FOREWORD

1996 was the first year in the Authority's short history when its activities could be described as regular. The status of implementation of legal acts by the EFTA States shows that a respectable level has been reached and maintained, which in the case of Liechtenstein represents an unprecedented effort.

The result is nevertheless somewhat flawed by the fact that a relatively high number of notifications of full implementation has revealed imperfections. This calls for attention, particularly as further in-depth conformity assessment is likely to reveal that additional legal acts have only been partially implemented.

It is furthermore a matter for concern that in certain sectors implementation is very slow or display many instances of non-implementation. The report explicitly mentions such sectors, and it is worth emphasis that, surprisingly, environment protection, workers rights and health and safety at work belong to those where implementation has been slow.

In addition to these remaining tasks in implementation control, the Authority has to be prepared for the further inclusion of relevant legal acts into the Agreement. The backlog is still very important, notably in the veterinary field.

However, 1996 seems to represent a turning point as regards the Authority's future work. The number of own initiative actions dropped dramatically, whereas the number of complaints was almost the same. This indicates that as problems related to transposition into national law are on the decrease, difficulties in the application of EEA law at national level are there to stay.

Application problems are encountered in a great number of fields, notably related to basic provisions of the EEA Agreement and to the deregulation process in sectors with previous heavy government involvement. Such cases are as a rule very complex and resource consuming. It is illustrative of this situation that in spite of a record number of closures in 1996, the case-load increased at an alarming rate.

This is to some extent a predictable development calling for clear strategies to be elaborated by the Authority in co-operation with the national authorities. Notably, national authorities should review their arrangements for dealing with complaints at administrative and judicial level to assure that application problems can be dealt with quickly and without unreasonable expense. Public procurement offers a striking example of disproportionality between the number of cases which the Authority has settled and those which have been settled nationally.

Such efficient systems for settlement of application problems, also involving co-operation between the Authority and the national authorities, is in fact what each EFTA State would like to have recourse to when its nationals encounter problems in another EEA State.

The economic effect of the Agreement and its image in political and business circles, depends heavily upon the way its two surveillance authorities are able to devise more consistent systems for informal, yet dedicated co-operation with the national authorities in order to remove the barriers encountered by those who through their daily activities are fulfilling the real objectives of the Agreement.

Brussels, 21 March 1997

Knut Almestad
President

1. SUMMARY

The EFTA Surveillance Authority monitors, together with the European Commission, the fulfilment of obligations under the EEA Agreement. The Agreement contains both basic provisions and secondary Community legislation (EEA acts). New EEA acts are included in the Agreement through decisions by the EEA Joint Committee. At the end of 1996 the number of binding EEA acts was 1575, of which 1218 were directives and 357 regulations or decisions.

Regarding *general surveillance*, as of September 1996 the Authority has applied a new implementation control policy, under which formal infringement proceedings are initiated automatically (by sending a letter of formal notice) against the EFTA State[1] concerned, if the Authority has received no acceptable notification on national implementing measures within two months from the date when the directive in question should have been transposed. As regards directives which have been only partially implemented, the need to initiate formal proceedings is being considered at regular intervals.

By the end of 1996, the rate of transposition of directives when account is taken of both directives which had been notified as fully implemented and those in which only partial notification had been received, was as follows: Iceland 96.7%, Liechtenstein 95.1%, and Norway 97.1%. However, the figures are markedly lower if only notifications indicating full implementation are taken into consideration.
The percentages then become for Iceland 83.7%, for Liechtenstein 79.3% and for Norway 89.9%. Furthermore, is should be noted that the quality of notified national measures has so far been assessed only with respect to a fraction of the directives. The amount of work involved is well illustrated by the fact that the rate of directives, for which the Authority's services have been able to conclude that full implementation has actually taken place, is no more than 35% on average for all three EFTA States.

Between 1994 - 1996, the Authority registered 473 cases altogether, of which 364 were own-initiative cases and 109 complaints, in the areas of free movement of goods, persons, services and capital, horizontal areas and public procurement. As 125 cases had been closed by the end of 1996, the Authority began the current year with the heavy workload of 348 open cases.

More specifically, in the area of free movement of *goods*, individuals and economic operators continue to show more concern for the correct application of the primary EEA rules than for the implementation of secondary legislation. In spite of a considerable amount of secondary legislation in this field, the transposition of the legislation into the legal order of the EFTA states can generally be considered satisfactory. There are, however, some delays in the transposition of new acts incorporated in the EEA Agreement. Certain important sectors such as, *foodstuffs*,

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

pharmaceuticals and *veterinary* issues are being examined with particular care for *conformity*. Special monitoring of the *application* of secondary EEA legislation is called for in the *veterinary* and *phytosanitary* sectors. Continuous and intensive control of the correct application of EEA rules is carried out by the Authority in a number of *information procedures*. With regard to *public procurement*, the application of the EEA rules by national authorities continues to call for particular attention by the Authority, due to a high number of complaints.

As regards free movement of *persons*, the number of cases of non-implementation or partial implementation is still relatively high in the sector of *mutual recognition* of professional qualifications. The *financial services* sector also contains many directives which are only partially implemented. Within the latter sector, systematic assessment of national measures in the *insurance* field is being carried out by the Authority's services. In both the free movement of persons and free provision of services fields, much of the Authority's resources are occupied with the examination of complaints, often alleging discrimination based on nationality. On the other hand, only one infringement case is open relative to *capital movements*. In the horizontal areas a lot of transposition work must still be carried out by the EFTA States in the sectors of *health and safety at work*, *environment* and *company law*. The transposition of part of the directives in the last mentioned sector has been subject to a systematic conformity assessment.

Concerning *State aid*, the Authority decided to propose appropriate measures to Iceland with regard to State aid in the form of sectorally differentiated social security tax. The Icelandic Government agreed to the measures and the necessary legal amendments were adopted. The Authority has also been investigating the regionally differentiated social security tax in Norway. The examination was still under way at the end of 1996.

An investigation procedure was opened with regard to the Norwegian Government's financing of the Arcus Group, a state owned company, established after the demerger of the former Norwegian alcohol monopoly and active in *inter alia* importation and wholesale of alcoholic beverages. At the same time, the Authority found that the Norwegian Government's legislative amendments and related organizational changes related to imports, exports and wholesale of alcoholic beverages met the requirements the Authority had previously laid down. Therefore, it decided to close the case it had opened concerning the former monopoly. The Authority expressed that this decision did not prejudice its position with respect to other aspects of trade in alcoholic beverages in Norway. The Authority was, at the end of 1996, examining whether the amendments of the alcohol legislation in Iceland met the requirements laid down in an earlier reasoned opinion. The Authority dealt with several individual State aid cases in 1996, where it decided not to raise any objections. This was the case *inter alia* for Rena Karton, a Norwegian producer of folding box board. An approval was given of areas in Iceland eligible for regional aid.

By the end of 1996, fifty-two *competition* cases were pending with the Authority, with particular attention being given to cases relating to the pharmaceutical, telecommunications, energy and forestry sectors, as well as the sector for distribution of wine and spirits. However, none of these cases were terminated in the course of

1996. In the pharmaceutical sector, the Authority has been examining a complaint regarding a refusal to supply, and another complaint on the establishment and functioning of a joint purchasing organization set up by most Norwegian hospitals to procure medicines. With regards to the telecommunications sector, the Authority has been closely looking at a leasing and cooperation agreement whereby Telenor AS, the public telecommunication operator in Norway, has the exclusive right to use the excess capacity of the telecommunication network owned by the Norwegian Railways.

In June 1996, the Authority received a request from the European Commission to undertake an investigation into the premises of the three member companies of the Norwegian Gas Negotiation Committee (*Gassforhandlingsutvalget - GFU*). Following the investigation, further information was requested from the Norwegian authorities. The Authority has also examined the markets for round wood in Norway. Three Statements of Objections were issued as a result, a subsequent hearing was held and final decisions are foreseen in the first part of 1997. Also received were three complaints concerning the wholesale and distribution activities of the Arcus Group, and in the insurance field, the Authority examined notified norms and standards for testing and acceptance of security devices and the evaluation and approval of undertakings installing them. With regards to the latter, a notice was adopted in December 1996 in which the Authority indicated its intention to take a favourable view on the arrangements and invited comments from interested parties.

2. INTRODUCTION

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

Pursuant to Article 21 of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (the Surveillance and Court Agreement), the Authority is to publish annually a general report on its activities. The present report is the third of its kind.

Some basic information is given in *Section 3* on the Agreement on the European Economic Area (EEA Agreement) and the Authority itself as a background to the substantive parts of the Annual report. In this part, definitions are also set forth on a number of concepts frequently referred to in the Report and reference is made to the Information Policy of the Authority.

Section 4 provides reports on the Authority's work on *general surveillance* with respect to the free movement of goods, persons, services and capital. The first part introduces the main principles of the new implementation control policy applied by the Authority as of September 1996, and explains how the EFTA States are being provided with information relative to the implementation of EEA acts. Additionally, statistical information is also given for the years 1994 to 1996, regarding the implementation status of directives, registered own-initiative cases and complaints, infringement cases, and instances where cases have been closed.

In the following parts of Section 4, an elaborate account is given, sector by sector, of the implementation and application of the EEA Agreement in the EFTA States, as well as the activities carried out by the Authority ensuring the fulfilment of obligations under the Agreement and for the management thereof. In general, with regard to each sector, a brief introductory overview is also given of the EEA legislation applicable in the sector.

Accordingly, extensive information is given on the status as regards the notification of national measures implementing directives. In that context, 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, and deficiencies are identified regarding the implementation and application of EEA rules by the EFTA States. Furthermore, the Authority's action to ensure the fulfilment of obligations under the Agreement, including formal infringement proceedings, is described. As regards the transposition of directives, the text is supplemented by information in tabular form in respect of each individual directive in Annex IV. Information is also given on certain procedures administered, and functions carried out by the Authority in the application of the Agreement, notably in the veterinary field.

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 pursued

by the Authority concerning the application of the rules, and statistics are provided on procurement notices published in the Official Journal of the European Communities.

Section 5 deals with State aid, monopolies and competition. In the field of *State aid*, an overview is given of the general policy developments that have taken place in the course of 1996, as reflected in the amendments made to the Authority's State Aid Guidelines. Information is given on the Authority's activities relative to existing aid, on complaints received by the Authority regarding such aid 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.

3. THE EEA AGREEMENT

3.1. THE EUROPEAN ECONOMIC AREA (EEA)

The Agreement on the European Economic Area (EEA Agreement) entered into force on 1 January 1994. 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 this report.

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. 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 EC 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.

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 EFTA 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.

3.2. THE EFTA SURVEILLANCE AUTHORITY

The Authority was 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.

3.2.1. Tasks and competences

A central task of the Authority is to ensure that the EFTA States fulfil their obligations under the EEA Agreement. In general terms, this means that the Authority is to ensure that the provisions of the Agreement, including its Protocols and the acts referred to in the Annexes to the Agreement (the *EEA rules*)[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

[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*.

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 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 is 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 usually 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 Directorate concerned may decide to send an informal letter to the EFTA State concerned (*pre Article 31 letter*) inviting it to adopt the measures necessary to comply with the Directive, or to provide the Authority with information on the actual status of implementation.

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

In the *competition* field, the tasks of the Authority are directed towards surveillance of the practices and behaviour of undertakings on the market, and are in principle not, as in other fields, related to ensuring that the EFTA States fulfil their obligations under the Agreement. 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 these tasks, the Authority is entrusted with wide powers to request information, including making on-the-spot inspections. In the case of an infringement, the Authority may order the undertakings concerned to bring the infringement to come to an end. In such cases, the Authority issues a *Statement of Objections*, on which the parties have the opportunity to comment both in writing and orally in the form of a hearing. If the Authority still is of the opinion that there is an infringement after the parties have been heard, a *final decision* is adopted ordering the infringement to an end. In addition, the Authority may impose fines and periodic penalty payments for breaches of the competition rules.

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 authorisation may sometimes be needed before a product can be lawfully placed on the market and an EFTA State may, under certain circumstances, restrict the free movement of a product in order to protect human health or refuse to recognise a foreign diploma or licence, provided that the restrictive measure is notified to and authorised by the Authority. Although these 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 and verification of national approval of fresh meat, fish processing and other establishments in the EFTA States.

3.2.2. Information Policy

During 1996, the Authority undertook particular measures to better inform the public on the functioning of the EEA Agreement and the activities of the Authority. In order to facilitate its contacts with the media and the general public, the Authority assigned Ms. Helga Óttarsdóttir as its contact person. Ms. Helga Óttarsdóttir may be reached during working hours on tel. +32-286.18.34 or +32-286.18.32, for questions concerning the Authority's activities. Furthermore, the Authority has established a set of simple rules for the handling of requests for access to documents. Such requests may be put forward in writing or even orally.

A request for access to documents shall be responded to, within two weeks, at the latest. Requests are responded to by Directors or College Members. The Authority's contact person with the media will assist those who seek access to documents kept by the Authority, and will transmit the requests to the respective Director or College

Member, who will decide on the matter. In view of provisions on business or professional secrecy, for reasons of protecting certain legitimate public and private interests, for example, in competition cases, certain information cannot be disclosed. It may be noted, however, that nothing prevents a party whose interests are protected by the Authority to make available to the public such documents or information. If access is granted, the document is made available to the person requesting access either as a paper copy, or for consultation on the premises of the Authority. In the case of a refusal of access to a document, the person requesting the document may ask in writing for a review by the Authority. The Authority shall decide on the matter within one month and state the reasons for arriving at its decision.

Towards the end of 1996, the Authority started the project to place the EFTA Surveillance Authority on the World Wide Web. The idea behind this undertaking is to provide everybody with access to relevant information on the EEA and the tasks and obligations of the Authority. The Home page of the EFTA Surveillance Authority will be available to the public in the first quarter of 1997, under the address *http://www.efta.int.*

3.2.3. Organization

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 1996 was,

Knut Almestad (President)
Björn Friðfinnsson
Bernd Hammermann

The division of responsibilities among College Members during 1996 is shown in Annex II.

At the end of the year, Björn Friðfinnsson left the Authority to take up other duties. A devoted professional and a highly appreciated colleague, he had served as a College Member since the establishment of the EFTA Surveillance Authority. The Governments of the EFTA States appointed Hannes Hafstein to replace him.

The number of staff excluding College Members at the beginning of 1996 totalled 41 allocated to five departments. An organigramme showing the Authority's organization during 1996 is at Annex III.

4. FREE MOVEMENT OF GOODS, PERSONS, SERVICES AND CAPITAL

4.1. IMPLEMENTATION CONTROL POLICY

At the end of 1996, the *acquis communautaire* which was part of the EEA Agreement, comprised altogether *1,575*[3] binding EEA acts (regulations, decisions and directives). Of these, 76 had been added in the Agreement during that year through EEA Joint Committee decisions.

During the first two years of its operation, the magnitude of Iceland's and Norway's task of implementing the *acquis* under the EEA Agreement had been such that the Authority had allowed more time for the informal settlement of issues than the European Commission normally permits, when performing its parallel tasks on the Community side. The same policy was, of course, applied to Liechtenstein during the first eight months of it being a party to the EEA Agreement.

However, as the Agreement entered its third year of operation the Authority concluded that the time had come - in particular, as regards Iceland and Norway which had achieved a relatively high notification rate by the end of 1995 - to adopt, with respect to new EEA acts, implementation control procedures which would be more in line with existing Commission practices. Therefore, in early June 1996, the Authority approached the Governments of the EFTA States by letter, introducing a new implementation control policy. With respect to Iceland and Norway the application of the policy started in September 1996 and will be extended to Liechtenstein during the course of 1997.

Even under the new policy, informal contacts with national administrations continue to be part of the Authority's general working methods when it seeks to ensure compliance with the EEA Agreement. However, for reasons of efficiency and in order to follow the Commission policy, formal means are now being used more readily in cases where it is evident that full implementing measures have not been notified. In such instances, formal infringement proceedings in accordance with Article 31 of the Surveillance and Court Agreement are initiated directly.

In practice, this means that every two months the Authority verifies whether each EFTA State has notified implementation of the relevant EEA acts. If the Authority

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[3] This figure also includes those acts in the original EEA Agreement which *amend* the so called "basic" acts. The amending acts have been included in order to render the Authority's statistics comparable with those of the European Commission. It should be noted that the amendments were not taken into account in the Authority's Annual Reports for 1994 and 1995, which explains the fact that the difference between the figure for 1996 and those of the two previous years is bigger than the total number of acts added through EEA Joint Committee decisions of the respective years.

has not received an acceptable notification, it sends a letter of formal notice for failure to adopt implementing measures to the EFTA State concerned. As regards EEA acts that have only been partially implemented, the Authority considers at regular intervals whether to initiate formal infringement proceedings against the EFTA State concerned, taking into account the extent to which the act has been implemented, and the length of time which the EFTA State has indicated it needed to achieve full compliance with the act.

4.2. INFORMATION RELATIVE TO IMPLEMENTATION

In order to help the Governments of the EFTA States in their efforts to co-ordinate, monitor and, where appropriate, speed up the preparation of national implementing measures, the Authority undertook, in the above-mentioned letter regularly to remind each EFTA State of those acts whose implementation was due within the next four months, including acts whose transition periods were about to expire. The Authority also committed itself to sending every second month, to each EFTA State, information regarding acts which the Authority deemed not to have been implemented, and acts only partially implemented. This practice has been in operation since the summer of 1996.

The information submitted to the EFTA States is produced with the help of the *Acquis Implementation Database (AIDA)* which is constantly kept up-to-date by the Authority's services.

With a view to facilitating the EFTA States' task of providing the Authority with detailed information on national implementing measures, the Authority continued, with respect to EEA acts in a number of sectors, its practice of preparing so-called *"frames for tables of correspondence"* - that is to say, tables in which the texts of the provisions of a directive are reproduced together with blank spaces for references to the relevant national implementing measures. The frames are sent to the EFTA State Governments with a request to have them completed and submitted to the Authority.

In this context it should be mentioned that the Authority's services enter into AIDA the *titles of all the national measures* which the EFTA States notify as implementing EEA acts, and the information is constantly being up-dated as new notifications are received. Each EFTA State has been requested to provide the titles of national measures not only in the national language, but also in English. In order to increase transparency and to promote the knowledge of the EFTA States as parties to the EEA Agreement, the Authority is examining ways of making this information available to the public. That is already the situation on the Community side, where information on the measures adopted by the EC Member States is accessible in Part 7 of the CELEX database.

4.3. IMPLEMENTATION STATUS OF DIRECTIVES

At the end of 1994 *Iceland* had notified full or partial implementation of 88% of the directives applicable to it, whereas the corresponding figure for *Norway* was 94%. By

the end of 1995 the figure for Iceland had risen to 92.6%, whereas Norway's figure had slightly decreased, to 93%. Liechtenstein, having only been a party to the EEA Agreement for a period of eight months, showed the relatively modest figure of 68.4%.

By the end of 1996, the total number of directives that were part of the EEA Agreement was 1218.[4] All but one were applicable both to *Iceland* and *Norway*, whereas *Liechtenstein* still enjoyed a transitional period with respect to 288 directives.

Directives notified as fully or partially implemented:

	1994	**1995**	**1996**
Iceland	88%	92.6%	96.7%
Liechtenstein	-	68.4%	95.1%
Norway	94%	93%	97.1%

By the end of 1996 *Iceland* had notified 96.7% of applicable directives, *Liechtenstein* 95.1%, and *Norway* 97.1%. The situation had thus improved considerably for each EFTA State, especially for Liechtenstein demonstrating a dramatic positive development.

Two important qualifications should nevertheless be made regarding these figures.

Firstly, as indicated above, the figures include both those directives which have been notified by the EFTA States as fully implemented, and those only *partially* implemented. If the latter are excluded - that is to say, if only those directives are taken into account which the respective State has informed the Authority that it considers the notified national measures as ensuring *full* implementation - the figures are markedly lower, being for *Iceland* 83.7%, for *Liechtenstein* 79.3%, and for *Norway* 89.9%.

Secondly, even the latter figures should be read bearing in mind that although an EFTA State, when submitting its notification, considers the notified national measures to ensure full implementation of the directive in question, in practice this is not always the case. In the Authority's experience, particularly when large and/or complex directives are notified, transposition is sometimes not entirely complete, individual provisions of directives not having been implemented for different reasons.

It should thus be underlined that it is only after the Authority's services have carried out a detailed assessment of the conformity of the notified national measures that conclusions can be drawn as to the *quality* of the transposition. A proper conformity assessment is often a very demanding and time consuming project, involving not only thorough analyses of the national measures, but also several rounds of correspondence with the competent national authorities.

[4] As regards this figure, compared with the figures presented in the Authority's Annual Reports for 1994 and 1995, see footnote no 3 above.

This being so, by the end of 1996 the Authority had been able to conclude only with respect to about 35% of the directives which are part of the EEA Agreement that the notified national measures are actually in conformity with the relevant provisions of the directive, and that full implementation has thus taken place.

4.4. OWN-INITIATIVE CASES AND COMPLAINTS

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

The Authority also receives written communications from individuals and economic operators, reporting EFTA States' measures or practices which are alleged not to be in conformity with the EEA rules. The respective Directorate registers communications of this kind in the *GENDA* as *complaints*.

The two tables below illustrate the total number of own-initiative cases and, respectively, complaints registered in the GENDA with respect to the three EFTA States during the years 1994 to 1996 in the main sectors covered by the EEA Agreement.

Own-initiative cases registered in 1994 - 1996:

Sector	1994	1995	1996	Total
FREE MOVEMENT OF GOODS	19	17	45	**81**
FREE MOVEMENT OF PERSONS	0	48	2	**50**
FREE PROVISION OF SERVICES	21	50	27	**98**
FREE MOVEMENT OF CAPITAL	0	1	1	**2**
HORIZONTAL AREAS	14	98	18	**130**
PUBLIC PROCUREMENT	0	0	3	**3**
Total	**54**	**214**	**96**	**364**

Complaints registered in 1994 - 1996:

Sector	1994	1995	1996	Total
FREE MOVEMENT OF GOODS	12	16	17	**45**
FREE MOVEMENT OF PERSONS	1	8	6	**15**
FREE PROVISION OF SERVICES	0	11	4	**15**
FREE MOVEMENT OF CAPITAL	0	0	0	**0**
HORIZONTAL AREAS	0	0	2	**2**
PUBLIC PROCUREMENT	3	15	14	**32**
Total	**16**	**50**	**43**	**109**

A number of observations can be made on the basis of the information contained in the tables.

For example, it can be seen that during the first three years of the EEA Agreement, the Authority has registered more than *three times* as many own-initiative cases (364) as complaints (109).

As to the distribution between *own-initiative* cases it can be seen that the main sector with the most cases is, perhaps somewhat surprisingly, *horizontal areas*, with a total of 130 cases (health and safety at work and environment being the two biggest sectors in that group). It is followed by the sectors of *free provision of services* (98 cases), *free movement of goods* (81 cases), and *free movement of persons* (50 cases).

Regarding *complaints*, the main sector with the most registered cases is *the free movement of goods* (45 cases), followed by *public procurement* (32 cases). As regards *free provision of services* and *free movement of persons*, 15 complaints have been registered in each sector.

More than half of the own-initiative cases were registered during 1995. A rather natural explanation for this is that a considerable number of directives were to be complied with only in 1995 and, that in several instances EFTA States either completely failed to transpose them, or notified only partial implementation. All those instances were then registered as own-initiative cases.

The next table shows the break-down between own-initiative cases and complaints which involve, on the one hand, an infringement of a basic provision of *the EEA Agreement* (or its Protocol) and, on the other hand, a failure in the implementation or application of an *EEA act*.

Break-down by type of own-initiative cases and complaints registered during 1994 - 1996:

Sector	EEA Agreement	EEA Act	Total
FREE MOVEMENT OF GOODS	49	77	**126**
FREE MOVEMENT OF PERSONS	9	56	**65**
FREE PROVISION OF SERVICES	14	99	**113**
FREE MOVEMENT OF CAPITAL	0	2	**2**
HORIZONTAL AREAS	1	131	**132**
PUBLIC PROCUREMENT	8	27	**35**
Total	**81**	**391**	**473**

As can be seen, the number of cases relating to the basic provisions is only about one fourth of those that are concerned with the implementation of application of an EEA act.

4.5. INFRINGEMENT CASES

It should be recalled that registration of a case as an own-initiative case or a complaint is only a first step, and is always followed by a closer examination of the matter. If the Directorate concerned, having completed the examination, concludes that an EEA rule *has not been properly implemented or is not correctly applied* by an EFTA State, it must inform the competent College Member, who shall bring the matter before the College for a decision to be taken on whether or not to initiate formal infringement proceedings. If the College takes such a decision and a letter of formal notice is sent to the EFTA State concerned, the issue (the own-initiative case or, the complaint, as the case may be) becomes *an infringement case*.

If the Authority, having provided the EFTA State with the possibility of presenting its observations by replying to the letter of formal notice, continues to be of the opinion that the State is in breach of the EEA Agreement, it shall deliver a reasoned opinion. If the State fails to comply with the opinion within the period laid down in it, the Authority may refer the matter for decision by the EFTA Court.

The table below indicates the total number of infringement proceedings started (letters of formal notice sent) against the three EFTA States during the years 1994 to 1996, as well as the total numbers of cases where reasoned opinions were delivered, and cases brought before the EFTA Court.

Steps in infringement proceedings registered in 1994 to 1996:

	Letters of formal notice			**Reasoned opinions**			**Referrals to EFTA Court**			**Total**
	94	**95**	**96**	**94**	**95**	**96**	**94**	**95**	**96**	
ISL	16	14	30	0	6	5	0	0	2	**73**
LIE	0	12	10	0	0	0	0	0	0	**23**
NOR	13	13	33	1	1	6	0	0	0	**66**
Total	**29**	**39**	**73**	**1**	**7**	**11**	**0**	**0**	**2**	**162**

As can be seen, of the 70 own-initiative cases and complaints registered in 1994, more than one third (29) matured into infringement cases that year, as *letters of formal notice* were dispatched to the respective EFTA States. (It should be mentioned that the "horizontal" letters of formal notice, sent by the Authority in March 1994 to, *inter alia*, Iceland and Norway, and listing all the directives on which the State in question had failed to provide information necessary to assess the status of implementation, are not included in the 1994 statistics.) The number of letters of formal notice increased in 1995, amounting to a total of 39. The year 1996 brought a considerable increase in the number of new infringement proceedings, 73 letters of formal notice being sent. Part of the increase is directly attributable to new implementation control policy being applied to Iceland and Norway.

To summarise, during the first three years of the EEA Agreement, the Authority opened 141 infringement proceedings. At the same time, it should be recalled that during that period the Authority registered a total of 473 own-initiative cases and complaints. This proportion is clear confirmation of the Authority's general policy of using informal contacts with national administrations whenever it believes that these will lead to the EFTA State in question taking the necessary remedying measures as quickly as it would if formal infringement proceedings were started against it.

As regards *reasoned opinions*, it is therefore rather natural that by the end of the third year this action had been taken by the Authority in only 19 cases. However, it can be expected that the number of reasoned opinions dispatched in 1997 will be higher than in 1996 - the trend being clearly visible in the table.

No cases were referred by the Authority to the *EFTA Court* during the first two years of the EEA Agreement. Only two referrals took place in 1996. In both cases the application was withdrawn before judgement, the EFTA State concerned having in the meantime adopted the measures necessary to comply with the Authority's request.

4.6. CLOSURES AND PRESENT WORKLOAD

The objective of the Authority's informal and formal action is to ensure that the EFTA States fulfil their obligations under the EEA Agreement. As soon as that objective has been reached, the case in question is *closed*. The table below displays the numbers of own-initiative cases and complaints in the main sectors that were closed during the years 1994 to 1996.

Own-initiative cases and complaints closed in 1994 to 1996:

Sector	1994	1995	1996	Total
FREE MOVEMENT OF GOODS	3	10	35	**48**
FREE MOVEMENT OF PERSONS	0	3	5	**8**
FREE PROVISION OF SERVICES	0	18	24	**42**
FREE MOVEMENT OF CAPITAL	0	1	0	**1**
HORIZONTAL AREAS	0	3	15	**18**
PUBLIC PROCUREMENT	0	7	1	**8**
Total	**3**	**42**	**80**	**125**

Altogether, 125 cases had been closed by the end of 1996. The Authority keeps separate records on cases which have been closed due to the fact that the EFTA State concerned has complied with the Authority's request to *adopt the measures* necessary to remedy the breach in question, and in cases which have been closed for *other reasons* (*e.g.* because the complaint was found not to be justified, or because the explanation provided by the EFTA State in an own-initiative case satisfied the Authority that there actually was no breach). Most of the closures (116) belong to the first-mentioned group.

The total number of own-initiative cases and complaints registered in 1994 - 1996 being 473, and that of closed cases 125, the Authority had at the end of the reporting period 348 open cases. This indicates clearly that despite the marked increase in the number of closures, the Authority's workload is rapidly growing.

Open cases in 1994 to 1996[5]:

	1994	**1995**	**1996**
Own-initiative cases and complaints	70	264	139
Closures	3	42	80
Open cases at end of preceding year		67	289
Total open cases end of year	**67**	**289**	**348**

[5] This table does not include cases and complaints in the field of State aid and competition.

4.7. FREE MOVEMENT OF GOODS

4.7.1. Overview

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

a) 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 customs duties;

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

c) examining individual cases with regard to the correct application of the EEA rules, e.g. concerning the obligation to notify draft technical regulations;

d) carrying out certain tasks of an administrative nature, such as controlling certain plans in the veterinary field and ensuring that the requirements for the hygienic conditions in meat and fish processing establishments are met; and

e) verifying the compliance with primary EEA rules and monitoring the transposition of secondary EEA legislation also with regard to public procurement. In practice, the examination of complaints regarding failure to apply the EEA rules on public procurement in a correct manner proved to be the main task.

Individuals and economic operators continued to show 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 than for the implementation of secondary legislation. A considerable part of the work of the Authority was therefore related to the application of those primary EEA rules.

In general terms, it could be concluded that in the EFTA States the transposition of secondary EEA rules on the free movement of goods can be regarded as satisfactory. However, new acts integrated into the Agreement after its entry into force, through decisions of the EEA Joint Committee, have not always been implemented in a timely manner. *Liechtenstein*, for which the Agreement was applicable from 1 May 1995,

undertook in 1996 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 certain fields, this process had not been finalized by the end of 1996.

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 were concerned, in spite of certain delays in completing the transposition. This conclusion is supported by the absence of complaints lodged with the Authority on the grounds of insufficient transposition of harmonization directives, or the incorrect application of those rules.

Even if the description below 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 European wide harmonized protection objectives pursued by product related EEA rules would not, to a considerable extent, have been achieved.

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

4.7.2. Basic Provisions

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) and discriminatory taxation of imported goods (Article 14).

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 product liability, energy and intellectual property.

4.7.2.1.Customs duties and charges having equivalent effect, and discriminatory taxation

During 1996, the Authority received one complaint, and three cases based on complaints received in 1994 and 1995 were closed. No own-initiative cases were opened in 1996. Three complaints on taxation and fiscal duties, dating from previous years, were not yet closed at the end of the reporting period. One own-initiative case was still under examination.

As *Iceland* had failed to adjust to the requirements of Article 14 of the Agreement because of its legislation concerning a commodity tax levied on a wide range of products, the Authority brought proceedings before the EFTA Court in January 1996. In the Authority's view, the provisions concerning the basis for the assessment and payment of the tax contained elements which had a discriminatory or protective effect in favour of goods produced in *Iceland*. As the Icelandic Government admitted that the provisions concerned were incompatible with Article 14 of the EEA Agreement, and as amendments to the commodity tax legislation in *Iceland* effectively removed the discriminatory elements disputed by the Authority, the case was withdrawn before the Court reached its decision.

In the case of the Norwegian basic tax on one-way packaging of beverages where a basic tax of 0.70 NOK is levied on all non-refillable packaging of beverages, except on milk, milk products and chocolate drinks, the Authority delivered a reasoned opinion in November 1996, stating its opinion that this tax had a discriminatory effect.

4.7.2.2.Quantitative restrictions and measures having equivalent effect

During the reporting period, nine complaints were received and one own-initiative case was opened regarding quantitative restrictions and measures having equivalent effect.

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 for 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, issued in 1995, the Norwegian authorities agreed in 1996 to amend the legislation. However, at the end of the reporting period the amendment had not been undertaken. During 1996 the Authority received another complaint concerning the licensing system in *Norway* for distributing video tapes.

Among other matters studied by the Authority in 1996, with regard to fulfilment of the obligations under Article 11 of the Agreement, was the Norwegian legislation on trade in alcoholic beverages. Further complaints on the Norwegian legislation on trade in alcohol beverages were received during the reporting period. Discussions with national authorities on the issue were still ongoing at the end of 1996.

The Authority received a complaint against *Norway* on the import restrictions on alcoholic cider. Cider is, however, excluded from the scope of the EEA Agreement, which resulted in the closure of the case. By the end of the reporting period, two new complaints on the same subject were received by the Authority.

Furthermore, in relation to tobacco and alcohol beverages, the Authority has received a complaint on the ban of advertisement of these products in *Norway* and *Iceland*.

Acting on the basis of a complaint against *Norway*, the Authority has started an examination of a case with regard to the prohibition of indirect publicity for tobacco products.

On the basis of a further complaint, the Authority approached the Norwegian Authorities regarding the legal situation when it comes to documents for the registration of motor vehicles, having earlier been registered in another EEA State. The Authority also received a complaint regarding an alleged case of non-acceptance in *Norway* of tests carried out in another EEA State with regard to the safety of fireplace inserts. These matters were under examination at the end of the reporting period.

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

Acts with regard to technical regulations, standards, testing and certification are included in Annex II to the EEA Agreement. The situation in the different areas is as follows:

At the end of the reporting period, transposition of all acts concerning ***Motor vehicles*** had been notified by the three EFTA States. The Authority invited *Iceland* to give complementary information on how the existing national laws and regulations actually ensure full compliance with the *Type Approval Directive* (70/156/EEC), *as amended*, in particular with its articles on the type approval process and on registration. *Iceland* has announced that it will make amendments in its legislation in that respect. No notification had, however, been received before the end of the reporting period. The Authority will therefore pursue the matter in 1997.

The directives in the chapter on ***Agricultural and forestry tractors*** have been implemented in all three EFTA States.

The directives regarding ***Lifting and mechanical handling appliances*** had been implemented in all three EFTA States at the end of 1995, with the exception of the *Directive on Electrically Operated Lifts* (84/529/EEC), which had not been fully transposed in *Norway*. Complete notification was received in May 1996 from that State as implementing national legislation had entered into force in April 1996.

When it comes to the field of ***Household appliances*** the Directives with regard to *Energy Labelling of Household Electric Refrigerators, Freezers and their Combinations* (94/2/EC), *Washing Machines* (95/12/EC) and *Tumble Dryers* (95/13/EC) were due for compliance during 1996. They have been transposed into national legislation in all EFTA States.

The two directives in the field of ***Gas appliances*** have been implemented by all three EFTA States.

In the field of ***Construction plant and equipment*** the time limit for taking the necessary measures to implement *Directive 95/27/EC of the European Parliament and of the Council amending Directive 86/662/EEC on the Limitation of Noise emitted by Hydraulic Excavators, Rope-operated Excavators, Dozers, Loaders and Excavator-Loaders* expired on 1 April 1996. As no notifications had been received, letters of formal notice were sent to *Iceland* and *Norway* in October 1996.

The chapter on ***Other machines*** covers only one act, *Directive 84/538/EEC on the Permissible Sound Power Levels of Lawnmowers*. This Act had been implemented in *Iceland* and *Norway* during 1995, and was implemented during 1996 in *Liechtenstein*.

Liechtenstein and *Norway* implemented the directives in the chapter on ***Pressure vessels*** during 1995, with the exception that *Norway* did not implement the Directive on *Aerosol Dispensers* (94/1/EC). During the reporting period *Norway* also implemented that Directive.

Iceland did not provide proof of implementation of any of the acts, which prompted the Authority to issue a letter of formal notice. A complete notification was received from *Iceland* in March 1996 and the legislation entered into force on 1 September 1996.

All three EFTA States have taken measures to fulfil the requirements of the different directives in the chapter on ***Measuring instruments.*** However, the Authority is still examining the legal technique used by *Norway* for the transposition of certain optional harmonization directives.

The acts in the chapter on ***Electrical material*** have been implemented by the EFTA States, with one exception. *Norway* had, by the end of the reporting period, not transposed the *Directive on Equipment Intended for Use in Potentially Explosive Atmospheres* (94/9/EC), which became applicable on 1 September 1995. A letter of formal notice was sent in May 1996 and the Authority was informed in October 1996 that the Norwegian implementing regulation was to enter into force on 1 January 1997.

In the case of the *Directives on Electro-medical Equipment* (84/539/EEC) and *Active Implantable Medical Devices* (90/385/EEC), a letter of formal notice was sent to *Liechtenstein* in January 1996 for both of these directives. During the reporting period the implementation was completed by that State.

Three decisions on common technical regulations, 94/796/EC, 94/797/EC and 94/821/EC, had not been implemented by *Iceland* in 1995, and a letter of formal notice was therefore issued during that year. Notifications on full implementation were received in March 1996.

During 1996, the Authority delivered a reasoned opinion to *Norway* regarding each of the acts in the field of ***Textiles***, either for partial implementation or for non-implementation. Subsequently, the legal measures to ensure full compliance with the acts were adopted. Some of these entered into force only on 1 January 1997.

With regard to acts in the chapter on ***Foodstuffs***, at the end of the reporting period *Iceland* had not fully implemented the vertical directives related to *Milk and Milk Products* (76/118/EEC, 79/1067/EEC and 87/524/EEC). Likewise, the *Directive on Infant Formula and Follow-on Formula* (91/321/EEC) had not been fully transposed. Formal proceedings were initiated against *Iceland* by letters of formal notice for not implementing *Directive 95/31/EEC on Sweeteners in Foodstuffs* and *Directive 95/45/EEC on Purity Criteria for Colourants*. Implementing measures for these two Acts were then subsequently notified before the end of the reporting period. Letters of formal notice were also sent to *Iceland* for not notifying implementation measures for *Directive 95/42/EC amending Directive 93/102/EC amending Directive 79/112/EEC on the Approximation of the Laws of the Member States relating to the Labelling, Presentation and Advertising of Foodstuffs for Sale to the Ultimate Consumer* and *Directive 95/3/EC amending Directive 90/128/EEC relating to Plastic Materials and Articles intended to come into Contact with Foodstuffs.*

A letter of formal notice had been sent to *Norway* during 1995 for failure to implement the *Directive on Infant Formula and Follow-on Formula* (91/321/EEC). By the end of 1996 this Directive had almost been fully transposed with a timetable submitted for the remaining parts. The same applied to *Directive 93/43/EEC on Hygiene* for which a letter of formal notice was sent during 1996. A detailed timetable was submitted by the Norwegian Authorities regarding that Act. Formal proceedings were initiated against *Norway* by letters of formal notice for not implementing *Directive 95/31/EC on Sweeteners in Foodstuffs* and *Directive 95/45/EC on Purity Criteria for Colourants*. Implementing measures for these acts were then subsequently notified before the end of the reporting period.

The two latest Acts concerning *Maximum Residue Limits of Pesticides* (95/38/EC and 95/39/EC) had not been notified as implemented by *Iceland* by the end of the reporting period.

Liechtenstein has a transitional period for implementing the whole Chapter XII of Annex II on foodstuffs which expires on 1 January 2000.

Co-ordinated programmes for official control of foodstuffs and inspections to ensure compliance with maximum levels of pesticide residues in and on certain products of plant origin, including fruit and vegetables, were started in 1995. They are in the form of recommendations corresponding to those of the European Commission. Preparations for the programmes in 1997 are well under way and will include *Liechtenstein* for the first time, due to the fact that although *Liechtenstein* has a

transitional period for implementing Chapter XII of Annex II, it was agreed by the Contracting Parties to the EEA Agreement that Liechtenstein would do its utmost to comply with the provisions of the foodstuffs acts by 1 January 1997.

Regarding the Chapter on ***Medicinal products,*** *Norway* notified during 1996 the *Directive on Protection of Animals* (86/609/EEC) as implemented. With regard to the *Directives on Narcotic Precursors* (92/109/EEC and 93/46/EEC) the Authority, after meetings with national authorities, decided to address the lack of transposition by a letter of formal notice. Concerning proprietary medicinal products, a new regulation has been drafted and is awaiting a hearing. The regulation was foreseen to enter into force in early 1997. Moreover, a new Norwegian law relating to medicines was adopted, and entered into force in December 1996.

During the reporting period, the Authority received a complaint against *Norway* in the field of radiopharmaceuticals. It concerned the issues of wholesale, taxation (VAT) and procurement practice. At the end of the reporting period, the case was still under examination. Another complaint in the sector of medicinal products gave rise to the question of possible shortcomings as regards the Norwegian implementation of the *Directive on Wholesale Distribution* (92/25/EEC). The Authority has on several occasions brought this matter to the attention of the Norwegian authorities.

By the end of the reporting period the Icelandic authorities had notified implementing measures for all the acts in the pharmaceuticals field, with the exception of *Regulation 1102/95 on Maximum Residue Limits for Veterinary Medicinal Products. Directive 86/609/EEC on Protection of Experimental Animals* is not fully transposed.

Liechtenstein had envisaged an extensive project of introducing an implementation technique and an approximate timetable for the transposition of the pharmaceuticals acts. However, due to delays in the national decision making process the proposed law on the marketing of medicinal products within the EEA had not been adopted by Parliament before the end of the reporting period.

Liechtenstein notified the Authority of implementing measures regarding the *Directive relating to Analysis of* ***Fertilisers*** (95/8/EC) which was included in the EEA Agreement during 1996.

The cases initiated in 1996 against *Iceland* and *Norway* by letters of formal notice for not implementing *Directive 95/8/EC* were closed during the year, since proper legislation in this field had been adopted and notified by both States.

The general transitional period in the field of ***Dangerous substances***, which had been granted to the EFTA States on the basic directives on chemical substances and preparations and their risk assessment *(Directive 67/548/EEC, as amended, on Chemical Substances, Directive 88/379/EEC, as amended, on Chemical Preparations,* and *Directive 93/67/EEC on Risk Assessment of New Chemicals),* expired on 1 July 1995.

Iceland implemented the remaining provisions of the *Directive on Restrictions on certain Chemicals* (76/769/EEC) which had been outstanding from the previous year.

During 1996, *Iceland* received letters of formal notice for not transposing the *Directive on Fastenings on Preparations* (91/442/EEC), the basic directives on *Chemical Substances* (67/548/EEC) and *Preparations* (88/379/EEC) as well as *Directive 94/60/EC on the 14th amendment to the Restrictions Directive* (CMT*).*

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).

By the end of the reporting period, *Norway* had made considerable progress in implementing the chemicals legislation and drafts have been received for all the outstanding acts except the *Directive 94/60/EC on the 14th amendment to the Restrictions Directive* (CMT). A letter of formal notice was sent to *Norway* in 1996 for not implementing the Act.

During 1996, *Norway* set up the necessary infrastructure to fully participate in the notification scheme for new substances.

By the end of 1996, *Liechtenstein* had notified national measures for all the acts in the chemicals field. A full implementation is not secured, however, until the management tasks envisaged in some of the acts are fully operational.

By the end of the reporting period, all three EFTA States had notified national implementing measures for *Directive 95/32/EC on Methods of Analysis of* ***Cosmetic Products***, which became applicable in 1996.

Norway and *Liechtenstein* had notified implementing measures for the transposition of *Directive 95/34/EC adapting to Technical Progress Annexes II, III, VI and VII to Directive 76/68/EEC on the Approximation of the Laws of the Member States relating to Cosmetic Products*, which was to be complied with in 1996, but becomes fully effective in 1997. No notification was received from *Iceland* for that Directive.

In the field of ***Environment protection*** notification on implementation measures had not been received from any of the EFTA States concerning *Directive 94/63/EC* on *Volatile Organic Compounds*, which became applicable on 1 October 1996.

The two directives in the field of ***Information technology and telecommunications***, referring to telecommunications equipment, have been implemented by all three EFTA States.

When it comes to the chapter on ***General provisions in the field of technical barriers to trade***, at the very end of the reporting period, *Liechtenstein* took measures to fully comply with the provisions on the notification procedure regarding technical regulations in *Directive 83/189/EEC laying down a Procedure for the Provisions of Information in the Field of Technical Standards and Regulations* and *Directive 94/10/EC amending for the second time that Directive.*

The *Directive on General Product Safety* (92/59/EEC) was notified as implemented by *Iceland* and *Norway*, while no notification of national implementing measures was received from *Liechtenstein*. A letter of formal notice was therefore sent to that State at the end of the reporting period.

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* (93/583), for which the Authority had sent *Iceland* a letter of formal notice in 1995, were made part of the legal order also of that State during 1996.

Norway had been sent a reasoned opinion in December 1995 for non-implementation of the ***Construction Products*** *Directive* (89/106/EEC). In 1996, *Norway* notified implementing measures. These measures were at the end of the reporting period still under examination by the Authority.

The *Directive 93/95/EC amending the* ***Personal Protective Equipment*** *Directive* (89/686/EEC) was completely notified by *Norway* during the reporting period.

The *Directive relating to the Safety of* ***Toys*** (88/378/EEC) had been implemented by all three EFTA States. However, in the case of *Norway* some amendments to the national legislation to fully comply with the Act with regard to the affixing of the CE marking were still outstanding at the end of the reporting period.

The two directives in the field of ***Machinery*** have been implemented by all three EFTA States.

The three directives in the field of ***Tobacco*** have been implemented by all three EFTA States.

Iceland notified full implementation of *Directive 93/7/EEC on Return of* ***Cultural Objects*** *unlawfully removed from the Territory of a Member State*. After a letter of formal notice regarding non-implementation of the Act had been sent to *Norway* in November 1995, that State notified in 1996 that the main part of the Act had been implemented. Information from *Liechtenstein* stated that adoption of an amendment to the Cultural Heritage Law was foreseen in the Autumn of 1996. As the necessary amendments had not been made, a letter of formal notice was issued with respect to that State at the end of the reporting period.

In 1996 a notification of implementing measures for the *Directive on* ***Explosives for Civil Use*** (93/15/EEC) was received from *Iceland*. However, the Icelandic measures taken so far did not include provisions on ammunition complying with those of the Directive.

The one Directive in the field of ***Medical devices*** has been implemented by all three EFTA States.

The *Directive relating to* ***Recreational Craft*** (94/25/EC) was to be implemented by mid-December 1995. A letter of formal notice was sent to *Iceland* during 1996 as no

notification on transposing measures had been received. However, at the very end of the reporting period, notification on implementation was received also from that State.

4.7.4. Operation of certain procedures

4.7.4.1.Information procedure on draft technical regulations

The *Directive on an 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 shall 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 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.

Within the framework of this information procedure, the Authority received 30 notifications from the EFTA States during 1996 (all from *Norway*). In five cases, the Authority delivered comments and in 23 cases comments from the European Commission were forwarded. These comments consisted mainly of 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. Most notifications concerned telecommunications (22 cases) and environment (4 cases).

During 1996, the Authority received 522 notifications from the EC side, which in three cases led to single co-ordinated communications being transmitted to the European Commission. In January 1996, the Authority also delivered a single co-ordinated communication on a notification received during the year of 1995.

On the basis of a report drawn up by a contractor, which the Authority had engaged with the view to carrying out the task of detecting national technical regulations which were adopted in infringement of Directive 83/189/EEC, it was in 1996 possible for the first time to evaluate all of the EFTA States' initiatives in the sphere of technical regulations. A total of 161 national regulations were revealed in the three EFTA States. Out of these, 36 regulations, which had entered into force in *Liechtenstein* were Swiss, becoming valid for *Liechtenstein* because of the Regional Union between the two States. The Authority especially analyzed 51 regulations, issued in the three EFTA States, to find out whether they should have been notified under Directive 83/189/EEC.

Following this examination, it appeared that the vast majority of these regulations did not fall under the obligation to be notified under the Directive. In 13 cases, the Authority followed up the regulations by letters to the EFTA States requesting their comments. As a result of this, a letter of formal notice was sent to *Iceland* for not respecting the notification obligation in seven cases.

Draft technical regulations

	Notifications from EFTA States	**Comments from the Authority**	**Notifications from EU**	**Single Co-ordinated Communica-tions**
1994	**61**	**30**	**389**	**4**
1995	**8**	**6**	**438**	**3**
1996	**30**	**5**	**522**	**3**

4.7.4.2.Information procedures on chemicals

The information procedures in the chemicals field comprise the following three notification schemes, which have as their main purpose the evaluation and control of the risks of new and existing chemicals:

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

b) notification of existing substances, according to *Council Regulation on the Evaluation and Control of the Risks of Existing Substances* (793/93) as supplemented by the *Council Regulation on Risk Assessment of Existing Chemicals* (1488/94); and

c) notification according to *Council Regulation concerning Export and Import of certain Dangerous Chemicals* (2455/92*).*

For the Surveillance Authority and the EFTA States these procedures entail extensive technical, scientific and administrative work in close collaboration with the European Commission services, the European Chemicals Bureau (ECB) and EU Member States. In 1996, the Authority awarded additional service contracts to a consultant, for carrying out certain scientific and technical tasks in relation to the procedures.

4.7.4.3.New chemicals

The co-operation between the Authority and the Commission, and later the ECB on the notification scheme for new chemicals which started in 1994, continued during 1996.

The task of establishing what chemicals, falling within the scope of the scheme, are on the markets of the EFTA States was finalised for *Norway* during 1995 and updated in 1996. It included an exhaustive list of chemicals on the Norwegian market which were not found in the *European Inventory of Existing Commercial Chemical Substances (EINECS)*. Similar lists have not yet been produced for *Iceland* and *Liechtenstein*.

The premises in *Norway* and the associated procedural aspects for processing and storing confidential information were assessed by the Authority in 1996 and were found to be in order.

Iceland and *Liechtenstein* have not yet finalised their arrangements concerning the operation of this procedure.

4.7.4.4.Existing chemicals

The *Council Regulation on the Evaluation and Control of the Risks of Existing Substances* (793/93) entered into force on 1 February 1995. The Regulation as adapted foresees the European Chemicals Bureau as a single collecting and processing point for information on existing chemicals and sets out transitional arrangements for the EFTA States and their industries to adapt smoothly to the provisions of the Regulation. By the first deadline for notification by the EFTA States of certain existing chemicals with high production volume, 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*. At present *Norway* acts as a rapporteur for the whole European Economic Area for risk assessment of some existing substances under the Regulation.

4.7.4.5.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* (2455/92) was received from the EFTA States. It is expected, however, that notifications of substances will be received in the future, in particular since the Regulation has been amended so as to cover additional substances.

4.7.4.6.Foodstuffs

Norway notified a draft regulation on maximum levels of aflatoxin in certain food products under *Council Regulation 315/93 laying down Community Procedures for Contaminants in Food.* This was the first notification from *Norway* under this procedure.

4.7.4.7.Product Safety

The notification procedure under the *General Product Safety Directive* (92/59/EEC) provides for the application of a procedure regarding the rapid exchange of information in cases of serious and immediate risk to the health and safety of consumers. 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 69 notifications under the emergency procedure during 1996. In the framework of the non-food network, no notification was presented by the EFTA States, while 53 were received from the EC side. Within the food network, one notification was transmitted by the EFTA States and 15 were received from the EC side. In addition, the Authority forwarded two notifications, falling outside the scope of the rapid exchange system, from the EFTA States, and eight such notifications from the European Commission regarding unsafe consumer products, for information purposes only.

The Emergency Procedure

	EFTA notifications			**EU notifications**		
	food	**non food**	**total**	**food**	**non food**	**total**
1994	**2**	**2**	**4**	**9**	**6**	**15**
1995	**4**	**-**	**4**	**12**	**15**	**27**
1996	**1**	**-**	**1**	**15**	**53**	**68**

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

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

4.7.4.9.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 to carry out conformity assessments of specific products or families of products, as set out in the relevant directives. In 1996, seven 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. These notifications are forwarded to the European Commission which publishes them, together with the notifications received from the EU Member States, in the Official Journal of the European Communities. The latest compilation of notified conformity assessment bodies was published in Official Journal C 172, volume 39, 15 June 1996.

1994[6]	**1995**	**1996**
454	**20**	**7**

4.7.5. Other rules in fields related to the free movement of goods

4.7.5.1.Product Liability

The *Directive on Product Liability for Defective Products* (85/374/EEC) has been notified as implemented by all the three EFTA States. During 1996, *Liechtenstein* and *Norway* were invited to explain some of their implementing measures.

The answers given by *Norway* seemed to be satisfactory. That State undertook to amend its legislation to avoid any unclarity when it came to the provision in the Directive that there shall be no reduction of the liability of the producer in the case of an act of a third party.

At the end of the reporting period there were still a few outstanding issues when it came to *Liechtenstein*, mainly relating to the provisions in the Directive regarding the situations where two or more persons are liable (they shall be jointly and severally liable) and where there can be a reduction of the liability of the producer.

[6] Five EFTA States.

4.7.5.2.Energy

A reasoned opinion had been sent to *Norway* in December 1995 for non-implementation of 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). In 1996, *Norway* notified implementing measures. At the end of the reporting period, these measures were still under examination by the Authority.

Routines have been established between the Authority and the European Commission for handling reports on the prices of crude oil and petroleum products, which are to be forwarded to the Authority in accordance with *Directive 76/491/EEC regarding a Community Procedure for Information and Consultation on the Prices of Crude Oil and Petroleum Products*. Reports have been received from *Iceland* and *Norway*. *Council Regulation 1056/72 on notifying the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sectors*, 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 1996, no such investment projects were reported to the Authority.

4.7.5.3.Intellectual Property

By the end of 1996, *Norway* had notified the Authority of national measures implementing all acts in this sector. However, with regard to *Directive 92/100/EEC on Rental Rights and Lending Rights and certain Rights related to Copyright in the Field of Intellectual Property, Norway* has a transitional period until 30 June 1997 as regards Article 4 of that Act. With regard to Article 8(2) of the same Act, *Norway* had a transitional period expiring on 31 December 1995. By the end of the reporting period, that Article had still not been transposed into the national order of that State.

As transposition of *Directive 92/100/EEC on Rental Rights and Lending Rights and on certain Rights related to Copyright in the Field of Intellectual Property, Directive 93/83/EEC on the Co-ordination of certain Rules concerning Copyright and Rights related to Copyright applicable to Satellite Broadcasting and Cable Retransmissions* and *Directive 93/98/EEC Harmonizing the Term of Protection of Copyright and Certain Related Rights* was outstanding in *Iceland* during 1995, a letter of formal notice was issued, followed by a reasoned opinion in November 1996. Notification of implementing measures for these three acts was thereupon received. At the end of the reporting period, these measures were still under examination by the Authority.

The Authority engaged independent consultants in *Iceland* and *Norway* to carry out a conformity assessment of the national measures notified by those two States with EEA rules in the field of intellectual property. The two studies are now under examination by the Authority.

By the end of the reporting period, *Liechtenstein* had notified one Act, *Directive 87/54/EEC on the Legal Protection of Topographies of Semiconductor Products* as fully implemented, and four acts as partially implemented, while there was no notification regarding *Directive 89/104/EEC to approximate the Laws of the Member States relating to Trade Marks*.

4.7.5.4.Competition in telecommunications equipment markets

The Act referred to in point 12 of Annex XIV (*Commission Directive 88/301/EEC on Competition in the Markets in Telecommunications Terminal Equipment*) has been notified as fully implemented by all three EFTA States.

4.7.6. Veterinary and phytosanitary matters

During 1996, the work within the veterinary and phytosanitary sectors focused on implementation control, inspections and decisions related to the negotiations between the EFTA States and the European Union on an extended Chapter I of Annex I. As regards inspections, in addition to continuing inspections of meat establishments, the inspections of fish establishments started, which engaged the Authority's inspectors to a large extent, due to large numbers of fish producing establishments, approximately 2,000 in *Iceland* and in *Norway*.

4.7.6.1.Legislation

Through decisions of the EEA Joint Committee, eight new acts in the feedingstuffs chapter, which entered into force during 1996, were integrated into Annex I to the EEA Agreement. Some of these 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 consists of 320 binding legal acts, excluding acts merely amending previous acts. Of these acts, 197 are in the veterinary chapter, 32 deal with feedingstuffs, while 91 concern phytosanitary matters.

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.

4.7.6.2.National transposition

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

Iceland has transposed all acts in this field applicable to that State. *Norway* has transposed all acts, with the exception of *Council Directive 88/657/EEC laying down the Requirements for the Production of, and Trade in, Minced Meat, Meat in Pieces of less than 100 Grams and Meat Preparations*, last amended by *Directive 92/110/EEC* which were not, or not fully implemented.

During 1996, a reasoned opinion was sent to *Norway* concerning the failure to take the necessary measures to comply with certain articles in *Council Directive 90/167/EEC laying down the Conditions governing the Preparation, Placing on the Market and Use of Medicated Feedingstuffs.* Subsequently, the Norwegian Government submitted the missing legislation. A preliminary report has been sent to *Norway* concerning the assessment of the transposition of that Directive.

The transposition control on other acts has focused on the fishery legislation both in *Norway* and in *Iceland*. A report concerning the Norwegian transposition was under way to be finalized by the end of the reporting period.

All three EFTA States have transposed all the acts in the field of ***Feedingstuffs***, with the exception of those directives for which *Iceland* and *Norway* have a derogation.

Liechtenstein has transposed all acts in the field of ***Seeds***, whereas Iceland and Norway have transposed all acts with the exception of Commission Directive 92/9/EEC amending certain Annexes to *Council Directive 69/208/EEC on the Marketing of Seed of Oil and Fibre Plants* and *Directive 92/107/EEC amending Council Directive 69/208/EEC on the Marketing of Seed of Oil and Fibre Plants*. The Authority has received applications from Iceland and Norway concerning a derogation from the application of the above mentioned Acts, which concern plants which cannot grow in either Iceland or Norway. The Authority will take a decision on the matters during 1997.

4.7.6.3.Application of the Agreement

4.7.6.3.1.General

During the reporting period, negotiations between the EFTA States and the European Commission concerning the extension of Chapter I of Annex I took place as well as negotiations concerning new acquis to be integrated into the Agreement. The Authority has taken part in those negotiations as an observer. The Norwegian Government has in a letter to the Authority requested it to amend seven decisions, *inter alia,* on additional guarantees taken earlier by the Authority which concern *Norway,* as well as the former EFTA States. The Authority has granted the request by the Norwegian Government underlining that the new decisions concerning only *Norway* would not in any way alter the material situation of the decisions taken earlier.

In *Norway* a buffer zone towards the Russian border has been established with regard to two fish diseases: IHN (infectious hematopoietic necrosis) and VHS (viral haemorrhagic septicaemia). Upon a request by the Norwegian Government the Authority amended its earlier decision, where the whole of *Norway* was granted the status as being free of IHN and VHS, thereby reducing that status to *Norway* with the exemption of the buffer zone.

4.7.6.3.2.Public health

Fresh meat establishments, such as slaughterhouses, cutting plants and cold stores, fish processing establishments, including factory vessels and live bivalve molluscs, meat products plants and milk processing plants are, under the EEA Agreement, subject to strict veterinary rules motivated by objectives of public health and consumer protection. As from 1 January 1997 all establishments covered by the EEA rules have to comply with the harmonized requirements.

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 continued co-operation between the inspection services of the Authority and the Commission has been operating as established in 1995.

During the first week of December 1996, a seminar in auditing was held by the EFTA Surveillance Authority at its premises in Brussels. The Surveillance Authority's inspectors have been invited to similar training programmes held by the Commission in previous years, the last being in January 1996 for milk processing establishments in France and the Netherlands. With this in mind, and in order to maintain reciprocity, the EFTA Surveillance Authority invited the EU inspectors to this seminar together with several inspectors from the EFTA States.

During the reporting period the Authority has, in the same way as the Commission, put increased emphasis on fish and meat processing establishments.

During 1996, the EFTA Surveillance Authority's inspectors have continued to inspect approved establishments operating in the relevant fields. In accordance with the importance of the fish industry in the EFTA States concerned, particular emphasis has been placed on inspections of fish establishments.

In July 1996, a mission was performed on factory vessels in *Norway*. This mission was carried out with help of, and in close co-operation with, the Norwegian Coast Guard, which provided the necessary means of transport.

During 1996, the Authority inspected 34 establishments in the EFTA States. Some basic characteristics of these inspections are given in the tables below. The inspectors

also participated in 28 inspections carried out by the Commission in EU Member States concerning meat product establishments (7), fresh meat establishments (7) and fish establishments (14).

Number of establishments inspected in the EFTA States in 1996

Type of inspections	Fresh meat		Fish		Total
	ISL	*NOR*	*ISL*	*NOR*	
Formal inspections		12	11	11	34
Total		12	11	11	34

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

Approved activity	Approved animal species
	Cattle, sheep, pigs
Slaughtering	
Cutting	1
Slaughtering and cutting	9
Cold storage	1
Small-scale plants	1
Total	12

Number of fish and molluscs handling establishments listed according to products placed on the market

State	Total number	Fresh/ Frozen	Salted wet	Salted dry	Herring Capelin	Other Process.	Live Bivalves
NOR	11	5	3	4	3	5	1
ISL	11	7	5	2	4	2	
Total	22	12	8	6	7	7	1

In accordance with the relevant EEA acts, the EFTA States submitted their plans for 1997 to the Authority for approval, regarding the examination of residues of hormones and other substances, as well as the results of tests carried out in 1995. The plans were examined by the Authority and found to be in compliance with the legislation.

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 then transmits the

lists to the European Commission for further distribution within the EU Member States.

4.8. PUBLIC PROCUREMENT

4.8.1. General overview

The main objective of the provisions in the EEA Agreement on public procurement is to oblige contracting authorities and entities within the EEA to apply certain procedures when procuring supplies, services and works with a value exceeding given thresholds, in order to secure equal treatment of all suppliers, service providers and contractors established within the EEA. As a general rule, notices on contracts to be awarded shall be published in the Official Journal of the European Communities. In addition, public procurement complaint bodies must be established on a 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 public procurement directives. However, work related to complaints regarding failure to correctly apply the rules was the main task of the Authority in 1996. With a view to safeguarding the interests of potential suppliers and service providers, the Authority continued its practice to ensure the correction of non-compliance with the procurement legislation by immediate contacts with national authorities.

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.

4.8.2. National implementing measures and conformity assessment

Iceland has notified the transposition of all public procurement acts. The texts of all the procedural procurement directives have been made as such part of the Icelandic legislation.

Norway has also notified the transposition of all public procurement acts. *Norway* has chosen to take over, to a large extent, the wording of the procedural directives into separate regulations covering individual directives. A detailed assessment of the conformity of the measures notified by *Norway* has been carried out with regard to all

directives. This work resulted in a few amendments to the Norwegian regulations transposing those directives.

Liechtenstein had been granted a derogation from the entire secondary legislation on public procurement until the end of 1995. No measures had been notified by that State by the end of the reporting period.

4.8.3. Application of the rules on public procurement

During 1996, a total of 99 public procurement notices from *Iceland* were published in the Official Journal of the European Communities, while approximately 2,600 such notices from *Norway* published during the same period. *Liechtenstein* published no notices.[7]

Table A: Notices according to procedure

Procedure	**ISL**			**LIE**	**NOR**		
	1994	**1995**	**1996**	**1996**	**1994**	**1995**	**1996**
Pre-indicative notices	5	5	3	0	42	93	87
Open	23	40	52	0	461	1007	861
Restricted	0	3	3	0	130	201	169
Accelerated restricted	0	1	0	0	10	22	29
Negotiated; authorities	0	0	0	0	22	26	35
Negotiated; utilities	0	0	0	0	13	137	167
Accelerated negotiated	0	0	0	0	4	2	14
Contract awards	1	34	40	0	180	827	1219
Qualification system (93/38)	0	0	0	0	27	75	32
Design contest	0	0	1	0	1	13	18
Result design contest	0	0	0	0	0	1	8
Total	29	83	99	0	890	2404	2639

The total number of notices increased from 1995 to 1996, both with regard to *Norway* and *Iceland.* Tables B and D show that the increase in *Norway* mainly seems due to an increase in contract award notices, while both the number of notices from local authorities, and the number of notices calling for competition, with or without a qualification procedure, have decreased.

[7] Source: Tenders Electronic Daily. It is not known why the totals in tables A, C and D are not identical.

Table B: Notices on call for competition, with or without qualification procedures

Type of notice	ISL		NOR	
	1995	1996	1995	1996
Pre-indicative notices with a call for competition (Directive 93/38)	0	0	10	9
Qualification system with call for competition (Directive 93/38)	0	0	36	15
Invitations to tender or pre-qualification (open, restricted or negotiated procedure with prior call for competition)	44	55	1395	1275
Design contests	0	1	13	18
TOTAL	44	56	1454	1317
Contract awards	34	40	827	1219

Table C: Notices according to type of contract

Type of contract	ISL			LIE	NOR		
	1994	1995	1996	1996	1994	1995	1996
Works	2	10	8	0	295	684	643
Supplies	26	65	75	0	471	1054	1182
Services	1	8	16	0	93	550	722
Mixed	0	0	0	0	15	78	81
Total	29	83	99	0	874	2366	2628

Table D: Notices according to contracting authority/entity

Authority/entity	ISL			LIE	NOR		
	1994	1995	1996	1996	1994	1995	1996
Central authorities	21	66	86	0	351	714	862
Armed forces	0	0	0	0	20	115	116
Local authorities	8	14	10	0	468	943	776
Utilities	0	3	3	0	46[8]	564	793
Total	29	83	99	0	885	2336	2547

During the reporting period, the Authority received two complaints against *Iceland* and 12 against *Norway*, approximately the same number as in 1995. Furthermore, three own-initiative cases were initiated against *Norway*. As the Authority pursued several cases pending from previous years, 28 procurement cases were dealt with altogether during the reporting period; three regarding *Iceland* and 25 regarding

[8] The Utilities Directive 93/38 was not in force in *Norway* during 1994.

Norway. Several cases found a satisfactory solution after intervention from the Authority.

Some cases dealt with during the reporting period involved the following issues worth mentioning:

- the lease of a building to be the subject of works is covered by the rules governing works contracts, e.g. if the works to be undertaken correspond to the requirements specified by the contracting authority;
- the distinction between those criteria which may be applied for the qualitative selection of candidates/tenderers with regard to assessing their financial and economic standing and technical capability, and those criteria on which the contracting authorities shall base the award of contracts;
- award criteria related to geographical nearness;
- policies on local preferences, including their applicability to below threshold procurement;
- financial services, including banking services are normally subject to the provisions covering service contracts;
- a contracting authority may normally not award a contract to another contracting authority without applying the EEA procurement rules to the award procedure.

4.9. FREE MOVEMENT OF PERSONS

4.9.1. Free movement of workers

Free movement for workers entails the abolition of any discrimination based on nationality between workers of the EEA States as regards employment, remuneration and other conditions of work and employment, 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.

4.9.1.1.Implementation control

National measures considered to ensure full compliance with all EEA acts regarding free movement of workers have been notified by Iceland and Norway.

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 authorisation entry, residence and employment. However, it may not introduce any new restrictive measures as of the date of signature of the EEA Agreement, on 2 May 1992.

At the end of the transition period, the transitional measures shall be jointly reviewed by the Contracting Parties, duly taking into consideration 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 Member 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.

4.9.1.2.Complaints

Two new complaints were lodged during the reporting period in the field of free movement of workers. The first complaint, against Liechtenstein, concerned alleged discriminatory treatment of foreigners with respect to employment in the teaching profession. The complaint is under examination by the Authority and contacts have been established with the responsible national authorities. The second complaint, against Norway, concerned taxation of remuneration of foreign artists performing in Norway. Examination of the applicable national rules revealed that there is no

discrimination against nationals of other EEA States, and the case was closed in early 1997.

The Authority also completed the examination of a complaint lodged in 1995 against Norway by a Community citizen alleging discrimination of foreigners who wished to study at the University of Oslo. A letter was sent to Norway inviting it to amend its legislation as concerns the requirement of an English test imposed exclusively upon foreigners as a precondition for access to the University. At a meeting in December 1996 the Norwegian authorities indicated that the relevant legislation would be amended, and non-discriminatory access conditions would be laid down at the next meeting of the Academic Senate of the University, which is scheduled for March 1997.

4.9.2. Mutual recognition of professional qualifications

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

4.9.2.1.Implementation control

By the end of the reporting period, *Norway* had submitted notifications indicating full implementation of all but one directive in this field, namely the *Second General System Directive* (92/51/EEC). A letter of formal notice for failure to notify implementing measures and for failure to notify the competent authorities for the professions falling within the scope of the Directive had been sent in December 1995. Following this letter Norway notified the authorities, the professions covered, and national implementing measures for 30 out of 34 professions that are dealt with in the Directive. However, the implementation still needs to be completed with respect to 4 professions relating to the technical and craftsmen sector.

Iceland's implementation shortcomings relate to the *Transitional Manufacturing and Processing Directive* (64/427/EEC), the *Transitional Food Manufacturing and Beverage Directive* (68/366/EEC) and the *Hairdressing Directive* (82/489/EEC). Full transposition of these 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 the acts in question.

Furthermore, the national measures adopted by Iceland with respect to *Directive* 94/38/EC, *amending Annexes C and D to the Second General System Directive*, were not considered by the Authority to ensure compliance with the provisions of the

Directive, and consequently a letter of formal notice was sent to that State in September.

Liechtenstein still needs to implement the two general system directives and the directives concerning the mutual recognition of diplomas in the medical professions and for architects**.** Liechtenstein indicated that the required implementing measures for these directives were being drawn up. Precise timetables and the relevant drafts were submitted to the Authority.

Formal infringement proceedings under Article 31 of the Surveillance and Court Agreement have so far been initiated against Liechtenstein concerning the *First General System Directive* (89/48/EEC), the *Second General System Directive* (92/51/EEC*)* and *Directive* 94/38/EC*, amending Annexes C and D to the Second General System Directive.*

In Liechtenstein several directives in the medical sector which co-ordinate the education and training and lay down minimum standards for medical training did not necessitate implementing measures, as no education and training is provided in that State within that sector.

The EEA acts included in Annex VII require that the EFTA States provide the Authority with information on national competent authorities, information centres, and denominations of national diplomas covered by the directives. During the reporting period, all States completed the fulfilment of these obligations.

4.9.2.2.Complaints

In 1996, three complaints were received by the Authority in the field of mutual recognition of professional qualifications, all of them against Norway.

Two complaints related to the medical sector and concerned recognition of professional qualifications in specialised medicine. The examination of these cases will be further pursued in 1997.

The examination of the third complaint concerning the use of the professional title of "Norwegian master" for migrants in Norway in professions relating to the craftsmen sector is nearly completed.

As regards three cases against Norway initiated on the basis of complaints received in 1995, two could be solved informally during the reporting period, as the complainants were authorised to exercise their professions in specialised dentistry (orthodontics) and in optometry, respectively. The third case relating to specialised medicine is still under examination.

4.9.3. 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.

Iceland and *Norway* have notified national measures considered to ensure full compliance with the six directives on the abolition of restrictions on freedom of movement and residence for different groups of EEA nationals.

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 authorisation entry, residence and employment.

4.9.4. 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.

In December 1996 the main two acts in Annex VI, *Regulation* (EEC) No 1408/71 *on the Application of Social Security Schemes* (Regulation 1408/71), and *Regulation* (EEC) No 574/72 *on the Procedure for Implementing Regulation 1408/71*, were amended by two new regulations, *Council Regulation* (EC) No 3095/95 and *Council Regulation* (EC) No 3096/95 which both were to be applied retroactively as from 1 January 1996. No notifications with respect to implementing measures concerning these amendments were received from *Iceland* or *Norway* by the end of the reporting period.

The Authority has not yet received all the declarations on national schemes and benefits which according to *Regulation* 1408/71 have to be submitted by *Liechtenstein*.

In the summer of 1995 the Authority received a complaint against *Norway* concerning the co-ordination system of *Regulation* 1408/71. Under Norwegian practice, persons working on permanent and mobile installations and devices engaged in petrol activity on the Norwegian continental shelf enjoy social security rights under the National Insurance Act if they reside in Norway or in another Nordic State, whereas this is not the case with respect to a Norwegian national who works on the Norwegian continental self, but has residence in another EEA State. The case is still under examination.

In December 1996 an own-initiative case was started on the basis of a communication from the European Commission concerning certain requirements of the *Norwegian* Seamen's Pension Scheme.

4.10. FREEDOM TO PROVIDE SERVICES

The freedom to provide services across borders within the EEA is established in Article 36 of the EEA Agreement, which 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.

4.10.1. Financial services

4.10.1.1.Banking

The Authority has carried out a detailed conformity assessment on the national measures adopted to transpose the *First Banking Directive* (77/780/EEC*)* and the *Second Banking Directive* (89/646/EEC). In a letter of formal notice *Iceland* was invited to adopt further measures necessary to ensure full implementation of the first mentioned Directive. *Liechtenstein* was requested to adopt further measures with respect to both directives. The provisions that are not yet fully transposed relate to the conditions governing the pursuit of the business of credit institutions. During the reporting period the Authority sent to *Norway* reasoned opinions for partial non-implementation of the directives, as well as a complementary letter of formal notice for partial non-implementation of the *Second Banking Directive*. As Norway subsequently adopted all necessary measures to ensure full compliance with both directives, all cases were closed.

Some defects in the transposition by *Iceland* and *Norway* of the *Solvency Ratio Directive* (89/647/EEC) were detected by the Authority, and the States were invited to amend the respective legislations. They were also sent letters of formal notice for failure to transpose the *1995 amendments* to the Solvency Ratio Directive (95/15/EC and 95/67/EC). Both States notified the national measures implementing the amendments and the infringement cases were closed in November 1996.

Iceland had not implemented the provisions of the *Deposit Guarantee-Scheme Directive (94/19/EC)* regarding the access of foreign branches to the national deposit guarantee-scheme system, and was invited to amend its legislation in this respect. Iceland acknowledged that there was a need for amendment and the necessary

legislation to ensure full compliance with the Directive has now been notified to the Authority. Following *Norway*'s notification of certain national legislation as implementing the Directive it was requested to provide the Authority with further information to allow it to assess whether, and to what extent, Norway had actually transposed the Directive's provisions into national law. After examining the reply, the Authority concluded that the implementation measures were appropriate.

As regards the *Banking Consolidated Supervision Directive* (92/30/EEC), *Norway* was informed of the Authority's view that the national participation rules for credit institutions must cover all degrees of participation.

At the end of the reporting period *Norway* notified the final national measures necessary to ensure full implementation of the *Money Laundering Directive* (91/308/EEC). *Liechtenstein* was invited to amend its implementing legislation.

In April 1996 a letter of formal notice was sent to *Norway* for failure to implement the *Large Exposures Directive* (92/121/EEC). The Authority pursued the proceedings in October 1996 by sending a reasoned opinion to that State. In its reply to the reasoned opinion, Norway informed the Authority that measures necessary to implement the Directive would be taken in early 1997.

4.10.1.2.Insurance

The Authority pursued conformity assessment projects of examining the national measures adopted by *Iceland* and *Norway* to implement the *First, Second* and *Third Non-life Insurance Directives* (73/239/EEC, 88/357/EEC and 92/49/EEC). In the autumn of 1996, the national measures adopted by *Liechtenstein* were also submitted to similar examination.

In close co-operation with the *Icelandic* authorities the Authority identified several defects in the implementation of these directives. For example, the provisions concerning the branches of insurance undertakings having their head-offices in third countries were not fully implemented. However, by the end of the year Iceland had in most cases already amended its legislation to ensure compliance with the directives. For those provisions that had not been implemented, the competent authorities submitted to the Authority detailed plans and timetables on implementation.

In the autumn of 1996, the Authority invited *Norway* to explain the implementation of a number of provisions in the directives. Norway was, at its own request, given more time to submit its explanations, and they had not been received by the end of the year. The most imminent problem with the Norwegian implementation is the lack of national measures to transpose the provisions concerning the investment of insurance undertaking's assets.

Liechtenstein submitted to the Authority filled-in tables of correspondence with regard to the three directives. After a preliminary examination, discussions on certain implementation issues were held in Vaduz in November 1996 between representatives

of the Liechtenstein administration and the Authority. As a next step in the project, the Authority invited Liechtenstein to explain the implementation of certain provisions.

Some defects were identified in the implementation by *Iceland* and *Norway* of the *Co-insurance Directive* (78/473/EEC). Both States were invited to amend their national measures. Norway notified the Authority in December 1996 of the adoption of the necessary measures.

In August 1996 *Iceland* was invited to submit a plan to implement the *Legal Expenses Insurance Directive* (87/344/EEC). Measures necessary to ensure compliance with the Directive had not been adopted by the end of the year.

As regards the *Third Life Assurance Directive* (92/96/EEC), *Norway* informed the Authority of the necessity to adopt two further regulations to make implementation complete. The regulations deal with the investment of insurance companies' assets and technical provisions. Notifications for both regulations are expected in early 1997.

In January 1996 the Authority sent a letter of formal notice to *Iceland* for failure to take the necessary measures to ensure full compliance with the *Insurance Accounts Directive* (91/674/EEC). In December 1996 Iceland notified the relevant national measures. After examining the measures and finding them appropriate, the Authority closed the case against Iceland.

In the beginning of 1996 *Liechtenstein* had submitted partial notifications for implementation of all insurance directives. In the course of 1996 the implementation work progressed well, and by February 1997 two thirds of the directives had been notified as fully implemented.

4.10.1.3.Stock exchange and securities

The transition period *Liechtenstein* had with regard to the implementation of the *Major Holdings Directive* (88/627/EEC), the *Prospectuses Directive* (89/298/EEC) and the *Insider Dealing Directive* (89/592/EEC) expired on 1 January 1996. The Authority has received notifications of national measures ensuring full compliance with both the *Major Holdings Directive* and the *Insider Dealing Directive*. Further measures still need to be adopted in order fully to comply with the *Prospectuses Directive*.

In the autumn of 1996, the Authority requested Liechtenstein to explain how it had implemented the *Investment Services Directive* and the *Capital Adequacy Directive*.

In April 1996, the Authority sent a letter of formal notice to *Norway* for failure to implement the *Investment Services Directive* (93/22/EEC) and *Capital Adequacy Directive* (93/6/EEC). In August 1996, notifications were received from Norway

ensuring the complete implementation of both directives. The Authority therefore terminated later in the autumn the infringement proceedings against Norway.

As regards the *UCITS Directive* (85/611/EEC), the Authority sent already in 1995 a letter of formal notice to *Norway* for failure to implement certain provisions of the Directive. A reasoned opinion followed in October 1996. Before the end of the reporting period Norway adopted further measures, and the case was subsequently closed.

By the end of 1996, *Iceland* had not yet adopted rules on the publication of prospectuses and their form and contents, as required by the UCITS Directive.

4.10.2. Audio-visual services

There is only one binding act in this part of the Agreement, the *Television Without Frontier*s *Directive (89/552/EEC).* No implementation or application problems were encountered during 1996 and the Authority received no complaints related to this Act.

The ongoing difference regarding re-transmission of alleged pornographic films by Swedish television channels on Norwegian cable TV networks is at the end of 1996 still pending before the competent court in Oslo.

4.10.3. Telecommunication services

There are seven EEA acts in this sector of the EEA Agreement. No new binding acts were added during 1996.

A letter of formal notice had been sent to *Norway* in late 1995 for non-implementation of the *Competition in Satellite Telecommunication Services Directive (94/46/EC).* Following Norway's notification of the Directive as fully implemented, the case has been closed.

In late 1996 the Authority received a complaint alleging, *inter alia*, that *Norway* has not complied with its obligation to ensure the independence of the national regulatory authority in the telecommunications sector, as required by the EEA Agreement and Directive 90/388/EEC on competition in the markets for telecommunications services.

Reasoned opinions were sent to Iceland for failure to implement the *Competition in Satellite Telecommunication Services Directive (94/46/EC)* and the *ONP Leased Lines Directive (92/44/EEC).* Both Directives were notified as implemented, and the cases were closed.

Liechtenstein's new Telecommunication Law entered into force on 30 August 1996. The law covers the whole telecommunication area, and Liechtenstein notified the law as fully implementing the seven acts in the telecommunication sector.

A number of requests for clarification in the telecommunication sector have been dealt with by the Authority's services, in particular regarding interpretation of the EEA acts related to liberalisation of the market and the role of the national regulatory authorities.

4.10.4. Transport

4.10.4.1.Road, inland and rail transport

In the road transport sector, most of the acts that had not been implemented in 1995 were notified during 1996. In the case of *Iceland* a reasoned opinion was delivered for the failure to implement the *Directive on Mutual Recognition of Diplomas in Road Transport* (77/796/EEC), and notification has been received.

Furthermore, a letter of formal notice was sent to *Liechtenstein* for failure to implement the *Directive on Standard Checking Procedures in Road Transport* (88/599/EEC*). Liechtenstein* has reported the directive as implemented, with entry into force 15 January 1997. At the end of the reporting period *Liechtenstein* was still considering the necessary amendments to its legislation in relation to *Switzerland*, regarding *Directive on Vehicles hired without drivers (84/647/EEC).*

Iceland notified partial implementation of the *Directive on Driving Licences (91/439).* Full implementation is foreseen in April 1997.

During the reporting period, three new binding acts were added to the road transport sector. They were the *Directive on uniform procedures for checks on transport of dangerous goods by road* (95/50/EC), the *Directive on transport of dangerous good by road* (94/55/EC*)* and *Regulation* (EC) No 2479/95 *on Recording Equipment in Road Transport.*

4.10.4.2.Inland waterway transport

There are no inland waterways in either *Iceland, Liechtenstein* or *Norway*, nor have the States inland waterway fleets under national flag. The acts in this sector were temporarily regarded as irrelevant, pending clarification. After consultations with the Commission, it was decided to follow similar procedures as in the European Community, e.g. for Denmark, Greece and Spain. This implies that EEA States with no inland waterways do not implement the secondary legislation in question. The

procedure is identical with the Authority's current procedures in the rail sector for Iceland and Liechtenstein, and in the maritime sector for Liechtenstein.

All companies in EEA States have the right to establish and operate inland waterway activities in an EEA State having inland waterways. Such activities will then have to follow national rules, including the relevant secondary legislation. However, the moment any operator from an EEA State without inland waterways wishes to acquire or operate an inland waterway boat under its home country's flag, all relevant acts must be implemented by that State. Ocean-going vessels performing both deep sea and inland waterway voyages are free to travel into the waterways as far as the maritime lane allows.

There are no specific rules or restrictions on hiring or chartering of inland waterway vessels.

4.10.4.3.Maritime transport

In the maritime transport sector, two new acts became part of the EEA Agreement in 1996, namely the *Directive on Port State Control* (95/21/EC) and *Regulation* (EC) No 3051/95 *on Ro-Ro Ferries. Norway* and *Iceland* have notified implementation of both acts.

4.10.5. Civil Aviation

Both *Iceland* and *Norway* have notified as fully implemented the *Civil Aviation Accidents and Incidents Investigation Directive* (94/56/EC). That Directive became part of the EEA Agreement 1 August 1996 and was to be implemented by 21 November 1996.

Liechtenstein shall only implement the civil aviation acts as of 1 January 2000.

During the reporting period, the Authority assisted *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.

4.10.6. Other

The Seventh Directive 94/21 on Summer-time Arrangements has been implemented by *Liechtenstein* and *Norway*. *Iceland*, belonging to another timer zone, is following GMT all year round.

4.10.7. Non-harmonized sectors

In 1995 the Authority received a complaint against *Norway* alleging that an Icelandic fishing vessel had been refused access to repair facilities in a Norwegian port. In September 1996 the Authority sent to Norway a letter of formal notice stating that the national legislation which allowed, under circumstances of the kind prevailing in the case, Norway to make cumbersome the access to repair services for fishing vessels flying the flag of another EEA State, constituted a restriction on the free movement of services prohibited under Article 36 of the EEA Agreement. In its reply Norway took the position that the refusal was justified on grounds of public policy under Article 33 of the EEA Agreement. The case is still under consideration by the Authority.

The Authority is also examining on its own initiative the compliance with Article 36 of the EEA Agreement of a provision in the *Icelandic* legislation according to which, in certain circumstances, foreign fishing vessels are not permitted to discharge their catch or sell in Icelandic ports, or seek services concerning their operation, when the vessels are fishing from fishing stocks of common interest that could be fished both within and outside the Icelandic economic zone.

In early 1996 the Authority received a complaint against *Norway* alleging abuse of monopoly by the Public Employment Agency, since other persons were not allowed to provide employment intermediary services. Another complainant alleged that provisions in the Norwegian Employment Act by which the hiring out of workers is prohibited, was not in accordance with the EEA Agreement. Both cases are still under examination.

In 1995 the Authority received eight complaints concerning restrictions which the *Norwegian* Lottery Act introduced on operating gaming machines with pay-outs, as the pursuit of these activities was being reserved for charitable organisations only. Norway has subsequently adopted a number of regulations in the subject matter, and this process is still going on. The Authority is following closely these developments.

4.10.8. Capital movements

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

Iceland's right to apply domestic legislation on direct investments on national territory and investment in real estate on national territory expired on 1 January 1996. The Authority concluded in its examination of the notified national measures that there still existed restrictions for nationals of other EEA States to acquire real estate in Iceland. Accordingly, the Authority sent in October 1996 a letter of formal notice to Iceland for failure to implement the Capital Movements Directive.

According to the EEA Agreement, *Liechtenstein* has transition periods regarding direct investment on national territory and investments in real estate on national territory. The first mentioned transition period expired on 1 January 1997 and the second will expire on 1 January 1999. During the remaining transition period Liechtenstein has the right to apply its existing domestic legislation in the respective area.

During 1996 the Authority received no complaints relating to the capital movements sector.

4.11. 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.

4.11.1. 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.
As regards the *Directive on Improvement of Safety and Health at Work* (89/391/EEC) - the so called *"framework directive"* - the Authority's view is that the transposition is not yet complete in any of the three EFTA States. Action will be taken to ensure that the States adopt the necessary measures.

Letters of formal notice were sent to *Iceland* for failure to implement the *Biological Agents Directive* (90/679/EEC) *as amended in 1993* (93/88/EEC). Subsequently Iceland notified these two directives, as well as the *1995 amendment* (95/30/EC), as fully implemented. The case was therefore closed.

By the end of the reporting period no notifications had been received from *Liechtenstein* and *Norway* regarding the implementation of the *1995 amendment* (95/30/EC) to the Biological Agents Directive, which was to be implemented by 30 November 1996.

In addition letters of formal notice were sent to *Iceland* for failure to implement the *Temporary or Mobile Construction Sites Directive* (92/57/EEC), the *Mineral Extracting Industries (Drilling) Directive* (92/91/EEC), the *Surface and Underground Mineral Extracting Industries Directive* (92/104/EEEC), the *Work Equipment Directive* (89/655/EEC), *Short-term Employment Directive* (91/383/EEC) and

Pregnant and Breastfeeding Workers Directive (92/85/EEC). Since the three first mentioned directives were subsequently notified by Iceland as fully implemented the respective cases were closed.

As the necessary national measures had not been taken by *Norway*, letters of formal notice were sent to that State with respect to the *Vinyl Chloride Monomer Directive* (78/610/EEC), the *Metallic Lead Directive* (82/605/EEC), the *Banning of Certain Agents and Work Activities Directive* (88/364/EEC), the *Work Equipment Directive* (89/655/EEC), the *Carcinogens Directive* 90/394/EEC, the *Biological Agents Directive* (90/679/EEC) *as amended in 1993* (93/88/EEC), and the *Surface and Underground Mineral Extracting Industries Directive* (92/104/EEC). *Norway* indicated that these directives would be implemented during 1996, but by the end of the reporting period no national measures to that effect had been notified.

Furthermore, *Norway* has not yet fully implemented the following directives: *Safety and Health Requirements for the Workplace Directive* (89/654/EEC), *Medical Treatment on Board Vessels Directive* (92/29/EEC), *Temporary or Mobile Construction Sites Directive* (92/57/EEC), *Mineral Extracting Industries (Drilling) Directive* (92/91/EEC) and *Work on Board Fishing Vessels Directive* (93/103/EC).

In *Liechtenstein* the national legislation has been under revision, and that State has indicated that the proposed amendments, ensuring the full implementation of 13 directives in this sector, are expected to enter into force in the summer of 1997.

Letters of formal notice were sent to *Liechtenstein* as the necessary national measures with respect to the *Directive on Improvement of Safety and Health at Work* (89/391/EEC) and the *Directive on Exposure to Noise at Work* had not been taken.

The *1995 amendment* to the Work Equipment Directive (95/63/EC) was to be implemented by 1 December 1996, but no notifications had been received from any of the EFTA States by the end of the reporting period.

4.11.2. Labour law

Article 68 of the EEA Agreement obliges the EEA States to introduce, in the field of labour law, measures necessary to ensure the good functioning of the 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.

As regards the *Collective Redundancies Directive* (75/129/EEC), the *Transfer of Undertakings Directive* (77/187/EEC), the *Employer's Information Obligation Directive* (91/533/EEC) and the *amendment* to the first-mentioned Directive (92/56/EEC), *Liechtenstein* indicated that full compliance required amendments in its

Civil Code. The work has been delayed, and the amendments are foreseen to enter into force by the summer of 1997.

The *Norwegian* Government has proposed amendments to the Wage Guarantee Act to comply with the *Employer's Insolvency Directive* (80/987/EEC), but since no notification on the adoption of these measures had been received by the Authority, a letter of formal notice for partial non-implementation of the Directive was sent to Norway in early 1997.

In January 1996, a letter of formal notice was sent to *Iceland* for failure to implement the *Employer's Information Obligation Directive* (91/533/EEC). The Authority pursued the proceedings in December 1996 by sending a reasoned opinion to that State.

Iceland has not notified fulfilment of constitutional requirements regarding the EEA Joint Committee Decision No 55/95 of 22 June 1995 by which the *European Works Council Directive* (94/45/EC) was added to the EEA Agreement. *Norway* nevertheless notified the Directive as fully implemented and submitted the relevant legal texts at the end of 1996. No notification had been received by the end of the reporting period from either *Iceland* or *Liechtenstein*.

The EEA Joint Committee decisions regarding two new directives, the *Working Time Directive (93/104/EC)* and the *Protection of Young People Directive (94/33/EC)*, were to enter into force on 1 December 1996, provided that all the notifications with respect to the fulfilment of constitutional requirements had been made to the EEA Joint Committee. At the end of the reporting period this was not the case.

4.11.3. 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 1996.

As regards the *Equal Access to Work Directive* (76/207/EEC), *Iceland* has been requested to submit to the Authority the texts of the national measures transposing the Directive.

Liechtenstein has notified the *Equal Social Security Directive* (79/7/EEC) and the *Equal Treatment of Self-employed Directive* (86/613/EEC) as fully implemented as from 1997.

4.11.4. Consumer protection

In 1995, the Authority sent a letter of formal notice to *Norway* for failure fully to transpose the *Consumer Credits Directive* (87/102/EEC). By the autumn of that year the Norwegian reply to the letter had been examined, and it was concluded that while most of the provisions of the Directive had been implemented, some national measures transposing the provisions regarding financial services and financial institutions were still outstanding. Following a request for further information, Norway informed the Authority that a proposal for a law relating to financial agreements and transaction orders would be sent to the Parliament in 1997 and a new Regulation on consumer credits was expected to enter into force in late autumn of 1996 or in the winter of 1997.

Liechtenstein has not yet implemented the *Unfair Terms Directive* (93/13/EEC). In October 1996, the Authority was informed of the Liechtenstein Governments' proposal to Parliament to amend two laws in order to implement the Directive. The measures were expected to enter into force in February 1997.

4.11.5. 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 utilisation of natural resources. The basic principles to be applied in this respect are that preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay.

4.11.5.1.General Provisions

With regard to the *Environmental Impact Assessment Directive* (85/337/EEC), *Liechtenstein* informed the Authority in 1995 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. In October 1996 *Liechtenstein* thus notified further national measures, and has informed the Authority that the Bill on the new Law on Environment Impact Assessment is expected to enter into force on 1 January 1998.

A letter of formal notice was sent to *Norway* in 1994 for partial non-implementation of the Directive. An amendment to the law implementing the Directive was adopted by the Parliament in March 1995, and in December 1996 a new regulation was adopted which, in Norway's view, ensures full implementation of the Directive.

4.11.5.2.Water

In *Liechtenstein* a new Ordinance, based on the existing Water Protection Law, was adopted in December 1996 and entered into force in January 1997. According to Liechtenstein the Ordinance ensures complete implementation of the water protection directives - that is, the *Drinking Water Directive* (75/440/EEC), the *Drinking Water Measurement Directive* (79/869/EEC), 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), the *Ground Water Directive* (80/68/EEC), the *Directive on Protection of Water Against Nitrates* (91/676/EEC), and the *Urban Waste Water Directive* (91/271/EEC). An entirely new Water Protection Law is expected to be adopted by mid-1997.

4.11.5.3.Air

Concerning the *Sulphur Dioxide Limit Values Directive* (80/779/EEC), the *Lead Limit Values Directive* (82/884/EEC) and the *Standards for Nitrogen Dioxide Directive* (85/203/EEC), the Authority sent in June 1996 a letter of formal notice to *Norway*. The Authority was subsequently informed that the Government would adopt in January 1997 a regulation ensuring implementation of these directives.

The *Air Pollution from Industrial Plants Directive* (84/360/EEC) provides that an authorisation may be issued only when the competent authority is satisfied that all applicable air quality limit values will be taken into account. This means that EEA States, as a minimum requirement, have to apply those air quality limit values set in the respective *acquis communautaire*. *Norway* has referred to certain provisions in its Pollution Control Law as being the relevant implementing measures. However, none of them specifically obliges the competent authority to take air quality limit values into account. Moreover, it can be concluded from the Norwegian communications with regard to the directives laying down air quality limit values (Directives 80/779/EEC, 82/884/EEC and 85/203/EEC, see above), that national implementing measures for the substances regulated in these Directives are not yet in place.

4.11.5.4.Chemicals, industrial risk and biotechnology

Liechtenstein had by the end of 1996 not fully implemented the *Major Accident Hazards Directive* (82/501/EEC). The Authority requested further information on the expected entry into force of the missing national measures, and in November 1996 *Liechtenstein* informed that a draft ordinance was being circulated for consultations until December 1996. Provided that there were no major objections to the draft during this process, adoption was expected in the first half of 1997.

Iceland had a transitional period up to 1 January 1995 for the implementation of the 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) as adapted to technical progress by Directive

94/15/EC. In December 1995 the Authority delivered a reasoned opinion requesting Iceland to take the necessary implementing measures. In May 1996 the Authority received a notification of a Law on Genetically Modified Organisms, considered by Iceland to make the implementation of the Directives complete. However, an initial examination of the Law suggest that in several instances it has been left to the Minister of Environment to issue regulations to supplement the Law itself. The Authority is therefore continuing its examination of the matter.

Liechtenstein's transitional period for the transposition of the *GMOs Directives* expired on 1 July 1996. In a meeting in November 1996 the Authority was informed that a draft bill on new legislation had been approved by the Government and that it was circulated for public hearing until February 1997. The current time-table is to have the first reading of the proposed legislation in Parliament in April/June 1997.

4.11.5.5.Waste

The *Hazardous Waste Directive* (91/689/EEC) was integrated into the EEA Agreement in 1994, and an amendment to it (94/31/EC) was made part of the Agreement in May 1995. The implementation of the main Directive depends on a binding list of hazardous waste. The list was subsequently established by *Council Decision 94/904/EC.* However, by the end of the reporting period this Decision had not yet been made part of the EEA Agreement, which explains the delays in the transposition of the Hazardous Waste Directive by the EFTA States.

4.11.5.6.Complaints

One complaint relative to environment was received by the Authority during 1996. It concerns the delayed implementation by *Norway* of the air quality directives. As mentioned above, the Authority sent in June 1996 a letter of formal notice to *Norway* referring to the same directives. *Norway* has informed that the necessary legislation would be adopted in January 1997.

4.11.6. Company law

Acts in the company law sector can be divided into two groups. One deals with *"basic"* company law issues, such as safeguards to protect the interests of certain parties, mergers and divisions of companies, disclosure requirements, and the so called European Economic Interest Grouping (EEIG). The other group is mainly concerned with *accounting* questions.

In the Summer of 1996 the Authority initiated conformity assessment projects regarding the implementation by *Iceland* and *Norway* of the directives on *"basic"* company law - that is, the *First Company Law Directive* (68/151/EEC), the *Second Company Law Directive* (77/91/EEC) and its *amendment* (92/101/EEC), the *Third*

Company Law Directive (78/855/EEC), the *Sixth Company Law Directive* (82/891/EEC), the *Eleventh Company Law Directive* (89/666/EEC), and the *Twelfth Company Law Directive* (89/667/EEC). The Authority's services are presently in the process of analysing the replies to the requests of further information and clarifications. At the end of the reporting period, pre Article 31 letters had been sent to both States concerned with respect to the First and Second Company Law Directives.

As regards the directives in the *accounting* field, the Authority sent in September 1996 letters of formal notice to *Norway* regarding the non-implementation of the *Fourth Company Law Directive* (78/660/EEC), the *Seventh Company Law Directive* (83/349/EEC) and the *Eight Company Law Directive* (84/253/EEC).

During 1996, the Authority received one complaint relating to the company law sector. The complaint dealt with the rights of non-Nordic parent companies to borrow surplus cash from its Norwegian subsidiaries. The examination of the complaint had not been concluded by the end of the year.

5. STATE AID, MONOPOLIES AND COMPETITION

5.1. STATE AID

5.1.1. Relevant legislation and competencies

The EEA provisions on State aid aim to ensure that conditions of competition for enterprises are equal and that States do not take measures in favour of 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 to 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 to 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 that effect are contained in Articles 5 and 24 of, and Protocol 3 to the Surveillance and Court Agreement. Furthermore, Protocol 27 to the EEA Agreement lays down the principles according to which the Authority and the Commission shall co-operate in order to ensure a uniform implementation of the State aid rules.

5.1.2. General policy developments

5.1.2.1.Legal acts in the field of State aid and the Authority's State Aid Guidelines

Annex XV to the EEA Agreement lists EEA relevant acts in the field of State aid. A distinction is made between "acts referred to" (binding acts) and "acts of which the EC Commission and the EFTA Surveillance Authority shall take due account" (non-binding acts).

After amendments by EEA Joint Committee Decisions No 7/94 and 21/95, points 1, 1a and 1b of Annex XV refer to three sets of binding State aid acts: Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings (with subsequent amendments), Commission Decision No 3855/91/ECSC establishing Community rules for aid to the steel industry and Council Directive 90/684/EEC on aid to shipbuilding (with subsequent amendments).

The Commission Directive on the transparency of financial relations between Member States and public undertakings is aimed at ensuring that the discipline of State aid control is also applied in an equitable manner to public enterprises. The EFTA States must, upon request, provide information to the Authority to ensure that financial relations between public authorities and public undertakings are transparent, so that public funds made available to the undertakings emerge clearly as well as the use to which they are put. Relevant information must be kept at the disposal of the EFTA Surveillance Authority for a period of five years following the end of the financial year in which the funds were used or made available. The directive also contains certain important definitions, e.g. of the terms 'public authorities' and 'public undertakings', which are frequently relied on in different areas of State aid control.

Following amendment of the transparency directive by Commission Directive 93/84/EEC of 30 September 1993, which was integrated in the EEA Agreement by EEA Joint Committee Decision No 7/94, the EFTA States are obliged to provide the EFTA Surveillance Authority on an annual basis with certain financial information for all public undertakings operating in the manufacturing sector, whose turnover for the most recent financial year was more than ECU 250 million. On this basis the Authority has received and examined the annual accounts and other financial information on the public manufacturing enterprises covered by these provisions.

The Authority took no decision in the course of 1996 on the basis of the act referred to in point 1a of Annex XV to the EEA Agreement (Commission Decision No 3855/91/ECSC establishing Community rules for aid to the steel industry).

Section 5.1.4.3 below provides a summary of actions by the Authority concerning aid to shipbuilding.

Points 2 to 37 of Annex XV to the EEA Agreement refer to acts, adopted by the EC Commission up to 31 July 1991, of which the Authority shall take due account (non-binding acts) when applying the EEA State aid rules. These acts comprise communications, frameworks, guidelines and letters to Member States which the 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. Relevant communications, frameworks, guidelines and notices issued by the Commission have been codified by the Authority in one single document, the Procedural and Substantive Rules in the Field of State Aid[9], also referred to as the State Aid Guidelines. These Guidelines, which the Authority initially issued in January 1994 and have since been regularly updated, take account of about 55 non-binding acts of the Commission and some 150 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, research and development, 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 closely followed 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 two multilateral meetings in the field of State aid during 1996, 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 to be subsequently included in the State Aid Guidelines.

The Guidelines were amended four times during 1996. In March, the Authority decided to introduce new **rules on aid to the synthetic fibres industry**[10]. These rules, which will apply for three years with effect from 1 April 1996, correspond to similar rules adopted by the Commission and replace an earlier set of rules for the

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9 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 1994 - OJ L 231, 3.9. 1994 and EEA Supplement to the OJ No 32, 3.9.1994), as last amended by Decision No 112/96/COL of 11 September 1996 (not yet published).

10 OJ No L 140 and EEA Supplement No 25, 13.6.1996.

same industry, which were due to expire on 31 March 1996. The new rules included specific notification requirements, which in the opinion of the EFTA Surveillance Authority, constituted appropriate measures within the meaning of Article 1(1) of Protocol 3 to the Surveillance and Court Agreement. The measures concerned were subsequently accepted by all EFTA States.

In May, the Authority adopted new **rules on aid for research and development (R&D)**[11]. The new rules implied several novelties as compared to the earlier R&D rules, most notably the following:

- Aid intensities and bonuses are more explicitly codified and provisions are made to authorise in certain circumstances matching the higher aid ceilings allowed under the WTO Agreement on Subsidies. The general rule remains that maximum aid intensity is 100% for fundamental research, 50% for industrial research and 25% for precompetitive development activity. Subject to the overall WTO limits of 75% of eligible R&D costs for industrial research and 50% for precompetitive development, the following bonuses and enhancements can be applied:
  - An extra 10% when the aid is given to SMEs.
  - An extra 10% when the project is carried out in an area eligible for regional aid under Article 61(3)(a) of the EEA Agreement, and 5% when eligible under Article 61(3)(c).
  - If relevant, the level of R&D aid in assisted regions can be raised to match the applicable regional aid ceilings, provided it remains within the limits of the WTO Agreement.
  - Where the project is in accordance with the objectives of a Community project, it qualifies for a 15% bonus on the aid ceiling.
  - Projects in non-priority areas, but involving co-operation between researchers in different EEA States, qualify for a bonus of 10%.
  - According to a so-called "matching clause", aid levels up to the WTO ceilings can be allowed, if similar projects of third-country competitors receive, according to information provided by the EFTA State concerned, aid of an equivalent intensity.
  - Aid for projects qualifying under Article 61(3)(b) of the EEA Agreement (project of common European interest) are eligible for an aid level of up to the WTO limits.

- Feasibility studies are eligible for aid. When such studies are preparatory to industrial research activities they may receive up to 75% of study costs, but 50% when they are preparatory to precompetitive development.

- Aid may be granted in support of patent applications and patent renewals by SMEs up to the same level as that for the research activity, which first led to the patent concerned.

[11] OJ No L 245 and EEA Supplement No 43, 26.9.1996.

- More explicit provisions are made on how to assess funding of R&D activity carried out by public research establishments and R&D contracts by public authorities.

- The threshold for the budget amount of big projects, which trigger notification of individual awards of aid, is raised from ECU 20 million to ECU 25 million. In addition, notification is only required when projects costing more than ECU 25 million are to receive aid in excess of ECU 5 million. The slightly higher threshold for Eureka projects, ECU 30 million, is for the time being retained unchanged.

- Rules concerning exemption from notification of either budgetary increases of authorised aid schemes (without substantive changes) or of extensions in time of approved aid schemes, are made more flexible in the case of R&D schemes than is otherwise the case.

- Finally, the new rules contain more explicit and operative criteria than the earlier ones on how to evaluate whether the aid has an incentive effect on R&D activity.

In May, the Authority decided to introduce a new ***de minimis* rule for State aid**[12]. The new rule provides that awards of aid to any one firm of up to ECU 100.000 over a three-year period are considered not to have an appreciable effect on trade and competition and need not be notified, provided that certain conditions are observed.

According to the earlier rule, the *de minimis* rule applied to aid to a given firm over a three-year period of up to ECU 50.000 in respect of one category of expenditure. For this purpose, a distinction was made between two categories of expenditure, investment costs (except R&D) and any other expenditure. Hence, a given firm could receive, without notification, up to a maximum of ECU 100.000 of aid under the two categories over a period of three years. On the other hand, the new *de minimis* rule applies irrespective of the categories of expenditure.

When evaluating whether an award of aid exceeds the *de minimis* ceiling, account must be taken of aid which the company concerned receives from other sources. According to the previous rule, account had to be taken of *de minimis* aid which a company had received during the past three years when evaluating its possibility to receive aid under an authorised aid scheme to finance the same category of expenditure. The new rule provides that the ceiling applies to the total of all public assistance considered to be *de minimis* aid and will not affect the possibility of the recipient obtaining other aid under schemes approved by the EFTA Surveillance Authority.

As before, export aid does not benefit from the new *de minimis* rule. The steel industry covered by the ECSC Treaty, shipbuilding and the transport sector are also excluded. On the other hand the rule will be available to companies in other sectors

[12] OJ No L 245 and EEA Supplement No 43, 26.9.1996.

covered by specific sectoral rules (synthetic fibres, motor vehicle and non-ECSC steel industries).

In September, the Authority introduced revised **rules on aid to small and medium-sized enterprises (**SMEs)[13] corresponding to the guidelines adopted by the Commission in March 1996[14]. The revision implied several amendments to the rules on aid to SMEs, concerning, *inter alia*, the definition of SMEs. That definition was revised by increasing the threshold values of the financial indicators applied for the definition of SMEs; annual turnover and balance sheet total. The independence criterion to be met for an enterprise to qualify as an SME was also revised for the purpose of clarification. The independence criterion is established to ensure that only genuinely independent SMEs are covered by the definition. It requires that a larger enterprise must not control 25 per cent or more of the SME's capital or voting rights, and it eliminates arrangements where the SME is part of an economic group of enterprises much stronger than an individual SME.

A definition of tangible investment consistent with the definition of initial investment in Chapter 25 of the State Aid Guidelines was included in Chapter 10 on aid to SMEs, and the concept of intangible investment was introduced. The new rules allow aid for intangible investment in the form of transfers of technology covering the costs of acquiring patent rights, licences, know-how or non-patented technical knowledge. Aid for the transfer of ownership of SMEs may be granted in accordance with the rules on aid for intangible investment. Aid may be allowed up to 15 % and 7.5 % of such costs for small and medium-sized enterprises respectively.

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.

5.1.2.2.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 periodic meetings at Director 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 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 upon request by the other authority.

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13 Not yet published at the time of writing.

14 OJ No C 213, 23.7.1996, p. 4

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.

5.1.3. Existing aid schemes and complaints relating to State aid

5.1.3.1.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.

5.1.3.2.Aid systems reviewed in 1996

In the course of 1996, the Authority was examining some 10 aid schemes under the review procedure for existing State aid, some of which also related to complaints. Particular effort was devoted to examining 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.

In February 1996, the Authority decided to propose appropriate measures to Iceland with regard to **State aid in the form of sectorally differentiated social security tax**.

The Act no 113/1990 on the social security tax in Iceland ('Lög um tryggingagjald'), as subsequently amended on several occasions, provides that employers, as well as self-employed persons, shall pay a tax to be levied on all kinds of wages, salaries and emoluments for any kind of activity as specified under Article 6 of the Act.

The tax is composed of two parts, the general social security fee ("almennt tryggingagjald") and the employment insurance fee ("atvinnutryggingagjald").

The proceeds from the employment insurance part of the tax are allocated to the Unemployment Insurance Fund, whereas revenues from the general social security fee are appropriated to the Occupational Safety and Health Administration and the State

Social Security Institute, to finance social security pensions and accident insurance under social security schemes.

At the time of the Authority's decision the legislation provided that whereas the employment insurance fee was levied at a uniform rate of 1,5% on all economic operators taxable under the law, the general social security fee was levied at two rates; a general rate of 5,35% and a special rate of 2,05%. When adding the two components this implied combined tax rates of 6,85% (general rate) and 3,55% (special rate).

The higher (general) tax rate applied to all economic sectors subject to the tax except for the following:

1. Fisheries, fish processing and manufacturing.
2. Agriculture.
3. Computer software industry, film industry, hotel accommodation, restaurants and car hire.

The sectors enumerated above were eligible for the lower (special) tax rate. The legislation in other words provided for sectoral reduction or differentiation in the tax rate, in favour of the above sectors.

The Authority concluded that the preferential tax rate (special rate) applied to certain economic sectors covered by the EEA Agreement, constituted State aid in the meaning of Article 61(1) of the EEA Agreement. Furthermore, the Authority considered that the measure did not pursue any such clearly identifiable objectives, which would make it eligible for exemption under Article 61(2) or (3) of the EEA Agreement. Consequently, the Authority decided to propose, on the basis of Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, that the Icelandic Government took the necessary steps to effect adjustment of the relevant provisions of the legislation in such a manner as to remove, in so far as sectors covered by the relevant provisions of the EEA Agreement are concerned, the sectoral differentiation in the rates of the social security tax.

The Icelandic Government agreed to the measures proposed by the Authority. In the autumn of 1996, it presented to the Parliament a proposal for amending the legislation, which was adopted in December. The amendment of the legislation implies that the tax rates for the social security tax will be harmonized. The tax rate changes will be implemented in four steps, the first starting on 1 January 1997. After a transitional period of three years, the same tax rate will be applied to all economic sectors, as from the income year 2000.

Norway operates a system of **regionally differentiated social security tax**. The social security tax is paid by employers. It is levied on employers and calculated as a percentage of the employees' gross salary. The full tax rate in tax zone 1 is 14.1 % of gross salary. Tax zone 1 covers 73 per cent of the population The tax rates in zones 2-5, however, range from 10.6 to 0 %. Enterprises located in the tax zones with reduced tax rates will therefore typically benefit from a reduced tax burden and thereby reduced operating costs compared to enterprises which have to pay the full tax rate.

The system applies to all employees in all economic sectors, both public and private, except for the central government which has to pay the maximum rate regardless of the tax zone. The reduced rates do not impinge on the rights acquired under the National insurance system. The level of reduced tax rates may be determined independently each year as part of the Fiscal budget.

The Authority considers that the scheme constitutes State Aid in the meaning of Article 61 EEA. Since the scheme has the direct effect of reducing labour costs for certain enterprises it must be regarded as operating aid.

The objective of the tax scheme is to promote regional development. The compatibility of the scheme as a whole must therefore be examined with reference to the exemptions under Article 61(3)(a) and (c) EEA. Operating aid may under certain conditions, be covered by the derogations referred to above.

In the course of 1996, the Authority examined the economic effects of the scheme and in particular possible adaptations needed for the scheme to comply with the rules on regional transport aid laid down in section 28.2.3.2. of the State Aid Guidelines. The examination was carried out in co-operation with the Norwegian authorities and a number of meetings were held in 1996. The Authority has also in this process, in accordance with Protocol 27 of the EEA Agreement, co-operated with the services of the European Commission. The examination was not completed by the end of 1996.

In April 1996, the Authority initiated an examination of **aid provided by the Norwegian authorities in favour of the construction of a ferry by a Norwegian shipyard**. The background to the case, was in the form of reports in the Norwegian and international press alleging irregularities of the aid award. In particular, it was alleged that the two parties to the contract had been pledged state aid according to the Norwegian rules on aid to shipbuilding which applied in 1993, although there were indications that a binding contract was only signed in 1996. If correct, this might have implied that the parties were awarded state aid in excess of the ceiling on contract related production aid for shipbuilding applicable in 1996, which was 9% of the contract value before aid.

After having initiated an examination of the situation, the Authority also received a request from the European Commission for clarification of the factual details in the same case.

Having examined the factual details in the case in relation to the relevant State aid provisions of the EEA Agreement, including those laid down in Council Directive 90/684/EEC, which first entered into force in the EEA on 1 May 1995, it was concluded that the aid for the construction of the vessel concerned did not call for action by the EFTA Surveillance Authority.

5.1.3.3.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 aid schemes when they are authorised in order to carry out its monitoring obligations more effectively.

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, the Authority decided in July 1995 to propose as an appropriate measure that Iceland and *Norway* submit standardized annual reports on the 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. The Authority's proposals for annual reporting were accepted by the Icelandic and Norwegian authorities. Through those proposals, 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. The Authority has requested the submission of an annual report in all positive decisions authorising State aid after that date.

To avoid placing an undue administrative burden on the EFTA States, the Authority has requested detailed annual reports for a limited number of schemes. Simplified annual reports, which need to contain only a limited amount of data, is the reporting format generally asked for in decisions authorising a scheme. The need to submit detailed annual reports for certain schemes has been considered on a case-by-case basis and justified, *inter alia*, with reference to the budget involved, links to other schemes, as well as other qualitative factors that were found to justify a closer scrutiny by the Authority.

A general system for annual reporting is necessary (in addition to the obligations to do so according to the specific rules existing for certain sectors) because scant information is available on the sectoral impact of regional aid, or on the regional impact of sectoral aid. For the monitoring of aid schemes to be effective, information is needed in particular to identify concentrations of aid on a small number of recipients and on the cumulative effect of different aid schemes on those recipients. The deadline laid down in the State Aid Guidelines, is normally 30 June each year.

In 1996, *Norway* submitted annual reports on all aid schemes which have been reported to the Authority, while in the case of *Iceland* there were still a number of reports outstanding at the end of the year.

5.1.3.4.Complaints relating to State aid

At the beginning 1996, eleven complaints relating to State aid were pending with the Authority. Two new complaints relating to State aid were also registered in the course

of 1996. The Authority decided to close the examination of four complaint cases without proposing further action, while in one case it decided to open a formal investigation procedure. There remained a total of eight complaints under examination at the end of 1996.

In the case concerning alleged aid to **Stentofon**, a Norwegian supplier of communication systems, it was found that Statens nærings- og distriktsutviklingsfond's (SND) and Fokus Bank's decisions to participate in the company's refinancing arrangement were commercially justified. The Authority concluded therefore, that State Aid in the meaning of Article 61(1) of the EEA Agreement was not involved.

In the case concerning a **hotel project in Suldal** (Norway), it was found that most of the public financing was provided before the entry into force of the EEA Agreement. The Authority also found that the part of aid provided in favour of the project under existing aid schemes after the entry into force of the EEA Agreement was awarded in conformity with provisions for regional investment aid approved by the Authority.

The Authority decided to close its examination of the State aid part of a complaint concerning the state-owned construction company **Statkraft Anlegg AS** (Norway) without proposing further action. The Authority did not find any evidence suggesting that the financing provided by the mother company, Statkraft SF, constituted State aid in the meaning of Article 61(1) of the EEA Agreement. The Authority assessed in the same decision other allegations made by the complainant. It was found that the available information did not indicate that the general procurement practice of Statkraft SF was not in compliance with the EEA rules on public procurement.

On 30 October 1996, the Authority decided to open an investigation procedure with regard to a complaint on the Norwegian Government's financing of the **Arcus Group**. The Arcus Group was established as a result of the dismantling of the former Norwegian alcohol monopoly. With effect from 1 January 1996, production and wholesale distribution activities of the former monopoly were transferred to the Arcus Group, a separate state owned company, competing on the market. Retail outlets remained as part of a state monopoly. Information presented by the Norwegian authorities did not enable the Authority to ascertain that State aid was not involved in the case of Arcus. The Authority stated in its decision that any under-valuation of the assets transferred from the state monopoly, A/S Vinmonopolet, would represent aid to the Arcus Group, since the Arcus companies in that case would benefit from not having to bear the full costs of assets acquired from the State. A further examination was considered necessary.

The book value of those assets was, as a part of the operation, written down by approximately two thirds (NOK 700 million) to NOK 357 million in the former monopoly's accounts for 1995. The latter figure corresponds with the Arcus Group's opening balance. The Arcus Group had otherwise received NOK 226 million from A/S Vinmonopolet to cover restructuring costs. The latter amount would also be subject to further scrutiny by the Authority.

The Norwegian authorities disputed that aid was involved in their financing of the Arcus Group. The transactions referred to above had therefore been carried out without prior notification and initial approval by the Authority.

The decision to open proceedings was without prejudice to the final decision, which might still be to find that aid was not involved, or that possible aid elements might be compatible with the functioning of the EEA Agreement.

The Norwegian Government was invited to submit its comments within a period of one month. Other EFTA States, EU States, and interested parties were to be informed by the publication of a notice in the EEA Section of the Official Journal of the European Communities and the EEA Supplement thereto. The Norwegian Government submitted its comments in December 1996. The Norwegian authorities submit that they do not consider that any form of aid was granted in the form of transfer of assets or financial assistance in connection with the reorganisation of A/S Vinmonopolet.

In October, the Authority decided to close a case initiated in February 1994 by a complaint from the Scottish Salmon Growers' Association, concerning alleged **State aid to the Norwegian salmon industry**.

It is recalled that following a letter by the Authority in March 1994 informing the complainant that the relevant provisions of the EEA Agreement did not confer upon the Authority the competence to assess State aid to fisheries, the complainant lodged an application to the EFTA Court, requesting the Court to annul what was referred to as the decision of the EFTA Surveillance Authority. By Judgement of 21 March 1995 (in Case E-2/94), the EFTA Court annulled the decision of the EFTA Surveillance Authority to close the case, for failure to state adequate reasons for the decision.

A re-examination of the case undertaken by the Authority lead to the following conclusions:

- The complaint was to be examined on the basis of the specific provisions of the EEA Agreement on State aid to fisheries.

- State aid provisions applicable under the EEA Agreement to the fisheries sector are set out exhaustively in Protocol 9.

- Protocol 26 of the EEA Agreement and Article 24 of the Surveillance and Court Agreement, which define the scope of the Authority's competences in the field of State aid, do not confer upon it the powers to assess State aid under Protocol 9. There is no reason to consider that these provisions were not meant to exhaustively enumerate the Authority's powers in the field of State aid.

- The provisions of Protocol 9 do not give any competence to the EFTA Surveillance Authority to assess State aid to fisheries. On the contrary, such aid "is to be assessed by the Contracting Parties".

For these reasons the EFTA Surveillance Authority concluded that it lacks competence to assess State aid to the Norwegian salmon industry. The case initiated by the complaint from the Scottish Salmon Growers' Association was therefore closed.

5.1.4. Assessment of plans to grant new aid

5.1.4.1.Statistics on cases

At the beginning of the reporting period, three cases on new aid were pending with the Authority. In the course of 1996, the Authority registered a total of six cases relating to new aid, all of which were notifications by the EFTA States, and no new case were registered as non-notified aid. Three notifications related to the shipbuilding sector, while the remaining cases concerned rescue aid, regional aid and aid for SMEs. One of the cases related to Iceland and five to Norway.

During 1996, the Authority decided in five cases relating to new aid not to raise any objection with regard to the aid proposals concerned, while in one case, which was initiated by a complaint, the Authority decided to open the formal investigation procedure. A final decision in the latter case last referred to had not been taken at the end of 1996. Three cases relating to new aid were pending with the Authority at the end of 1996.

Sections 5.1.4.2 and 5.1.4.3 below provide an account of the decisions taken by the Authority with regard to notified aid cases.

5.1.4.2.Aid not covered by specific sectoral rules

5.1.4.2.1.Aid for Rena Karton AS

On 8 May 1996, the EFTA Surveillance Authority decided not to raise objections for plans to award rescue aid in favour of Driftsselskapet Rena Karton AS (DRK). The rescue aid concerned a one-off award of a subordinated risk loan from the Norwegian Industrial and Regional Development Fund (SND) to DRK amounting to NOK 2.7 million. The plan to award rescue aid was triggered by the bankruptcy of Rena Karton, a Norwegian producer of folding box board. DRK was a provisional company set up to continue production for a limited period while new owners were sought for the former Rena Karton.

The rescue aid was found to satisfy the Authority's rescue aid policy on the following grounds:

a) The aid was limited to liquidity help in the form of a loan bearing a commercial rate of interest (9 % p.a.) for a limited period of time (six months).
b) The amount of NOK 2.7 million did not exceed the company's estimated need for liquidity (NOK 23 million) during the rescue period.
c) The company is located in an area eligible for regional aid which is already experiencing significantly higher unemployment rates than the national average. The Authority took into account that alternative employment in the region was scarce and that the consequences of closing down production were likely to spread to other economic activities, thus leading to serious social difficulties.
d) Both DRK and former RK satisfied the definition of small and medium-sized enterprises which provided a further justification for taking a favourable view with regard to the aid.
e) DRK's production was estimated at 3,000 tonnes in the rescue period, corresponding to an annual capacity utilisation of 20,000 tonnes. The total EEA consumption of folding box board is approximately 1.3 million tonnes per year. The aid was therefore not considered to have unjustified adverse effects on competitors within the EEA.

The Norwegian Government was obliged to submit a report to the Authority on the operations of DRK during the rescue period. Such a report has been received, requiring no further action from the Authority.

5.1.4.2.2.Adjustment of Norwegian SME aid schemes

In December 1996, the Authority decided not to raise objections to the Norwegian Government's notified plan to alter nineteen existing aid schemes by introducing the **revised SME definition** referred to in paragraph 4.1.2.1 of this annual report.

5.1.4.2.3.Regional aid map for Iceland

In August, the Authority decided to authorise a map of areas eligible for regional aid in Iceland and the corresponding aid intensity ceilings.

The decision was taken on the basis of a proposal from the Icelandic Government notifying the Authority of plans to establish the new aid areas as a basis for a well co-ordinated regional policy.

The area which is to be eligible for regional aid consists of the following electoral constituencies: *Vesturland, Vestfirðir, Norðurland vestra, Norðurland eystra, Austurland* and *Suðurland,* as well as the region referred to as *Suðurnes*, which consists of those municipalities belonging to the *Reykjanes* constituency, which are outside the capital (*Reykjavík*) region. 40.8% of Iceland's population lives in the assisted area. The decision implies that enterprises located in the capital region,

consisting of *Reykjavík* and eight adjoining municipalities, will not be eligible for regional aid.

The assisted area was found to qualify for regional aid under Article 61(3)(c) of the EEA Agreement, on the basis of criteria in the Authority's State Aid Guidelines, according to which regions may be deemed eligible for regional aid provided they fulfil any one or more of the following alternative criteria: low GDP per capita, high unemployment compared to the national average or low population density (less than 12,5 inhabitants per square kilometre). The assisted area in Iceland meets the last of these statistical criteria, as it has a population density of only 1,1 inhabitants per square kilometre.

As is foreseen by the guidelines on regional aid, the Authority also took into account other relevant factors. In particular, it acknowledged the relevance of a variety of demographic, economic and topographic factors, such as unfavourable population trends in the regions, their vulnerable and undiversified economic base with high dependence on agriculture and fisheries, long distances within the country and to European markets, as well as particularly harsh climatic conditions.

Maximum aid limits are linked to the map of assisted areas. After taking account of taxation, the aid ceiling in the assisted area is 17% of eligible investment costs. Firms qualifying as small and medium-sized enterprises are eligible for an additional 10% subsidy before tax.

The Icelandic map of assisted areas will be applicable for a period of five years.

5.1.4.3.Sectoral aid: Aid to shipbuilding

5.1.4.3.1.General developments

In 1994, an Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry was concluded under the auspices of the OECD. Amongst the signatories to this agreement were the European Community, on behalf of its Member States, and Norway.

The Agreement provides for the elimination of all direct shipbuilding aids except social aid and aid for research and development. However, indirect measures of support to shipbuilding in the form of credit facilities and loan guarantees for shipowners are permitted provided they are in conformity with the OECD Understanding on Export Credits for Ships, which in the context of the new Agreement has been revised.

The OECD Agreement was originally foreseen to enter into force on 1 January 1996. In view of this, the European Union adopted Council Regulation No 3094/95 in December 1995, which implements the state aid provisions of the OECD Agreement in Community legislation. However, in the light of uncertainties concerning

ratification of the OECD Agreement, Article 10 of the Regulation provided that should the OECD Agreement not enter into force on 1 January 1996, the relevant provisions of *Council Directive on aid to shipbuilding* (90/684/EEC) should apply until the Agreement enters into force and until 1 October 1996 at the latest. As it turned out, entry into force of the OECD Agreement has been delayed due to failure by certain contracting parties to ratify the Agreement. When it was apparent, in the summer of 1996, that ratification of the Agreement would be delayed beyond 1 October 1996, the EU Council again decided to extend application of the Directive on aid to shipbuilding, this time until 31 of December 1997 at the latest.

In March 1996, the EEA Joint Committee decided that the provisions of the Act referred to in point 1b of Annex XV to the EEA Agreement (the Council Directive on aid to shipbuilding (90/684/EEC), as adapted for the purpose of the EEA Agreement by the EEA Joint Committee Decisions No 21/1995), should continue to apply until Articles 1 to 9 of Council Regulation 3094/95 on aid to shipbuilding become applicable in the European Community, but no longer than until 1 October 1996. This decision entered into force on 1 April 1996 and applied retroactively from 1 January 1996.

In October 1996, the EEA Joint Committee again decided that the provisions of the Shipbuilding Directive shall continue to apply within the EEA, until Articles 1 to 9 of Council Regulation 3094/95 become applicable in the European Community, but no longer than until 31 December 1997.

According to Article 4(2) and 4(3) of the Shipbuilding Directive the EFTA Surveillance Authority is to determine the common maximum ceiling for operating aid to shipbuilding referred to in Articles 4(1) and 5(1) of the Directive. Following the above decision of the EEA Joint Committee in March, the Authority decided in the same month to set the ceiling at 9% for the period as from 1 January 1996 until Articles 1 to 9 of Council Regulation 3094/95 became applicable in the European Community, but no later than 1 October 1996. 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, the ceiling was set at 4.5% for the same period, except for the construction of such ships destined for national utilisation in Greece.

Similarly, following the above decision of the EEA Joint Committee in October, to extend Council Directive 90/684 beyond 1 October 1996, the Authority decided in November that the ceiling should remain unchanged during the last three months of 1996.

In preparation for fixing the ceiling to be applied in 1997, a study has been carried out by and independent consultant appointed by the European Commission of the prevailing differences between the costs of the most competitive EEA yards and the prices charged by their main international competitors. On the basis of the outcome of this study, the EFTA Surveillance Authority has consulted the EFTA States with shipbuilding industries on the ceiling to be applied in 1997 and expects to decide on the matter in January 1997.

5.1.4.3.2.Norway

Following the extension in March 1996 of the aid discipline applicable to the shipbuilding sector, the Authority examined the relevant aid schemes in Norway. As, compared to the schemes authorised by the Authority in 1995, no substantive changes were made with an implication for the Authority's assessment based on the Shipbuilding Directive, which continued to be applied with the same ceiling, the Authority decided in June not to raise objections to:

- the prolongation of the aid scheme on grants for shipbuilding, newbuildings and conversions;

- the continued application to the shipbuilding industry of the existing guarantee scheme by the Guarantee Institute for Export Credits (GIEK);

- the prolongation of the guarantee scheme for ship construction.

The schemes were prolonged so that they would be applied to new binding contracts entered into as from 1 January 1996 until the OECD Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry enters into force, and until 30 September 1996 at the latest, on the condition that delivery takes place no later than 31 December 1998. At the end of 1996, the Authority was examining a notification which it had received on a further prolongation and amendment of the existing aid schemes in Norway for the shipbuilding sector.

In July, the Authority decided not to raise objections to the proposal by the Norwegian authorities to grant regional investment aid to the **ship repair yard A/S Lofoten Sveiseindustri.**

Investment costs amounting to NOK 800.000 were considered eligible for aid under the SND Regional investment grant scheme. In addition to a grant under this scheme corresponding to an aid intensity of 20% net, the Norwegian authorities proposed to participate in the financing of the project by means of a risk loan from the SND amounting to NOK 150.000. The Authority estimated this loan to contain an aid element corresponding to 3,1% of the eligible costs. The cumulated aid intensity was therefore 23,1%, which the Authority concluded was within the relevant regional aid ceiling. It was also considered relevant to examine the proposal in relation to the Act referred to in point 1b of Annex XV to the EEA Agreement (Council Directive on Aid to shipbuilding) and concluded that the conditions for investment aid to shipyards set out in Article 6 this Act were fulfilled.

5.1.4.3.3.Iceland

The aid scheme for shipbuilding and ship conversion in Iceland, authorised by the Authority in 1995, expired at the end of that year and has not been renewed.

In November 1995, the Authority received a request from the Icelandic authorities to invoke the procedure in Article 4(5) of the Shipbuilding Directive with respect to aid for a contract for conversion of an Icelandic trawler, for which there was competition between shipyards in Iceland, Norway, Poland and Spain. The notifications confirmed that the contract had been placed with the Spanish shipyard.

Following consultation with the Commission services, the Authority requested notifications from Iceland and Norway, and likewise the Commission requested notification from Spain. The notifications confirmed, inter alia, that the contract had been placed with the Spanish shipyard.

In July 1996, the Commission decided to open a State aid investigation procedure laid down in Article 93(2) of the EC Treaty with respect to the aid provided by the Spanish authorities. The reasons stated for taking this action were that the Commission considered that aid could not be granted to shipyards for the construction of fishing vessels belonging to the Community fleet, as it would be contrary to the aid rules under the common fisheries policy. Furthermore, the Commission expressed that this same principle should apply within the EEA. At the end of 1996, the Commission had not taken a final decision in this case.

5.2. 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.

In its reasoned opinion of 30 December 1994, the EFTA Surveillance Authority considered certain aspects of the Norwegian Alcohol Monopoly not to be compatible

with the EEA Agreement, namely the exclusive rights of A/S Vinmonopolet to import, export and wholesale of alcoholic beverages and the institutional link between the retail monopoly and the production of such beverages.

Subsequently the Norwegian Government decided to introduce changes to the Alcohol Act and the Act on the Foundation of A/S Vinmonopolet which abolished A/S Vinmonopolet's exclusive rights related to import, export and wholesale of alcoholic beverages with effect from 1 January 1996.

Furthermore, the Norwegian Government transferred the import, export, wholesale and production activities of A/S Vinmonopolet to the Arcus Group of companies with effect from 1 January 1996, whereby the institutional link between the retail monopoly and the production of alcoholic beverages was eliminated.

The Authority found in its decision of 30 October 1996, that the measures referred to above removed the infringements addressed by its reasoned opinion and as a consequence decided thereof to close the case.

The scope of the decision of 30 October 1996 was, however, limited to the question of whether the Norwegian Government's legislative amendments and related organisational changes met the requirements laid down in the reasoned opinion. The decision did, therefore, not prejudice the Authority's position in respect of other aspects of trade in alcoholic beverages in Norway or its enforcement of the rules on State aid and competition in that sector[15].

In February 1995, the Authority delivered a reasoned opinion addressed to the Icelandic Government, 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 1996, still examining whether the requirements of its reasoned opinion had been met.

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.

[15] For information on cases dealt with by the Authority involving State aid and competition aspects of trade in alcoholic beverages reference is made to sections 5.1.3.4 and 5.3.2.2.5., respectively, of this Report.

5.3. COMPETITION

5.3.1. The importance of anti-trust rules

The EEA Agreement aims at the creation of a "level playing field", where goods and 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.

Thus, whereas most of the Authority's activities relate to the EFTA States, the competition rules contained in Articles 53 to 58 and 60 of the EEA Agreement concern individual economic operators. 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 in practice virtually the same in the EEA Agreement as in the Community Treaties. The corner-stones of the European competition regime, reflected in Articles 53, 54 and 57 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 EEA Agreement. Cases dealt with by the Authority may concern undertakings located not only in the EFTA States, but also in EC Member States or third countries.

In competition cases, one of the roles of the Authority is to put an end to infringements through formal decisions directed at individual undertakings - possibly including sanctions. This is done either upon the Authority's own initiative (ex officio cases) or upon application by interested parties (complaints).

Furthermore, the Authority is competent to grant exemptions from the prohibition against restrictive agreements in Article 53(1). In order to be able to apply for such

exemptions, the undertaking concerned must notify the agreement in question. Notified agreements benefit from immunity from fines in respect of acts taking place during the period from the date of notification until the decision by the Authority, to grant or reject an individual exemption.

Undertakings may also apply for negative clearance, i.e. a statement by the Authority certifying that there are no grounds for action under Articles 53(1) or 54 in respect of an agreement, decision or practice. Decisions by the Authority in competition cases may be challenged before the EFTA Court.

Finally, the Authority is competent to deal with applications to approve mergers which only have an EFTA dimension, i.e. in principle when the turnover of the participating undertakings exceeds certain thresholds world wide and within the territory of the EFTA States and the latter threshold is not attained within the EU. However, in practice such cases are unlikely to occur.

The application of European anti-trust rules will often directly benefit the consumers whose free choice of goods and services may be limited through restrictive practices. The enforcement of these rules may have equal importance 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. Another important task is implementation control, i.e. ensuring that the relevant provisions are in place in the national legal orders of the EFTA States. Furthermore, the Authority issues notices and guidelines for the interpretation of the competition rules, and co-operates with the European Commission regarding individual cases and on general policy issues. Most of the different activities also involve close co-operation with national authorities.

5.3.2. Cases

5.3.2.1.Overview

On 31 December 1995, there were forty-three cases pending with the Authority. Of these, thirty-six were based on notifications and seven cases were complaints. From 1 January to 31 December 1996, twelve additional cases were opened. Out of these new cases, five were based on notifications, six were complaints and one was opened on the Authority’s own initiative. During the same period, three cases were closed by administrative means. Thus, by the end of 1996, fifty-two cases were pending. All the 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.

Since 1995, there has been a gradual relative increase of both formal and informal complaints in the competition field received by the Authority. This would seem to indicate that the knowledge of the EEA competition rules, and of the way in which infringements can be addressed using the EEA institutional set up, are becoming more widespread among economic operators in the EFTA countries. The complaints and other more informal contacts with economic operators have for the most part dealt with competition problems in sectors which have recently been liberalised or are in the process of being deregulated. Examples of such sectors are pharmaceuticals, distribution of alcoholic beverages, telecommunications and energy. The Competition and State Aid Directorate has followed the developments in these areas closely.

5.3.2.2.Developments in individual cases

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

- the general impact of the restrictive practices on the economy of EEA States,
- the nature and severity of infringements,
- the specific effects for consumers or third parties of the restrictive practices,
- whether the objectives of the application of competition rules could be better achieved 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 given to cases relating to the pharmaceutical, telecommunications, energy and forestry sectors, as well as the sector for distribution of wine and spirits.

5.3.2.2.1.Pharmaceuticals

The Authority continued scrutinising a complaint received in 1995 regarding a refusal to supply. A Norwegian subsidiary of a Danish company engaged in parallel imports and exports of pharmaceuticals was refused supplies by a Norwegian pharmaceuticals wholesaler, allegedly on the basis that the goods were not to be resold in Norway. The Danish parent company also tried to place orders with the wholesaler for delivery via its Norwegian subsidiary, but was refused orders with the same reasoning. The complainants' request for interim measures was rejected in June 1995.

The Authority continued the assessment of a complaint received in 1995 from the Norwegian Association of Pharmaceutical Manufacturers (*Legemiddelindustriforeningen*) on the establishment and functioning of a joint purchasing organization, *Legemiddel Innkjøp Samarbeid (LIS)*, set up by most Norwegian hospitals to procure medicines. The complainant is of the opinion that there are infringements, both of Article 53(1) and of Article 54 of the EEA

Agreement. Following the complaint the Authority also received a notification from LIS in February 1996 on the same issue.

5.3.2.2.2.Telecommunications

On the basis of a complaint, the Authority is presently examining a leasing and cooperation agreement whereby Telenor AS, the public telecommunication operator in Norway, has the exclusive right to use the excess capacity of the telecommunication network owned by the Norwegian Railways. The examination, which is carried out in light of the general legislative liberalisation measures taken in the telecommunication sector, was not yet finalized by the end of the reporting year.

5.3.2.2.3.Energy

In June 1996, the Authority received a request from the Commission to undertake an investigation into the premises of the three member companies of the Norwegian Gas Negotiation Committee (*Gassforhandlingsutvalget - GFU*), in a case where the Commission considers itself to be the competent surveillance authority according to Article 56 of the EEA Agreement. Pursuant to Article 8(3) of Protocol 23 to the EEA Agreement, the competent surveillance authority, as defined in Article 56 of the EEA Agreement, may in a particular case request the other surveillance authority to carry out investigations within its territory where the competent surveillance authority considers it to be necessary. The purpose of the investigation, which was carried out in June, was linked to the activities of GFU and their conformity with EEA competition law. This case is still pending with the European Commission. Following the investigation, it has been indicated to the Authority that the establishment and activities of GFU are based on Government involvement. The Authority therefore sent a letter to the Norwegian Government in October 1996, asking it to provide information on the establishment and functioning of GFU in order to be able to evaluate the application of Article 59 of the EEA Agreement to these issues. According to Article 59, the Contracting Parties to the EEA Agreement shall, in the case of public undertakings and undertakings to which EC Member States or EFTA States grant special or exclusive rights, ensure that there is neither enacted nor maintained in force any measure contrary to the rules contained in the Agreement, in particular to the competition rules. The information requested had still not been submitted at the end of the reporting period.

5.3.2.2.4.Forestry

Based on one formal complaint and two notifications, the Authority has examined the markets for round wood in Norway. This examination showed that the market particularly for pulpwood, was characterised by a system of central or centrally co-ordinated price negotiations between buyers and sellers of pulpwood, and far reaching cooperation between potential competitors on both the buyers' side, through the Norwegian Association of Paper and Pulp Industries (TFB), and the sellers' side, through the Norwegian Association of Forest Owners (NSF).

As a result, the Authority issued on 3 July 1996, three Statements of Objections. A hearing in these matters was subsequently held on 23 September 1996. One Statement related to the centralised or centrally co-ordinated price negotiations between NSF and TFB, and an agreement between them to fix the level of commissions on the sale of round wood through the forest owners' associations. After having received the Statement, the parties declared that they would not retain any cooperation as regards prices on a national level, including the fixing of commission levels. Consequently, it is foreseen that no further formal action by the Authority will be necessary in these cases. In another Statement of Objections, the geographic sharing of pulpwood purchases between the members of TFB was held by the Authority to be contrary to Article 53(1) of the EEA Agreement, and could not be exempted under Article 53(3). Finally, in the third Statement, the Authority considered that certain clauses in the statutes of NSF, mainly relating to the possibility for the central association's possibility to control its members' commercial behaviour on the round wood markets and the exclusive obligation for the members to supply all round wood to the applicable district association of NSF, may constitute an infringement of Article 53(1) and the conditions for an exemption are not fulfilled. Final decisions in these two latter cases are foreseen in the first part of 1997.

5.3.2.2.5.Distribution of wine and spirits

In September and October 1996, three complaints were submitted to the Authority concerning the activities of the major Norwegian wholesaler and distributor of wine and spirits, Arcus Distribusjon AS (AD)[16]. AD is a state- owned company and was established as a consequence of the reorganisation of the state-owned company AS Vinmonopolet, which until 1 January 1996 had a total monopoly on the trade in wine and spirits in Norway. From that date, a separate holding company, Arcus AS, was established with two subsidiaries, Arcus Produkter (AP) and AD, which were to take over the production activities and the wholesale and related distribution activities, respectively. The restructuring was done to comply with the Authority's reasoned opinion, issued in 1995, on the compatibility of the monopoly on the production, imports and wholesale/distribution with the EEA Agreement. Today there are at least two additional companies which have established themselves as wholesale distributors on the Norwegian market, and other companies are trying to penetrate the market. The complaints relate to distribution agreements entered into between AD and various importers of/agents for wine and spirits in Norway. It is alleged that AD is abusing its dominant position contrary to Article 54 of the EEA Agreement on the Norwegian market for distribution of wine and spirits by offering marketing support with retroactive effect to importers and agents if they enter into cooperation agreements of a certain duration. Two of the complainants have requested the Authority to adopt interim measures. One complainant formally withdrew his request for interim measures in November, and it was indicated in December that the other complainant will do the same.

[16] The Authority is also dealing with a case under the state aid rules of the Agreement involving this company, see point 5.1.3.4. above.

5.3.2.2.6.Other cases

Agreements between insurance companies covering a large part of the Norwegian insurance sector are presently being handled by the Authority. The agreements range from different types of pooling arrangements to common standards. In the latter category, the Association of Norwegian Insurance Companies (Norges Forsikringsforbund) have notified the norms or standards set by the Insurance Companies' Approval Committee (Forsikringsselskapenes Godkjenningsnemnd) for the testing and acceptance of security devices and the evaluation and approval of undertakings installing them. After discussions with the Authority, certain changes were made to the notified arrangements, *inter alia*, clarifying that the use of these standards were not binding for the insurance companies, that security devices and installation undertakings were accepted if they fulfilled equivalent standards prevalent in other EEA States, and that a certain degree of impartiality was secured in the body applying these standards. In view of these changes, a notice was adopted in December 1996 in which the Authority indicated its intention to take a favourable view on the arrangements and invited comments from interested parties. The notice is expected to be published in the Official Journal at the beginning of 1997.

In a case involving a non-exclusive distribution agreement between two ferrosilicon producers in Norway, a notice was published in January 1996[17] in which the Authority indicated its intention to take a favourable view on the arrangements and invited comments from interested parties. No comments were received and the case was subsequently closed by means of a so-called “comfort letter” to the parties concerned.

5.3.3. New acts

5.3.3.1.Legislation

During 1996, three new acts were adopted by the EEA Joint Committee into the EEA Agreement in the competition field. They all concern so-called block exemptions, which automatically exempt agreements, decisions and concerted practices if they do not go further than what is explicitly set out as permissible in the block exemption. One of the acts is a block exemption for agreements, decisions and concerted practices between liner shipping companies (consortia)[18]. The second is a block exemption for motor vehicle distribution and servicing agreements, which replaces the preceding

[17] OJ C 13/08, 18.01.96

[18] Point 11c of Annex XIV to the EEA Agreement, which corresponds to Commission Regulation (EC) No 870/95 of 20 April 1995 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) pursuant to Council Regulation (EEC) No 479/92.

block exemption which expired on 30 June 1995[19]. The third act is an amendment of an existing block exemption in the air transport sector which, among other things, includes a possibility for consultations among airlines on passenger and cargo tariffs on scheduled air services[20]. According to the amendment, consultations on freight tariffs are now excluded from the block exemption.

The Commission has adopted an additional Regulation which is to be included in the EEA Agreement, but which had not yet been taken into the Agreement at the end of the reporting period[21].

5.3.3.2.Non-binding acts

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

Through Article 25(2) of the Surveillance and Court Agreement, the Authority is given the power and obligation to adopt acts corresponding to the ones listed in Annex XIV. This obligation has its basis in Article 5(1)(b) of the Surveillance and Court Agreement, stating that the EFTA Surveillance Authority shall, in accordance with EEA legislation and in order to ensure the proper functioning of the EEA Agreement, ensure the application of the EEA competition rules.

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

On 15 May 1996 the Authority amended its notice of 12 January 1994 on agreements of minor importance[22] in conformity with the Commission's latest amendment of its notice on agreements of minor importance[23]. The notice lays down specific criteria for determining when agreements can be considered not to be covered by the prohibition on restrictive agreements in Article 53(1) of the EEA Agreement. These criteria are linked to the market shares of the parties involved in the agreement and their aggregate annual turnover. As regards the latter, it is a condition for an agreement to be considered of minor importance that the aggregate turnover of the

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19 Point 4a of Annex XIV to the EEA Agreement, which corresponds to Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements.

20 Point 11b of Annex XIV to the EEA Agreement, which corresponds to Commission Regulation No 1523/96 of 24 July 1996 amending Regulation (EEC) No 1617/93 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices concerning joint planning and co-ordination of schedules, joint operations, consultations on passenger and cargo tariffs on schedules air services and slot allocation at airports.

21 Commission Regulation (EC) No 240/96 of 31 January 1996 on the application of Article 85(3) of the Treaty to certain categories of technology transfer agreements.

22 OJ of 26 September 1996 No C 281, p. 20.

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

parties concerned does not exceed ECU 200 million. The amendment raised this threshold to ECU 300 million. As regards market share, no changes were made. Thus, it is an additional criterion for agreements to be considered of minor importance that the market share of the parties concerned for the goods or services in question, including substitutes, is not more than 5 % of the total market for these goods or services within the EEA.

During 1996, the Commission adopted a notice on the non-imposition or reduction of fines in cartel cases. A corresponding non-binding act is under preparation by the Surveillance Authority.

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

From the information received from *Norway* and *Iceland*, it seems as if new EEA competition legislation has been implemented in a satisfactory manner. As regards *Liechtenstein*, international agreements entered into by the state automatically become a part of the national legal order. Thus, it is not necessary to undertake specific implementation measures to the same extent as in *Norway* and *Iceland*. However, there are specific obligations under the EEA Agreement which have been considered to require implementation measures also in *Liechtenstein*. These include the obligation to afford the necessary assistance to officials of the Authority in case an undertaking were to oppose an on-the-spot investigation by the Authority (cf. Article 14(7) of Chapter II of Protocol 4 to the Surveillance and Court Agreement). Such measures were adopted in *Liechtenstein* during 1996.

In connection with the investigation carried out at the premises of the companies which are members of the Norwegian Gas Negotiation Committee (GFU - see point 4.9.2), the Authority found reasons to question the implementation of parts of EEA competition legislation in *Norway*. The undertakings concerned agreed and submitted to the investigation, but in the case they opposed it being carried out, a decision ordering the investigation was prepared by the Authority. According to Norwegian law a decision by the Court of Examination of Summary Jurisdiction is necessary to enforce such a decision taken by the Authority. It appears that the national court considered itself competent to assess the factual and legal grounds underlying the Authority's decision. In the Authority's view, such competence would have to be regarded as being more extensive than what is considered to be in conformity with established EEA law. The issue was still under discussion at the end of the year.

5.3.4. Co-operation with the European Commission

The EEA Agreement emphasises 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 the rules themselves must 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 in all parts of the EEA.

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

5.3.4.1.Co-operation in the handling of individual cases

The Commission and the Authority co-operate in the handling of individual cases which affect both EFTA and Community States, the so-called "mixed cases". In these cases, both authorities submit to each other copies of notifications and complaints and inform each other about the opening of ex officio procedures. The authority which is not competent to deal with the case may at any stage of the proceedings make any observations it considers appropriate. The Authority considered that all of the twelve cases opened in 1996, affected one or more Community States and consequently the relevant documents were forwarded to the Commission for comments. During the same time, the Authority received copies of fifty-four 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.

A specific aspect of the rules on co-operation laid down in Protocol 23 is the right of both authorities to take part in each others' hearings and Advisory Committee meetings. The Competition and State Aid Directorate conducted one hearing during the year, in which the Commission took part, but no Advisory Committee was called in. It was, however, represented in the hearings conducted by the Commission in 1996, and in the meetings of the various Community Advisory Committees in competition cases.

In some cases, where the EFTA aspects are considered to be of particular importance, the Authority participates actively also in the preparatory stages. During the year, such cases included Euroc/Aker/Skanska (IV/M695), a merger in the construction sector, Finnish Timber (IV/35.467), concerning the round wood trade in Finland, Nordic Satellite Distribution (IV/M.490), relating to transmission of TV broadcasts in the Nordic area, and GFU (see Section 5.3.2.2.).

5.3.4.2.Consultations on general policy issues

Protocol 23 provides for the exchange of information and consultations on general policy issues. This typically includes the proposals for revised legislation in the competition field forwarded by the Commission as well as other questions of a policy nature.

During 1996, the Authority participated actively in the review of the Community merger regulation, where the Authority supported, in principle, the proposals forwarded by the Commission. The Authority also took part in the discussions on amendments to a block exemption in the air transport sector[24]. In addition, preparatory work was undertaken by the Commission aiming at issuing a new notice concerning the definition of the relevant market and a notice replacing the existing so-called *de minimis* notice[25]. This work, in which the Authority takes active part, was not finalized during the reporting year.

During the year, the Authority also participated in meetings 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.

5.3.5. 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 Surveillance 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 the field of 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 specialised in different sectors of the economy.

The close contact with the national authorities is also of vital importance when there are parallel proceedings before the national authorities under national competition law and before the Authority under EEA competition legislation.

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[24] See footnote no 20.

[25] Further amendments to what is described in section 5.3.3.2. For reference to the existing *de minimis* notice see footnote no 22.

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