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FOREWORD

The activities of the Authority in 1997 have developed in a stable and consolidated environment. Further progress in the implementation and application of the EEA Agreement has been registered, and the institutional mechanisms of the Agreement, notably the Authority's co-operation with the European Commission, function very satisfactorily.

The performance of the EFTA States in respect of implementing the Agreement remains comparatively good. There has in particular been significant progress as regards reducing the relative share of Directives that were listed as only partially implemented.

However, the EFTA States have not managed to bring further down the percentage of Directives which have not been implemented at all. The Authority sees this mainly as related to difficulties in achieving a timely implementation of new Directives, the time set for implementing EEA Joint Committee decisions frequently being extremely short. The EFTA States have been made aware of this problem, which may be accentuated in 1998, if the EEA Joint Committee succeeds in eliminating the considerable backlog of legal acts before it, notably in the veterinary field.

The Authority has had a good working year and has passed more than three hundred formal decisions, which is around fifty more than the previous year.
It is with some satisfaction that the Authority for the first time can register a decrease in the number of open cases in the field of general surveillance while the case load in the fields of State aid and competition has not increased. There remains a problem related to more complicated cases, typically emanating from complaints, which cannot be processed as quickly as could be desired.

The Authority has in the course of the year carried out a thorough overhaul of its working methods with a view to increasing its efficiency. A performance audit undertaken by the EFTA Board of Auditors confirmed that the Authority's system for monitoring the implementation of the Agreement was efficient and that the Authority was capable of fulfilling its surveillance tasks.

Moreover, the audit also highlighted major work remaining with regard to conformity checking and resource gaps, related to the performance of management functions.

The Authority feels encouraged by the positive reaction of the EFTA States to the conclusions of the performance audit, which will allow certain increases of its manning already in 1998.

The planned inclusion of the package of veterinary acquis, alongside with a reduction of the backlog of EEA Joint Committee Decisions, could in 1998 increase the number of the main legal acts attached to the Agreement by at least one third.

This will be another major challenge for the Authority which we nevertheless feel confident that we can handle provided that we can count on, as always, the continued close co-operation with the national authorities and with our colleagues in the European Commission.

Brussels, XX February 1998

Knut Almestad

President

1. SUMMARY

The task of the EFTA Surveillance Authority is to ensure, together with the European Commission, the fulfilment of the obligations set out in the Agreement on the European Economic Area (EEA Agreement). The Agreement contains both basic provisions and secondary Community legislation (EEA acts). New EEA acts are included in the Agreement through decisions of the EEA Joint Committee. At the end of 1997, the number of binding EEA acts was 1697, of which 1255 were Directives, 287 Regulations, and 155 Decisions.

In respect of *general surveillance*, in 1997 the Authority continued to apply to *Iceland* and *Norway* the *new implementation policy* introduced during the preceding year, whereas *Liechtenstein* was brought within its scope as from October 1997. According to this policy, formal infringement proceedings are initiated automatically (by sending a letter of formal notice) against the EFTA State 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.

In its statistics on the *transposition rate* of Directives the Authority makes a distinction between Directives which have been notified as *fully* implemented and those where only *partial* implementation has taken place.

When account is only taken of Directives where *full* implementation had been notified, by the end of 1997, the rate of transposition was as follows: *Iceland* 93.7%, *Liechtenstein* 86.7% and *Norway* 92.4%. When compared with the corresponding figures of 1996, clear improvement had taken place. It should be noted, however, that the fact that a Directive has been notified as fully implemented does not say anything about the actual *quality* of the national measures notified as implementing it. For a quality evaluation, the conformity of the measures with the provisions of the Directive has to be assessed. By the end of 1997 the Authority's services had concluded that full implementation had actually taken place with respect to 48% of the Directives belonging to the EEA Agreement.

When Directives regarding which *partial* implementation has taken place are *added* to those notified as fully implemented, the percentages are the following: *Iceland* 96.5%, *Liechtenstein* 92.2% and *Norway* 97,4%. The comparison of *these* figures with those of 1996 reveals only a minor improvement in the performance of *Norway*, whereas the percentage of *Iceland* and, in particular, *Liechtenstein* is lower than last year.

When the areas of free movement of *goods, persons, services* and *capital*, *horizontal areas* and *public procurement* are taken together, during the years 1994-1997 the Authority registered altogether *612* cases, of which *400* were *own-initiative* cases, *141 complaints* and *71 preliminary* examinations. In addition, a large number of *management tasks* had been initiated. By the end of the reporting year, the Authority had closed *214* own-initiative cases and *59*

complaint cases, and *21* preliminary examinations had been completed (without having being registered as own-initiative or complaint cases). At that time, the total number of open cases in the field of general surveillance, excluding management tasks, was *312*.

In the area of free movement of *goods*, individuals and economic operators continued to show concern for the correct application of the primary EEA rules with regard to certain types of products, in particular *alcoholic beverages*, *motor vehicles* and *tobacco products*. The transposition of secondary legislation into the legal orders of the EFTA States can generally be considered satisfactory. However, some complaints regarding areas covered by secondary legislation were received during the reporting year. Furthermore, the Authority opened a number of own-initiative cases for delayed implementation. Altogether, 15 new complaints and 23 own-initiative cases were registered. The implementation situation in the sector of *dangerous substances* is still not satisfactory, in particular with regard to *Iceland* and *Norway*. The same applies for *Liechtenstein* and *Norway* in relation to the Directives in the field of *medicinal products*. These sectors as well as *veterinary issues* continued to be examined with particular care with respect to *conformity*. Special monitoring of the *application* of secondary EEA legislation was called for in the *veterinary* and *phytosanitary* sectors. Continuous and intensive control of the correct application of EEA rules was 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 continued to call for particular attention of the Authority, due to the high number of existing cases and the two complaints and eight own-initiative cases that were opened during the reporting year.

While no new own-initiative cases were registered during 1997 in the sector of free movement of *persons*, the Authority received 10 complaints, the highest yearly number so far in that field. As regards transposition of Directives, the situation in the sector of *mutual recognition of professional qualifications* is still not satisfactory, in particular with respect to *Liechtenstein*. In the sector of free provision of *services* the Authority registered 23 new own-initiative cases and one complaint. While the Authority has received notifications on all Directives in the *financial services* sector, each EFTA State still has a number of Directives where implementation is only partial. Systematic assessment of national measures in the *insurance* field continued during the reporting year. In the *road transport* sector infringement proceedings against *Iceland* were initiated or pursued. No new own-initiative cases were opened relative to *capital movements*, nor were any complaints received.

In the horizontal *areas* 16 new own-initiative cases and two complaints were registered. *Health and safety at work* continued to be a problematic area from the point of view of implementation, in particular for *Liechtenstein* and *Norway*, and the same goes for *labour law*. In the *environment* field formal proceedings were initiated against *Liechtenstein* for failure to implement the Directives relative to genetically modified organisms (GMOs). In *company law* the infringement proceedings were continued against *Norway* for partial implementation of the accounting Directives.

In the general surveillance field *eight complaints* against EC Member States, lodged with the Authority by individuals or economic operators in EFTA States, were transferred to the European Commission. The States concerned were, *Austria, Belgium, Denmark, Germany, the Netherlands, Spain, Sweden* and *the United Kingdom*.

In May, the Authority decided to propose appropriate measures to *Norway* with regard to *State aid* in the form of regionally differentiated social security contributions from employers. The Norwegian Government did not concur with the Authority's view that the scheme involved State aid and consequently declined to comply with the Authority's proposals. After assessing the Norwegian reaction, the Authority decided in November to open a formal investigation procedure which will be completed in 1998. On the basis of a complaint, the Authority examined whether the operations of the Norwegian State Housing Bank implied infringements of the EEA Agreement. The Authority decided to close the case without further action. The complainant in this case has lodged an application to the EFTA Court seeking annulment of the Authority's decision.

The Authority continued its examination of possible State aid involved in relation to the establishment of the Arcus Group as a result of the de-merger of the former Norwegian State monopoly for alcohol. Other cases related to the markets for alcoholic beverages in *Iceland* and *Norway* were also under scrutiny by the end of the year.

After an examination, following complaints of the Icelandic Harbour Act, the Authority decided to propose appropriate measures to *Iceland* requiring advanced notification of any financing under the Act to docking construction for ships or related measures. At the same time, it was decided not to raise any objections to State aid which had been granted to docking facilities in the harbour of Akureyri. In its approval of prolongation and amendment of the *Norwegian* aid scheme for shipbuilding the Authority noted the Norwegian Government's undertaking (later accepted by Parliament) to abolish, as from 1 January 1998, aid for the construction of fishing vessels destined for the EEA area.

The Authority's *State Aid Guidelines* were amended by the incorporation of new guidelines on aid to the *maritime transport* sector. Other guidelines, corresponding to non-binding acts issued by the Commission, were under elaboration by the end of the reporting period. The Authority consulted the EFTA States and the Commission on drafts for new guidelines on State aid.

As regards *competition*, following an investigation of the *Norwegian* forestry industries, the Authority found that sellers as well as buyers of round wood in Norway contravened the applicable EEA rules. Consequently, the involved parties, the Association of Norwegian Forest Owners and subsidiary associations, and the Norwegian Association of Paper and Pulp Industries and its members, were ordered to bring the infringements to an end. Three complaints concerning wholesale and distribution of wine and spirits by the Arcus Group were closed after it became clear that Arcus had amended contested agreements with various importers of and agents for wine and spirits.

Work on the competition cases in telecommunication continued in 1997. A leasing and co-operation agreement whereby Telenor, the public telecommunication operator in *Norway*, had the exclusive right to use excess capacity in the telecommunication network owned by Norwegian Railways, was terminated by the parties. By the end of the year the Authority was at the final stage in its review of a set of standards and norms notified by the Association of Norwegian Insurance companies, and related to security devices and their installations.

The Authority continued its examination of the *Norwegian* Gas Negotiating Committee in relation to Article 59 of the EEA Agreement, as well as unsettled cases in the pharmaceuticals market. By the end of the reporting period, altogether *51* competition cases were pending with the Authority.

A notice on *non-imposition or reduction of fines* in cartel cases, and another notice on the application of competition rules to *cross-border credit transfers* were adopted, while work on other notices was in progress. The Authority co-operated with the Commission and the national competition authorities in individual cases as well as on further developments of competition rules and their application.

2. INTRODUCTION

The EFTA Surveillance Authority was established to ensure, together with the European Commission, the fulfilment of obligations under the EEA Agreement.

Pursuant to Article 21 of the Agreement between the EFTA States[1] 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. This is the Authority's fourth Annual Report.

In *Section 3* of the Report basic information is given on the EEA Agreement and the Authority itself. In that part, a number of concepts frequently referred to in the Report are also explained, and a short account is given on the Authority's information policy.

Section 4 provides reports on the Authority's *general surveillance* work with respect to the free movement of goods, persons, services and capital. The first part gives statistical information on general surveillance during 1994-1997, including the implementation status of Directives, case handling, infringement cases, as well as closures and the Authority's workload at the end of the reporting period. In the following parts an elaborate account is given, sector by sector, of the implementation and application of the EEA Agreement in the EFTA States, and of the activities carried out by the Authority in ensuring the fulfilment of obligations under the Agreement and for the management thereof. With regard to each sector, a brief introductory overview is also given of the applicable EEA legislation.

Accordingly, as regards free movement of *goods, persons, services* and *capital*, and the so-called *horizontal areas*, extensive information is given on the Authority's work in controlling the implementation of EEA acts, in particular the transposition of Directives, and in dealing with complaints lodged by individuals and economic operators. References are made to the work carried out by the Authority's services to verify the conformity of national implementing measures with the corresponding EEA rules, and to identify deficiencies regarding the implementation and application of the 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. 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 by 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

[1] In this report, the term *EFTA States* is used to refer to the three EFTA States presently participating in the EEA - that is, *Iceland*, *Liechtenstein* and *Norway*.

statistics are provided on procurement notices published in the Official Journal of the European Communities.

Section 5 begins with an overview of the general policy developments in the *State aid* sector in the course of 1997, amongst others as reflected in amendments made to the Authority's State Aid Guidelines. Information is given on the Authority's activities relative to existing aid, on complaints regarding State aid, and on assessments and decisions by the Authority concerning plans to grant new aid. Thereafter the situation relative to State *monopolies* in trade of alcoholic beverages is briefly presented.

With regard to *competition*, developments of cases handled by the Authority are outlined. Information is also given on the implementation of competition rules by the EFTA States, on the situation concerning the Authority's adoption of non-binding acts in the form of notices, and on co-operation with the Commission and with national competition authorities.

3. THE EEA AGREEMENT

3.1 THE EUROPEAN ECONOMIC AREA

,Agreement entered into force on 1 January 1994. Following the accession a year later of Austria, Finland and Sweden to the European Union, *Iceland* and *Norway* remained for a while the only EFTA States parties to the Agreement. The number of EFTA States was subsequently brought to three when on 1 May 1995, the Agreement entered into force for *Liechtenstein*. Some basic data on the three EFTA States are contained at *Annex I* to this report.

The 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 European 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 referred to in this Report as *horizontal areas* - such as labour law, health and safety at work, environment, consumer protection and company law. 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 Community 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 750 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 European 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 organisation 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*), are properly implemented in the national legal orders of the EFTA States and that they are correctly applied by their authorities. 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. However, infringement proceedings are initiated only where the Authority has failed to ensure by other means compliance with the Agreement. In practice the overwhelming majority of problems identified by the Authority is solved as a result of less formal exchanges of information and discussions between the Authority's staff and representatives of the EFTA States.

A salient feature in this respect is the holding of sectoral meetings in which whole ranges 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 EEA rule concerned, or to provide the Authority with information on the actual status of implementation.

If formal infringement proceedings are initiated, as a first step the Authority notifies, in a *letter of formal notice,* the Government concerned of its opinion that an infringement has taken place and invites the Government to submit its observations on the matter. If the Authority is not satisfied with the Government's answer to the letter, or if no answer is received, the Authority delivers a *reasoned opinion*, in which it defines its final position on the matter, states the reasons on which that position has been based, and requests the Government to take the necessary measures to bring the infringement to an end. Should the Government fail 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.

In three fields 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 within the Community in these fields.

Thus, with respect to *public procurement* the Authority is to ensure that central, regional and local authorities, as well as utilities, in the EFTA States carry out their procurements in accordance with the relevant EEA rules. To this end, and as an alternative to initiating formal infringement proceedings, if the Authority considers that prior to a contract being concluded a clear and manifest infringement has been committed in the award procedure, 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 authorisation, 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. Thus, the Authority is to ensure that the competition rules of the Agreement are complied with, notably the prohibitions on *restrictive 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 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 end. In addition, the Authority may impose *fines* and periodic *penalty payments* for breaches of the competition rules.

In addition to handling individual State aid and competition cases, the Authority is entrusted with the competence and has the obligation to *issue guidelines, notices,* or *other communications* which, without being legally binding, provide guidance for the interpretation and application of the State aid and competition rules. These various acts, adjusted for EEA purposes, replicate acts issued by the Commission.

Along with the surveillance functions outlined above, the Authority has a wide range of tasks of an *administrative character*, which within the Community are performed by the Commission. Generally speaking, these tasks relate to EEA rules whose proper application 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 Community 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 the State may in the course of the recognition of a foreign diploma or license introduce a derogation as regards the person's right to choose between an aptitude or an adaptation period, provided that the restrictive measure is notified to, and authorised by, the Authority. Although this kind of tasks appear in most fields of activity, they are of particular importance in the sector 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 the reporting year, the Authority took particular measures in order to better inform the public on the functioning of the EEA Agreement and the Authority's activities.

In April 1997, the Authority's Website was officially placed on the World Wide Web. The Website provides access to the separate *Homepages* of the three EFTA bodies: the *EFTA Secretariat*, the *EFTA Court* and the *EFTA Surveillance Authority*.

The Authority's Homepage contains general information on the Authority's organisation and its organigram, as well as a guide to the Authority in English, German, Icelandic and Norwegian. Vacancy announcements are also placed on the Site. Furthermore, there is a section for the Authority's publications, including the Annual Reports, the Interim Report on Transposition Status of Directives (see below), and the Press Releases from 1996 and 1997. In

addition, the Authority's Rules of Procedure, the Competition Procedures, Information Guidelines, and a description of the Authority's infringement procedures can all be found on the Site. Finally, there is a section explaining the Authority's databases. The Website is updated regularly. The Authority is examining ways of expanding the information to be added to the Site. The Website's address is *http://www.efta.int*.

In June 1997, the Authority issued for the first time the *"Interim Report on Transposition Status of Directives"*. It was followed in October by an up-dated version which was also made available to the public. The Authority plans to continue issuing an Interim Report twice a year also in the future.

The Authority has established a set of rules for the handling of requests for *access to documents*. Such requests may be put forward in writing or even orally. A reply to a request for access to documents should be provided at the latest within two weeks. The reply is given by the responsible Director or College Member. 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, or for reasons of protecting certain legitimate public and private interests in, for example, competition cases, certain information cannot be disclosed. It may be noted, however, that nothing prevents a party whose interests are protected from making public such documents or information. If access is granted, the document is made available 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 shall state the reasons for its decision.

The rules on access to documents, in the form of Information Guidelines, may be obtained from the Authority, or directly on the Authority's Homepage.

The Authority intends to adopt shortly practices to the effect that the public will be informed by means of a press release of all *reasoned opinions* - and, in exceptional cases, also of letters of formal notice - issued by the Authority,

The Authority's contact person with the media, Ms. Helga Óttarsdóttir, may be reached during working hours on tel. +32-2-286.18.34 or +32-2-286.18.32 for questions concerning the Authority's activities.

3.2.3 Organisation

3.2.3.1 College

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, which is 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 a majority vote by its Members.

During 1997 the composition of the College was:

Knut Almestad **President**

Hannes Hafstein

Bernd Hammermann

The division of responsibilities among College Members is shown at *Annex II*.

3.2.3.2 Staff

During the reporting year the Authority's staff consisted of *41* persons, representing seven nationalities. An organigramme showing the Authority's organisation during 1997 is at *Annex III*.

During the reporting year six staff members left the Authority's service and were all replaced. In 1998 the staff will increase by three persons.

As in previous years the Authority engaged national experts and trainees to enhance its resources and expertise.

3.2.3.3 Performance Evaluation

In October 1996 the Authority requested the EFTA Board of Auditors to review and evaluate the performance of the Authority. The audit was carried out in May and June 1997 by an audit team from the Office of the Auditor General of *Norway* and the National Audit Office of Iceland. It focused on the Authority's activities and achievements, and on its efficiency and management.

The Auditors concluded, *inter alia*, that:

- The Authority had successfully established an efficient system to monitor the implementation of EEA acts into the national legislation of the EFTA States.
- As a result of the examination of surveillance cases the conclusion was that the Authority was capable of carrying out its tasks according to the given mandate.
- However, at the end of 1996 only 35% of the work of checking and verifying the national legislation for conformity with the EEA rules had been finished. The Authority was to set goals and targets, and was encouraged, through long term planning, to estimate and describe the need for resources.
- Furthermore, the Authority had many management tasks similar to those of the European Commission which it had not been able to carry out as they demanded more resources than was available.

- The working methods of the Authority were very well documented and systematised.
- The Authority was encouraged to continue to expand the use of data systems and electronic handling of documents. The various databases used in case handling play a crucial role in ensuring the efficiency of the organisation.

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

4.1 IMPLEMENTATION CONTROL

During 1997, the EEA Joint Committee included in the EEA Agreement *119* new binding acts (Directives, Regulations and Decisions). As a result, by the end of the year the total number of EEA acts belonging to the Agreement amounted to *1697*.

Throughout the year, the Authority continued to apply the *new implementation policy* introduced in 1996 to *Iceland* and *Norway*, whereas *Liechtenstein* was brought within its scope as of October 1997. According to this policy, if an EFTA State has not notified implementation of an EEA act within two months from the date by which it should have complied with it, formal infringement proceedings in accordance with Article 31 of the Surveillance and Court Agreement are initiated and the Authority sends to that State a letter of formal notice. 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 needs to achieve full compliance with the Act.

An important aspect of the new implementation policy is that non-implementation cases will be pursued vigorously so that if the national measures are still not adopted and notified within two months from the receipt by the respective EFTA State of the Authority's reasoned opinion, the case will be referred to the EFTA Court without delay, the objective being that the Authority's decision to refer the case be taken within *one year* from the initiation of the formal proceedings.

4.2 INFORMATION RELATIVE TO IMPLEMENTATION

The Authority has also continued its practice of reminding the EFTA States of the EEA acts whose implementation is due within the next four months, including acts whose transition periods are about to expire, and sending with intervals of about two months to each EFTA State, information regarding acts which the Authority deems not to have been implemented, or only partially implemented. Where appropriate, so-called "*frames for tables of correspondence"* regarding new Directives were prepared and sent to the EFTA State Governments with a request to have them completed and submitted, so as to enable the Authority to assess the conformity of the national implementing measures with the various provisions of the Directives.

During 1997 major steps were taken in the further development of the Authority's two general surveillance databases, the Acquis Implementation Database *(AIDA)* and the General Case Handling Database (*GENDA)*.

In June 1997, the Authority therefore decided to issue for the first time its *"Interim Report on Transposition Status of Directives"* which included similar

tables regarding transposition as the tables set forth in Annex IV to this Annual Report. In October 1997, a second interim report was prepared, and made available to the public. The Authority intends to continue publishing an Interim Report twice a year, in June and October, thus up-dating the information given in February in the Annual Report.

Another important consequence of the development work on AIDA and GENDA was that it became possible to produce directly from the databases several types of *internal reports* which allow the College and the general surveillance Directorates to obtain detailed information on past and current action in the various sectors concerned. Once the internal reporting facility was made available, it was also possible for the Authority's services to verify for the first time in a systematic manner the entries that had been made in the databases during the first four years of operation. As a result, in a number of instances incorrect data, including double entries, were found and corrected. For that reason some of the statistics in this Annual Report concerning the years 1994-1996 differ from those presented in the earlier Reports.

4.3 IMPLEMENTATION STATUS OF DIRECTIVES

4.3.1 All Directives

By the end of 1997, the total number of Directives that were part of the EEA Agreement was *1255*. Of these, *1244* were Directives where the *compliance date* - the date by which the EFTA States have to comply with the Directive unless a transition period has been granted or no implementing measures are necessary - was on or before 31 December 1997. The table below sets out details on the implementation status of these Directives on that date.

Implementation status of Directives with compliance date on or before 31 December 1997

IN NUMBERS:	Iceland	Liechtenstein	Norway
Total number of Directives	1244	1244	1244
Directives with effective transition periods	3	286	0
Directives where no measures are necessary	174	84	57
Applicable Directives	**1067**	**874**	**1187**
Status			
Full implementation notified	1000	758	1093
Partial implementation	30	48	63
Non-implementation	37	68	31
IN PERCENTAGES:	**Iceland**	**Liechtenstein**	**Norway**
Full implementation notified	93.7%	86.7%	92.4%
Full implementation notified or partial notification	96.5%	92.2%	97.4%

In its Annual Report'96, the Authority pointed out that there was a clear difference between the respective statistics on the implementation status of

Directives depending on whether account was only taken of the Directives regarding which *full* implementation had been notified, or whether *all* the Directives regarding which an acceptable notification had been received were considered. In the latter case both the Directives which had been notified as *fully* implemented and those where implementation was only *partial* were included in the statistics.

The table confirms the pattern also with respect to the situation at the end of the reporting year. While the difference between the *Icelandic* figures is less than 3 percentage points, for *Liechtenstein* it is 5.5, and for *Norway* 5 points.

The *progress* in each EFTA State's performance during the time it has been party to the EEA Agreement is illustrated in the next two tables.

When account is taken only of Directives where *full* implementation has been notified, (see table below) there has been marked improvement as compared with the corresponding figures of 1996 (no data is available on earlier years).

Full implementation notified in 1996-1997:

	Iceland	Liechtenstein	Norway
1996	83.7%	79.3%	89.9%
1997	93.7%	86.7%	92.4%

Iceland has moved up no less than 10 percentage points, *Liechtenstein* 7.4 points, and *Norway* 2.5 points. This means that concrete efforts have been made to implement Directives in full (see also Section 4.3.2 below), and that measures have been adopted to complete the transposition of Directives that were earlier only partially implemented.

By contrast, the comparative picture is different when both the Directives where *full* implementation has been notified and those which have been only *partially* implemented are taken into consideration for an *overall* picture, (see table).

Full implementation notified or partial implementation in 1994-1997:

	Iceland	Liechtenstein	Norway
1994	88%	—	94%
1995	92.6%	68.4%	93%
1996	96.7%	95.1%	97.1%
1997	96.5%	92.2%	97.4%

Thus, *Norway* had by the end of 1997 improved its performance with only 0.3 percentage points as compared with the corresponding figure on 1996, *Iceland* did quite not maintain its position, and *Liechtenstein* went backwards with almost 3 points. In other words, as far as the overall implementing situation is concerned, no tangible progress was made by the EFTA States during 1997.

It appears, that a main explanation to this state of affairs is late implementation of the Directives which were included in the EEA Agreement in 1997, and which provided very short time limits for implementation (see Section 4.3.2 below).

It should be recalled that the fact that an EFTA State has notified a Directive as fully implemented does not necessarily mean that this is the case in actual practice. It is only after a detailed assessment of the *conformity* of the notified national measures has been carried out that conclusions can be drawn as to the *quality* of the transposition.

In its Annual Report'96, the Authority stated that by the end of 1996 it had been able to conclude with respect to only about 35% of the Directives that were part of the EEA Agreement that the notified national measures were actually in conformity with the relevant provisions of the Directive, and that full implementation had thus taken place. This work continued during the reporting year, and the corresponding figure for 1997 is 48%.

4.3.2 Directives included in the EEA Agreement in 1997

Altogether *54* Directives were made part of the EEA Agreement in 1997. As indicated in the table below, *37* of them had an implementing date *during the same year*. Excluding the Directives regarding which a transition period has been granted, as well as those where no implementing measures are necessary, *Iceland* was to transpose by the end of the year *28* of these Directives, *Liechtenstein 18,* and *Norway 29*.

The number of Directives that had to be transposed during 1997 was thus not overwhelming for any of the EFTA States. Yet the implementation status at the end of the year was as presented in the table.

Implementation status of Directives included in the EEA Agreement in 1997 and to be implemented during the same year:

IN NUMBERS:	Iceland	Liechtenstein	Norway
Total number of Directives	37	37	37
Directives with effective transition periods	0	9	0
Directives where no measures are necessary	9	10	8
Applicable Directives	28	18	29
Status			
Full implementation notified	8	5	10
Partial implementation	0	1	0
Non-implementation	20	12	19
IN PERCENTAGES:	**Iceland**	**Liechtenstein**	**Norway**
Full implementation notified	28.6%	27.8%	34.5%
Full implementation notified or partial notification	28.6%	33.3%	34.5%

As can be seen, by the end of 1997 both *Iceland* and *Liechtenstein* had notified less than one *third* of the Directives as fully implemented, and *Norway* slightly over a third. For Iceland and Norway the overall figure is the same, while the

only Directive which Liechtenstein had implemented partially increases its overall figure to just above one third.

In the Authority's view this modest performance can at least partly be attributed to the fact that the EEA Joint Committee decisions which include Directives in the EEA Agreement often give the EFTA States in practice no time, or a very short time, to take implementing measures on the national level.

Thus, in 14 of its decisions taken in 1997 and involving a Directive the Joint Committee decided that the decision would enter into force *the day after* it was taken. Since the date of implementation laid down in those Directives had already passed by the date of entry into force of the respective decision, the compliance date for the EFTA States was *the next day* after the Joint Committee decision.

Regarding 16 other Directives somewhat (but not much) more implementation time was allowed. With respect to five Directives the compliance date occurred in less than *10* days, regarding five others less than *25* days, and for six further Directives less than *65* days after the decision.

It is most likely that if Directives continue to be included in the EEA Agreement in this manner, without the EFTA States at the same time initiating the necessary legislative work early enough, low short-term implementation rates will also be shown in the Authority's future reports.

Moreover, since the short-term implementation rate appears to be about 30% for each of the three EFTA States - and since the Authority is determined to apply its new implementation control policy in a systematic and vigorous manner - this could also mean that for each Directive included in the EEA Agreement, *two* infringement proceedings might be initiated in the future.

4.4 CASE HANDLING

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 GENDA as *complaints*.

It is also possible to open a case in GENDA for *preliminary examination.* This can be done if the responsible officer wants to use the facilities of GENDA to register the actions he/she takes when examining a matter. A typical situation for opening a case for this purpose is when a conformity assessment project is initiated, during which the national measures notified by an EFTA State as implementing a Directive are taken under detailed scrutiny as explained above. If a preliminary examination reveals that there is reason to suspect a breach, an own-initiative case is opened, in the opposite situation an entry is made indicating that the examination has been completed.

In accordance with relevant provisions in certain EEA acts, the Authority carries out so-called *management tasks*, notably in the operation of certain procedures (*e.g.* information procedures on draft technical regulations and notification procedures relative to product safety), in veterinary and phytosanitary matters, and in the sector of free provision of services. Some of these tasks are also registered in GENDA.

The two tables below illustrate the total number of *own-initiative cases* and, respectively, *complaints*, registered in GENDA during the years 1994 to 1997 in the main sectors covered by the EEA Agreement.

Own-initiative cases registered in 1994 - 1997:

Sector	1994	1995	1996	1997	Total
FREE MOVEMENT OF GOODS	19	18	43	23	**103**
FREE MOVEMENT OF PERSONS	1	47	1	0	**49**
FREE PROVISION OF SERVICES	21	47	26	23	**117**
FREE MOVEMENT OF CAPITAL	0	1	1	0	**2**
HORIZONTAL AREAS	14	73	15	16	**118**
PUBLIC PROCUREMENT	0	0	3	8	**11**
Total	**55**	**186**	**89**	**70**	**400**

Complaints registered in 1994 - 1997:

Sector	1994	1995	1996	1997	Total
FREE MOVEMENT OF GOODS	12	17	17	15	**61**
FREE MOVEMENT OF PERSONS	1	8	6	10	**25**
FREE PROVISION OF SERVICES	0	11	5	1	**17**
FREE MOVEMENT OF CAPITAL	0	0	0	0	**0**
HORIZONTAL AREAS	0	0	2	2	**4**
PUBLIC PROCUREMENT	3	15	14	2	**34**
Total	**16**	**51**	**44**	**30**	**141**

The tables reveal that the number of registered own-initiative cases and complaints has been decreasing since 1995. As regards *own-initiative cases* the 1995 peak can be explained by the fact that during that year the Authority continued to detect defects in the implementation by *Iceland* and *Norway* of the EEA acts belonging to the original EEA Agreement and the "Interim Package" and, indeed, dealt with the huge amount of notifications submitted by *Liechtenstein* which joined the EEA Agreement during that year.

In 1997, most own-initiative cases were registered in the *goods* and *services* sectors (23 in each) and in the *horizontal* areas (16). These are also the three sectors with the highest total numbers of cases over the four year period 1994-1997.

Regarding *complaints* the difference between the 1995 and 1996 figures finds its explanation in the fact that during the first-mentioned year, the Authority received altogether eight complaints regarding the same issue (Norwegian Lottery Act) in the service sector.

The difference between 1996 and 1997, for its part, is due to a clear drop in complaints relative to *public procurement* and free provision of *services*, compensated to some extent by the increase in complaints in the field of free movement of *persons*.

During 1997, the highest number of complaints was registered in the *goods* sector (16), thus confirming that sector's position over the four year period. The sector with the second highest number of complaints during the reporting year was free movement of *persons* (10).

The tables further confirm the overall picture regarding the high number of *own-initiative cases* as compared with *complaints*. In the last two years the number of registered own-initiative cases has been approximately *double* that of complaints.

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* - that is, a Directive, Regulation or Decision. Break-down by type of own-initiative cases and complaints registered during 1994 - 1997:

Sector	**EEA Agreement**	**EEA Act**	**Total**
FREE MOVEMENT OF GOODS	60	104	**164**
FREE MOVEMENT OF PERSONS	14	60	**74**
FREE PROVISION OF SERVICES	17	117	**134**
FREE MOVEMENT OF CAPITAL	0	2	**2**
HORIZONTAL AREAS	2	120	**122**
PUBLIC PROCUREMENT	9	36	**45**
Total	**102**	**439**	**541**

The table shows a clear difference between the *goods* sector and the other fields. While in the goods sector the number of cases concerning the EEA Agreement is more than *half* the number of cases involving an EEA act, in the other sectors the average proportion is *one to eight*. Overall, the trend shown in the Annual Report'96, namely that 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, is being confirmed by the new figures.

As mentioned earlier, a case can also be opened for *preliminary examination*. As can be seen from the table below, over the years this facility has been used increasingly by the Authority's services, so that 37 such cases were opened during the reporting year.

Preliminary examinations initiated in 1994 - 1997:

Sector	1994	1995	1996	1997	Total
FREE MOVEMENT OF GOODS	—	1	3	14	**18**
FREE MOVEMENT OF PERSONS	—	—	1	3	**4**
FREE PROVISION OF SERVICES	—	3	10	7	**20**
FREE MOVEMENT OF CAPITAL	—	1	—	1	**2**
HORIZONTAL AREAS	1	2	12	12	**27**
Total	**1**	**7**	**26**	**37**	**71**

The bulk of the *management tasks* consist of handling notifications according to the information procedure on draft technical regulations - for example, in 1997 alone the Authority received 12 EFTA notifications and 900 EC notifications - and notifications under the emergency procedure on product safety - 4 EFTA notifications and 119 EC notifications during that year (see Sections 4.7.4 and 4.7.6 below). In addition, 12 other management tasks were registered in GENDA in 1997.

4.5 INFRINGEMENT CASES

When the Authority takes a decision to initiate formal infringement proceedings and a *letter of formal notice* is sent to the EFTA State concerned, the own-initiative case or, respectively, complaint case, becomes *an infringement case*.

The table below shows the development in the number of letters of formal notice the Authority has sent to the EFTA States during the four years of operation of the EEA Agreement.

Letters of formal notice sent during 1994-1997:

	Iceland	Liechtenstein	Norway	Total
1994	16	—	14	**30**
1995	14	11	15	**40**
1996	31	10	33	**75**
1997	10	29	19	**58**
Total	**72**	**50**	**81**	**203**

It appears that the 1995 peak in the registration of new cases resulted in a corresponding increase in the number of letters of formal notice sent to *Iceland* and *Norway* in 1996, and to *Liechtenstein* in 1997.

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 view that the State is in breach of the EEA Agreement, it shall deliver a *reasoned opinion*. The developments regarding this step are set out in the table below.

Reasoned opinions sent during 1994-1997:

Iceland	Liechtenstein	Norway	Total

1994	0	0	1	**1**
1995	6	0	1	**7**
1996	5	0	7	**12**
1997	5	4	11	**20**
Total	**16**	**4**	**20**	**40**

The table shows that since 1995, *Iceland* has received yearly an almost even number of reasoned opinions, *Liechtenstein* received the first reasoned opinions only in 1997, and *Norway*, too, received more than half of its reasoned opinions during the last mentioned year.

If the State fails to comply with the reasoned opinion within the period laid down in it, the Authority may refer the matter for decision by the *EFTA Court*. No referrals were made during the first two years of the EEA Agreement, and therefore the table below only covers 1996 and 1997.

Cases referred to EFTA Court in 1996-1997:

	Iceland	Liechtenstein	Norway	Total
1996	2	0	0	**2**
1997	0	0	2	**2**
Total	**2**	**0**	**2**	**4**

In February 1996 one application was sent to the EFTA Court joining two cases against *Iceland* in the field of internal taxation, but since *Iceland* adopted the necessary measures soon thereafter the application was withdrawn. In March 1997, the College decided to refer two cases to the Court against *Iceland* regarding partial implementation of the Directives on genetically modified organisms (GMOs). However, as *Iceland* notified full implementation shortly after the decision, the cases were actually not referred to the Court, and are consequently not reflected in the table, either.

In late 1997, applications in two cases against *Norway* in the health and safety at work sector were submitted to the EFTA Court.

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 is *closed*.

The table below shows that the number of *own-initiative* cases closed in 1997 is almost *double* (119) the corresponding amount in 1996 (67), and *four* times that of 1995 (28). The highest number of closures is to be found in the *services* sector (38), followed by free movement of *persons* (28), free movement of *goods* (27), and *horizontal areas* (23).

Own-initiative cases closed in 1994 to 1997:

Sector	1994	1995	1996	1997	Total
FREE MOVEMENT OF GOODS	—	6	27	27	**60**
FREE MOVEMENT OF PERSONS	—	—	2	28	**30**
FREE PROVISION OF SERVICES	—	18	23	38	**79**
FREE MOVEMENT OF CAPITAL	—	1	—	1	**2**
HORIZONTAL AREAS	—	3	15	23	**41**
PUBLIC PROCUREMENT	—	—	—	2	**2**
Total	**0**	**28**	**67**	**119**	**214**

The number of closures of *complaint* cases has doubled from 1996 (14) to 1997 (28), as illustrated in the table below. The largest sectors are *public procurement* (11) - the sector to which the growth from last year is almost entirely attributable - and free movement of *goods* (10).

Complaint cases closed in 1994 to 1997:

Sector	1994	1995	1996	1997	Total
FREE MOVEMENT OF GOODS	3	4	9	10	**26**
FREE MOVEMENT OF PERSONS	—	3	3	5	**11**
FREE PROVISION OF SERVICES	—	—	1	2	**3**
FREE MOVEMENT OF CAPITAL	—	—	—	—	**0**
HORIZONTAL AREAS	—	—	—	—	**0**
PUBLIC PROCUREMENT	—	7	1	11	**19**
Total	**3**	**14**	**14**	**28**	**59**

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). The table below shows the development in the closures of *own-initiative* and *complaint* cases during the four years of operation of the EEA Agreement, as well as in the total number of open cases at the end of each year. The two types of closures are presented separately.

Open own-initiative and complaint cases in 1994 to 1997:

	1994	1995	1996	1997
Own-initiative cases	55	186	89	**71**
Complaint cases	17	51	44	**31**
Closures - Measures taken	3	38	76	**121**
Closures - Other reasons	—	4	5	**26**
Open cases at the end of preceding year	—	69	264	**316**
Total open cases at end of year	**69**	**264**	**316**	**271**

As can be seen, closures of the first type - that is, cases where the EFTA State concerned has taken the necessary measures - have constantly been the overwhelming majority. Thus, in 1997, of the 147 closures *121* took place as a result of the EFTA State concerned having taken the relevant measures.

The decrease in the number of own-initiative cases and complaints registered in 1997 (see Section 4.4 above) and the marked increase in the number of cases closed during that year is reflected as a decreased number of open cases belonging to these groups at the end of the reporting period *(271)*.

However, this does not show the Authority's aggregate case handling workload in general surveillance. The table on open *preliminary examinations* shows that their number is on the increase, being *41* at the end of the reporting period.

Open preliminary examinations in 1994 to 1997:

	1994	1995	1996	1997
Preliminary examinations (pex)	1	7	24	30
Completion of pex	—	—	4	17
Open pex at the end of preceding year	1	1	8	28
Total open pex at end of year	**1**	**8**	**28**	**41**

The three groups put together, at the end of the reporting period the total number of open own-initiative and complaint cases and preliminary examinations was *312*.

To this must be added the *management* tasks referred to in the Sections below, many of which will involve further action by the Authority.

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.

Individuals and economic operators continued to show 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, motor vehicles and tobacco products.

It could be concluded that in the EFTA States the transposition of secondary EEA rules on the free movement of goods is satisfactory. However, as described in the chapter on secondary legislation below, some complaints regarding areas covered by secondary legislation were received. Furthermore, the Authority opened a number of own initiative cases for delayed implementation.

When it comes to the application of such 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). Furthermore, the arrangements provided for in the Agreement with regard to trade in agricultural and fishery products must not be compromised by other technical barriers to trade (Article 18).

Specific provisions and arrangements are set out in a number of protocols and in Acts referred to in annexes to the Agreement. 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 1997, the Authority received two complaints, and three cases based on complaints were closed. No own-initiative cases were opened in 1997.

One complaint referred to value added tax (VAT) on the import of second-hand goods to *Norway*. It was under examination at the end of the reporting period.

The other complaint, also against *Norway,* concerned alleged customs duties on goods brought by travellers in excess of the duty free quota. As concerns the amount paid by travellers it does not constitute a customs duty, but an internal excise. According to Article 14 of the EEA Agreement any internal taxation imposed on the products of other Contracting Parties must not be in excess of that imposed on similar domestic products. Nothing in this case indicated discriminatory taxation.

The two cases regarding the *Icelandic* Commodity Tax regime, which in 1996 were jointly referred to the EFTA Court and subsequently withdrawn from the Court were formally closed as well as a complaint on the *Norwegian* VAT legislation on import of certain dental products.

The Authority delivered a reasoned opinion in November 1996, in the case of the *Norwegian* basic tax on one-way packaging of beverages. Due to the fact that the Norwegian Government was going to inform the Parliament about developments in the Community concerning the implementation of the *Directive 94/62/EC of 20 December 1994 on Packaging and Packaging Waste*, and that it would review the situation, no further steps were taken by the

Authority during the reporting period. The Authority will look at the case again in the light of developments concerning taxes of this kind, and act accordingly.

4.7.2.2 Quantitative restrictions and measures having equivalent effect and other technical barriers to trade

During the reporting period, five complaints were received regarding quantitative restrictions and measures having equivalent effect and other technical barriers to trade.

One complaint, against *Norway,* was added to the fourteen already registered complaints and own-initiative cases relating to the legislation on trade in alcoholic beverages in that State and in *Iceland*. The cases are under continuous examination and will be pursued in 1998 in the light of the outcome of the Wilhelmsen-case and the Gundersen-case at the EFTA Court.

The Authority received one complaint against *Norway* on the import restrictions on alcoholic cider. Cider is excluded from the general scope of the EEA Agreement.

The Authority, furthermore, dealt with a complaint regarding an alleged non-acceptance in *Norway* of tests carried out in another EEA State with regard to the safety of fireplace inserts. That case, together with another case on the same subject based on a complaint received already in 1996, were closed as no infringement of the EEA Agreement could be established.

An issue was raised with the Authority in a complaint regarding refusals by *Norwegian* Authorities to register certain imported second-hand motor cycles. The case could be closed as it was shown that the refusals were related to requirements not covered by the EEA Agreement.

Furthermore, a complaint was lodged with the Authority regarding the prohibition in *Iceland* of certain smokeless tobacco products. In the light of observations from that State, the case is under examination in order to establish whether the prohibition is in breach of Article 18 of the EEA Agreement by compromising the arrangements provided for in Articles 17 and 23 of that Agreement.

Finally, the Authority continued the examination of the system applied by *Norway* for the distribution and showing of films and video tapes, including requirements for the registration and labelling of video tapes, the registration of importers and producers of video tapes and municipal licensing for the distribution of video tapes. Following a letter of formal notice on the matter, sent in 1995, the Norwegian authorities stated in 1996 their intention to amend the legislation. During 1996, the Authority received an additional complaint concerning the licensing system in Norway for distributing video tapes. Since no amendments to the Norwegian legislation to correct the situation were made, the Authority delivered a reasoned opinion by 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. In the Annex there are 31 Chapters dealing with various subject areas. The situation in the different areas, which is presented also in tabular form in *Annex IV* to this report, is as follows:

During the reporting period, the Authority sent letters of formal notice because of delayed transposition of some Directives concerning ***Motor vehicles*** to the three EFTA States; to *Iceland* regarding the *Directive on the Burning Behaviour of Material*s (95/28/EC), to *Liechtenstein* with regard to the *Directive on the Adaptation of the Directive on Masses and Dimensions* (95/48/EC), the *Directive on the Adaptation of the Directive of Devices to Prevent Unauthorised Use* (95/56/EC), the *Directive amending the Directive on Emissions from Diesel Engines* (96/1/EC) and the *Directive on the Adaptation of the Directive on Sound Level and Exhaust System* (96/20/EC) and to *Norway* for these five Directives as well as for the *Directive on the Adaptation of the Directive on Radio Interference* (95/54/EC).

These Acts, which were to be complied with at the beginning of the year, were later notified as having been implemented, with one exception. *Iceland* has not notified implementation of the *Directive on the Burning Behaviour of Material*s (95/28/EC).

With the exception of one notification from *Norway* with regard to the *Directive on the Adaptation of the Directive on Emissions from Motor Vehicles* (96/44/EC), no notifications have been received regarding the implementation of that Directive and the *Directive on the Protection in the Event of Side Impact* (96/27/EC), the *Directive on the Adaptation of the Directive on Interior Fittings of Motor Vehicles* (96/37/EC) and the *Directive on the Adaptation of the Directive on Safety Belts* (96/38/EC) which were included in the EEA Agreement during 1997 and which were to be implemented no later than on 1 December 1997.

The Authority had earlier 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 regard to the type approval process and to registration. Iceland notified new legislation in that respect during the reporting period. However, after discussions with representatives of the Icelandic Government it has been established that the Icelandic legislation needs further elaboration when it comes to the obligation to issue European Type Approvals. The necessary amendments had, however, not been notified by the Icelandic Government before the end of the reporting period. The Authority will, therefore, pursue the matter.

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

In the chapter on ***Lifting and Mechanical Handling Appliances*** *the Directive on the approximation of the laws of the Member States relating to lifts* (95/16/EC) has not been notified by *Iceland* and *Norway*.

When it comes to the areas of ***Household appliances*** and ***Gas appliances*** all Directives have been notified as implemented by all three EFTA States.

In the field of ***Construction plant and equipment*** the time limit for taking the necessary measures to implement the *Directive 95/27/EC 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 Directive was notified as implemented in Norway during 1997, but since no information was received from Iceland a reasoned opinion was delivered in December 1997.

The Directives in the chapters on ***Other machines*** and on ***Pressure Vessels*** have been notified as implemented by all three EFTA States.

All three EFTA States have notified measures to fulfil the requirements of the different Directives in the chapter on ***Measuring instruments.*** During the reporting period *Norway* notified full implementation of the *Directive 75/106/EEC referring to allowed volumes of certain pre-packaged liquids*, regarding which that State had a transitional period until 31 December 1996 for wine contained in returnable packages. Thereby, a case opened on the basis of a complaint could be closed.

A complete notification was received from *Norway* in February 1997 on the *Directive on Equipment Intended for Use in Potentially Explosive Atmospheres* (94/9/EC). The Acts in the chapter on ***Electrical material*** have thereby been notified as implemented by all EFTA States.

In the field of ***Textiles*** the legal measures to ensure full compliance with the Acts have been notified by the three EFTA States.

During the reporting period, *Iceland* notified full implementation of the vertical Directives on ***Foodstuffs*** related to *Milk and Milk Products* (76/118/EEC, 79/1067/EEC and 87/524/EEC), the *Directive 95/31/EEC on Purity of Sweeteners in Foodstuffs*, the *Directive 95/45/EEC on Purity Criteria for Colourants* and the *Directive 95/3/EC relating to Plastic Materials and Articles intended to come into Contact with Foodstuffs*, all of which had been the subject of formal proceedings. However, the *Directive on Infant Formulae and Follow-on Formulae* (91/321/EEC), the *Directive 95/42/EC on Sell-out Stocks* and the *Directive 94/54/EC on Labelling of Foodstuffs Containing Packaging Gases*, which had also been the subject of formal proceedings, have not been fully transposed.

At the end of the reporting period, *Iceland* had not notified implementation measures for the *Regulation (EC) No 2232/96 on Flavourings*, the *Regulations (EC) No 345/97, 1935/95* and *418/96 on Organic Production*, the *Directive 96/70/EC on Natural Mineral Waters*, the *Directive 96/21/EC on Labelling of Foodstuffs Containing Sweeteners*, the *Directive 96/3/EC on Hygiene of*

Foodstuffs Transported in Bulk and the *Directive 96/8/EC on Energy-Restricted Diets*, all of which were to be complied with during 1997.

During the reporting period *Norway* notified full implementation of the *Directive 93/43/EEC on Hygiene of Foodstuffs*, *the Directive 95/31/EC on Purity of Sweeteners in Foodstuffs* and the *Directive 95/45/EC on Purity of Colourants in Foodstuffs*, for which letters of formal notice had been sent in 1996. However, the *Directive on Infant Formulae and Follow-on Formulae* (91/321/EEC), which had also been the subject of formal proceedings, is not fully transposed. At the end of the reporting period *Norway* had not notified implementation measures for the *Regulation (EC) No 2232/96 on Flavourings, the Regulations (EC) No 345/97, 1935/95* and *418/96 on Organic Production*, the *Directive 96/70/EC on Natural Mineral Waters*, *the Directive 96/21/EC on Labelling of Foodstuffs Containing Sweeteners, the Directive 96/32/EC on Pesticides in Fruit and Vegetables*, the *Directive 96/33/EC on Pesticides in Cereals* and the *Directive 96/8/EC on Energy-Restricted Diets*, all of which were to be complied with during 1997.

Liechtenstein has a transitional period, which expires on 1 January 2000, for implementing the whole Chapter on foodstuffs.

Co-ordinated programmes for the 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 Commission. Preparations for the programmes in 1998 are well under way.

During 1997, the Authority visited both *Iceland* and *Norway* for the first time, with the purpose to monitor and evaluate the effectiveness and equivalence of the official food control systems operated by their competent authorities according to the *Directive 89/397/EEC on the Official Control of Foodstuffs* and the *Directive 93/99/EEC on the Subject of Additional Measures Concerning the Official Control of Foodstuffs.*

Regarding the Chapter on ***Medicinal products,*** the Authority delivered a reasoned opinion to *Norway* for the lack of transposition of the *Directives on Narcotic Precursors* (92/109/EEC and 93/46/EEC). Subsequently, Norway notified implementation of the Directives.

During the reporting period, the Authority received three complaints and opened one own-initiative case against *Norway* in the field of pharmaceuticals. Two of the complaints concern the labelling of pharmaceuticals and the third complaint concerns general trade restrictions on herbal and vitamin supplements. The own initiative case concerns the pricing of pharmaceuticals in Norway.

Letters of formal notice have been sent to *Norway* for only partial implementation in relation to the *First Directive* (65/65/EEC) and the *Second Directive relating to Medicinal Products as amended* (75/319/EEC). The notified measures with regard to other Directives, in particular the *Directive relating to the Pricing of Medicinal Products* (89/105/EEC), the *Directive on Radiopharmaceuticals* (89/343/EEC), the *Directive on Wholesale Distribution*

(92/25/EEC) and the *Directive on the Labelling of Medicinal Products for Human Use and on Package Leaflets* (92/27/EEC) are under examination.

Iceland has not fully implemented *the Directive 86/609/EEC on Protection of Experimental Animals.*

Liechtenstein had during the reporting period not transposed any Acts under this chapter. A proposed law on the marketing of medicinal products within the EEA had not been adopted by Parliament before the end of the reporting period.

All three EFTA States have notified measures to fulfil the requirements of the Directives on ***Fertilisers***.

In the field of ***Dangerous substances****, Iceland* notified full transposition of the *Directive 91/442/EEC on Fastenings on Preparations* and the *Directive 91/410/EEC on Child-Resistant Fastenings*. Iceland also made some progress in transposing some of the amending Directives to the basic Directives on *Chemical Substances* (67/548/EEC) and on *Preparations* (88/379/EEC) and a time-plan was submitted for the remaining work.

The Authority sent a letter of formal notice to *Iceland* with regard to non-implementation of the *Regulation on Existing Chemicals* (793/93) and delivered a reasoned opinion for lack of transposition of the *Directive 94/60/EC on the 14th amendment to the Restrictions Directive* (CMT).

In addition to the outstanding Acts on *Chemical Substances* (67/548/EEC as amended) and *Preparations* (88/379/EEC as amended), *Iceland* had not notified implementation measures at the end of the reporting period for the *Directive 93/67 on Risk Assessment of New Chemicals,* the *Regulation (EC) No 1488/94 on Risk Assessment of Existing Chemicals* and the *Regulation (EC) No 142/97 on Certain Existing Substances.*

By the end of the reporting period, *Norway* had notified partial transposition of the Directives on *Chemical Substances* (67/548/EEC as amended) and *Preparations* (88/379/EEC as amended) and a draft had been received regarding the remaining work.

The *Directive 94/60/EC on the 14th amendment to the Restrictions Directive* (CMT) for which a letter of formal notice had been sent to *Norway* in 1996, was partly transposed during 1997.

During 1997, *Norway* continued its active participation in the notification scheme for new substances.

By the end of 1997, *Liechtenstein* had notified national measures for all the Acts in the chemicals field. The management tasks envisaged in the Directive on *Chemical Substances* (67/548/EEC) would be carried out in collaboration with the Competent Authorities in another EEA State.

By the end of the reporting period, all three EFTA States had notified national implementing measures for all the Acts on ***Cosmetic Products***, with the exception of the *Directive 96/41/EC on the 19th Technical Adaptation to Directive 76/768/EEC* when it comes to *Norway* and the *7th Directive on*

Analysis of Cosmetics when it comes to *Liechtenstein* and *Norway*. Both Directives became applicable at the end of 1997.

In the field of ***Environment protection***, the Authority sent a letter of formal notice to each of the EFTA States for non-implementation of the *Directive 94/63/EC on Volatile Organic Compounds*. Subsequently, *Liechtenstein* notified implementation of that Directive. During the year, the *Directive 94/62/EC on Packaging and Packaging Waste* became applicable. Notifications of implementation have been received from all the EFTA States. As *Norway* has announced higher recovery and recycling quotas than those mentioned in the Directive, that State has been invited to provide additional information in order for the Authority to be able to confirm that the Norwegian measures are in conformity with the Directive and EEA law.

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

When it comes to the chapter on ***General provisions in the field of technical barriers to trade***, *Liechtenstein* notified implementation of the *Directive on General Product Safety* (92/59/EEC).

During the reporting period the Joint Committee took a decision on the incorporation into the EEA Agreement of the *Commission Decision No 3052/95/EC which establishes a Procedure for the Exchange of Information on National Measures derogating from the Principle of the Free Movement of Goods*. However, *Iceland*, which indicated constitutional requirements according to Article 103 of the EEA Agreement, has not notified the fulfilment of that process. Therefore, the Authority has asked the Icelandic Government to submit information on how the decision is being provisionally applied. No such information had been received by the Authority at the end of the reporting period.

At the end of the reporting period the *Directive 69/493/EEC on Crystal Glass* was included in the EEA Agreement and fell due for implementation. No notifications were received regarding that Directive.

Notifications of implementation have been received from all EFTA States regarding the Directives in the areas of ***Construction Products, Personal Protective Equipment, Toys, Machinery*** and ***Tobacco.***

Iceland has notified full implementation of the *Directive 93/7/EEC on Return of* ***Cultural Objects*** *unlawfully removed from the Territory of a Member State*. In 1996 *Norway* notified that the main part of the Directive had been implemented and in 1997, a regulation completing the national transposition of the Directive was received from that State. As *Liechtenstein* has not made the necessary amendments to the Cultural Heritage Law in order to implement the Directive, a reasoned opinion was delivered to that State in 1997.

A notification of measures ensuring full compliance with the *Directive on* ***Explosives for Civil Use*** (93/15/EEC) was received from *Iceland*. Thereby, that Directive has been notified as implemented by all three EFTA Member

States. The same applies for the Directives on ***Medical Devices*** and on ***Recreational Craft.***

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 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 12 notifications from the EFTA States during 1997, 11 notifications from *Norway* and one from *Iceland*. In six cases, the Authority made comments to the notifications and in five cases comments from the Commission were forwarded. Three notifications concerned the telecommunication sector and two referred to the environment and to chemicals, respectively.

During 1997, the Authority received 900 notifications from the EC side, which in three cases led to single co-ordinated communications being transmitted to the Commission.

On the basis of a report drawn up by a consultant, the Authority analysed 71 regulations, issued in the three EFTA States, to find out whether they should have been notified under Directive 83/189/EEC. Out of these, 37 regulations, which had entered into force in *Liechtenstein* were Swiss, becoming valid for Liechtenstein because of the Regional Union between the two States.

Following this examination, it appeared that most of these regulations did not have to be notified under the Directive. In 10 cases, the Authority followed up the regulations with 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 six cases.

At the very end of the reporting period *Iceland* submitted observations to that letter as well as to the letter of formal notice which the Authority sent to Iceland in 1996 for the same reason. Out of the total 13 cases where the Authority has considered that Iceland had adopted technical regulations without prior notification to the Authority, five regulations have been repealed. In six cases Iceland has expressed a willingness to replace the non-notified regulations with new ones, which would be duly notified as drafts to the Authority, while in two cases the notification obligation was disputed. The matter will be pursued by the Authority in 1998.

Norway is in the process of replacing non-notified regulations in three cases. The replacing legal acts have been notified as drafts to the Authority.

Draft technical regulations

	EFTA notifications	Comments from the Authority	EC notifications	Single Coordinated Communications
1994	61	30	389	4
1995	8	6	438	3
1996	30	5	522	3
1997	12	6	900	3

4.7.4.2 Notification procedures on chemicals

The ***information procedures on chemicals*** has the main objective of evaluating and controlling the risks of new and existing chemicals. It comprises the following separate notification schemes:

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

b) notification of existing substances, according to the *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 the *Council Regulation concerning Export and Import of certain Dangerous Chemicals* (2455/92).

For the Authority and the EFTA States, these procedures entail extensive technical, scientific and administrative work in close collaboration with the Commission services, the European Chemicals Bureau (ECB) and EU Member States. The Authority awarded again in 1997 service contracts to a consultant, for carrying out certain scientific and technical tasks in relation to the procedures.

The co-operation between the Authority and the European Chemicals Bureau on the notification scheme for ***new chemicals*** continued during 1997.

Norway has been active in this scheme from the beginning. In 1997, Norway started notifying chemicals on the Norwegian market which are not found in the *European Inventory of Existing Commercial Chemical Substances (EINECS)*. No similar notifications have yet been made by *Iceland* or *Liechtenstein*.

Iceland and *Liechtenstein* informed the Authority that they were in the process of finalising their arrangements concerning the operation of this procedure. Liechtenstein intends to co-operate with the Competent Authority in Germany and Iceland with the Competent Authority in Denmark.

The European Chemicals Bureau continues to act as a single collecting and processing point for information on ***existing chemicals*** as stipulated in the transitional arrangements when the *Regulation on the Evaluation and Control of the Risks of Existing Substances* (793/93) was integrated into the EEA

Agreement. During the first period, more than 200 notifications had been submitted by *Iceland* and *Norway* on high production volume chemicals. The second period for collection of data, on low production volume chemicals, started in the middle of 1996 and ends in the middle of 1998. The statistics for that phase will be available before the end of 1998. Notifications on existing chemicals have not yet been received from *Liechtenstein*. Norway continues to act as a rapporteur for the whole European Economic Area for risk assessment of several existing substances under the Regulation.

Norway notified import of dangerous substances under the *Regulation concerning the* ***Export and Import of certain Dangerous Chemicals*** (2455/92), on one hand 1,2-dibromoethane from Switzerland and on the other hand, DDT from the United States.

4.7.4.3 Foodstuffs

The *Regulation 315/93 laying down Community Procedures for Contaminants in Food*, the *Directive 93/43 on the Hygiene of Foodstuffs* and the *Directive 79/112 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*, contain procedures which allow the EEA States to introduce national provisions that are more specific than those laid down by these Acts and to notify them accordingly. During 1997, no such measures were notified by any of the EFTA States.

4.7.4.4 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 123 notifications under the emergency procedure in 1997. In the framework of the non-food network, two notifications were presented by the EFTA States, while 52 were received from the EC side. Within the food network, two notifications were transmitted by the EFTA States and 67 were received from the EC side. Furthermore, the Authority forwarded 34 notifications from the Commission regarding voluntary withdrawals of unsafe consumer products for information purposes only.

In addition, one notification under the general safeguard procedure was received from the Commission.

The Emergency Procedure

	EFTA notifications			EC 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**
1997	2	2	4	67	52	**119**

4.7.4.5 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 safeguard measures taken under specific Directives referred to in Annex II to the Agreement.

4.7.4.6 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. These notifications are forwarded to the Commission which publishes them, together with the notifications received from the EU Member States, in the Official Journal of the European Communities. In 1997, 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.

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 1997, *Liechtenstein* notified amendments in its legislation which ensure full compliance with the Act.

4.7.5.2 Energy

A reasoned opinion was 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. An assessment of the measures notified revealed that implementation was still not complete. However, after further contacts with Norway, a notification of further national measures was made at the end of 1997, and the case was closed.

Routines have been established between the Authority and the Commission for handling reports on the prices of crude oil and petroleum products, which are to be forwarded to the Authority in accordance with the *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*. The *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 1997, no such investment projects were reported to the Authority.

4.7.5.3 Intellectual Property

By the end of 1997, *Norway* had notified the Authority of national measures implementing all Acts in this sector. However, with regard to the *Directive 92/100/EEC on Rental Rights and Lending Rights and certain Rights related to Copyright in the Field of Intellectual Property,* Norway had a transition 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 transition period expiring on 31 December 1995. By the end of the reporting period, these Articles had still not been transposed into the national order of Norway.

Iceland had also notified the Authority of national measures implementing all Acts in this sector except for *Regulation (EEC) No 1768/92 concerning the creation of a supplementary protection certificate for medicinal products* with regard to which Iceland has a transition period until 2 January 1998.

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 the Acts in the field of intellectual property. On the basis of the two studies the national measures are under examination by the Authority.

By the end of the reporting period, *Liechtenstein* had notified two Acts, the *Directive 87/54/EEC on the Legal Protection of Topographies of Semiconductor Products* and the *Directive 89/104/EEC to approximate the Laws of the Member States relating to Trade Marks*, as fully implemented, and four Acts as partially implemented.

4.7.5.4 Competition in telecommunications equipment markets

The *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

The work within the veterinary and phytosanitary sectors continued to be focused on implementation control, inspections and the simplification of the handling of the inspection reports. As regards inspections, in addition to continuing inspections of meat establishments, the inspections of fish establishments, including aquaculture establishments, engaged the Authority's inspectors to a large extent, because of a large numbers of fish producing

establishments, approximately 2,000 in *Iceland* and in *Norway*. Information visits were also made to meat product establishments, establishments producing live bivalve molluscs and to intended border inspection posts in Iceland and in Norway.

4.7.6.1 Legislation

No new Acts were integrated into Annex I in 1997. That Annex consists of 320 binding legal Acts, excluding Acts amending previous Acts. Of these Acts, 197 are in the veterinary chapter, 32 deal with feedingstuffs, while 91 concern phytosanitary matters.

Transition periods, specific for each of the EFTA States, are applicable with regard to several Acts in the Annex. *Liechtenstein* has a transition period until 1 January 2000, with regard to all the Acts in the veterinary chapter. The Acts in that chapter, not related to fishery products, do not apply to *Iceland*.

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 notified transposition of all Acts in this field applicable to that State. *Norway* has notified transposition of all Acts, with the exception of *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 the *Directive 92/110/EEC* which were not, or not fully implemented.

In 1996, a reasoned opinion was delivered to *Norway* concerning the failure to take the necessary measures to comply with certain articles in the *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. The case was closed in 1997.

The Authority has focused its conformity assessment in the veterinary field on the fishery legislation both in *Iceland* and in *Norway*. The assessment discovered some shortcomings which are being corrected in both States.

All three EFTA States have notified implementation of all the Acts in the field of ***Feedingstuffs***, with the exception of certain Directives for which *Iceland* and *Norway* have derogations.

Liechtenstein has notified transposition of all Acts in the field of ***Seeds***, while *Iceland* and *Norway* have notified transposition of all Acts with the exception of the *Directive 92/9/EEC amending certain Annexes to Directive 69/208/EEC on the Marketing of Seed of Oil and Fibre Plants* and the *Directive 92/107/EEC amending 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 Directives, which concern plants which cannot grow in either State. The Authority will take a decision on the matters during 1998.

4.7.6.3 Application of the Agreement

Fresh meat establishments (slaughterhouses, cutting plants and cold stores), meat product establishments, fish processing establishments (including factory vessels and establishments producing live bivalve molluscs), and milk processing establishments 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 fresh meat establishments (only applicable to *Norway*) have to comply with the harmonised requirements since there are no longer any derogations from the EEA rules.

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 Commission for further distribution to the Member States.

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, the co-operation between the inspection services of the Authority and the Commission continued.

During 1997, the Authority's inspectors have continued to inspect establishments approved by national authorities in order to verify that they are in fact complying with the relevant EEA provisions. Due to the importance of the fish industry in the EFTA States concerned, particular emphasis has been placed on inspections of fish establishments.

Visits were made, during the reporting period, to establishments producing meat products and to establishments producing live bivalve molluscs with the purpose of collecting information on the situation and to prepare formal inspections in those fields.

During 1997, the Authority formally inspected 45 establishments in the EFTA States and made 14 information visits. Some basic characteristics of these inspections are given in the tables below. The inspectors also participated in 14 inspections of fish establishments carried out by the Commission in EU Member States.

Number of establishments inspected in the EFTA States 1997

Type of inspections	Fresh meat		Meat Products		Fishery products		Molluscs		Total
State	**ISL**	**NOR**	**ISL**	**NOR**	**ISL**	**NOR**	**ISL**	**NOR**	
Formal inspections	—	16	—	—	12	17	—	—	45
Information visits	—	—	—	11	—	—	—	3	14
Total	—	16	—	11	12	17		3	59

Number of inspected fresh meat establishments with regard to approved activity

Approved activity	
Cutting	2
Cold storage	4
Slaughtering, cutting and cold storage	10
Total	**16**

A revision of Chapter I of Annex I to the EEA Agreement has been negotiated between the Contracting Parties, but has not yet been integrated into the EEA Agreement. As the border control Directives are foreseen to be part of the revised Chapter I, the EFTA States must have border inspection posts in operation from the day the revised Chapter I enters into force. As the approval of these posts will be a task for the Authority, information visits have been made by the Authority together with inspectors of the Commission to six intended border inspection posts in *Norway* and in *Iceland* to prepare the approval process. The inspectors also participated in 14 inspections of border inspection posts carried out by the Commission in EU Member States.

In accordance with the relevant EEA Acts, the EFTA States submitted their plans for 1998 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 1996. The plans were examined by the Authority and found to be in compliance with the legislation.

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.

In the field of public procurement, work related to complaints regarding failure to correctly apply the procurement rules continued to be the main task of the Authority in 1997. However, with fewer complaints related to public procurement received during the reporting period than in 1995 and 1996, the Authority could devote parts of its resources to assessing, and in a number of cases also closing, cases initiated in the previous years. 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 when a complaint was received.

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. With regard to the national procurement review procedures to be established in accordance with the *Legal Remedies Directive*, Iceland had chosen the Ministry of Finance as a complaints body. Already in May 1995, the Authority in a letter to Iceland raised a question as to the correctness of choosing the Ministry as a complaints body, *inter alia*, as it has to deal with complaints on State entities falling within its competence. The Icelandic Government has on several occasions informed the Authority that it will propose to the Parliament the establishment of a new, independent complaints body. Such a body had not been established by the end of 1997.

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 She 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 a derogation from the entire secondary legislation on public procurement until the end of 1995. In April 1997, letters of formal notice were sent to Liechtenstein concerning the lack of implementation of all the procurement Acts referred to in Annex XVI to the EEA Agreement. No implementing measures had been notified by that State by the end of the reporting period.

4.8.3 Application of the rules on public procurement

In 1997, a total of 123 public procurement notices from *Iceland* were published in the Official Journal of the European Communities (99 in 1996). *Liechtenstein* published two notices (none in 1996) and Norway 2409 (2635 in 1996).[2]

Table A: Notices according to procedure

Procedure	ISL			LIE		NOR		
	1995	1996	1997	1996	1997	1995	1996	1997
Pre-indicative notices	5	3	7	0	0	93	87	83
Open	40	52	59	0	0	1007	861	917
Restricted	3	3	7	0	0	203	165	136
Accelerated restricted	1	0	0	0	0	22	29	25
Negotiated; authorities	0	0	0	0	0	30	35	33
Negotiated; utilities	0	0	0	0	0	137	167	194
Accelerated negotiated	0	0	0	0	0	2	14	10
Contract awards	34	40	50	0	0	827	1219	941
Qualification system (93/38)	0	0	0	0	0	75	32	48
Design contest	0	1	0	0	2	13	18	12
Result design contest	0	0	0	0	0	1	8	10
Total	**83**	**99**	**123**	**0**	**2**	**2410**	**2635**	**2409**

The total number of notices increased from 1996 to 1997 with regard to *Iceland*, while it decreased with regard to Norway. In both countries, a small increase in the number of notices calling for competition, with or without a qualification procedure, is noted (Table B). In Iceland, only one local authority and one utility seem to publish procurement notices in the Official Journal. The decrease in the total number of notices from Norway seems partly to be explained by a decrease in the number of award notices, in particular by central authorities and armed forces.

[2] Source: Tenders Electronic Daily. Some figures with regard to 1995 and 1996 will differ from the figures published in the Authority's annual reports for those years, as some corrections have been made in this report.

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

Type of notice	ISL			LIE	NOR		
	1995	1996	1997	1997	1995	1996	1997
Pre-indicative notices with a call for competition (Directive 93/38)	0	0	0	0	10	9	1
Qualification system with call for competition (Directive 93/38)	0	0	0	0	36	15	12
Invitations to tender or pre-qualification (open, restricted or negotiated procedure with prior call for competition)	44	55	62	0	1395	1275	1316
Design contests	0	1	0	2	13	18	12
TOTAL	**44**	**56**	**62**	**2**	**1454**	**1317**	**1341**
Contract awards	34	40	50	0	827	1219	941

Table C: Notices according to type of contract

Type of notice	ISL			LIE	NOR		
	1995	1996	1997	1997	1995	1996	1997
Works	10	8	17	0	684	643	463
Supplies	65	75	89	0	1054	1182	1140
Services	8	16	17	2	550	716	735
Mixed	0	0	0	0	78	81	35
Qualification system (93/38)[3]	0	0	0	0	44	13	36
Total	**83**	**99**	**123**	**2**	**2410**	**2635**	**2409**

[3] The figures in this table do not correspond to the figures concerning qualification in Table A. The reason for that is that some notifications on qualification have been entered in TED as pure qualification procedures, while other notifications have been entered as procedures relating to works, supplies, services or mixed contracts and, therefore, are integrated in those figures.

Table D: Notices according to contracting authority/entity[4]

Authority/entity	ISL			LIE	NOR		
	1995	**1996**	**1997**	**1997**	**1995**	**1996**	**1997**
Central authorities and bodies governed by public law	71	85	93	2	748	900	740
Armed forces	0	0	0	0	118	119	50
Local authorities and bodies governed by public law	9	11	25	0	969	820	845
Utilities	3	3	5	0	575	796	774
Total	**83**	**99**	**123**	**2**	**2410**	**2635**	**2409**

During the reporting period, the Authority received two complaints against *Norway* related to public procurement. On the other hand, no complaints were received against *Iceland* and *Liechtenstein*. One own-initiative case was initiated against *Iceland*, concerning offset requirements in a tender.

As the Authority continued its work with several cases pending from previous years, approximately 30 procurement cases were dealt with altogether during the reporting period. Thirteen cases were formally closed.

At the end of the reporting period, there were 24 open complaints or own-initiative cases, of which closure is pending for approximately seven cases, either because a satisfactory solution has been found after intervention from the Authority or that the Authority's investigations have shown that no infringements have been committed.

The cases dealt with during the reporting period involved, *inter alia,* the following issues:

- One of the complaints the Authority handled during the year concerned a works contract awarded by a *Norwegian* body governed by public law. The contract, because of its complexity, was divided into several lots. The Authority received a complaint against the contracting authority for failure to publish an invitation to tender in the Official Journal regarding a contract for one of the lots. The Authority's investigation of the case revealed that the total value of the works did not exceed the applicable threshold value and, consequently, the *Works Directive* (71/304/EEC) was not applicable. However, the Authority's investigation revealed that the contracting authority had awarded a related contract for consultant services, which was above the threshold, without publishing a contract notice in the Official Journal. It had

[4] The 1995 and 1996 figures for Iceland with regard to central and local authorites are not identical to the figures published in the Authority's annual reports for those years. The reason for that is that it has been discovered that some notifications from local authorites had been entered into TED as coming from central authorites, and vice versa. The tables for 1995 and 1996 have been corrected so that this table gives the actual figures for the period 1995-1997.

thus not complied with the *Services Directive* (92/50/EEC). Although the contract had already been awarded, that matter was raised in a letter to Norway, and the contracting authority undertook to observe the EEA procurement rules in the future.

- When it came to the attention of the Authority that a Town Council in *Norway* had adopted a resolution instructing the administration of the municipality to exercise restraint with regard to inviting foreign tenders related to work projects, and to give, to the extent possible, priority to local contractors, an own-initiative case was initiated. As Norway had failed to fulfil its obligations under Articles 3, 4, 11 and 36 of the EEA Agreement, as well as the *Works Directive*, a letter of formal notice was sent at the end of 1996. In September 1997, the Authority was informed by the Norwegian Government that the contested resolution had been annulled by a decision of the Town Council, and the case has been closed.

- Furthermore, it came to the attention of the Authority that a utility in *Iceland* in connection with an above threshold tender for goods had included among the tender requirements a set of offset requirements relating both to the local content of supplies and services directly related to the supply, and to the supplier's engagement in economic activities other than the supply. As such requirements infringe several articles of the EEA Agreement as well as the *Utilities Directive* (93/38/EEC), the Authority opened an own-initiative case. In March 1997, the Authority was informed by a letter from the Icelandic Government that the contested offset requirements had been withdrawn from the tender documents. Subsequently, the case was closed.

- The Authority has in several complaints cases met the problem that the type of criteria which according to the Procurement Directives may be used for the qualitative selection of candidates and tenderers, e.g. experience, references, capacity, economic or financial standing, are applied as criteria for the award of contracts. The EEA procurement rules are clear on the distinction in use between the two types of criteria, both in the restricted and the open contract award procedure. During the latter procedure, although qualification and award are not two distinct procedures in time (as in the restricted procedure), the distinction between the two sets of criteria must nevertheless be respected in the award decision to be made.

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

By the end of 1995, both *Iceland* and *Norway* had notified national measures considered by them to ensure full compliance with all EEA acts on the free movement of workers.

By virtue of Protocol 15 to the Agreement on transitional periods on the free movement of persons *Liechtenstein* had the right to maintain in force until 1 January 1998 national provisions submitting to prior authorisation entry, residence and employment. However, it could not introduce any new restrictive measures after the date of signature of the EEA Agreement, on 2 May 1992.

At the end of the transition period, the transitional measures were to 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 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.

While *Liechtenstein* started negotiations with the Commission concerning further transition measures as of 1 January 1998, no agreement had been reached on the subject matter by the end of the reporting period. Therefore, in a letter dated 23 December 1997, the Liechtenstein Government informed the Authority that, in order to counter the serious difficulties Liechtenstein would face, it had to apply, in the context of Annex V and VIII of the EEA Agreement, the safeguard clause referred to in Articles 112 and 113 of the Agreement. Furthermore, the Government stated that the measures which would be taken as from 1 January 1998 would be published in a special Ordinance which would be notified to the Authority as soon as it was in force.

4.9.1.2 Complaints

In 1996, the Authority received a complaint against *Liechtenstein* concerning alleged discriminatory treatment of foreigners with respect to employment in the teaching profession. Formal infringement proceedings under Article 31 of the Surveillance and Court Agreement were initiated in April 1997 against Liechtenstein for failure to fulfil its obligations under the EEA Agreement and the *Regulation on Free Movement of Workers* (EEC) No 1612/68. The Liechtenstein Administrative Appeal Court, for its part, rendered a judgement in the matter, stating that the relevant provisions of the Liechtenstein Constitution and other legislation had to be interpreted so that there was no discrimination of EEA nationals as compared with Liechtenstein citizens. The Government subsequently informed the Authority that it would reconsider the legislation on foreign teachers.

A complaint was lodged in March 1997 against *Norway* concerning alleged discrimination, with respect to tax advantages, of EEA workers whose families resided in an EEA State other than Norway.

Following an examination of the complaint, formal infringement proceedings were initiated for *Norway*'s failure to comply with the EEA Agreement and the *Regulation on Free Movement of Workers*.

The Authority also completed the examination of a complaint lodged in 1996 against *Iceland* by a German handball club alleging that, by claiming a transfer sum with respect to one of its players, an Icelandic handball club was in breach of Article 28 of the EEA Agreement on the free movement of workers. In line with established Commission policy, the Authority sent a letter to the complainant containing information on the legal situation and applicable procedures in such cases, and at the end of the reporting period preparations were being made to close the case.

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 thus facilitate the right of establishment and the provision of services.

4.9.2.1 Implementation control

By the end of 1996, following a letter of formal notice sent during the preceding year, *Norway* had notified national implementing measures regarding 30 out of 34 professions that are referred to in the *Second General System Directive* (92/51/EEC). It indicated that legislation implementing the remaining four professions would be adopted by 1 January 1998. However, by that time the Authority had not received any notifications to that effect.

As regards implementation by *Iceland* of *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), the shortcomings in the system of dispensations and exemptions concerning professional qualifications, referred to in the Authority's Annual Report'96, were rectified in the revised Industrial Act notified in 1997. After examining the measures and finding them appropriate, the Authority closed the respective cases against Iceland.

Iceland also notified national measures implementing the *Amendments 1994 and 1995 to the Second General System Directive* (94/38/EC and 95/43/EC). In that context Iceland chose to use the so-called reference technique, whereby the respective implementing legislation contains a general reference to any new amendment which would occur in the future as part of the EEA Agreement with respect to the *First General System Directive* (89/48/EEC) or the *Second General System Directive* (92/51/EEC). At the end of the reporting period the Authority was examining whether the reference technique was adequate for proper implementation.

Norway's communication relative to the *Amendment 1995 to the Second General System Directive* implies that the professions in question are not

regulated in that State and that consequently no implementing measures are necessary

Since, in its opinion, further implementing measures were needed to ensure full compliance, the Authority sent to *Liechtenstein* in December 1997 letters of formal notice regarding the *Establishment in Agriculture Directive* (63/261/EEC), the *Agricultural Holdings Directive* (63/262/EEC), the *Services in Agriculture Directive* (65/1/EEC), the *Access to Aid Directive* (68/415/EEC), and the *Agricultural and Horticultural Directive* (71/18/EEC).

In May 1997, the Authority took the formal infringement proceedings initiated in 1995 against *Liechtenstein* a step further by sending reasoned opinions regarding partial implementation of the *First General System Directive* and the *Second General System Directive,* as well as on the non-implementation of the *Amendment 1994 to the Second General System Directive.* By the end of the reporting period, Liechtenstein had neither adopted the national measures necessary to transpose these Directives, nor the *Amendment 1995 to the Second General System Directive*.

Liechtenstein also needs to transpose a number of Directives of the medical professions regarding which the Authority sent earlier Pre Article 31 letters, namely the *Doctors Directive* (93/16/EEC), the *Dentists Directive* (78/686/EEC), the *Nurses Directive* (77/452/EEC), the *Midwives Directive (80/154/EEC)*, the *Veterinarians Directive* (78/1026/EEC), the *Pharmacists Directive* (85/433/EEC) and the *Acquired Rights in Medical Professions Directive* (81/1057/EEC). The same applies for the *Architects Directive* (85/384/EEC). Furthermore, the Authority has communicated to Liechtenstein its view that certain provisions of the relevant national measures appear not to be in compliance with the *Lawyers' Service Directive* (77/249/EEC).

4.9.2.2 Complaints

In 1997, five complaints were received by the Authority in the field of mutual recognition of professional qualifications.

One complaint related to a decision by the *Norwegian* authorities not to authorise the complainant to exercise the professional activity of a self-employed auditor on the basis of his University diploma obtained at a University in *Sweden* and subsequent professional experience in Norway. The Authority concluded that the complainant did not possess a diploma within the meaning of the *First General System Directive,* and that therefore the decision of the national authorities did not contravene the Directive. In these circumstances there were no grounds for the Authority to pursue the case, and it was closed.

Three complaints were lodged against *Iceland* regarding the right of establishment of beauty parlours in that State by Icelandic nationals - two of whom had obtained their diplomas in Denmark, and one in the United Kingdom - and the right to exercise the profession as a beautician. The examination of these cases is being pursued in 1998.

The fifth complaint, received in December 1997, concerned the renewal or re-certification in *Norway* of specialisation in general medicine for foreign doctors or doctors residing outside that State, and the practice in hospitals relative to the ranking and short-listing of foreign applicants for positions as "assistentleger". The Authority will examine the case further in 1998.

A complaint against *Norway*, received in 1995 and alleging restrictions in the use of services of a doctor was closed since there was evidently no ground for pursuing the case further. In another complaint case, initiated in 1996, the Norwegian Board of Health, following the Authority's informal intervention, decided to grant recognition of a German doctor's specialisation in general medicine. At the end of the reporting period, steps were being taken to close the case.

The examination of a complaint registered in 1996, concerning the right of a migrant worker to use in *Norway* the professional title of "Norwegian master", will be completed in 1998.

A complaint against *Denmark* for not granting an Icelandic citizen permission to work as a master on a Danish vessel was forwarded to the European Commission which is the competent body to deal with a complaint against an EC Member State.

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.

4.9.3.1 Implementation control

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 was the case with respect to the EEA acts relative to the free movement of workers, Protocol 15 to the EEA Agreement allowed *Liechtenstein* to maintain in force, until 1 January 1998, national provisions in the field of the right of establishment submitting to prior authorisation entry, residence and employment.

As explained in Section 4.9.1.1 above, the *Liechtenstein* Government informed the Authority that safeguard measures under Articles 112 and 113 of the EEA Agreement would be applied from 1 January 1998 also with respect to the EEA acts in the field of right of establishment.

4.9.3.2 Complaints

In April 1997, the Authority received a complaint against *Liechtenstein*, alleging an infringement of the EEA Agreement through the single practice rule for doctors in that State. In July 1997, the Authority invited Liechtenstein in a Pre-Article 31 letter to amend its legislation in order to ensure that EEA nationals, established as doctors or dentists in another EEA State, have the

right to establish themselves in Liechtenstein without having to give up their practice in the other EEA State. By the end of the reporting period the Liechtenstein reply, received in November 1997, was under examination by the Authority's services.

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 several countries, and the payment of benefits to persons resident in the territories of those States.

In March 1997, the Authority received from *Liechtenstein* all the declarations on national schemes and benefits which according to the *Regulation on Social Security of Migrant Workers* (EEC) No 1408/71 have to be submitted by that State.

In the summer of 1995, the Authority registered a complaint against *Norway* concerning the question whether a Norwegian working on the Norwegian continental shelf and residing in another EEA State should be covered by the co-ordination system of *Regulation 1408/71*. In June 1997, the Authority initiated formal infringement proceedings under Article 31 of the Surveillance and Court Agreement against Norway for failure to ensure compliance with the Regulation. The Norwegian reply to the Authority's letter of formal notice was received at the end of the reporting period, and it will be examined further in 1998.

In June 1997, another complaint against *Norway* concerning the non-application of Regulation 1408/71 to persons working on the Norwegian continental shelf was lodged with the Authority. The examination of the case will be pursued in 1998.

In December 1996, an own-initiative case was started on the basis of a communication from the Commission concerning certain requirements of the *Norwegian* Seamen's Pension Scheme. The examination of the issue did not reveal any discrepancies between the applicable national rules and *Regulation 1408/71*, and the case was closed.

In February 1997, the Authority's attention was drawn to the fact that Community citizens who left *Iceland* were not reimbursed for contributions paid into two Icelandic pension schemes. The examination of the case showed that the prohibition of the reimbursement was not in breach of either the EEA Agreement or *Regulation 1408/71*. The two earnings-related pension schemes are general social security schemes, and the legislation relating to them falls within the scope of the Regulation. Therefore, the person concerned will be able to invoke the provisions of the Regulation when claiming benefits under the two schemes mentioned above. The contribution payments will not be lost, but will remain in the Icelandic pension funds until such time as the person in question becomes eligible for pension under Icelandic law.

In March 1997, the Authority received a complaint against *Liechtenstein* alleging that the complainant's old age benefit acquired under Liechtenstein legislation was subject to a reduction due to the fact that the pensioner resided in an EEA State other than Liechtenstein. After having examined the complaint, the Authority concluded that there was no breach of *Regulation 1408/71* since the pension to which the complainant was entitled was not subject to any residence condition. The case was therefore closed.

Two further complaints were lodged against *Norway*. The first complaint concerned Norwegian family allowances and alleged discrimination of non-nationals working for foreign diplomatic missions in Norway, and the second complaint concerned entitlement to retirement pension. At the end of the reporting period both complaints were under examination by the Authority.

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 harmonised 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 continued to follow up the transposition of *the First Banking Directive* (77/780/EEC) and the *Second Banking Directive* (89/646/EEC). Already in December 1996 *Iceland* had received a letter of formal notice concerning the rules on professional secrecy laid down in the first mentioned Directive. Legislative work advanced in 1997 and the necessary amendments to the present national measures are expected to enter into force by summer 1998.

In early 1997, the Authority sent letters of formal notice to *Liechtenstein* with respect to the two above mentioned Directives, taking up a number of provisions whose implementation it found lacking or insufficient. The provisions that are not yet fully transposed, relate to the conditions governing the pursuit of the business of credit institutions. According to the reply received in June 1997, the necessary measures will enter into force in late 1998. The measures were further discussed in a package meeting in Vaduz in October 1997.

Norway was requested in a Pre-Article 31 letter to explain in more detail the transposition of the *Solvency Ratio Directive* (89/647/EEC). The Authority was interested in the treatment accorded to certain state enterprises under Norwegian legislation. Following Norway's clarifications, the existing measures were found appropriate and the case was closed in late 1997.

In 1996 the Authority invited *Iceland* and *Norway* to adopt measures ensuring full compliance with the *Deposit Guarantee-Scheme Directive (94/19/EC)*.

Both States had already adopted the necessary measures in late 1996, and after receiving appropriate notifications the Authority closed the cases in April 1997.

With regard to the application of the *Banking Consolidated Supervision Directive* (92/30/EEC), *Norway* provided the Authority with sufficient assurances that full consolidation of participations from 50 to 100 per cent would be required when derogations were granted from the Norwegian ownership rules. As a consequence, at the end of the reporting period the Authority was preparing to close the case.

In a Pre-Article 31 letter the Authority reminded *Liechtenstein* of the need to notify the measures implementing the *Banking Consolidated Supervision Directive*. In summer 1997, the Authority received, a partial notification of the national measures indicating that full compliance would not be achieved before late 1998. The same timetable applies for the *Banking Accounts Directive* (86/635/EEC) and the *Post-BCCI Directive* (95/26/EC).

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In June 1997, the Authority sent a letter of formal notice to *Liechtenstein* for failure to implement the *Money Laundering Directive* (91/308/EEC). The present anti-money laundering measures only apply to transactions those value exceeds CHF 15.000. The Directive does not foresee such a limit. The reply to the letter of formal notice was received in autumn 1997, and the Authority is in the process of further assessing the situation.

The Authority sent, in late 1996, a reasoned opinion to *Norway* for failure to implement the *Large Exposures Directive* (92/121/EEC). Norway notified the Authority in early 1997 of the adoption of measures ensuring full compliance with the Directive. Having examined the measures the Authority closed the case in May 1997.

4.10.1.2 Insurance

In the *non-life insurance* sector, the projects initiated in 1995 to assess the conformity of the national measures adopted by *Iceland*, *Liechtenstein* and *Norway* to implement the *First, Second* and *Third Non-life Insurance Directives* (73/239/EEC, 88/357/EEC and 92/49/EEC) reached their final stages in 1997.

Thus, following the Authority's request to adopt complementing measures, *Iceland* notified in December 1997 the final measures regarding the *First Non-Life Insurance Directive,* which it considered to ensure full compliance. The Authority is presently assessing their conformity. The Authority had earlier been notified of the measures implementing the two other main stream non-life Directives.

The Authority also indicated to *Liechtenstein* the provisions of the three non-life Directives which still required new measures or amendments to present measures to achieve full implementation. The necessary steps are being taken, and the last measures are expected to be adopted by Liechtenstein in summer 1998.

With regard to *Norway*, amendments to the national legislation required to ensure compliance with the *First* and *Second Non-Life Insurance Directives* are being prepared and will enter into force in the near future. The last regulations to complete the implementation of the *Third Non-Life Insurance Directive* were adopted in 1997.

The conformity assessment project concerning the transposition of the *Co-insurance Directive* (78/473/EEC), initiated in 1994, was pursued. Already in late 1996, *Norway* had adopted the necessary measures and *Iceland* followed suit in early 1997. The cases against these States were therefore closed.

After assessing the compliance of the current *Liechtenstein* legislation with the above mentioned Directive the Authority sent, in April 1997, a letter of formal notice to that State for failure to implement. The Authority received a partial notification of national measures in June 1997, but further amendments are still required and the implementation is expected to be complete by summer 1998.

Liechtenstein also received, in April 1997, a letter of formal notice for failure to transpose the *Legal Expenses Insurance Directive* (87/344/EEC). The necessary implementing measures are expected to be adopted by summer 1998. *Iceland* is preparing a regulation to implement the Directive, but measures necessary to ensure compliance had not been notified by the end of the year.

In 1997, the Authority completed a number of conformity assessment projects regarding *Liechtenstein* national measures. The acts covered were the *Reinsurance Directive* (64/225/EEC), the *Directive Abolishing Restrictions in Insurance* (73/240/EEC), the *Tourist Assistance Directive* (84/641/EEC), the *First, Second and Third Motor Insurance Directives* (72/166/EEC, 84/005/EEC and 90/232/EEC), and the *Insurance Intermediary Directive* (77/92/EEC). No problems were detected.

In March 1997, the Authority received a partial notification on the national measures considered by *Liechtenstein* to ensure partial implementation of the *Insurance Accounts Directive* (91/674/EEC). The additional measures needed and the timetable for their adoption were discussed during a package meeting in Vaduz in October 1997.

As regards *life assurance*, *Norway* notified two further regulations to make implementation of the *Third Life Assurance Directive* (92/96/EEC) complete. The regulations deal with the investment of insurance companies' assets and technical provisions. The own-initiative case initiated against Norway in 1994 for partial implementation of the Directive was subsequently closed.

4.10.1.3 Stock exchange and securities

In January 1997, *Liechtenstein* notified to the Authority the national measures considered by that State to ensure full compliance with the *Major Holdings Directive* (88/627/EEC). The respective case for non-implementation of the Directive was therefore closed. Having received in December 1997 a notification of implementing national measures, by the end of the reporting

period the Authority was also preparing the closure of a similar case regarding the *Prospectuses Directive* (89/298/EEC).

In September 1997, the Authority sent a letter of formal notice to *Liechtenstein* for failure to fully implement the *Investment Services Directive* (93/22/EEC). In its reply, Liechtenstein stated that necessary amendments to the present legislation would be adopted in the course of 1998.

The Authority requested *Liechtenstein*, in a Pre-Article 31 letter sent in October 1997, to explain the timetable for measures required to guarantee full compliance with the *Capital Adequacy Directive* (93/6/EEC). According to the reply received in December 1997, the measures were to be adopted and to enter into force in autumn 1998.

In early 1997, *Iceland* adopted rules on the publication of prospectuses and their form and contents, as required by the *UCITS Directive* (85/611/EEC). The case against that State for partial implementation was therefore closed in April 1997.

In December 1997 the Authority received a complaint against the *United Kingdom* concerning the registration of a company name in the field of investment services. The complaint was transmitted to the Commission.

4.10.2 Audio-visual services

At the end of 1997, the only binding EEA act in the field of audio-visual services was the *Television Without Frontiers Directive (89/552/EEC)*. During the year, significant amendments to the Directive were adopted on the Community side (97/36/EC), and they are expected to be included in the EEA Agreement in 1998. The *Standards for Television Signals Directive (95/47/EC)* had not become part of the EEA Agreement by the end of the reporting period, pending fulfilment of constitutional requirements in *Norway*.

4.10.3 Telecommunication services

The reporting year has been dominated by preparations for the full liberalisation of telecommunications services as from 1 January 1998. Within the European Community, the bulk of the telecommunications regulatory package had entered into force by the end of 1997. Three new Directives were added to the EEA Agreement late that year, namely the *Cable Network Directive* (95/51/EC), the *Mobile Telephony Directive* (96/2/EC) and the *Full Competition Directive* (96/19/EC*)*.

Iceland notified full implementation of the *ONP Leased Lines Directive* (92/44/EEC) at the end of 1996, and infringement proceedings were subsequently closed. Infringement proceedings against *Iceland* and *Norway* concerning the non-implementation of the *Competition in Satellite Telecom Services Directive* (94/46/EC) were also closed in the first quarter of 1997, after both countries notified full implementation of the act.

During the year, discussions on the progress of national telecommunications regulation took place between the Authority and the EFTA States. Work has been in progress in all States to secure compliance with EEA requirements.

In *Iceland*, the national regulatory authority was established in April 1997, whereas *Liechtenstein* indicated that the regulator would be set up in 1998.

In late 1996, the Authority registered a complaint against *Norway* in which the Norwegian company *Teletopia a.s* alleged that Norway had failed to ensure the independence of the existing national regulatory authority. By the end of the reporting period the complaint was still being examined by the Authority.

In addition to the complaint against *Norway*, *Teletopia a.s* called upon the Authority to initiate a conciliation procedure in the dispute between that company and the Norwegian telecommunications operator *Telenor AS*. The dispute concerns the terms and conditions for access to *Telenor's* public telecommunications network. The Authority examined the procedural and substantial aspects of the request, and had by the end of 1997 defined its preliminary position in the matter.

During the reporting year the Authority co-operated closely with the Commission with regard to both general issues and individual cases in the telecommunication sector. The Authority has an observer-status in the *ONP Committee*, and has participated in both regular meetings and high-level meetings.

4.10.4 Transport

4.10.4.1 Road, inland and railway transport

During the reporting period, five binding acts were added to the EEA Agreement in the field of *road transport*. These were the *Admission and Mutual Recognition in Road Transport Directive* (96/26/EC), a new *Roadworthiness Tests Directive* (96/96/EC*),* a new *Maximum Dimensions and Weights in Road Transport Directive* (96/53/EC), the *1996 Amendment to the Transport of Dangerous Goods by Road Directive* (96/86/EC) and the *1996 Amendment (Model) to the Driving Licences Directive* (96/47/EC).

In the field of inland transport, three binding acts were made part of the Agreement. These were the *Safety Advisers for Dangerous Goods Directive* (96/35/EC), the *1996 Amendment to State Aid for Inland Transport Regulation* (EC) No 2255/96 and the *1997 Amendment to Inland Transport Aid Regulation* (EC) No 543/97.

As regards rail transport, two acts were included in the Agreement, namely the *Trans-European High-speed Rail System Directive* (96/48/EC) and the *1996 Amendment to Transport of Dangerous Goods by Rail Directive* (96/87/EC).

A number of infringement proceedings were initiated in 1997 in the field of *road transport*.

Letters of formal notice were sent to *Iceland* for failure to implement the *Transport of Dangerous Goods Directive* (94/55/EC) and the *Checks on Transport of Dangerous Goods Directive* (95/50/EC*)*, and to both *Iceland* and

Norway for failure to implement the *Admission and Mutual Recognition in Road Transport Directive* (96/26/EC*)* and the *1996 Amendment* to the *Transport of Dangerous Goods by Road Directive* (96/86/EC).

Norway subsequently notified implementation of both of the above mentioned acts, and the cases were closed. Furthermore, one earlier case against that State was closed when appropriate measures were notified. Two cases against *Iceland* and four against *Liechtenstein* were also closed following notification of appropriate measures.

The Authority handled complaints from economic operators as well as from individuals during the year. One complaint against *Norway*, concerning alleged unreasonable application of *Recording Equipment in Road Transport Regulation* (EEC) No. 3821/85, was closed as unfounded following the Authority's examination. One complaint concerning exchange of driving licences is presently under examination.

Two complaints were transferred to the Commission. The complaint against *Austria* concerned alleged discrimination of vehicles from Liechtenstein as regards weight limitations. The case is still being examined by the Commission. The case against *Germany*, also within the field of road transport, related to German rules for refund of value-added tax on diesel used by hauliers. The Norwegian Hauliers Association claimed that through the EEA Agreement hauliers of the EFTA States were entitled to the same refunds as hauliers belonging to an EC Member State. The Commission concluded that the German rules were not in breach of the EEA Agreement, as taxation was not part of the Agreement. The Authority is presently examining the Commission's position.

4.10.4.2 Inland waterway transport

Several new acts have been added to the EEA Agreement in the field of inland waterway transport. But as there are no inland waterways in any of the three EFTA States, they are not for the time being under obligation to implement measures in this sector.

4.10.4.3 Maritime transport

Three new acts were added to the EEA Agreement in the field of maritime transport. These were the *1996 Amendment to Vessels Carrying Dangerous Goods Directive* (96/39/EC*)*, the *Identity Card for Port State Control Directive* (96/40/39) and the *Maritime Cabotage Regulation* (EEC) No 3577/92.

Neither *Iceland* nor *Norway* notified implementation of the *1996 Amendment to Vessels Carrying Dangerous Goods Directive,* and the Authority initiated infringements proceedings against both countries for failure to implement the act.

The Authority received notification from *Iceland* concerning implementation of the *Port State Control Directive* (95/21/EC), and the corresponding infringement case was subsequently closed.

4.10.4.4 Civil aviation

In the civil aviation sector, one Regulation, namely *Regulation* (EC) No 2176/96 *Amending Technical Progress Regulation (EEC) No 3922/91 on the Harmonisation of Technical Requirements and Administrative Procedures in the Field of Civil Aviation*, became part of the EEA Agreement in 1997. *Iceland* submitted notification during the latter half of the year, whereas no communication to that effect had been received from *Norway* by the end of the reporting period. *Liechtenstein* has a transition period regarding the Regulation until 1 January 2000.

One new Directive was included in the EEA Agreement in 1997, namely the *Directive adopting Eurocontrol Standards and Amending Directive (93/65/EEC) on Aviation Procurement of ATM Equipment and Systems* (97/15/EC). *Norway* was to transpose the Directive by 1 December 1997, but no national measures had been notified to the Authority by the end of the reporting period.

By virtue of a specific adaptation, the amended Directive shall not apply to *Iceland*. *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.

4.10.5 Non-harmonised service sectors

In 1995, eight complaints had been filed with the Authority 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. By the end of the reporting period, *Norway* had not yet adopted all the regulations it had planned to put into force within the framework of the Lottery Act. The Authority continues to follow the developments.

Having received, in 1995, a complaint concerning the alleged refusal by *Norwegian* authorities of access by an Icelandic fishing vessel to repair facilities in a Norwegian port, in September 1996, the Authority sent Norway a letter of formal notice regarding the matter. Norway's reply of November of the same year was still under examination by the end of the reporting period.

Work on the Authority's own initiative case regarding *Icelandic* legislation on the right of foreign fishing vessels to discharge their catch or sell in Icelandic ports, or seek services concerning their operation, was postponed pending examination of the above mentioned complaint against *Norway*.

In April 1997, a complaint was received maintaining that the Icelandic Net Worth Tax on deposits discriminated against non-Icelandic credit institutions and established a restriction of free provision of services. The Authority sent a Pre-Article 31 letter to *Iceland* to obtain more information on the national

provisions. At the end of the reporting period the Authority was examining the reply.

In 1996, the Authority received a complaint against *Norway* alleging abuse of monopoly by the Public Employment Agency. Another complainant alleged that the provisions in the Norwegian Employment Act which prohibited the hiring out of workers were not in accordance with the EEA Agreement. The examination of the complaints revealed that, in the cases at hand, the Agreement had not been breached. Therefore, at the end of the reporting period closure of both cases was being prepared.

The Authority transmitted to the Commission a complaint against *Belgium* lodged by a Norwegian company. The complaint concerned the refusal by Belgian authorities to register the company so that it could carry out a construction project in Brussels.

In early 1997, a complaint concerning certain aspects of the *Swedish* lottery legislation was lodged by a Norwegian entrepreneur, and the complaint was transmitted to the Commission.

4.11 FREE MOVEMENT OF CAPITAL

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.

In late 1996, the Authority sent a letter of formal notice to *Iceland* for failure to implement the Directive. Although the transition period under which Iceland had the right to apply domestic legislation on direct investments on national territory and investment in real estate on national territory had expired on 1 January 1996, restrictions on the right of nationals of other EEA States to acquire real estate in Iceland continued to exist. In May 1997, the Authority received from Iceland a notification of amendments to the national legislation. After examining the amendments and finding them appropriate the Authority closed the case.

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 come to an end on 1 January 1999. During the remaining transition period Liechtenstein has the right to apply its existing domestic legislation in the respective area.

4.12 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.

4.12.1 Health and safety at work

In 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 paying particular attention to encouraging improvements in the health and safety aspects of the working environment. Minimum requirements shall be applied for gradual implementation, but this shall not prevent any State from maintaining or introducing more stringent measures for the protection of working conditions compatible with the Agreement.

Annex XVIII to the Agreement refers to 25 basic Directives laying down such minimum requirements. The areas covered by the Directives include environment at the work place, protection against physical, biological and chemical agents and dangerous substances, protective and work equipment, protection of, and facilities for, pregnant and breastfeeding or nursing workers, mineral extracting industries, temporary construction sites, medical treatment on board ships, and work on board fishing vessels.

With respect to the *Directive on Improvement of Safety and Health at Work* (89/391/EEC) - the so called *"framework Directive"* - a Pre-Article 31 letter for partial implementation had been sent to *Iceland* in 1995, and a letter of formal notice to *Liechtenstein* in 1996. A Pre-Article 31 for the same reason was sent to *Norway* in 1997, and work on systematically assessing the conformity of national implementing measures in all three EFTA States was started towards the end of the year.

In 1995, the Authority had initiated formal proceedings against *Iceland* for non-implementation of the *Work Equipment Directive* (89/655/EEC), the *Short-term Employment Directive* (91/383EEC), and the *Pregnant and Breastfeeding Workers Directive* (92/85/EEC). The Authority sent reasoned opinions in the spring of 1997, after which Iceland notified the national measures considered by it to ensure compliance with the Directives. After examining the measures and finding them appropriate the Authority closed the cases against that State.

Reasoned opinions were sent to *Norway* with respect to the *Metallic Lead Directive* (82/605/EEC), as well as the *Biological Agents Directive* (90/679/EEC) and its *1993* and *1995 Amendments* (93/88/EEC and 95/30/EC). The first mentioned Directive was subsequently notified by Norway as fully implemented and that case was therefore closed.

At end of 1997, a letter of formal notice was sent to *Norway* for failure fully to transpose the *Directive on Mineral Extracting Industries* (92/91/EEC).

Reasoned opinions had earlier been sent to *Norway* for failure to implement the *Surface and Underground Mineral Extracting Industries Directive* (92/104/EEC) and the *Vinyl Chloride Monomer Directive* (78/610/EEC). Since no national measures had been taken within the time prescribed in the reasoned opinions, both cases were referred to the EFTA Court during the last quarter of 1997. Before the end of the year Norway notified the first mentioned Directive as being fully implemented.

Already in 1996, Pre-Article 31 letters had been sent to *Norway* for partial implementation of the *Safety and Health Requirements for the Workplace Directive* (89/654/EEC), the *Medical Treatment on Board Vessels Directive* (92/29/EEC), the *Temporary or Mobile Construction Sites Directive*

(92/57/EEC), and the *Work on Board Fishing Vessels Directive* (93/103/EC). Letters of formal notice had been sent for the same reason regarding the *Banning of Certain Agents and Work Activities Directive* (88/364/EEC), the *Work Equipment Directive* (89/655/EEC), and the *Carcinogens at Work Directive* (90/394/EEC). Where appropriate, the cases will be pursued in 1998.

The situation is the same with respect to *Liechtenstein* where Pre-Article 31 letters had been sent in 1995 and 1996 regarding the *Manual Handling of Loads Directive* (90/269/EEC), the *Display Screen Equipment Directive* (90/270/EEC), the *Safety and Health Signs at Work Directive* (92/58/EEC), the *Vinyl Chloride Monomer Directive* (78/610/EEC), the *Exposure to Chemical, Physical and Biological Agents Directive* (80/1107/EEC as amended by Directive 88/642/EEC), the *Exposure to Metallic Lead Directive* (82/605/EEC), the *Exposure to Asbestos Directive* (83/477 as amended by Directive 91/382/EEC), and the *Banning of Certain Agents Directive* (88/364/EEC). A letter of formal notice had been sent on the *Exposure to Noise at Work Directive* (86/188/EEC). In 1997, Liechtenstein informed the Authority that full implementation would be ensured through the provisions of an Ordinance on the Health and Safety of Workers in the Workplace. The same was true for the transposition of the *1995 Amendment to the Biological Agents Directive* (95/30/EC).

In 1997, a Pre-Article 31 letter was sent to *Liechtenstein* for partial implementation of the *Pregnant and Breastfeeding Workers Directive* (92/85/EEC). Liechtenstein informed the Authority that the Directive would be implemented through the new "Arbeitsgesetz", entering into force at the beginning of 1998.

In 1997, letters of formal notice were sent to all three EFTA States, as the necessary national measures with respect to the *Indicative Limit Values Directive* (91/322/EEC*)* had not been taken by the prescribed date 1 June 1997.

4.12.2 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 seven 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, the employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, the establishment of a European Works Council, the organisation of working time and the protection of young people at work.

As regards the *Collective Redundancies Directive* (75/129/EEC) and the *Amendment to that Directive* (92/56/EEC), the *Transfer of Undertakings Directive* (77/187/EEC), and the *Employer's Information Obligation Directive* (91/533/EEC), *Liechtenstein* indicated in early 1996 that full compliance required amendments to its Civil Code. Thus, in September 1996, it notified

the amendment to their Civil Code as partially implementing these Directives, but also informed the Authority that still another law on the information and participation of employees was required in order fully to comply with the Directives. Following the entry into force of the new law, the "Mitwirkungsgesetz", in December 1997, Liechtenstein notified the Directives as being fully implemented.

The *Norwegian* Government 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 was received by the Authority, a letter of formal notice for partial non-implementation of the Directive was sent in early 1997. The amending law is expected to be adopted by the Parliament during spring 1998.

In December 1996, a reasoned opinion was sent to *Iceland* for failure to implement the *Employer's Information Obligation* Directive (91/533/EEC). Subsequently Iceland notified the Directive as being fully implemented as from 1 July 1997, and the case was closed.

The EEA Joint Committee Decision No 42/96 and Decision No 43/95 regarding the *Working Time Directive (93/104/EC)* and the *Protection of Young People Directive (94/33/EC)*, entered into force on 1 November 1997 and 1 July 1997, respectively. Both *Iceland* and *Liechtenstein* have notified the two Directives as being fully implemented.

In October 1997, a letter of formal notice was sent to *Norway* for failure to implement the *Protection of Young People Directive.* *Norway* informed the Authority that the Bill amending the Working Environment Act, which would implement the Directive as well as the Working Time Directive, was submitted to the Parliament in October 1997, but that the amending law was not expected to be adopted until spring 1998.

During the summer of 1997, the Authority received a letter according to which the *Working Time Directive (93/104/EC)* was not fully implemented in *Iceland*. Subsequent to the entry into force of the EEA Joint Committee Decision No 42/96 by which the Directive was added to the EEA Agreement on
1 November 1997, the letter was registered as a complaint and is being examined.

4.12.3 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.

By the end of 1996 the EFTA States had notified full implementation of all five Directives. No new acts were added to the EEA Agreement in 1997.

4.12.4 Consumer protection

Both *Iceland* and *Norway* notified as fully implemented the *Directive on Purchase of Immovables on Timeshare Basis* (94/47/EEC), whereas a letter of formal notice was sent to *Liechtenstein* for failure to implement the Directive.

Liechtenstein notified as being fully implemented the *Unfair Terms Directive* (93/13/EEC).

4.12.5 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.

4.12.5.1 General provisions

With regard to the *Environmental Impact Assessment Directive* (85/337/EEC), *Liechtenstein* had in 1995 communicated to the Authority its view that 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. Liechtenstein thus notified in 1996 further national measures, and informed the Authority in 1997 that an amended proposal for a Law on Environment Impact Assessment was planned to enter into force on 1 July 1998. The amended law was also intended to implement the new *Directive on the Assessment of the Effects of Certain Public and Private Projects on the Environment* (97/11/EC), which has not yet been made part of the EEA Agreement.

A letter of formal notice was sent to *Norway* in 1994 for partial non-implementation of the *Environmental Impact Assessment Directive*. An amendment to the law implementing the Directive was adopted by the Parliament in March 1995, and in early 1997 a new regulation was notified which in Norway's view ensured full implementation of the Directive as of 1 January 1997.

The Authority sent a letter of formal notice to *Norway* in June 1997 for failure to make the *Regulation on a Community Eco-label Award Scheme* (EEC) No 880/92 part of its legal order. In its reply, *Norway* stated that the eco-label award scheme was operating in full compliance with the Regulation and that the legal measures formally necessary to make the Regulation part of the national legal order would be adopted in 1998.

4.12.5.2 Water

In early 1997, *Liechtenstein* notified a new Ordinance which was to ensure full 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). A new Water Protection Law is expected to be adopted in 1998.

The Authority sent letters to *Iceland* and *Liechtenstein* requesting further information on the implementation of limit values and monitoring procedures under the water protection Directives.

4.12.5.3 Air

In June 1996, the Authority sent letters of formal notice to *Norway* 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). In May 1997, Norway adopted a regulation which, in its view, ensure full implementation of these Directives and of the *Air Pollution from Industrial Plants Directive* (84/360/EEC). The regulation, which was subsequently notified to the Authority, entered into force on 1 July 1997.

The *Incineration of Hazardous Waste Directive* (94/67/EC) was to be transposed by the EFTA States at the latest by the end of 1996. In 1997, *Iceland* and *Norway* notified implementation of the Directive, while *Liechtenstein* informed the Authority that, for the time being, formal implementation was not planned, because there were, at present, no installations covered by the Directive either in operation or in planning.

Iceland and Norway also notified implementation of the *Regulation on Substances that Deplete the Ozone Layer* (EC) No 3093/94.

4.12.5.4 Chemicals, industrial risk and biotechnology

By the end of 1997, *Liechtenstein* had 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 was informed in October 1997 that an amended ordinance, which was intended to implement both this Directive and the new *Directive on the Control of Major Accident Hazards Involving Dangerous Substances* (96/82/EC), was expected to be adopted by the Government before the end of 1997.

Iceland had a transition 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 examination of the Law suggested that several provisions of the Directives had not been transposed, as it had been left

to the Minister of Environment to issue regulations to supplement the Law itself.

The Authority therefore decided in March 1997 that the case would be referred to the EFTA Court unless *Iceland* notified the necessary measures within two months. The deadline was later extend until mid-June 1997, at which time the Authority received information that additional national measures had been adopted. In these circumstances no application was sent to the Court. The notified measures were also intended to implement the *Directive Adapting to Technical Progress the Contained Use of GMOs Directive* (94/51/EC) which was made part of EEA Agreement from 1 April 1997.

Liechtenstein's transition period for the transposition of the *GMO Directives* expired on 1 July 1996. In October 1997 the Authority sent letters of formal notice for failure to notify implementation of the Directives. No reply had been received by the end of 1997.

4.12.5.5 Waste

The *Hazardous Waste Directive* (91/689/EEC) was integrated into the EEA Agreement in 1994, and the *1994 Amendment* (94/31/EC) was made part of the Agreement in May 1995. Full implementation of the main Directive depends on a binding list of hazardous waste. The list was subsequently established by *Council Decision* 94/904/EC which was made part of the EEA Agreement from 1 July 1997.

Norway notified full implementation of the Directive and the Decision, while *Iceland* informed the Authority that the list on hazardous waste would be included in the Regulation on pollution control. Such an amendment was under preparation and it was foreseen that the Authority would receive a notification before the end of 1997, but no notification was received by that time.

In accordance with Joint Committee Decision No 50/97, *Liechtenstein* may, for hazardous waste disposed of or recovered in Switzerland, apply Swiss rules concerning such hazardous waste applicable in Liechtenstein under the Treaty of 29 March 1923 on the Inclusion of Liechtenstein in the Swiss Customs Union. These regulations are considered to guarantee an equivalent level of environmental protection as laid down in the *Hazardous Waste Directive*.

4.12.6 *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 concerned with *accounting* and *auditing* issues. The transition periods granted to *Iceland* and *Norway* expired at the beginning of 1996, whereas *Liechtenstein* has such a period until 1 May 1998.

In summer 1996, the Authority initiated conformity assessment projects regarding the implementation by *Iceland* and *Norway* of the Directives dealing

with the *"basic"* company law issues. The assessment work continued throughout 1997.

Pre-Article 31 letters were thus sent to *Iceland* in late 1996 and early 1997 regarding five of the seven Directives, namely the *First, Second, Third, Sixth* and *Eleventh Company Law Directives* (68/151/EE, 77/91/EEC, 78/855/EEC, 82/891/EEC and 89/666/EEC). By the end of the reporting period, *Iceland* had notified certain amendments to its company legislation in order to achieve full implementation of the *First and Second Company Law Directives*.

In 1996 and 1997, similar letters were sent to *Norway* with respect to the same acts - except for the *Sixth Company Law Directive* regarding which no implementing measures were necessary - and the *Amendment to the Second Company Law Directive* (92/101/EEC). New implementing legislation was adopted by the Norwegian Parliament in 1997, but it had not entered into force by the end of the reporting period.

It is expected that the conformity assessment projects regarding the two States will be completed in the year 1998 and, if necessary, formal proceedings started. Similar projects will be started with respect to *Liechtenstein* as soon as national measures have been notified.

As regards the Directives in the *accounting* field, the Authority sent in May 1997 reasoned opinions to *Norway* regarding the non-implementation of the *Fourth, Seventh* and *Eighth Company Law Directive* (78/660/EEC, 83/349/EEC and 84/253/EEC). In its reply, Norway indicated that existing legislation from 1964 and 1977 was at least partially in line with the Directives, and that the Government intended to present in 1997/98 proposals for amendments of the accounting and auditing legislation. By the end of the reporting period, no further communications regarding the matter had been received from Norway.

The Authority registered one complaint relative to the company law sector. The complaint concerns public access in *Iceland* to annual accounts that must be disclosed. The examination of the complaint had not been concluded by the end of the reporting year.

In June 1996, the Authority received a complaint concerning the possibility to transfer capital from a subsidiary in *Norway* to a parent company registered in an EEA State other than a Nordic country. After examining the complaint, the Authority sent, in October 1997, a letter of formal notice to Norway for failure to fulfil its obligations under Article 40 of the EEA Agreement and the *Capital Movements Directive* (88/361/EEC). At the end of the reporting period the Authority was in the process of examining the reply received in December 1997

5. STATE AID, MONOPOLIES AND COMPETITION

5.1 STATE AID

5.1.1 Relevant legislation and competences

The EEA provisions on State aid aim to ensure that conditions of competition for enterprises are equal and not distorted by State measures which favour 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. Article 61 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, lay down State aid rules which are in substance identical to Articles 92 and 93 of the EC Treaty.

Aid granted through State resources which 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 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 Nos 7/94, 21/95, 16/96 and 58/96, 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 ensuring that financial relations between public authorities and public undertakings are transparent. In this way, 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 annually 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 of public manufacturing enterprises covered by these provisions.

The *Commission Decision No 3855/91/ECSC of 27 November 1991 Establishing Rules for Aid to the Steel Industry*, referred to in point 1a of Annex XV of the EEA Agreement, expired at the end of 1996. By *Commission Decision No 2496/96/ECSC of 18 December 1996*, new Community rules for State aid to the steel industry were established. In the course of 1997, preparations were made for integrating the new steel aid code in the EEA Agreement. However, at the end of 1997, a decision on the matter by the EEA Joint Committee was still pending.

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 before 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 Commission, at various points of time, has issued for the interpretation and application of Articles 92 and 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[5], also referred to as the State Aid Guidelines. These Guidelines were initially issued by the Authority in January 1994. They have since been regularly updated, and at the end of 1996 they took account of about 55 non-binding acts of the Commission and some 160 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, the non-ECSC steel industries and the maritime transport sector. 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 of new non-binding State aid acts being prepared by the Commission and has contributed to the preparation of such acts. The Authority held three multilateral meetings in the field of State aid in 1997, 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 Authority adopts corresponding acts with the necessary adaptations to the EEA Agreement and includes them in the State Aid Guidelines.

The Guidelines were amended twice in 1997. In July, the Authority decided to introduce **Guidelines on Aid to the Maritime Transport Sector**[6]. These guidelines correspond to the Community guidelines on State aid to maritime transport adopted by the EC Commission in April 1997 as a part of an overall review of the European Community's maritime strategy.

The new guidelines review the current competitive conditions of the European shipping sector, acknowledging that by its nature international shipping is not bound to national locations. The registration of ships and the location of

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5 Procedural and Substantive Rules in the field of State Aid - Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement (EFTA Surveillance Authority Decision No. 4/94/COL of 19 January 1994 - OJ L 231, 3.9. 1994 and EEA Supplement to the OJ No. 32, 3.9.1994), as last amended by Decision No. 298/97/COL of 17 December 1997 (not yet published).

6 OJ No L 316 and EEA Supplement No 48, 20.11.1997

shipping management activities can easily be shifted to countries offering the most favourable environment for such activities. The guidelines point out that the European shipping sector faces stiff international competition, not only in international trades but also in most trades within the EEA, with operators from third countries, particularly those operating under so-called flags of convenience, where shipping companies enjoy freedom of safety requirements and manning conditions, making them free to employ seafarers from low-wage countries. It is also pointed out that relocation of shipping activities to non-EEA countries can offer attractive savings in terms of corporate and seafarers' taxation. The guidelines highlight the development in recent years of the EEA shipping sector, in particular the decreasing competitiveness of EEA flags and the consequent trend by shipping companies in EEA countries to remove their vessels from national registers and operate under flags of convenience. The guidelines furthermore recall that EEA States have, in the absence of harmonisation at the European level, independently taken initiatives in order to preserve their maritime interests. These include progressively introducing measures intended to slow down the trend to flag out, such as developing international registers or using different types of State aid measures or a combination of these.

According to the guidelines on aid to shipping, State aid can be justifiable if it can be shown to enhance the competitiveness of the Contracting Fleets; and at the same time does not risk distorting competition and adversely affecting trading conditions between the Contracting Parties to an extent contrary to the common interest. Furthermore, aid may generally be granted only in respect of ships entered in EEA States' registers. The policy should seek to safeguard EEA employment, both on board and on shore, preserve and develop maritime know-how in the EEA and improve safety. Additionally, flag-neutral aid measures may be approved in certain exceptional cases where it is clearly demonstrated that common objectives of the Contracting Parties are served. Besides these general conditions, the guidelines set specific conditions for the different forms of aid.

The Authority's guidelines on aid to maritime transport acknowledge the challenge faced by the EEA shipping sector due to a generally mild fiscal climate in third countries. They also acknowledge that several EEA States have already responded to favourable tax regimes in third countries by introducing diverse tax concessions in favour of shipping activities. In order to stem the tide of corporate relocation, the guidelines foresee that aid in the form of a preferential fiscal treatment of shipping companies can be approved if it serves the general common objective of preserving the competitiveness of the EEA maritime sector in the global shipping market. The approval of such aid is, however, made subject to *inter alia* the following conditions:

- Given the recognised common objective of shipping aid, it should, as a main rule, require a link with a flag of an EEA State. However, flag-neutral measures may exceptionally be approved, provided that a clear economic link to the territory of the Contracting Parties to the EEA Agreement can be demonstrated.

- Vessels operated by companies receiving aid must comply with the relevant international and EEA safety standards.
- Aid of this type must be restricted to shipping companies, i.e. it must be ensured that there is no spill-over of this exceptional type of aid to other activities.
- The amount of aid should not exceed the total amount of taxes collected from shipping activities, i.e. a reduction to zero of corporate taxation of shipping activities is the maximum level of aid which may be permitted.

In December, the Authority decided that pending its adoption of revised rules on the same subject, the rules in Chapter 16 of the State Aid Guidelines, concerning **Aid for Rescuing and Restructuring Firms in Difficulty**, adopted in October 1994, should continue to apply until 31 December 1998. The background to this decision, was that the planned review of these guidelines by the EC Commission before the end of 1997 was postponed until 1998.

Besides the above amendments of the State Aid Guidelines, the Authority has in the course of 1997 been engaged in the development of a number of other new guidelines in important areas, some of which were adopted by the EC Commission before the end of 1997. These include rules on state aid in the form of public support to short-term export-credit insurance, revised guidelines on regional aid and on aid for the motor vehicle industry, as well as a new so-called multisectoral framework on regional aid for large investment projects. It can be expected that the Authority will in 1998 adopt new guidelines in these areas.

The Authority has also been involved in consultations on new acts relating to aid to the ECSC steel industry, the shipbuilding industry, a draft regulation on State aid procedures and a draft enabling regulation designed to introduce block exemption in the field of State aid. The acts last referred to are of a binding character and will thus, if made applicable in the context of the EEA Agreement, be adopted by the EEA Joint Committee. A procedural regulation on State aid, as well as the procedural part of the new Community discipline for the steel industry, may, for the above purposes, necessitate amendments to the Surveillance and Court Agreement.

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 for 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.

The co-operation between the two surveillance authorities in the field of State aid has in practice worked well. The close contacts and co-operation at different levels contributed to a homogeneous 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.

Aid systems reviewed in 1997

In the course of 1997, the Authority was actively examining some 15 aid schemes under the review procedure for existing State aid, some of which also related to complaints. In two cases, the Authority decided to propose appropriate measures in order to ensure compatibility of the aid schemes concerned with the EEA State aid provisions. In the case of the review of the regionally differentiated social security taxation system in *Norway*, to which particular effort was devoted, the Authority also opened the formal State aid investigation, as is explained below.

In March, the Authority concluded its examination of the ***Icelandic* Harbour Act** provisions relating to State grants for the financing of docking constructions for ships. The Authority considered that the legislation gave room for an application, which may involve State aid incompatible with the relevant rules under the EEA Agreement. It consequently decided to propose to the Icelandic Government, as an appropriate measure under the review procedure for existing State aid, that any financing under the Harbour Act of docking constructions for ships or related aid measures by municipal harbour authorities in Iceland be notified in advance to the Authority. This will allow the Authority to examine such measures on a case-by-case basis, to ensure their compatibility with the relevant State aid rules.

Regionally differentiated social security taxation (Norway)

Norway operates a system of **regionally differentiated social security taxation** levied on employers. The charge on employers is calculated as a percentage of the employees' gross salary. Five different tax rates apply, varying according to the permanent residence of the employees. The highest tax rate, the rate of tax zone 1, is 14.1 % of gross salary. Tax zone 1 covers 73 % of the population. The tax rates in the more remote areas covered by zones 2-5, range from 10.6 % in zone 2 to zero %, in zone 5.

The scheme applies to all employers in all economic sectors, both public and private, except for the central government which pays the maximum rate regardless of the residence of its employees.

The system of regionally differentiated social security taxation was the subject of several informal and technical meetings with the Norwegian authorities between the Spring of 1995 and March 1997. The Authority has also, in the course of the process and in accordance with Protocol 27(f) of the EEA Agreement, kept the Commission's services informed of its assessment and received their comments.

The Authority came to the conclusion that the lower tax rates applicable in zones 2-5 lead to disbursements of State aid in the meaning of Article 61(1) EEA. The Authority also came to the conclusion that it would be possible, save for certain activities, to grant exemptions from the general prohibition on such aid. Possible exemptions would be based on Article 61(3)(c) EEA and on the provisions on regional aid laid down in the State Aid Guidelines.

These guidelines permit aid to be granted in order to take account of regional development problems arising out of special features of the Nordic countries, such as very low population density and long distances within the national borders. The provisions of regional aid to compensate for additional transport costs are applicable under such conditions.

Based *inter alia*, on a detailed examination of additional transport costs for enterprises benefiting from lower social security contributions, the Authority drew the conclusion that a large number of economic sectors could continue to receive the benefits of lower social security contributions.

The Authority found however, that certain economic activities, irrespective of location, could not be allowed to benefit from lower tax rates. This concerned production and distribution of electricity, extraction of crude petroleum and natural gas, mining of metal ores, and extraction of certain industrial minerals. The same applied to enterprises with more than 50 employees engaged in freight transport by road, enterprises in telecommunication, and providers of financial services engaged in cross-border activities. Likewise, it was found that certain industrial sectors which are subject to particular sectoral aid regimes under the EEA Agreement, such as shipbuilding and steel, could not be allowed to benefit from the lower tax rates. Enterprises falling in some of these categories would have to pay the full social security tax applicable in tax zone 1, irrespective of location.

In May, the Authority therefore proposed certain appropriate measures to the Norwegian Government requiring that necessary adjustments (as indicated above) be taken in the course of 1997. However, the Norwegian Government disputed the Authority's findings, that the tax scheme under consideration led to appropriation of State aid in the meaning of Article 61(1) of the EEA Agreement, and expressed its unwillingness to comply with the Authority's proposal for appropriate measures.

After assessing the arguments presented by Norway, the Authority, without prejudice to its final view, maintained that the system of regional differentiation of employers' social security contributions in Norway resulted

in State aid allocations and that the system as such did not merit exemptions. It therefore decided on 19 November 1997 to open a formal investigation procedure.

The Norwegian Government was invited to submit its comments. 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 notice had not been published by the end of the year and the case was therefore still pending.

Annual reporting on existing aid schemes and State aid surveys

As is foreseen in the State Aid Guidelines, it has been the Authority's practice to request the submission of annual reports on new State aid schemes which it has authorised. The information in these reports is particularly focused on the annual aid expenditure under the schemes and its breakdown on main recipients, as well as according to sectors, forms of aid, etc. Furthermore, following decisions by the Authority in 1995 in the form of appropriate measures, *Iceland* and *Norway* agreed to submit standardised annual reports on existing aid schemes. The *Liechtenstein* government has informed the Authority that it operates no State aid, and the Authority has received no indication to the contrary.

According to Protocol 27 of the EEA Agreement, the Authority is charged with the responsibility to periodically prepare a quantitative survey of State aid in the EFTA States. Besides enabling the Authority to monitor the application of existing aid schemes, annual reports will be the primary source of information for such surveys. The Authority will draw up the State aid surveys in co-operation with the EFTA States and in parallel with corresponding surveys by the EC Commission. In recent years, the Commission's practice has been to issue such surveys every second year, each presenting average annual aid amounts for three year periods. In 1997, the Commission commenced compiling its sixth survey, which is expected to cover the years 1994-96. Accordingly, the Authority's services started in 1997 the necessary preparatory work to draw up the Authority's first survey on State aid, which is also expected to cover 1994-96, the first three years after entry into force of the EEA Agreement.

5.1.3.2 Complaints relating to State aid

At the beginning of 1997, eight complaints relating to State aid were pending with the Authority. Three new complaints relating to State aid were registered in the course of 1997. The Authority decided to close the examination of three complaint cases without proposing further action. There remained a total of eight complaints under examination at the end of 1997.

In March, the Authority decided not to raise objections to State aid which the *Icelandic* authorities had provided in support of an investment in a **floating dock and other docking facilities for ship repairs in the harbour of Akureyri, Iceland**. The case was examined as a result of complaints received from interested parties.

The background to the case was that in May 1994, the *Akureyri Harbour* decided to purchase a floating dock for ship repairs and undertake certain related investments in docking facilities for ships. The project was found to be eligible for a grant from the State Treasury under the Icelandic Harbour Act, and funding for the project was subsequently pledged by the central authorities. In September 1995, the Akureyri Harbour decided to lease the facilities to the shipyard *Slippstöðin Oddi hf*.

The Authority concluded that the terms of the lease between the *Akureyri Harbour* and the shipyard *Slippstöðin Oddi hf*. involved State aid to the shipyard estimated at IKR 75 million (approx. ECU 0,9 million), which corresponds to 22,4% (net) of the relevant investment costs.

As neither the Harbour Act (enacted in 1994), nor the investment project in the Akureyri harbour and the related State grant, nor the lease with *Slippstöðin Oddi hf*. were notified to the EFTA Surveillance Authority, the aid was granted in breach of the obligation to notify in advance and await the Authority's approval of all new State aid.

The Authority nevertheless assessed the aid in relation to the relevant State aid rules under the EEA Agreement, in particular the rules on aid to the shipbuilding industry and on regional aid. It found that in this case, the conditions for investment aid to ship repair yards, as set out in Article 6 of Council Directive 90/684/EEC on aid to shipbuilding, were fulfilled. It also concluded that the level of the aid was within the relevant ceiling on regional aid in the respective area. Under these circumstances the Authority decided not to raise any objection to the aid. At the same time, the Authority decided to propose appropriate measures to the Icelandic Government with respect to certain provisions of the Harbour Act (see section 5.1.3.1).

In July, the Authority decided to close without further action its examination of the **framework conditions for the *Norwegian* State Housing Bank** (Den *norske Stats Husbank - "Husbanken*"). The examination was initiated by a complaint which alleged that the operating conditions for *Husbanken* involved an infringement of State aid provisions of the EEA Agreement.

Husbanken is a state-owned financial institution established in 1946 by an act of the Norwegian Parliament to provide housing loans and loan guarantees against mortgage security. The institution is currently authorised to grant loans, loan guarantees and grants for housing policy purposes.

The concerns of the complainant were in particular directed towards loans for new dwellings, which are provided without any means-testing of applicants. The complainant submitted that owing to special framework conditions within which *Husbanken* operated, including annual subsidisation over the state budget and an effective "monopoly" on providing subsidised lending for housing purposes, *Husbanken* is shielded against competition from regular banks and mortgage companies.

In its examination of the case, the Authority concluded that the financial relations between *Husbanken* and the Norwegian State Treasury involved financial advantages which are covered by the first paragraph of Article 61 of the EEA Agreement. Furthermore, the Authority considered that the

arrangement did not qualify for any of the exemptions provided for under the second and third paragraphs of the same Article.

At the same time, however, the Authority examined the situation in relation to the provisions on public undertakings in Article 59 of the EEA Agreement. It was concluded that in the given circumstances, the Authority did not consider that restrictions or distortions of competition as a result of the framework conditions for *Husbanken* went beyond what is required to allow that undertaking to perform the services of general economic interest with which it had been entrusted.

In reaching the above conclusion, the Authority took into account *inter alia* the following:

Husbanken has been assigned particular service tasks to achieve objectives of social housing policy. *Husbanken's* non-means tested housing loan scheme for new dwellings includes conditions, e.g. on building costs, size and quality standards of dwellings. These conditions, intended to achieve housing policy objectives, impose monitoring obligations on *Husbanken* and also constraints on the recipients of its loans. *Husbanken* is not a credit institution in the meaning of the EEA banking legislation and does not compete with regular operators in the financial market outside the scope of its core activity in housing finance. The framework conditions for *Husbanken* do not constitute a monopoly on housing finance, as there are no mandatory exclusive rights reserved for *Husbanken* to provide housing loans. Although the financial advantages enjoyed by *Husbanken* may potentially affect trade between Contracting Parties to the EEA Agreement, in practice such trade effects are likely to be limited. In most EEA States, governments intervene in housing and housing finance markets. The form of the intervention varies from one country to another depending, *inter alia,* on the housing policy of the State concerned. While in some countries the emphasis is on publicly supported housing finance, in other countries the support takes more the form of directly subsidised rented housing. The Norwegian housing market is characterised by a particularly high proportion of owner-occupied dwellings, and the emphasis of the Norwegian authorities is on a broad public housing finance system. Overall Government support for residential housing in Norway is nevertheless relatively modest.

The Authority noted in the decision that its conclusion in the case did not preclude that it might at a later stage find reason to intervene, for instance as a result of changes in the market situation, introduction of new legislation at EEA level or in response to changes of the Norwegian Government's policy with regard to the scope of *Husbanken's* lending activities.

In September, the complainant in the above case concerning the framework conditions for the Norwegian State Housing Bank lodged an application with the EFTA Court requesting the Court to annul the Authority's decision reviewed above. At the time of writing, the Court had not delivered a judgement in the case.

Aid to Arcus

On 30 October 1996, the Authority decided to open an investigation procedure with regard to a complaint in the Norwegian Government's financing of the *Arcus Group* of companies.

The case is related to the fact that, with effect from 1 January 1996, production and wholesale distribution activities of the former Norwegian alcohol monopoly were transferred to the *Arcus Group*, a separate state owned company competing on the market. Retail outlets remained as parts of a state monopoly.

The Authority found that the information presented by the Norwegian authorities did not enable it to ascertain whether State aid had been granted to the *Arcus Group* or not, although the Norwegian authorities disputed that State aid was involved.

The Authority stated in its decision to open the investigation procedure 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 special allocation to the *Arcus Group* of NOK 226 million to cover restructuring costs was also covered by the Authority's investigation. The Authority has in the course of 1997 been assisted in its examination of the *Arcus Group* by independent consultancy help chosen by public tender.

The Authority's decision to open an investigation was published on 13 February 1997 in the EEA Section of the Official Journal of the European Communities and the EEA Supplement thereto. A final decision on the existence of possible State aid to the *Arcus Group* was still pending at the end of the reporting period.

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 1997, the Authority registered a total of seven cases relating to new aid, all of which were notifications by the EFTA States, and no new cases were registered as non-notified aid. The notifications concerned *inter alia* aid schemes in favour of the shipbuilding industry, the maritime transport sector and regional development, as well as aid for individual investment projects. One of the new cases related to *Iceland*, while the remaining cases concerned *Norway*.

In 1997, the Authority decided in five cases relating to new aid not to raise objections with regard to the aid proposals concerned. Five cases relating to new aid were pending with the Authority at the end of 1997.

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

Regional aid to International Pipe System AS

On 22 May 1997, the Authority decided not to raise objections to a notification from *Norway* on regional investment aid to *International Pipe System AS* (*IPS*), a company to be located in the municipality of Surnadal (Norway).

IPS would according to the notification, produce and market plastic tubes and tube-systems for the sanitary sector and have 55 employees.

The notification concerned aid in the form of a grant and a loan from the Industrial Fund of Surnadal. It was otherwise foreseen according to the notification, that the investment project would benefit from public financial assistance from the Norwegian Industrial and Regional Development Fund (*SND*) in the form of a loan and a grant.

The Authority's services estimated that the combined volume of aid from different sources taken together constituted 21.6 % of the eligible investment costs. The aid intensity was therefore below the maximum admissible aid level for regional investment aid set at 25 % in target zone B, within which the municipality of Surnadal is located.

The EFTA Surveillance Authority therefore concluded that the aid qualified for exemption under the Article 61(3)(c) of the EEA Agreement.

Interreg IIA scheme and Pilot Projects programme

The Authority decided on 10 July 1997, not to raise objections to the measures undertaken by *Norway* in relation to their participation in the *Interreg IIA* scheme and Pilot Projects programme. The measures under consideration had been notified late, i.e. after having been put into effect by the Norwegian Government.

The *Interreg IIA* scheme and Pilot Projects programme were initiated by the European Community. Norway was invited by the European Commission to participate in these activities. The aim of the *Interreg IIA* scheme is to assist border areas in overcoming the special development problems arising from their isolation within national economies, while the aim of the Pilot Projects programme is to assist innovative smaller scale joint actions.

The Finnish, Swedish and Norwegian authorities have, in co-operation with local authorities, established six regions along the borders between these countries as *Interreg IIA* regions. In one of the regions, namely the Barents-region, co-operation with Russia is also foreseen.

NOK 52.5 million per year have been allocated by the Norwegian Government to the *Interreg IIA* scheme and Pilot Projects programme for 1996 and 1997. The same amounts have been foreseen for each of the following two years of the action plan period.

The Norwegian authorities decided that awards of aid granted under the mentioned schemes should be based on the criteria of certain existing State aid schemes which had previously been examined by the EFTA Surveillance Authority and found compatible with the EEA Agreement. The Authority concluded therefore that the measures undertaken by Norway were in accordance with the State aid rules of the EEA Agreement.

Limited extension of the validity of the map of assisted areas (Norway)

The validity of the general map of assisted areas in Norway was to expire at the end of 1997. Anticipating a decision by the Authority to approve a map of assisted areas, valid for the period after 1997, the Norwegian authorities submitted by letter of 16 October 1997, a notification proposing certain amendments to the existing map. The notification was found to be incomplete and Norway submitted upon request, additional information which the Authority received on 10 December 1997.

As it was not possible to process the information received and reach a conclusion before the end of the year, the Authority found it appropriate in a decision of 17 December 1997, to extend the validity of the existing system of regional aid in *Norway* for a period of 4 months, i.e. until 30 April 1998.

5.1.4.3 Sectoral aid

Aid to shipbuilding

General developments

As in 1996, the general policy developments in this field within the EEA continued to be marked by a delay of the entry into force of the OECD Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry, which was concluded in 1994 but has not yet been ratified by all its contracting parties.

The European Community and *Norway* are amongst the contracting parties to the OECD Agreement who have ratified the agreement. The European Community has adopted Council Regulation 3094/95 designed to implement the State aid provisions of the OECD Agreement in Community legislation. However, as the OECD Agreement has not yet entered into force, this regulation has not become applicable and it has been necessary to prolong *ad interim* the prevailing aid discipline, Council Directive 90/684/EEC. Thus, following a decision in October 1996 by the EEA Joint Committee, which mirrored a corresponding decision by the Council of the European Community, the provisions of the Shipbuilding Directive continued to apply within the EEA 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. In January, the Authority decided that, as from 1 January 1997 until Articles 1 to 9 of Council Regulation 3094/95 became applicable in the European Community, but no later than 31 December 1997, the ceiling should remain unchanged from the previous years, i.e. at 9%. 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.

In October, the EC Commission decided to submit to the Council a proposal for a new shipbuilding aid regime, which would, if the OECD Agreement had still not entered into force, come into effect as from 1 January 1999. According to the proposal, contract related operating aid (except for export credits in conformity with OECD rules on export credits for ships) would be

abolished as from the year 2001, irrespective of whether the OECD Agreement would then have entered into force. The proposal also contained certain other novelties, *inter alia* allowing under certain conditions for the possibility of investment aid for innovation and for regional aid with regard to investment in upgrading or modernising existing shipyards. At the same time, the Commission also proposed that the rules of the prevailing Council Directive on aid to shipbuilding be prolonged until 31 December 1998 unless in the meantime the OECD Agreement entered into force. In December, the Council decided to follow the latter proposal on the prolongation of the Shipbuilding Directive. Once a corresponding decision has been taken in early 1998 by the EEA Joint Committee, the Authority can be expected to decide on the ceiling for operating aid to apply for shipbuilding contracts signed in that year.

Norway

In October, the Authority decided not to raise objections to the prolongation of existing Norwegian aid schemes in support of the shipbuilding industry.

The Decision covered prolongation for the period October 1996 to December 1997 of the following three aid schemes: Grants for shipbuilding, newbuildings and conversions, Export credit guarantee for ships and the Guarantee scheme for ship construction. These schemes were already assessed and authorised by the Authority in 1995.

The Norwegian authorities introduced two amendments to the Grant scheme for shipbuilding. Firstly, the deadline for deliveries of ships supported under the scheme, which was previously 31 December 1998, was changed to three years from the date of contract. Secondly, the scheme was opened for financing the building of ferries receiving government grants to operate ferry connections. The Authority found these amendments to be compatible with the provisions of the Shipbuilding Directive. As the schemes had otherwise not been subject to any substantive changes, and the aid discipline applicable to the shipbuilding sector under the EEA Agreement remained unchanged, the Authority concluded that the schemes remained compatible with the Shipbuilding Directive.

As a part of its re-evaluation of the Norwegian aid schemes for the shipbuilding sector, the Authority found it appropriate to examine in particular the question of State aid to shipyards for the construction of fishing vessels, noting that the European Commission had in a recent decision concluded that aid for the construction of fishing vessels could not be authorised under the Shipbuilding Directive unless they were for export outside the Community. In the course of the procedure leading up to the Authority's decision, the Norwegian Government undertook to propose to Parliament an adjustment of the Grant scheme for shipbuilding, so as to ensure that it would respect the rule that no aid was to be granted to shipyards for the construction or conversion of fishing vessels, except in respect of vessels for delivery outside the EEA.

In October, the Authority decided not to raise objections to aid to be granted by the Industrial and Regional Development Fund (SND) in support of a small **R&D project by the shipyard Solnes Båt AS** (total project costs NOK 2.4 million). The objective of the project is to develop new material oriented

techniques for the building of aluminium boats and special structural profiles intended to increase rigidity and reduce hull weight.

The proposed aid level for the project corresponded to 33,2% (gross) of eligible costs. Taking account *inter alia* of the facts that the company falls within the definition of a small and medium-sized enterprise and that the project was taking place in an area eligible for regional aid, the Authority concluded that the aid level for the project was within the admissible aid intensity ceiling and that other relevant conditions of the rules on aid for research and development were met.

Iceland

Reference is made to the information in section 5.1.3.2 on aid for docking constructions for ships in Iceland, which was examined as a result of a complaint received by the Authority.

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.

Most of the Authority's work in the field of State monopolies has been related to the legislation and practices in the Nordic EFTA States concerning trade in alcoholic beverages. As has been explained in the Authority's previous annual reports, the Authority decided in 1994 to initiate infringement proceedings under Article 31 of the Surveillance and Court Agreement. The Authority sent letters of formal notice to then four Nordic EFTA States, including *Iceland* and *Norway*, with respect to legislation providing for exclusive rights to import, export and wholesale trade of alcoholic beverages, which it considered to be contrary to Articles 11, 13 and 16 of the EEA Agreement. A reasoned opinion was delivered to Norway in December 1994, and in February 1995 with respect to the alcohol legislation in Iceland.

Both countries subsequently made certain changes to their legislation.

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, thereby eliminating the institutional link between the retail monopoly and the production of alcoholic beverages which was required by the reasoned opinion addressed to Norway.

It is also recalled that by decision in October 1996, the Authority concluded that the measures taken by *Norway* removed the infringements addressed by the reasoned opinion, and as a consequence the Authority decided to close the case. The scope of this Decision 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 not therefore, 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[7].

In the course of 1997 the Authority continued to receive complaints relating to the alcohol beverage markets in *Iceland* and *Norway*. At the end of the year, it was still examining whether these would require action in addition to the cases indicated above.

In 1997, the EFTA Court delivered Advisory Opinions in two cases concerning interpretation of EEA law relating to State alcohol monopolies,[8] and the Court of Justice of the European Communities delivered a judgement on the interpretation of Articles 30 and 37 of the EC Treaty with respect to the Swedish alcohol legislation[9]. Due account will be taken of the judgements by the two courts in the examination of the cases relating to trade in alcohol still pending with the Authority.

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,

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7 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 5.1.3.2. and 5.3.2.2.3, respectively, of this Report.

8 Case E-6/96, Tore Wilhelmsen AS v. Oslo kommune, and Case E-1/97, Fridtjof Frank Gundersen v Oslo Kommune.

9 Case C-189/95, Harry Franzén (reference to the Court by the Landskrona Tingsrätt (Sweden) for a preliminary ruling).

- 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 ensure that infringements are put to an end 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 for the Authority to be able to grant such exemptions, the undertakings 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 have an EFTA dimension, without at the same time having a Community 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. The Authority also 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. The activities also involve close co-operation with national authorities.

5.3.2. Cases

5.3.2.1 Overview

On 31 December 1996, there were 52 cases pending with the Authority. Of these, 39 were based on notifications, 12 were complaints and one case was opened *ex officio*. From 1 January to 31 December 1997, eight additional cases were opened. Out of these new cases, one was based on a notification and seven were complaints. During the same period, nine cases were closed, two by formal decisions and seven by administrative means. Thus, by the end of 1997, 51 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 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 by economic operators with the Authority 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.

5.3.2.2 Developments in individual cases

In order to make most efficient use out of the Authority's resources in the competition area, cases have been given priorities following a preliminary assessment of their importance. The following criteria have been 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 at the EEA level than at 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.

5.3.2.2.1 Telecommunications

The Authority has closely followed the development in the telecommunications sector, both through meetings with government representatives and through information collected in connection with cases under consideration. The Authority currently has under review, cases concerning ownership and use of infrastructure and the provision of telecommunications services.

On the basis of a complaint and a notification, the Authority recently examined a leasing and cooperation agreement whereby *Telenor AS*, the public telecommunication operator in *Norway*, had the exclusive right to use the

excess capacity in the telecommunication network owned by the Norwegian Railways. In April 1997, the parties terminated the agreement and withdrew the notification but the final termination conditions were not agreed upon by the end of 1997. The Authority will finalise its examination in light of the general legislative liberalisation in the telecommunications sector.

5.3.2.2.2 Forestry

On 24 April 1997, the Authority adopted two decisions concerning the markets for round wood in *Norway*. One related to the statutes of the Norwegian Association of Forest Owners (*NSF*) and subsidiary associations[10] . In this decision the Authority held that the notified statutes of *NSF*, the standard statutes of forestry district societies and the standard statutes of forestry local squads contained provisions which were contrary to Article 53(1) of the EEA Agreement, and that no individual exemption could be granted for the notified agreements. The provisions giving rise to the infringements related to three different issues; provisions which gave *NSF* the right to negotiate prices and framework quotas for its members and allocate these quotas among the members or district societies, provisions which gave *NSF* and the district societies the right to impose market regulations on their members, such as reducing or stopping the members' production of round wood or equalising prices, and provisions obliging the members to sell all their harvested round wood to the district society in their respective geographic area. The undertakings concerned were ordered to bring the infringements to an end with immediate effect. Information on how the decision had been implemented was requested by the Authority in December 1997. The reply had not been evaluated at the end of the reporting period.

The second decision concerned an agreement between the members of the *Norwegian* Association of Paper and Pulp Industries (*TFB*) geographically sharing their pulpwood purchases between themselves[11]. The Authority found that this agreement was contrary to Article 53(1) of the EEA Agreement, and that the conditions for individual exemption were not fulfilled. Thus, the undertakings concerned were ordered to bring the infringement to an end with immediate effect. In December 1997, the Authority requested information on how its decision had been implemented. The reply had not been evaluated at the end of the reporting period.

Initially, a Statement of Objections was also been issued in relation to the centralised or centrally co-ordinated price negotiations between *NSF* and *TFB*, and to an agreement between them to fix the level of commissions on the sale of round wood through the forest owners' associations. However, the parties subsequently declared that they would not retain any cooperation as regards prices at a national level, including the fixing of commission levels. Consequently, the Authority considered that the infringements were brought to an end, and the two cases were closed by so-called comfort letters.

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10 EFTA Surveillance Authority Decision No 120/97/COL relating to a proceeding under Article 53 of the EEA Agreement in case COM 020.0099 - NSF, OJ No. L 284 of 16.10.97, p. 68.

11 EFTA Surveillance Authority Decision No 121/97/COL relating to a proceeding under Article 53 of the EEA Agreement in case COM 020.0130 - TFB, OJ No. L 284 of 16.10.97, p. 91.

In addition, a formal complaint on the issues covered by the previously mentioned cases was closed, as the Authority considered that there were no reasons for further action.

5.3.2.2.3 Distribution of wine and spirits

The examination of three complaints submitted to the Authority in 1996 concerning the activities of the major *Norwegian* wholesaler and distributor of wine and spirits, *Arcus Distribusjon AS* (*A*D) continued in 1997. The complaints related to distribution agreements entered into between *AD* and various importers of/agents for wine and spirits in Norway. The complainants alleged that *AD* was 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 entered into cooperation agreements of a certain duration. It was stated that this had the effect of tying the importers and agents to *AD* in an abusive manner and preventing other distributors from getting access to the distribution market.

Complaints identical in substance were also submitted to the *Norwegian* Competition Authority (*NCA*) under similar provisions of Norwegian competition law. During the two parallel proceedings there was close contact between the Authority and the *NCA*, and fact finding measures and discussions with the undertakings involved also took place in parallel at the NCA and at the Authority. During the proceedings with the *NCA*, *AD* amended the distribution agreements upon which the alleged abusive behaviour was based. In addition, all agents/importers parties to distribution agreements entered into during the Autumn of 1996 were released from these agreements, and given the possibility to enter into contracts with other distributors instead if they so wished. *AD* informed the Authority of the amendments on 17 March 1997, and held that the amendments undertaken also removed any restrictions of competition in relation to Article 54 of the EEA Agreement. On the basis of the amendments, neither the *NCA* nor the Authority found any reason for further actions. Thus, the files were closed.

5.3.2.2.4 Other cases

Based on notifications from the Association of *Norwegian* Insurance Companies (*Norges Forsikringsforbund*) the Authority has been reviewing common standards for the approval of security devices and of installation and maintenance undertakings, issued by the Insurance Companies' Approval Committee (*Forsikringsselskapenes Godkjenningsnemnd*). After discussions with the Authority, certain amendments were made to the notified arrangements. In view of these changes the Authority published in the Official Journal on March 20 1997 a notice in which the Authority indicated its intention to take a favourable view on the arrangements subject to certain conditions being met, and invited comments from interested parties. The conditions concerned, *inter alia*, a statement on the non-binding status of the rules, the non-discrimination on the basis of nationality, a speedy approval process with reasoned decisions and finally administrative changes to ensure a high degree of impartiality to the approval process. The Authority has not

received any comments and the examination was in its final stages at the end of the year.

The Authority continued its examination of the *Norwegian* Gas Negotiation Committee (*Gassforhandlingsutvalget - GFU*) in relation to Article 59 of the EEA Agreement. In addition, the Authority is considering questions concerning charges for the use of infrastructure to transport natural gas in the North Sea under Articles 53 and 54 of the EEA Agreement. Furthermore, the Authority continued the investigation of the pending cases in the pharmaceuticals market. For a more detailed description of these cases, see the Annual Report for 1996.

In October 1997, the Authority was requested by *KLM Royal Dutch Airlines* (*KLM*) to consider whether or not the Authority would be competent to assess *KLM's* planned acquisition of shares in the *Norwegian* airline *Braathens S.A.F.E.* (*Braathens*), under the rules on control of concentrations of the EEA Agreement. One of the conditions for the Authority to be competent to deal with a concentration, is that each of at least two of the undertakings concerned has an aggregate EFTA-wide turnover exceeding ECU 250 million. In the case at issue this threshold was only met by *Braathens*. The Authority therefore held that the case did not have an EFTA dimension as required under the Act on merger control referred to in Annex XIV, as adapted for EEA purposes, and that it was not competent to assess the acquisition under the EEA Agreement.

Furthermore, it appeared that the concentration lacked Community dimension. A condition for the EC Merger Regulation to apply is that each of at least two of the undertakings involved has an aggregate Community-wide turnover exceeding 250 million ECU. This condition was only fulfilled by *KLM*.

Accordingly, the result was that neither the European Commission nor the EFTA Surveillance Authority would be competent to assess the concentration, even though the undertakings concerned may be seen as significant players on the EEA market as such. The reason for this is that the EEA Agreement has not introduced an EEA dimension in cases concerning control of concentrations. This differs from what has been established for cases falling under Articles 53 and 54 of the EEA Agreement.

In 1997, the Authority also sent written observations to the EFTA Court concerning a request to the Court from a *Norwegian* court for an advisory opinion on questions related to EEA competition law.

5.3.3 New acts

5.3.3.1 Legislation

The EEA Joint Committee adopted three decisions in 1997 to incorporate new acts in the competition field into the EEA Agreement. The first[12] concerned a

[12] Joint Committee Decision No 12 of 14 March 1997.

new block exemption for technology transfer agreements[13]. This block exemption replaced the two earlier block exemptions on know-how licensing agreements and on patent licensing agreements with one single block exemption. Furthermore, two new acts were included in the list of acts referred to in Article 3(1) of Protocol 21 to the EEA Agreement, concerning the implementation of procedural competition provisions[14]. They replaced the acts referred to in points 2 and 4 of Article 3(1). The first act concerns the notifications, time limits and hearings in cases on control of concentrations between undertakings[15], and the second act relates to the form, content and other details of applications and notifications in other competition cases[16].

The third Joint Committee Decision[17] concerns the prolongation of the validity of the block exemption for exclusive distribution agreements and the block exemption for exclusive purchasing agreements[18], which were both to expire on 31 December 1997. The two block exemptions are now valid until 31 December 1999.

In addition, the EU-side amended its rules on the control of concentrations in 1997[19]. These rules have not yet been implemented into the EEA Agreement.

5.3.3.2 Non-binding acts

According to Annex XIV to the EEA Agreement, the Authority shall take due account of the principles and rules contained in the acts listed in points 16 to 25 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 should be seen in light of 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 guarantee the proper functioning of the EEA Agreement, ensure the application of the EEA competition rules.

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13 Point 5 of Chapter C of Annex XIV to the EEA Agreement, which corresponds to 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.

14 Joint Committee Decision No 13 of 14 March 1997.

15 Point 2 of Article 3(1) of Protocol 21 to the EEA Agreement, referring to Commission Regulation (EC) No 3384/94 of 21 December 1994 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/94 on the control of concentrations between undertakings.

16 Point 4 of Article 3(1) of Protocol 21 to the EEA Agreement, referring to Commission Regulation No 3385/94 of 21 December 1994 on the form, content and other details of applications and notifications provided for in Council Regulation No 17.

17 Joint Committee Decision No 84 of 12 November 1997.

18 Points 2 and 3 of Annex XIV to the EEA Agreement, which corresponds to Commission Regulation No 1582/97 of 30 July 1997.

19 Council Regulation (EC) No 1310/97 of 30 June 1997 amending Regulation (EEC) No 4064/94 on the control of concentrations between undertakings.

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

On 4 June 1997, the Authority adopted a notice on the non-imposition or reduction of fines in cartel cases[20] and a notice on the application of the EEA competition rules to cross-border credit transfers[21]. These Notices correspond to similar notices already adopted by the Commission[22].

In 1997, the Commission adopted several new notices in the field of competition. The Authority is in the process of evaluating their EEA relevance and is preparing corresponding non-binding acts. These notices are:

- Commission Notice on the internal rules of procedure for processing requests for access to the file in cases pursuant to Articles 85 and 86 of the EC Treaty, Articles 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/94,
- Commission Notice on cooperation between national competition authorities and the Commission in handling cases falling within the scope of Articles 85 or 86 of the EC Treaty,
- Commission Notice on the definition of the relevant market for the purposes of Community competition law.
- Commission Notice on agreements of minor importance which do not fall within the meaning of Article 85(1) of the Treaty establishing the European Community,
- Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain state measures relating to postal services and,
- Commission guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty.

5.3.4 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.

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20 Notice of the EFTA Surveillance Authority of 4 June 1997 on the non-imposition or reduction of fines in cartel cases, OJ No C 282 of 18 September 1997, p. 8.

21 Notice of the EFTA Surveillance Authority of 4 June 1997 concerning the application of the EEA competition rules to cross-border credit transfers, OJ No C 301 of 2 October 1997, p. 7

22 OJ No C 207 of 18 July 1996, p. 4 and OJ No C 251 of 27 September 1995, p. 3 respectively.

From the information received from *Iceland* and *Norway*, it would seem that new EEA competition legislation has only partly been implemented at a national level. In both Iceland and Norway, implementation has not been completed as regards the EEA adapted versions of Commission Regulation No 3384/94 on the notifications, time limits and hearings in merger cases and Commission Regulation No. 3385/94 on the form, content and other details of applications and notifications in other competition cases[23]. The Authority will pursue the matter in 1998. As regards *Liechtenstein*, international agreements entered into by the State automatically become a part of the national legal order. Thus, it has not been necessary to undertake specific implementation measures to the same extent as in *Iceland* and *Norway*. The Authority did not find that any specific implementation measures were necessary in Liechtenstein as a consequence of the new acts included in the EEA Agreement in 1997.

The Authority continued its discussions with *Norway* during the year, on the implementation of the procedural EEA competition rules regarding decisions by the Authority to undertake inspections on the premises of undertakings located in Norway. For a more detailed description of the questions raised, see the Annual Report for 1996.

5.3.5 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 must the rules themselves be equal but they must also be applied in such a way that the undertakings' legitimate demands for legal certainty, efficient handling and predictability 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.

5.3.5.1 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 on the case it considers appropriate to the authority dealing with the case. The Authority considered that six of the eight cases opened in 1997 affected one or more Community States and, consequently the relevant documents were forwarded

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[23] See point 5.3.3.1 above.

to the Commission for comments. At the same time, the Authority received copies of forty 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 transmitted to the Commission Services.

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 EFTA Surveillance Authority arranged one Advisory Committee meeting in 1997 dealing with the forestry cases referred to above under point 5.3.2.2.2, in which the Commission and certain EU Member States took part. No hearing was conducted. During the year the Authority was represented in a number of hearings conducted by the Commission, and in meetings of the various Community Advisory Committees in competition cases.

5.3.5.2 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.

In 1997, the Authority took part in the continued review of the Community merger legislation, including preparatory work on new notices to be issued on the concept of undertakings concerned, the notion of full-function joint ventures, the concept of a concentration and the calculation of turnover. In addition, the Authority participated in the Commission's continued preparations of new notices on the definition of the relevant market and on agreements of minor importance.

Moreover, the Authority took an active part in meetings concerning the proposals for a revision of competition legislation on vertical restraints, and submitted its preliminary written comments to the Commission's Green Paper on the matter. Discussions on the drafting of new legislation in this field will continue throughout the next year.

During the year the Authority also took part in meetings on more general policy matters, such as the strengthening of international co-operation as regards competition policy and rules.

5.3.6 Liaison with national authorities

An important element in the application of EEA competition rules is the co-operation between the Authority and the national authorities. Protocol 4 to the Surveillance and Court Agreement, lays down rules which provide for close and constant liaison between the Surveillance Authority and the competent authorities of the EFTA States. The competent authorities in *Iceland* and *Norway* are 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 take advantage of the knowledge of national markets which the national authorities have at hand and to benefit from their staff specialised in different sectors of the economy.

The Authority finds such contact to be particularly important when there are parallel proceedings before national competition authorities under national law and before the Authority under EEA competition law. In these situations, the national authorities are likely to have more extensive knowledge of the national markets at hand and, would hence increase the possibility for the Authority to make use of valuable information under its own procedures. Furthermore, the Authority believes that such contacts may increase the possibility of also reaching decisions on a national level which would be compatible with the competition rules within the EEA.

ANNEX I

THE EFTA STATES
ICELAND, LIECHTENSTEIN AND NORWAY

FACTS AND FIGURES

	ICELAND	LIECHTENSTEIN	NORWAY
Name of State	**Republic of Iceland**	**Principality of Liechtenstein**	**Kingdom of Norway**
Size in km^2	103 000	160	324 000
Forest (%) of total area	1	34.8	26
Water (%)	2	-	5.3
Cultivated Land (%)	22	24.3	3
1.1.1996 - Population	268 000	30 900	4 370 000
1.1.1996 - Foreign Residents (% of pop.)	1,8	37,6	3,6
1.1.1996 - Population Density (inhab./km^2)	2,6	193,3	13,5
Gross Domestic Product in Billion ECU (1996)	5,0	-	114,0
Unemployment rate (1996)	4,4	1,6	4,9
Head of Government	Davíð Oddsson since 1991	Mario Frick since 1993	Kjell Magne Bondevik since 1997
National holiday	17 June	15 August	17 May

ANNEX II

EFTA SURVEILLANCE AUTHORITY

DIVISION OF RESPONSIBILITIES AMONG COLLEGE MEMBERS

KNUT ALMESTAD (PRESIDENT)	HANNES HAFSTEIN	BERND HAMMERMANN
General policies **Co-ordination** **External relations** **Administration** **Legal & Executive Affairs;** **State aid and monopolies**	**Free movement of goods (incl. technical barriers to trade, other trade matters, veterinary and phytosanitary matters)** **Public procurement** **Competition**	**Free movement of persons (incl. mutual recognition of diplomas)** **Right of establishment** **Social security** **Financial services** **Audiovisual and telecommunication services** **Transport** **Capital movements** **Social policies** **Consumer protection** **Environment;** **Company law**

ANNEX III

EFTA SURVEILLANCE AUTHORITY

ORGANIGRAMME

COLLEGE

GOODS	PERSONS, SERVICES AND CAPITAL	COMPETITION AND STATE AID	LEGAL & EXECUTIVE AFFAIRS	ADMINI-STRATION
Technical barriers to trade, including information procedures, product safety etc. Other trade matters, including customs duties, charges and discriminatory taxation, processed agricultural products, fish, energy, intellectual property rights Veterinary and phytosanitary matters Public procurement	Free movement of persons, including mutual recognition of diplomas Right of establishment Social security Financial services Banking Securities trading Insurance Audiovisual services Telecommunication services Transport Inland Road Maritime Civil aviation Capital movements Social policies Consumer protection Environment Company law	Competition rules applicable to enterprises Prohibition of cartels Prohibition of abuse of dominant position Control of concentrations State aid Review of existing aid Examination of new aid measures Monopolies Rules on public undertakings	Representing the Authority in Court proceedings Formal part of infringement proceedings Advice on legal questions Jurist linguist services Library Meetings of the College oral, written and delegation procedures follow-up of College decisions Publication Press and Information Visitors groups General reports	Human resources Budget planning Finance control Computer plan and support Staff social security Office facilities Procurement Registry

ANNEX IV