Annual Report 2002

EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY

Foreword

The Agreement on the European Economic Area has now been in force for nine years. The Agreement continues to ensure access to an increasingly important Internal Market, and is a cornerstone of trade policy in the EFTA States.

With its dynamic character, the EEA Agreement has stood the test of time. Just as the Agreement functions in parallel with the EC Treaty to ensure a homogenous Internal Market, the Authority works in parallel with the European Commission to ensure that the Agreement is implemented and applied in an equal manner throughout the European Economic Area. It is worth noting, however, that certain Articles of the EC Treaty, which have been added since 1992, are not reflected in the EEA Agreement. There is a growing concern that differences between the EC Treaty and the EEA Agreement may eventually result in an Internal Market moving at different speeds, thus reducing the efficiency of the Internal Market.

During 2002, considerable effort was made by the EFTA States to improve their implementation records for EEA law. These efforts have been fruitful: all the EFTA States now figure among the EEA countries with the highest implementation scores.

Statistics show that the number of cases dealt with by the Authority in 2002 has been reduced compared to the previous year. This can be attributed in part to the improved implementation records of the EFTA States, and in part to a gradual shift in focus of the Authority's tasks towards resolution of complaints and examination of implementing legislation and away from legislative notification by EFTA States. In order to be better equipped to handle its future workload and to be more flexible, the Authority, in 2002, merged the Goods Directorate and the Persons, Services and Capital Movements Directorate into a new Internal Market Affairs Directorate.

In 2002, the Authority focused its attention particularly on the free movement of services and the free movement of capital. More open financial and capital markets being an important goal. The Authority dealt with discriminatory practices and provisions that also, in effect or indirectly, limited the free movement of capital. This focus will continue in 2003.

An important task for the Authority remains to secure compliance with the competition and state aid rules of the EEA Agreement.

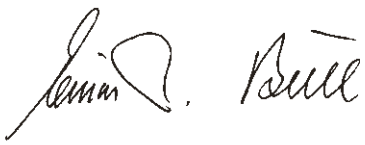
Food safety remains an important issue for citizens in the EFTA States. This field has been and will continue to be a priority within the Authority, both with respect to veterinary inspections and implementation control of EEA rules in this area.

Over the last years, the Authority has noticed increased media attention on its activities. While the Authority welcomes this recognition of the importance of its work, a perception in the EFTA States that the Authority is creating, rather than simply applying, EEA law has not gone unnoticed. It is important to bear in mind that the Authority is an organisation whose tasks are of a legal nature – it is not a political body. Moreover, the EEA Agreement, including its secondary legislation, is agreed upon by the EFTA States. The Authority has no legislative powers.

Looking forward, the enlargement of the European Union will enhance the importance of the EEA Agreement to the EFTA States. Although the existing imbalances between the two pillars of the EEA will increase even further, the Authority will continue to play a central role in ensuring that the EFTA States remain equal partners in the European Economic Area, bound by the same internal market principles and rules as the EU Member States.

Einar M. Bull

President



EFTA SURVEILLANCE AUTHORITY

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1 Summary

The task of the EFTA Surveillance Authority is, together with the European Commission, to ensure the fulfilment of the obligations set out in the Agreement on the European Economic Area (EEA Agreement).

The EEA Agreement contains both basic provisions and, in 22 annexes thereto, secondary Community legislation (EEA acts). New EEA acts are included in the Agreement through decisions of the EEA Joint Committee. At the end of 2002, there was a total of **2814** binding acts (directives, regulations and decisions) applicable under the Agreement. The number of directives with a compliance date on or before 31 December 2002 was 1442. The compliance date is the date by which the EFTA States[1] must comply with the directive unless a transitional period has been granted or no implementing measures are necessary.

At the end of the reporting period, the Authority's staff, including temporary staff and national experts, consisted of 57 individuals of twelve nationalities.

In 2002, as part of its role of **general surveillance**, the Authority continued its previous policy as regards implementation of EEA legislative provisions by the EFTA States. According to this policy, formal infringement proceedings can be initiated against the EFTA State concerned, in the form of a letter of formal notice, if the Authority has received no acceptable notification by that State of national implementing measures within *two* months of the final date by which the act in question should have been transposed. As regards those acts that have been only partially implemented by EFTA States, the need to initiate formal proceedings is considered at regular intervals.

The Authority keeps statistics concerning the EFTA States' performance in fulfilling their obligations under the EEA Agreement. A key indicator in this respect is the rate of full implementation of acts by the EFTA States. At the end of 2002, Iceland had transposed 97.0% of acts, Liechtenstein 97.2% and Norway 98.6%.

The fact that the Authority has received notification by an EFTA State of what it considers to be full implementation of an act entails no comment concerning the actual *quality* of the national implementing measures notified. Determination of the quality of implementing national provisions is undertaken through assessment of the conformity of the measures with the provisions of the relevant act. At the end of 2002, the Authority had concluded that 33% of the acts applicable under the EEA Agreement had been fully implemented by the EFTA States.

The total number of formal infringement proceedings opened by the Authority during 2002 decreased compared to the previous year. The Authority sent 37 letters of formal notice to the EFTA States and delivered 17 reasoned opinions in 2002. The corresponding figures for 2001 were 58 and 35 respectively. The figures reflect an improved implementation record by the EFTA States for 2002.

In the area of **free movement of goods**, seven new complaints were received during 2002. The Authority also opened 64 own-initiative cases, mainly concerning the implementation of acts. A number of preliminary examinations and matters related to management tasks were also initiated during the year.

The management task that demands most resources is the notification procedure for draft technical regulations. According to this procedure, the EFTA States are obliged to notify the Authority of national rules that might create barriers to trade. During a standstill period following the notification, the Authority and all the EEA States can comment on the intended measure. The EFTA States also have the opportunity to comment on notifications from the EU Member States. During 2002, the number of notifications from the EFTA States more than doubled compared to the number received in 2001.

In March 2002, the EFTA Court concluded that the different treatment in Norway between beer and other beverages with alcohol content between 2,5 % and 4,75 % by volume was contrary to Articles 11 and 16 of the EEA Agreement. The judgment upheld the view of the Authority, which had brought the matter before the Court in December 2000. The Authority monitored Norway's compliance with the judgment during 2002. The Authority further continued its examination of Norwegian requirements concerning allocation of licences to import, wholesale and serve alcoholic beverages.

In 2002, the Authority examined several complaints against Iceland and Norway regarding alleged breach of Article 14 of the EEA Agreement. Article 14 provides for a ban against discriminatory taxation of products. The Authority commenced a more general examination of the situation in the three EFTA States in relation to product taxes during 2002.

The Authority noticed an improvement in the implementation and notification of acts in the areas of **foodstuffs and feedingstuffs** during 2002. Nevertheless, Iceland has room for improvement with regard to feedingstuffs. In relation to foodstuffs, Liechtenstein was delayed in providing the Authority with the necessary monitoring plans and results of official controls of food, pesticides and certain contaminants.

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

Summary

In May 2002, the Authority adopted a decision in the **veterinary sector**. As a result of this, four new border inspection posts were added to the existing list of such entities in Iceland and one was added in Norway. These inspection posts are agreed for veterinary checks on live animals and animal products coming from third countries. The Authority also issued four letters of formal notice to Iceland due to its failure to implement one Act in the veterinary field as well as that Act's amending acts. The Authority conducted inspections both in Iceland and Norway. It concluded that, in general, the national competent authorities need to improve suitable follow-up to the conclusions and recommendations set out in the Authority's previous inspection reports.

The Authority received nine new complaints in 2002 related to the **free movement of persons**. It also opened nine own initiative cases. In the area of free movement of workers, the Authority initiated an assessment of the conformity of national immigration laws of Iceland and Norway with EEA provisions. The Authority has already begun to conduct a similar exercise regarding Liechtenstein's compliance with EEA law in this area.

In the area of **freedom of establishment**, the Authority monitored Liechtenstein's compliance with judgments of the EFTA Court of 14 June 2001. These judgments concluded that the single practice rule, which requires doctors and dentists to have only one practice regardless of location, was contrary to the EEA Agreement. Liechtenstein has abolished the rule in question but has placed a moratorium on the grant of concessions for general practitioners while a new Health Care Act is adopted.

In 2001, the Authority sent a reasoned opinion to Norway concerning national rules giving priority to local ownership when allocating licences within the aquaculture sector. The reasoned opinion was based on the Authority's conclusion that the national rules in question constituted a breach of the EEA provisions governing freedom of establishment and those governing free movement of capital. In its reply, Norway informed the Authority that it had modified the existing rules in this area in order to rectify the breach by using criteria of economic integration instead of local ownership when determining entitlement to licences. The Authority invited Norway to further specify the criteria established and to keep it informed about allocation of licences. In December 2002, the Authority received a new complaint on this matter alleging that the new criteria were, in fact, being applied like the old criteria. The Authority will examine the situation further in 2003.

In the field of **social security**, the Authority sent one reasoned opinion to Norway. The opinion arose from Norway's refusal to permit people living in an EEA State outside Norway, but insured by the Norwegian Social Insurance Scheme, to benefit from a certain type of childcare benefit.

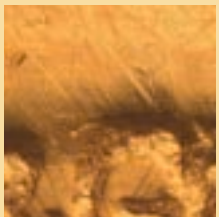
In the sector of **free provision of services**, the Authority received eight new complaints and opened 14 own initiative cases. Full implementation of directives in the **financial services sector** continued to require the Authority's attention. Furthermore, the Authority initiated a review of the Liechtenstein financial legislation in the course of the year, in addition to the ongoing review of the Norwegian legislation.

In 2001, the Authority sent a reasoned opinion to Norway regarding restrictions in national law on ownership of financial institutions (10 % rule). Norway responded by informing the Authority that the rule would be replaced by a system close to the notification procedure set out in the *Banking Directive*. During 2002, the Authority monitored the steps being taken by the Norwegian authorities to prepare the relevant legislative proposals.

In the course of 2002, when dealing with matters concerning **Information Society services**, the Authority sent two letters of formal notice to Iceland**.** These resulted from the failure by that State to incorporate rules regarding the *Unbundling Regulation* and the *UMTS Decision* into its national legislation. The Authority also sent a reasoned opinion to Liechtenstein arising from its failure to implement the *Electronic Signature Directive*, and a letter of formal notice to both Liechtenstein and Norway due to their late implementation of the *E-commerce Directive*.

In the **transport sector**, the Authority undertook several management tasks arising from requests by EFTA State for exemptions from certain provisions of two Directives in the Maritime sector. The Authority also sent a reasoned opinion to Liechtenstein due to its failure to comply with the *Driving Licences Directive* and to issue new driving licences in accordance with the provisions of that Directive. Moreover, the deadline set by the Authority for Iceland to take necessary rectifying measures to replace discriminatory air transport taxes, ran out at the end of the year. As no measures had been taken by Iceland, the Authority referred the matter to the EFTA Court in January 2003.

In the area of **non-harmonised services**, the Authority further examined five complaints relating to Norwegian tax rules which restricted the use of foreign registered vehicles in its territory. Additional complaints relating to car taxes were also received, based on claims that these taxes restricted the free movement of persons and goods. A complaint was also received against Iceland alleging discriminatory imposition of tax on cars imported by tourists into that country for temporary use.



The Authority further issued two reasoned opinions to Norway in areas falling within the area of non-harmonised services. One reasoned opinion concerned discriminatory restrictions on aerial photography services. The other concerned discriminatory income tax exemption of lottery prizes won in a Norwegian lottery by people residing in Norway compared to similar prizes won in other EEA States by persons residing in Norway.

In the sector of **free movement of capital**, the Authority received three new complaints and opened one own initiative case. It continued to examine national rules relating to acquisition of land. The Authority is currently examining three complaints against Norway and one against Iceland concerning the issue. In the case against Iceland, following infringement proceedings initiated in 2001, the Icelandic authorities indicated in 2002 that they would propose a new Land Act to the Parliament.

During 2002, a reasoned opinion was sent to Norway concerning national rules restricting the acquisition of concessions in waterfalls. The Authority considered these rules to be contrary to the EEA provisions on free movement of capital and freedom of establishment. In Norway's reply to the reasoned opinion, it was indicated that the disputed legislation would be amended.

In sectors falling within the so-called **horizontal areas** of the EEA Agreement, the Authority received one new complaint and opened 10 own initiative cases.

In the field of **health and safety at work**, the Authority sent a reasoned opinion to Iceland arising from its failure to fully implement the *Improvement of Safety and Health at Work Directive*. A further reasoned opinion was sent to Iceland due to its failure to comply with the reporting obligations contained in several directives in this field.

In the area of **labour law**, two letters of formal notice were sent to Liechtenstein for failure to fully comply with Directives concerning working time and parental leave.

During 2002, the Authority initiated proceedings against Norway in the field of **equal treatment of men and women**, in which the EFTA Court has just rendered judgment. The Court concluded that Norwegian rules reserving a number of academic positions to women only were contrary to the EEA Agreement. This was because they automatically and unconditionally give priority to women, applications from men not even being considered.

In the area of **consumer protection**, the Authority sent two letters of formal notice and one reasoned opinion to the EFTA States for failure to fully comply with specific acts.

In the **environment field**, the Authority sent five letters of formal notice to the EFTA States for failure to implement certain acts within the time limits provided for. Furthermore, it examined two complaints against Iceland relating to application of the *Environmental Impact Assessment Directive*. Both cases concerned exemption of fish farming projects from environmental impact assessment obligations. One of these complaints was resolved during the year. The Authority adopted a report on the implementation of directives in the waste sector by the EFTA States.

In the field of **company law**, all EFTA States have notified full implementation of the basic company law and accounting acts. The Authority has been assessing the conformity of the notified national implementing provisions. During 2002, it sent four reasoned opinions to Norway concerning the basic company law directives. Two reasoned opinions were sent to Iceland regarding the accounting directives.

With regard to **public procurement**, the application of the EEA rules by national authorities and utilities continued to call for particular attention on the part of the Authority. 17 new complaints were formally registered in this area in 2002. The Authority sent a letter of formal notice to Norway regarding the use of framework agreements. An agreement concluded with service providers by central Norwegian authorities had provided that all entities subject to the Norwegian Law of public procurement could use the framework agreements to conclude procurement contracts with these service providers without applying the EEA procurement provisions. The framework agreements also provided that contracting authorities were required to organise a second competition between the successful service providers under the framework agreement prior to placing an actual order. The Authority continued to evaluate the conformity with EEA procurement rules of EFTA States' national measures intended to transpose them.

In the field of **competition**, 26 cases were pending with the Authority at the beginning of 2002. In the course of the year, 10 new cases were opened. In total 12 cases were closed by administrative means during the same period. Thus, by the end of 2002, 24 cases were pending.

In 2002, the Authority initiated formal proceedings under the EEA competition rules against two Norwegian associations concerning *anti-competitive practices instituted through standard film rental terms* applicable in relation to cinemas in Norway. This is the fifth time the Authority has initiated such proceedings under the EEA competition rules. The Authority's intention to fully safeguard the rights of defence in such proceedings was reflected through its decision, in October 2002, to enhance the powers of its Hearing Officers.

The Authority's Competition and State Aid Directorate continued to follow developments in the telecommunications sector. It pursued its inquiry within the territory of the EFTA

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States regarding certain aspects of the telecommunications sector. The Authority also followed the formulation and ultimate adoption at European Community level of a new *regulatory regime for electronic communications networks and services* with a view to assessing the impact of the new package once transposition into the EEA legal framework has taken place.

The number of cases handled by the European Commission that were subject to the co-operation rules under the EEA Agreement was lower in 2002 than in recent years. However, they included important cases such as the *Aker/Kvaerner merger re-notification*, which became the object of a partial referral by the Commission to Norway, and the settlement of the case concerning the *Norwegian Gas Negotiation Committee (GFU)*.

The Authority adopted three new competition-related notices in 2002. Besides redefining agreements of minor importance (*de minimis*), the Authority set out its methods for setting fines and formulated a new leniency programme.

Resources were also devoted to on-going projects within the European Community, such as the plan to *modernise the rules of competition, the review of certain aspects of the merger control regime* and other projects for the review of the EC/EEA competition regime.

In the field of **state aid**, 33 cases were under examination by the Authority at the beginning of 2002. 25 new cases were opened in the course of the year and 13 cases were closed. Consequently, 45 cases were pending at the end of the year.

The Authority approved the introduction of a new *Research and Development aid scheme* in Norway ("SkatteFUNN-ordning"). The objective of the scheme was to stimulate enterprises to increase their R&D activities through special tax deductions.

Following the adoption of new environmental guidelines, the Authority examined the existing environmental tax measures in Norway. This preliminary examination revealed doubts concerning the compatibility of several of these tax measures with the requirements laid down in the environmental guidelines. Therefore, the Authority decided to open a *formal investigation procedure against sectoral and regional exemptions from the tax on electricity consumption, derogations from the CO_2 tax and the selective abolishment of the SO_2 tax.*

In the context of a reform of *film support measures* in Norway, the Norwegian Government notified to the Authority several aid measures for film producers. In approving these measures, the Authority acknowledged that due to the limited market potential for Norwegian films, public support exceeding 50% of total production costs could be regarded as acceptable.

With the objective of establishing a more favourable fiscal environment in the maritime sector, Norway introduced a *special tax refund for ferry operators*. Under this scheme, ferry operators are reimbursed for social security contributions and income tax paid for seafarers. The Authority considered the scheme to be compatible with the state aid rules as laid down in the Maritime Guidelines.

Following the cancellation of *air transport services* on the route between Reykjavik and Höfn, the Icelandic authorities concluded a contract with Air Iceland to provide scheduled services on that route. In line with previous practice, the Authority approved the compensation granted by Iceland to the air carrier covering the time that would be necessary to carry out a formal tender procedure as required by EEA secondary legislation.

The Authority raised no objections to the *prolongation of the war insurance schemes* for airline companies and airports offered by Iceland and Norway given that the commercial insurance market had not yet returned to normal following the terrorist attacks of 11 September 2001. The Authority verified, in particular, that the benefiting airlines and airports paid an appropriate premium.

During 2002, the Authority approved a proposal from the Norwegian authorities on *amended depreciation rules of the Petroleum Tax Act* for certain petroleum related activities in the northernmost region of Norway and *the application of these rules to the Snøhvit Project*.

In September 2002, the Authority decided to propose appropriate measures to Norway concerning state aid in the form of *Regionally Differentiated Social Security Taxation* ("Geografisk differensiert arbeidsgiveravgift"). The present scheme expires at the end of 2003.

As an appropriate measure, the Authority decided to propose to Norway to abolish aid contained in the *Norwegian Act on State Enterprises*. Undertakings established under that Act were exempt from normal bankruptcy proceedings and the State was under an obligation to cover those of the enterprises' obligations that could not be met by their own funds. This resulted in more favourable funding terms than the undertakings would have otherwise obtained.

The *State Aid Guidelines* were amended four times during 2002. New guidelines were introduced in the fields of stranded costs in the *electricity sector, regional aid for large investment projects (multisectoral framework)* and rescue and restructuring aid and closure aid for the *steel sector*. The validity of the rules on aid for *Research & Development* was prolonged.

EFTA SURVEILLANCE AUTHORITY

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 on the establishment of a Surveillance Authority and a Court of Justice (the Surveillance and Court Agreement), the Authority publishes a general report on its activities each year. This is the Authority's ninth Annual Report. In addition to the printed version, the Annual Report is available online at the Authority's website (www.eftasurv.int). The online version of the Report contains an additional annex providing information in tabular form on the EFTA States' progress, as of 31 december 2002, with regard to implementation of directives.

Chapter 3 of the Report provides basic information on the EEA Agreement and the Authority itself, including an introduction to its tasks and competences and to its organisational set-up. A short account of the Authority's information policy is also given.

Chapter 4 of the Report provides reports on the Authority's general surveillance work with respect to the free movement of goods, persons, services and capital, as well as the so-called horizontal areas. Chapter 4.2 gives statistical information on general surveillance carried out by the Authority during the five years period 1998-2002. This includes the implementation status of directives, case handling, infringement cases, closure of cases and the Authority's workload at the end of the reporting period. In the subsequent parts of Chapter 4, an account is given, sector by sector, of the implementation and application of the EEA Agreement in the EFTA States. An account is also given of the steps taken by the Authority in ensuring fulfilment by the EFTA States of obligations under the EEA Agreement and for the management thereof. Information is also given on certain procedures administered, and functions carried out, by the Authority in the application of the EEA Agreement.

Chapter 5 of the Report describes the field of public procurement. Following an introduction and general overview, the Chapter describes the implementation control undertaken by the Authority in this sector during 2002, with particular emphasis on the complaints against EFTA States handled during the year.

Chapters 6 and 7 set out the main principles and rules in the fields of competition and state aid respectively, together with an outline of the powers of the Authority. Also provided in these Chapters is an overview of cases handled in 2002, of non-binding acts issued in the form of amendments to the Authority's State Aid Guidelines and in the form of notices in the field of competition respectively. Co-operation with the European Commission and the national authorities of the EFTA States is also mentioned.

In Chapter 8 to the Report, the appearances of the Authority before the EFTA Court and the Court of Justice of the European Communities are described.

EFTA SURVEILLANCE AUTHORITY

3 The EEA Agreement

3.1 THE EUROPEAN ECONOMIC AREA

The EEA Agreement entered into force on 1 January 1994. Following the accession of Austria, Finland and Sweden to the European Union a year later, 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.

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

Accordingly, the EEA Agreement contains basic provisions, which are drafted in terms resembling as closely as possible 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 those relating to state aid and public procurement. The Agreement also contains provisions on a number of European Community policies relevant to the four freedoms (referred to in this Annual 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 between contracting parties to the Agreement in certain fields not related to the four freedoms.

Secondary European Community legislation in areas covered by the EEA Agreement is brought into the EEA by means of direct references in the Agreement to the relevant European Community acts. The Agreement thus implies that two separate legal systems are applied in parallel within the EEA: the EEA Agreement to relations between both the EFTA and European Community sides and between the EFTA States themselves, and European Community law to the relations between the EU Member States. This being the case, for the EEA to be homogeneous the two legal systems must develop in parallel and be applied and enforced in a uniform manner. The Agreement thus includes decision-making procedures for the integration into the EEA of new secondary European Community legislation. It also provides 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 European Community legislation is extended to the EEA in a timely manner rests, in the first instance, with the EEA Joint Committee, a committee composed of representatives of the Contracting Parties to the EEA Agreement.

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

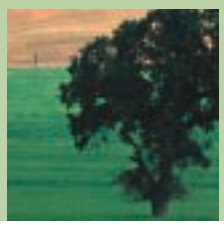
The two-pillar structure also applies to the judicial control mechanism. The EFTA Court exercises competences similar to those of the Court of Justice of the European Communities and the Court of First Instance with regard to, *inter alia*, the surveillance procedure regarding the EFTA States and appeals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

3.2 THE EFTA SURVEILLANCE AUTHORITY

The Authority was established by the Surveillance and Court Agreement. This Agreement contains basic provisions on the Authority's organisation and lays 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 into the national legal orders of the EFTA States and correctly applied by their national authorities. This task is commonly referred to as general surveillance. The general surveillance cases are either initiated by the Authority itself or on the basis of a complaint.



Procedural steps in an infringement case

- Alleged infringement
- Informal stage
- Pre-Article 31 letter
- The EFTA State submits comments
- Letter of formal notice
- The EFTA State submits comments
- Reasoned opinion
- The EFTA State replies to the opinion
- Decision on referral to the EFTA Court
- Proceedings before the EFTA Court

When the Authority receives a complaint, it sends the complainant, usually within a month, a letter of acknowledgement of receipt, together with information explaining the proceedings for non-compliance with EEA law. The information referred to may be found on the Authority's website (www.eftasurv.int, paragraph 3.2.3).

If the Authority considers that an EFTA State has failed to fulfil an obligation under the EEA Agreement, it may initiate formal infringement proceedings under Article 31 of the Surveillance and Court Agreement. However, before infringement proceedings are initiated the Authority tries to ensure compliance by the EFTA State with the Agreement by other means. In practice, the overwhelming majority of problems identified by the Authority are 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 are the package meetings between the Authority's staff and representatives of the EFTA States, during which whole ranges of problems in particular fields are discussed.

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 Authority 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 relevant EEA rule or to provide the Authority with information on the actual status of implementation into the national legal order.

If formal infringement proceedings are initiated, the Authority, as a first step, notifies the EFTA State Government concerned, in a letter of formal notice, 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 that the Government 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.

The Authority has extended competences in three fields. They supplement the competences vested in the Authority with regard to general surveillance and fully reflect the extended competences of the European Commission within the European Community in these fields.

With respect to public procurement, the Authority ensures that utilities and central, regional and local authorities in the EFTA States carry out procurement contract in accordance with the relevant EEA rules. To this end, and as an alternative to initiating formal infringement proceedings, if the Authority considers that clear and manifest infringement of the EEA procurement rules has occurred in the award procedure prior to a contract being concluded, it may directly require that the EFTA State concerned correct the infringement.

In the field of competition, the tasks of the Authority are predominantly directed at the surveillance of the practices and behaviour of market players. The Authority seeks to ensure that the competition rules of the EEA Agreement are complied with, notably the prohibitions of restrictive business practices and the abuse of a dominant market position. In carrying out these tasks, the Authority is entrusted with wide powers of investigation, including powers to make on-the-spot inspections. Moreover, the Authority's leniency programme has been reinforced to encourage cartel members to come forward with relevant information about a particular cartel. In the case of an infringement of the EEA competition rules, the Authority may order the undertakings concerned to terminate the infringement. In such cases, the Authority initiates formal proceedings by issuing a statement of objections, which the parties have the opportunity to comment on in writing and by way of a hearing.

The EEA Agreement

College:
In front from left to right:
Hannes Hafstein,
President Einar M. Bull,
Bernd Hammermann

Behind from left to right:
Isabel Tribler,
Charlotte Schaldemose

If the Authority remains of the opinion that there is an infringement of EEA competition rules after the parties have been heard, it adopts a final decision ordering the infringement to be brought to an end. In addition, the Authority may impose fines and periodic penalty payments for breaches of the EEA competition rules.

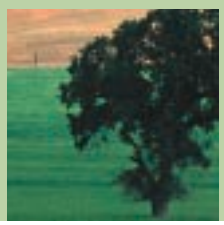
With regard to state aid, the EEA Agreement requires the Authority to keep all systems of existing aid in the EFTA States under constant review and, where relevant, to propose to the EFTA States appropriate measures to ensure their compatibility with the Agreement. New aid or alterations to existing aid must be notified to the Authority before it is put into effect. If, after having carried out a preliminary examination of the notified aid measure, the Authority considers the aid to be compatible with the EEA Agreement, it will decide not to raise any objections and approves the aid. On the other hand, if the Authority has doubts concerning the compatibility of the notified aid with EEA state aid provisions, it will decide to open a formal investigation procedure. If the Authority, as a result of this investigation, comes to the conclusion that an aid measure is not in conformity with the EEA Agreement, it decides that the EFTA State concerned shall abolish or alter the measure. Where aid that was found to be incompatible with the EEA Agreement has been paid out, the Authority may instruct the government concerned to recover the aid from the recipient. If the EFTA State concerned does not follow the Authority's decision, the Authority may bring the matter before the EFTA Court.

To ensure uniform application of the competition and state aid rules, the EEA Agreement provides for co-operation between the Authority and the European Commission in handling individual cases in these fields, including merger cases. The Agreement also provides for consultations related to proposals for new European Community acts in the same areas.

In addition to handling individual competition and state aid 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 competition and state aid rules. These various acts, adjusted for EEA purposes, replicate acts issued by the Commission.

Along with the surveillance functions outlined above, the Authority performs a wide range of tasks of an administrative character, which match those performed by the European Commission within the European Community. Generally speaking, these tasks relate to EEA rules the proper application of which is not only subject to the general surveillance function, but to more direct control by the Authority. The tasks often mean that the Authority, under procedures presupposing an exchange of information between the EFTA and European Community sides, is to take measures that are to have an effect throughout the entire EEA.

Thus, for example, 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 the product in order to protect human health. Furthermore, an EFTA State may, in the course of the recognition of a foreign diploma or licence, introduce a derogation as regards a person's right to choose between an aptitude test or an adaptation period, provided that the restrictive measure is notified to, and authorised by, the Authority. Although the Authority undertakes these kinds of tasks 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 health. These tasks constitute a considerable part of the Authority's work and include, for instance, an assessment of the application of the provisions laid down in the acts relating to Border Inspection Posts (BIP), fresh meat and meat products and fish. This assessment requires inspections by the Authority in the EFTA States concerned, during which the performance of the State's competent authorities is evaluated and a representative number of approved BIPs, fresh meat and fish processing establishments visited.

3.2.2 ORGANISATION

3.2.2.1 College

The Authority is led by a College, made up 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 from among the Members in the same manner for a period of two years. The Members are completely independent in the performance of their duties. They must not seek or take instructions from any Government or other body, and refrain from any action incompatible with their duties.

During 2002 the composition of the College was:

Einar M. Bull *President*

Hannes Hafstein

Bernd Hammermann

3.2.2.2 Departments

The Authority's work has, since 1995, been organised through five departments. In April 2002, it was decided to merge the operations of the Goods Directorate and the Persons Services and Capital Movements Directorate into one Directorate responsible for general surveillance for a trial period. By the end of 2002, this arrangement was made permanent through the establishment of the Internal Market Affairs Directorate. The distribution of functions between the departments during 2002 is shown on the next page.

3.2.2.3 Staff and recruitment

The Authority had 57 staff members, including temporary staff and national experts, of 12 nationalities at the end of the reporting period. The number of regular posts increased from 52 to 53 during the year following appointment of a Press and Information officer.

Staff members are employed on fixed-term contracts normally for a period of three years. According to Authority

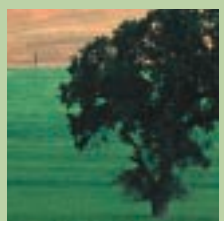
For the years 2002 and 2003, the College has assigned the responsibility for the preparation and implementation of its decisions in the various fields of activity as follows:

Einar M. Bull (President)	Hannes Hafstein	Bernd Hammermann
Co-ordination of general policies	Competition	Free movement of goods, persons, services and capital
External relations		
Administration	State aid	Horizontal provisions
Legal & Executive Affairs		
	Public undertakings	Information technology
Environment		
Intellectual property	Monopolies	
Energy		
Public procurement		

Distribution of functions between departments 2002*:

GOODS DIRECTORATE	PERSONS, SERVICES & CAPITAL MOVEMENTS DIRECTORATE	COMPETITION & STATE AID DIRECTORATE	LEGAL & EXECUTIVE AFFAIRS	ADMINISTRATION
General trade provisions,	Free movement of persons,	Competition rules applicable to enterprises	Representing the Authority in Court proceedings	Human resources
including:	including:	• prohibition of cartels	Formal part of infringement proceedings	Budget planning Finance control
• quantitative restrictions and measures having equivalent effect	• free movement of workers	• prohibition of abuse of dominant position	Advice on legal questions	Information technology
• discriminatory taxation	• mutual recognition of professional qualifications	• control of concentrations	Jurist linguist services	Staff social security
Harmonising directives, *i.a* in the fields of:	• right of establishment	State aid	Meetings of the College	Office facilities
• motor vehicles	• social security	• review of existing aid	Oral, written and delegation procedures;	Procurement
• foodstuffs	Free movement of services,	• examination of new aid measures	Follow up of College decisions	Registry
• pharmaceuticals	including:	Monopolies	Publication	
• chemicals	• financial services	Rules on public undertakings	Library	
• fertilisers	• banking		Press and information	
• construction products	• securities trading		Visitor groups	
• toys	• insurance			
• product safety, including information procedures	• audiovisual, telecommunication and postal services			
Veterinary and phytosanitary matters	• transport			
Intellectual property	Capital movements			
Energy	Social Policies			
Public procurement	Consumer Protection			
	Environment			
	Company law			

* The distribution of functions between the Authority's departments as of end 2002 can be found at: www.eftasurv.int/about/dbaFile3778.html



policy, contracts may be renewed if it is in the interest of the Authority. Renewal will normally occur only once.

This leads to an employment horizon of six years, with some rotation of personnel every year. As a number of staff members choose to end their contracts prematurely, the average period of employment is less than six years. The rotation principle entails, on one hand, a certain loss of work capacity equivalent to the time it takes to train new staff members. However, on the other hand, the Authority enjoys a regular inflow of new and skilled persons and the EFTA States have the possibility to draw on the experience of departing staff members.

During 2002, the International Labour Organisation (ILO) Administrative Tribunal dealt with two cases between staff members and the Authority. One of these cases concerned the non-renewal of the contract of an individual staff member. The Tribunal found in favour of the Authority in this case. The second case concerned salary review issues. In this case, the Tribunal invited the Authority to establish a method for annual salary reviews that would be in compliance with the requirements as stated in the Tribunal's case law, and to apply that method retroactively for the years 1999 and 2000. The Authority's implementation of the judgment has been contested by its staff and will be addressed by the Tribunal towards the end of 2003.

3.2.2.4 Medium Term Plan of the Authority

In Spring 2002, the Authority established its fifth Medium Term Plan, covering the period 2002 - 2004. The Medium Term Plan is a thorough assessment of the Authority's future tasks, including the present workload and backlog situation.

The main conclusion of the fifth Medium Term Plan is that the Authority's workload remains at a very high level and is expected to remain so. The Plan thus confirms the findings of previous plans. The inflow of new EEA legislation is expected to remain consistently high in all sectors during the period covered by the Plan. However, a shift of resources from implementation control to conformity assessment and an increase in the number of complaints received are expected to take place.

Conformity assessment in certain fields of general surveillance, the sectors related to free movement of goods, persons, financial services, transport and mutual recognition, have a larger backlog than other sectors.

The workload in the fields of competition and state aid is expected to continue to put a heavy strain on the Authority's resources as a result, *inter alia*, of the modernisation of the competition rules, the inquiry into the telecommunications sector, and the increased focus on state aid in the context of taxation, environmental aid, energy and transportation.

Administration:
Behind from left to right:
Torbjørn Strand Rødvik,
Anne Valkvae,
Kåre Antonsen,
Claudia Candeago

In front from left to right:
Jenny Davidsdóttir,
Director Dag Harald Johannessen,
Anne Günther,
Jurg Malm Jacobsen

Not present:
Thomas Langeland

3.2.3 INFORMATION ACTIVITIES

The aim of the EFTA Surveillance Authority's information activities is to provide information on its activities and on the implementation and application of the EEA Agreement. This helps promote the proper functioning of the EEA Agreement. Various elements of the Authority's information activities were subject to expansion in 2002.

An important tool in the Authority's information strategy is its **website**. The Authority launched its new website in November 2002: **www.eftasurv.int**. Some key features of the new website are:

Under the heading "Fields of work", the Authority website features comprehensive information on the areas covered by the EEA Agreement. This new section should be a primary source of information for those wishing to learn about the Agreement and how it functions in practice.

With the new website comes an improved search function. Under the "subscriptions" heading, users may subscribe to news alerts, delivered by e-mail, enabling them to stay informed about the Authority's activities within fields selected by the user.

The Authority's Press Releases, Annual Reports and Single Market Scoreboards are available online in the Information and publications section of the website.

Under the heading "Implementation status", the website allows searches in the Authority's Acquis Implementation Database to determine the level of implementation of EEA acts in the EFTA States.

Competition notices, State Aid Guidelines and state aid decisions are now accessible on the website.

Information on the Authority's procedures for infringement proceedings and complaints is available on the website. The Competition and State aid sections of the site contain information about complaints and notifications in these fields received by the Authority.

The section of the website entitled "About the EFTA Surveillance Authority" provides information about the Authority's organisation, including information about the College and staff members. All vacancies with the Authority are published here.

The EFTA portal, **www.efta.int**, has been redesigned and will remain the common entry page for the three EFTA organisations.

Simultaneous to the launch of its website, the Authority adopted a new **visual profile** in 2002. A new logo is now used on all written material from the Authority, and will help the Authority become more visible.

In May and November 2002, the Authority published its 10th and 11th **Internal Market Scoreboard – EFTA States**. The Scoreboard looks at the achievement by Iceland, Liechtenstein and Norway of implementation of European Community Internal Market Directives. The Scoreboard also addresses infringement proceedings commenced by the Authority against the three EFTA States arising from the failure by these States to comply with the relevant Internal Market rules.

The Authority's Scoreboard is published in parallel to the Internal Market Scoreboard published by the European Commission. The two scoreboards provide comparable statistics on the transposition record of the EEA States. They are viewed as a useful indication of how well the EFTA States and the EU Member States are complying with their obligations under the EEA Agreement and the EC Treaty.

Seminars and lectures for visitors groups form an important part of the Authority's information policy. Visitors' groups comprise representatives from various organisations in the EFTA States, including officials from governmental bodies and municipalities, economic operators and students. During 2002, a number of presentations were given by the Authority concerning its activities and other EEA law issues. The Authority's Legal and Executive Affairs Department is responsible for the organisation of such events.

The Authority issues **press releases** on a regular basis to inform the public about its activities. Press releases are typically issued when reasoned opinions are delivered to EFTA States or when decisions are taken in the fields of state aid and competition.

In order to strengthen its efforts to inform the public about its activities, the Authority appointed a Press and Information Officer in August 2002. Priority areas for the Press and Information Officer will be a revision of the Authority's information strategy, further development of the Authority's website and strengthened contact with the media.

Press and Information Officer:

Tor Arne Solberg-Johansen
tel. (+32)(0)2 286 18 66
fax (+32)(0)2 286 18 00
e-mail: tsj@eftasurv.int

4 Free Movement of Goods, Persons, Services and Capital

4.1 INTRODUCTION

The aim of the EEA Agreement is, according to its Article 1, to establish a dynamic and homogenous European Economic Area, based on common rules and equal conditions of competition.

Four freedoms form the basis for the EEA-wide internal market: free movement of goods, persons, services and capital. These four freedoms are governed by Parts II and III of the EEA Agreement. The Agreement also contains horizontal provisions that are relevant to the four freedoms. These provisions are deemed essential to the proper functioning of the four freedoms within the EEA.

In addition to these basic provisions, the EEA Agreement contains a number of protocols and annexes with secondary provisions that are common to all the EEA States, such as decisions, directives and regulations.

One of the main tasks of the EFTA Surveillance Authority is to ensure the fulfilment by the EFTA States of their obligations under the EEA Agreement. This is referred to as general surveillance, and is directed towards the application of the principles of the four freedoms and the relevant horizontal provisions in the EFTA States. Chapter 4 of the Annual Report covers the EFTA Surveillance Authority's general surveillance work during 2002.

Chapter 4.2 provides statistics about the EFTA States' implementation of the secondary provisions and about the Authority's case handling role. These statistics also cover the field of public procurement, which is further described in Chapter 5 of the report.

Chapter 4.3 describes the Authority's work in relation to the free movement of goods.

Chapter 4.4 relates to food safety, which, in the EEA Agreement, is covered by Part II on the free movement of goods.

Chapters 4.5 to 4.7 provide information on the Authority's activities concerning the free movement of persons, services and capital, respectively.

Finally, Chapter 4.8 concerns the horizontal areas relevant to the four freedoms.

4.2 STATISTICS ON IMPLEMENTATION OF DIRECTIVES AND CASE HANDLING

4.2.1 IMPLEMENTATION CONTROL

In order to achieve the basic objective of the EEA Agreement, it is essential that EEA rules are properly implemented into the national legal order of the EFTA States in due time and, in addition, correctly applied by their national authorities.

It falls upon the Authority to carry out *implementation control* in the EFTA States. In this role the Authority ensures that the EFTA States implement the EEA rules in a manner that achieves the overall objectives set forth in the EEA Agreement. The Authority undertakes this task in accordance with its *implementation policy*. According to the implementation policy, formal infringement proceedings can be initiated in accordance with Article 31 of the Surveillance and Court Agreement. In application of this policy, where an EFTA State has not notified implementation of an EEA act within two months of the date by which the provision should have been brought into its national legal order[2] the Authority sends an EFTA State a letter of formal notice. As regards EEA acts that have been only partially implemented by an EFTA State, the Authority considers, at regular intervals, whether to initiate formal infringement proceedings against the EFTA State concerned. In coming to its decision the Authority takes into account the extent to which the act has been implemented by the EFTA State in question and the length of time that the EFTA State has indicated it is likely to need in order to achieve full compliance with the Act.

When describing its tasks relating to implementation control, the Authority differentiates loosely between *non-notification* of national implementing provisions and *partial implementation* and *incorrect application*. Non-notification implies that the EFTA State in question has failed to notify to the Authority full implementation of an act into its national legal order within the time limit given in a certain EEA Act. Without giving any precise definitions, partial implementation refers to the situation where the

[2] These formal infringement procedures are described further in Chapter 3.2.1 of this Report and under the heading Infringement proceedings and complaints on the Authority's website (www.eftasurv.int).

transposition measures taken by an EFTA State are insufficient to completely implement the EEA act in question. Incorrect application refers to the situation where the EFTA State fails to apply the national implementing measures in a manner that ensures the fulfilment of the objectives of the EEA Act. The latter circumstances could also come under the so-called application control, depending on the circumstances.

An important aspect of the Authority's implementation policy is that non-notification cases will be pursued vigorously. As a result, where EFTA States fail to adopt and notify national measures implementing EEA acts within two months of the receipt by the respective EFTA State of the Authority's reasoned opinion, the case will be referred to the EFTA Court without delay. In such circumstances, the Authority's decision to refer the case to the EFTA Court could be taken within *one year* following the initiation of the formal proceedings.

New acts are added to the EEA Agreement every year through decisions taken by the EEA Joint Committee. In 2002, that Committee took decisions on the inclusion of 324 new acts in the EEA Agreement. Of these, 313 were binding and, hence, subject to implementation control by the Authority. 155 acts were repealed or became obsolete during the year. At the end of the year, the total number of binding acts (directives, regulations and decisions) falling within the Agreement amounted to *2814*[3].

4.2.2 INFORMATION RELATIVE TO IMPLEMENTATION

The Authority published the *EFTA States' Internal Market Scoreboard* in May and November 2002. The Scoreboard contains information about the implementation by the EFTA States of the Internal Market directives that are part of the EEA Agreement. It is published in parallel with the European Community's Internal Market Scoreboard. As such, it gives a possibility to compare the implementation of the internal market rules in all 18 EEA States.

In November 2002, in parallel to the European Commission's Internal Market Index, the Authority for the first time published an Internal Market Index (IMI) of the EFTA States (except for Liechtenstein), together with its Scoreboard. The IMI is a tool to measure the functioning of the Internal Market in the EFTA States through the use of a set of twelve indicators, developed in collaboration between the European Commission, the Joint Research Centre in Ispra and the members of the Internal Market Advisory Committee. These indicators comprise elements such as the costs of utilities (*inter alia*, electricity prices), intra-EEA foreign direct investments, intra-EEA trade, the value of published public procurement and sectoral and ad hoc state aid. The IMI is more a reality check than a precise scientific exercise. The 2002 Internal Market Index indicated that Norway's index has fluctuated more than the EU-15 index, and that Iceland's index has grown sluggishly.

The Authority intends to continue publishing the EFTA States' Internal Market Scoreboard, thus up-dating the information given in the Annual Report twice each year.

Furthermore, up-dated information from the Acquis Implementation Database, AIDA, can be found at the Authority's website[4].

4.2.3 IMPLEMENTATION STATUS OF DIRECTIVES

4.2.3.1 All directives

By the end of 2002, the total number of directives with a *compliance date*, the date by which the EFTA States must implement the provisions of the directive into its national legal order (unless a transitional period has been granted or no implementing measures are necessary), on or before 31 December 2002, was *1442*. Figure 4.1 sets out details of the implementation status of these directives on that date.

Figure 4.1 refers to *notification of full implementation* and *notification of full or partial implementation*. The percentage of directives notified as implemented is higher when notifications of partial implementation are taken into consideration. The difference is, however, marginal. This is because the large majority of notifications received by the Authority from the EFTA States indicate that all the necessary measures have been taken to implement the act. Compared to the previous year, the figures from 2002 show a slight drop in the percentage of directives notified to the Authority by the EFTA States.

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 practise. It is only after a detailed assessment of the *conformity* of the notified national

[3] Due to different methods of counting, the number of binding acts in may vary. The number used by the Authority is based on its Acquis Implementation Database, and counts the number of decisions, directives and regulations in force in the EEA Agreement per 31 December 2002.

[4] Please see the Authority's website at www.eftasurv.int, under the heading *Information and publication*.

4.1 Implementation status of directives with compliance date on or before 31 december 2003:

IN NUMBERS:	Iceland	Liechtenstein	Norway
Total number of directives	1442	1442	1442
Directives with current transition periods	126	148	1
Directives where no measures are necessary	94	138	83
Net total directives	1222	1156	1358
Status			
Full implementation notified	1185	1124	1339
Partial implementation	2	5	2
Non-implementation / non-notification	35	27	17
In percetages			
Full implementation notified	97,0%	97,2%	98,6%
Full or partial implementation notified	97,1%	97,7%	98,7%

4.2 Implementation status of directives to be implemented during 2003:

IN NUMBERS:	Iceland	Liechtenstein	Norway
Total number of directives	58	58	58
Directives with current transition periods	1	1	0
Directives where no measures are necessary	9	10	7
Net total directives	48	47	51
Status			
Full implementation notified	28	40	42
Partial implementation	0	0	0
Non-implementation / non-notification	20	7	9
In percentages			
Full implementation notified	58,3%	85,1%	82,4%
Full or partial implementation notified	58,3%	85,1%	82,4%

measures has been carried out by the Authority that conclusions can be drawn as to the *quality* of the transposition.

At the end of 2002, the Authority was able to conclude that the national provisions notified with respect to 33 % of the directives which were part of the EEA Agreement were actually in conformity with the relevant provisions of the directive and that full implementation had thus taken place. The corresponding figure for 2001 was 37 %. The internet version of the Annual Report contains an additional annex with the implementation status, as of 31 December 2002, of all the directives in the EEA Agreement[5].

5 Please see the Authority's website: http://www.eftasurv.int/information/annualreports/.

4.2.3.2 Directives to be complied with in 2002

58 directives had a compliance date *during 2002*. Excluding the directives regarding which a transitional period was granted to EFTA States and those where no implementing measures are necessary, Iceland was to transpose 48 of these directives in 2002, Liechtenstein 47, and Norway 51.

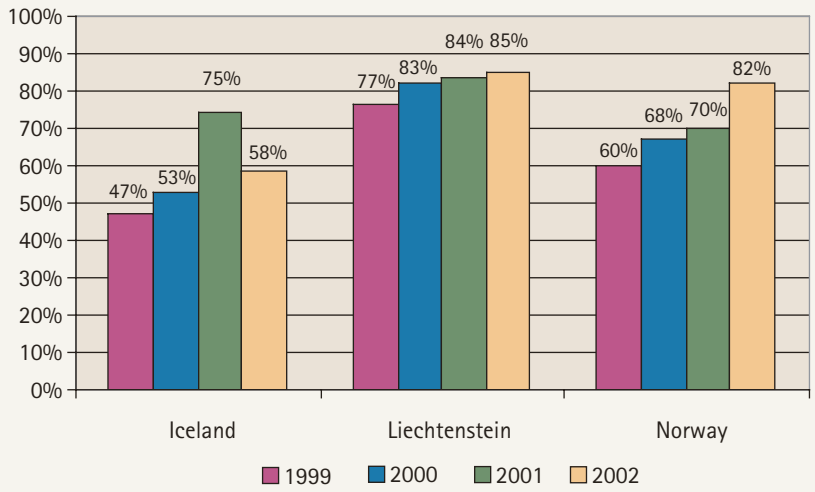
Figure 4.2 indicates the extent to which the EFTA States have succeeded in implementing the acts added to the EEA Agreement in 2002. The numbers reveal that Iceland is lagging behind when it comes to implementation of recently added acts. This is a setback compared to the year before, when considerable effort was made by that country to ensure timely implementation of the acts entered into the EEA Agreement in 2001.

Figure 4.3 shows that, while Iceland has not managed to keep up its 2001 performance, Liechtenstein and Norway have improved their record in respect of timely implementation of new acts in the EEA Agreement.

When comparing the implementation of directives overall (figure 4.1) with the implementation of recently adopted directives (figure 4.2), it appears that Iceland and Norway's problems with implementation lie with recently adopted directives (54 % and 47 % respectively). As regards Liechtenstein, the majority of directives not implemented are from before 2002 (21 % of the directives not implemented were adopted in 2002).

Of directives adopted by the EEA Joint Committee in 2002, 58 entered into force in the course of the year. In this context is should be pointed out that the compliance date for directives is often the day after the Joint Committee decision. This can make it difficult for the EFTA States to comply with the directives within the given time limit.

4.3 Acts for which full implementation was notified 1999-2002



4.2.4 CASE HANDLING

Handling of individual cases constitutes the bulk of the Authority's work. Cases may be opened at the Authority's own initiative, or can be based on complaints. Cases may further arise from obligations provided for in various EEA acts, such as inspections and reporting tasks.

Whenever the Authority's Internal Market Affairs Directorate decides to make an EFTA State's possible non-compliance with EEA rules subject to closer examination, an *own-initiative* case is registered in the *Authority's General Case Handling Database (GENDA).*

The Authority receives complaints from individuals and economic operators concerning measures or practices by the EFTA States that are alleged not to be in conformity with the EEA rules. The Directorate then registers these cases as *complaints* in GENDA.

It is also possible to open a case in GENDA for *preliminary examination*. A typical situation where a case is opened for this purpose is when a conformity assessment project is initiated. During this process, the national measures notified by an EFTA State as implementing a directive are considered in detail as explained above. If a preliminary examination reveals that there is reason to suspect a failure to correctly implement the act, an own-initiative case is opened. Where no shortcomings are identified, 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.* These occur notably in the operation of certain procedures (e.g. information procedures on draft technical regulations and notification procedures relative to product safety), in veterinary matters and in the sector of the free provision of services. Some of these tasks are also registered in GENDA. Similarly, the Authority draws up reports on the implementation or application by the EFTA States of certain EEA acts, when such reports are called for in the relevant acts.

Figures 4.4 and 4.5 illustrate the total number of own-initiative cases and complaints registered in GENDA during the years 1998 to 2002 in the main sectors covered by the EEA Agreement[6]. For further descriptions of the various sectors referred to in the figures, please consult chapter 4.3 to 5. These figures indicate that the total number of new own-initiative cases and complaints lies between 120 and 150 per year.

In 2002, the number of cases opened by the Authority at its own initiative was 99, an increase of 18 % compared to 2001. Most of these cases concerned the free movement of goods (65 %). Compared to previous years, the focus of the Authority's actions against EFTA States now rests more with partial implementation and application and less with

[6] The figures in the following figures represent the situation in GENDA as per 31 December of each reporting year. As it is possible to make changes also after this date, in some cases the figures do not correspond exactly with those given in earlier years.

non-notification. Figure 4.4 illustrates how the own-initiative cases opened during the last five years are divided between the various sectors.

45 cases were opened on the basis of complaints in 2002. These cases generally require more resources than non-notification cases do. 38 % of the complaints were related to the field of public procurement. Figure 4.5 shows the initiation of new complaints cases over the last five years.

The increase in the number of complaints received by the Authority in recent years may indicate an increased awareness among the public of their rights under the EEA agreement and of the possibility to complain if these rights are not reflected in the legislation and actions of the three EFTA States.

In 2002, 31 % of the cases opened were complaints, as shown in figure 4.6. Like previous years, there is a marked difference between the sectors when it comes to percentage of cases that were based on complaints, as illustrated by figure 4.7.

For the distribution between sectors of the total number of opened own-initiative and complaints cases from 1998 to 2002, see figures 4.8. and 4.9.

The distribution of cases between countries shows that a majority of the *own-initiative cases* opened in 2002 concerned Iceland (figure 4.10). This reflects the problems faced by Iceland when it comes to timely implementation of directives that entered into the EEA Agreement the same year. Over a five-year period, the number of own-initiative cases registered per country is more even (figure 4.11).

4.4 Own-initiative cases registered in 1998 - 2002

Sector	1998	1999	2000	2001	2002	Total 1998-2002
FREE MOVEMENT OF GOODS	54	25	56	39	64	238
FREE MOVEMENT OF PERSONS	2	2	0	12	9	25
FREE PROVISION OF SERVICES	19	31	30	14	14	108
FREE MOVEMENT OF CAPITAL	2	3	0	1	1	7
HORIZONTAL AREAS	12	37	39	17	11	116
PUBLIC PROCUREMENT	5	4	6	1	0	16
OTHER SECTORS	0	1	0	0	0	1
Total	**94**	**103**	**131**	**84**	**99**	**511**

4.5 Complaints registered in 1998 - 2002

Sector	1998	1999	2000	2001	2002	Total 1998-2002
FREE MOVEMENT OF GOODS	5	7	3	11	7	33
FREE MOVEMENT OF PERSONS	15	9	10	13	9	56
FREE PROVISION OF SERVICES	8	10	7	2	8	35
FREE MOVEMENT OF CAPITAL	0	0	1	1	3	5
HORIZONTAL AREAS	4	5	2	3	1	15
PUBLIC PROCUREMENT	8	8	10	13	17	56
OTHER SECTORS	0	0	0	0	0	0
Total	**40**	**39**	**33**	**43**	**45**	**200**

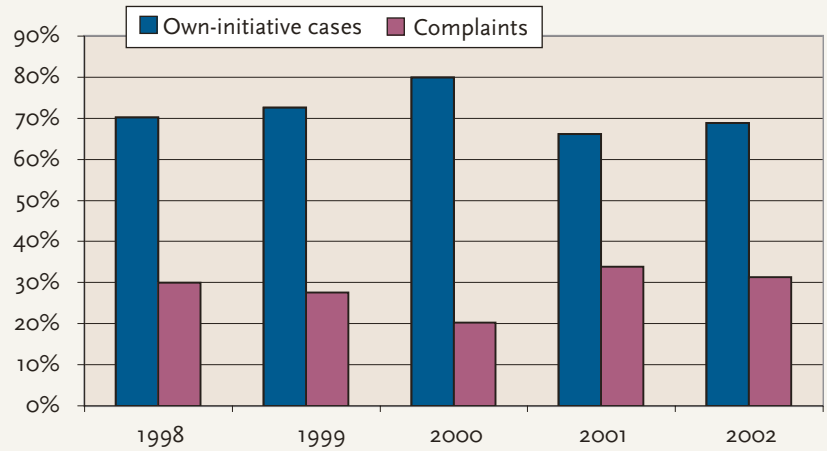
In recent years the vast majority of *complaints* has related to Norway. Figure 4.12 shows that 93 % of the cases registered concerned that country. The same trend is similar also over a five years perspective (figure 4.13).

In addition to own-initiative cases and complaints, a case can also be opened for *preliminary examination*. During 2002, 116 such cases were opened (figure 4.14).

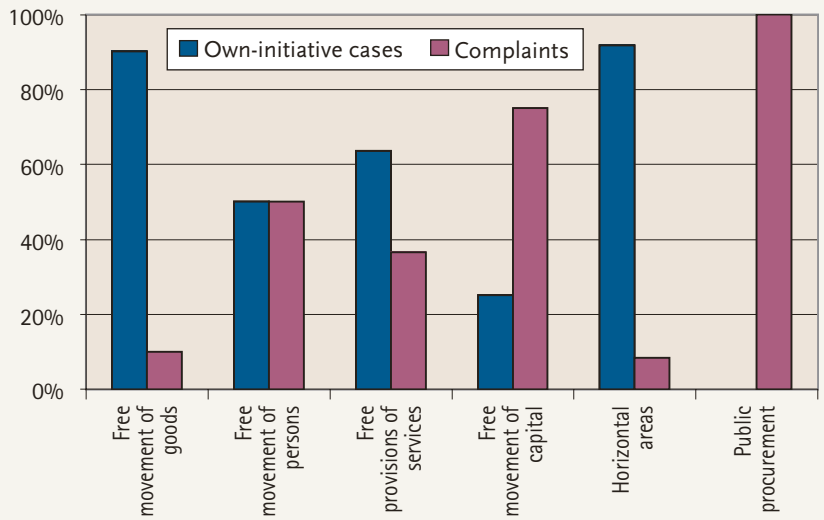
The bulk of the *management tasks* consist in handling notifications according to the information procedure on draft technical regulations. In 2002, the Authority received 49 EFTA notifications and 508 European Community notifications. In 2002, notifications under the emergency procedure on product safety amounted to 59 from the EFTA States and 518 from the European Community (see paragraphs 4.3.5.1 and 4.4.6 below).

Other management and reporting tasks concern a variety of fields and are registered in GENDA. In 2002, 35 such tasks were registered. The figures for the last five years are shown in figure 4.14. The management tasks include, *inter alia*, the operation of certain procedures and the drafting of reports.

4.6 Comparison own-initiative cases and complaints 1998-2002



4.7 Comparison own-initiative cases and complaints by sector 2002



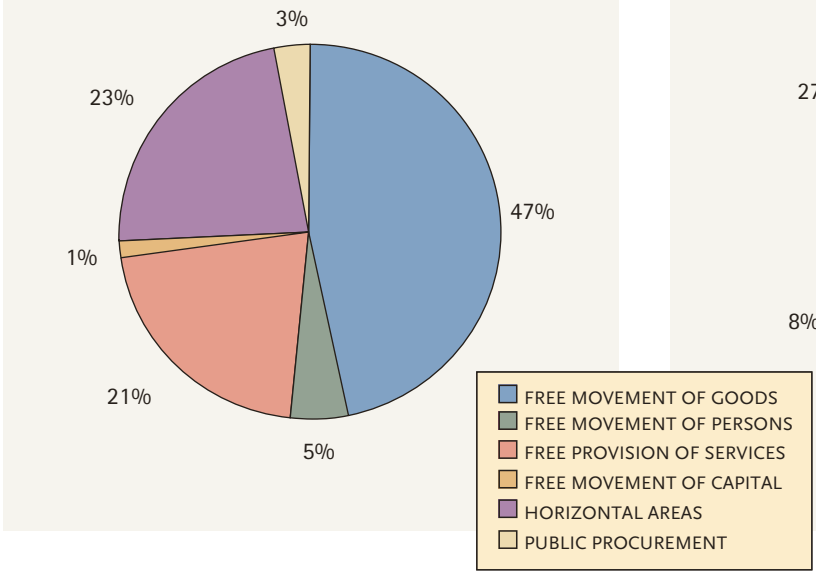
4.2.5 INFRINGEMENT CASES

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 relevant own-initiative or complaint case becomes an *infringement case*.

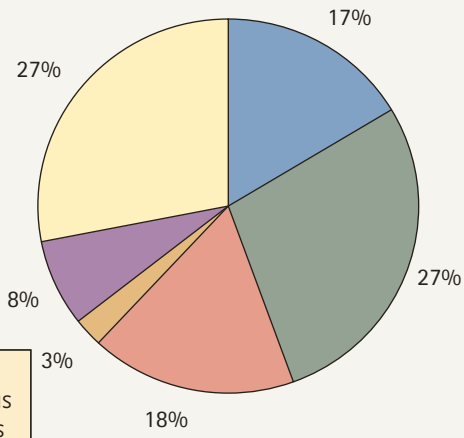
Figure 4.15 shows the evolution in the number of letters of formal notice the Authority has sent to the EFTA States over the last five years. The letters of formal notice sent concerned, *inter alia*, non-transposition of directives, complaints and breaches of the provisions of the EEA Agreement itself.

Over the last year, the overall number of letters of formal notice has decreased by 36 % to 37 (figure 4.15). As noted above, the number of cases opened has increased. The apparent discrepancy between the number of opened cases and the number of infringement proceedings is explained by the fact that there can be a time lapse between the time that a case is opened and when it becomes an infringement case. Furthermore, many cases are solved by less formal means than infringement proceedings. This year's decrease in infringement cases is particularly noticeable for Norway and reflects the fact that Norway's implementation record has improved considerably over the last year. The proportion

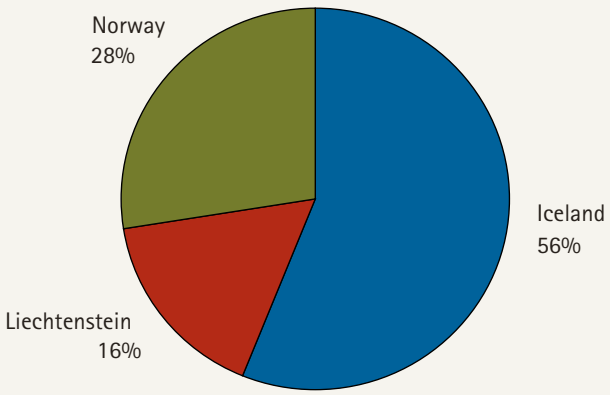
4.8 Own-iniative cases 1998 - 2002, by sector



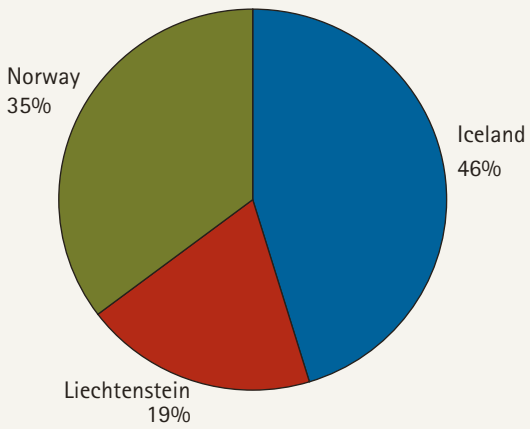
4.9 Complaints 1998 - 2002, by sector



4.10 Own-initiative cases 2002, by country

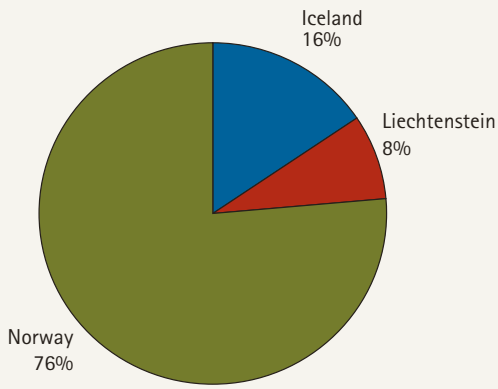


4.11 Own-initiative cases 1998 - 2002, by country

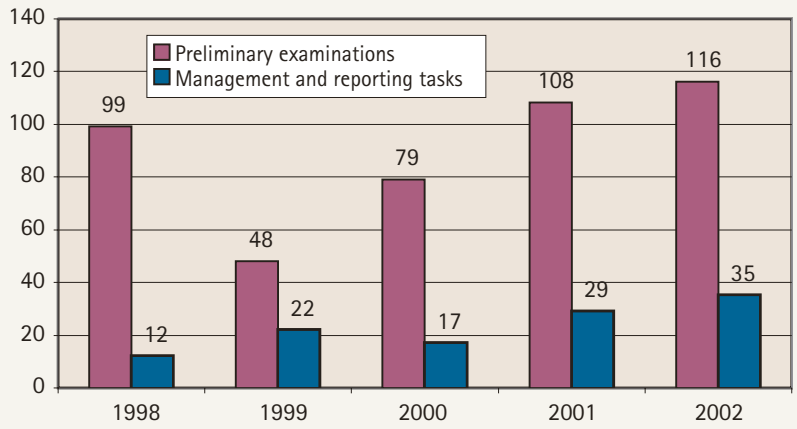


4.12 Complaints cases 2002, by country

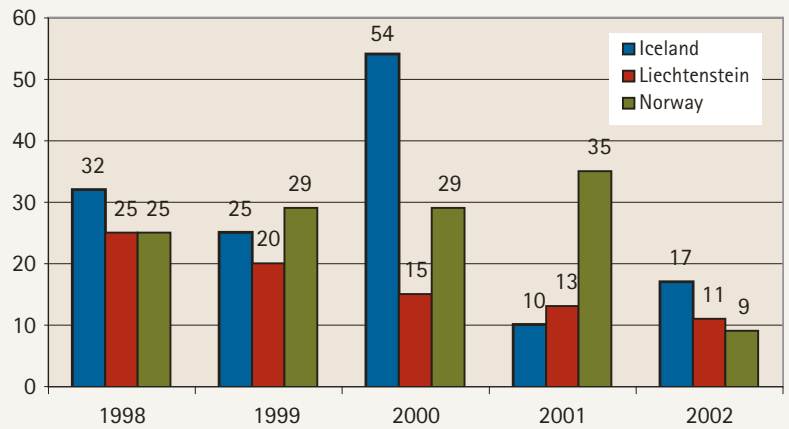
4.13 Complaints 1998 - 2002, by country



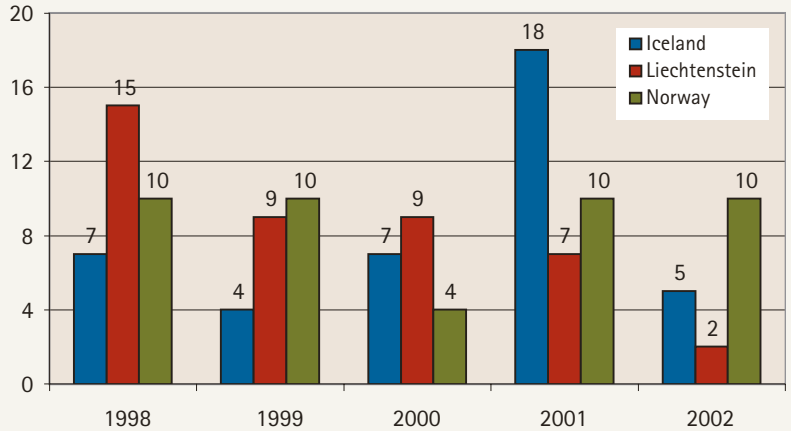
4.14 Preliminary examinations and management/reporting tasks registered 1998-2002



4.15 Letters of formal notice issued 1998-2002



4.18 Reasoned opinions delivered by EFTA State 1998-2002



of letters of formal notice for each of the EFTA States is shown in figures 4.16 and 4.17. The figures indicate that, while Iceland received most letters of formal notice last year, over a five-year period the distribution of such cases between the three EFTA States is fairly even, with a slightly lower proportion for Liechtenstein.

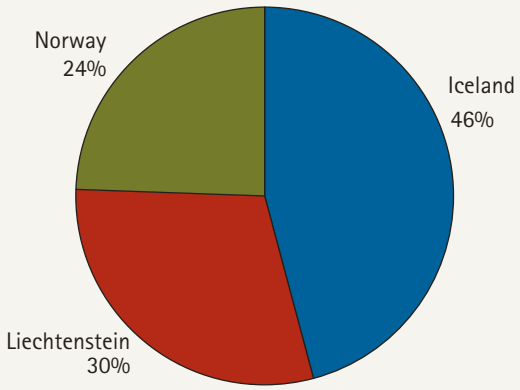
If the Authority, having provided the relevant EFTA State with the possibility of presenting its observations by replying to a letter of formal notice, continues to be of the view that the State is in breach of the EEA Agreement, it delivers a *reasoned opinion*. The development regarding this step is set out below.

After a peak in 2001, the number of reasoned opinions delivered by the Authority in 2002 was 17, most of which were received by Norway. Again, over a five-year period the number of reasoned opinions is distributed quite evenly between the EFTA States (figure 4.18 to 4.20). Figures 4.17 and 4.20 seen together show that the proportion of reasoned opinions to letters of formal notice over the last years is around 30 % for Iceland, 50 % for Liechtenstein and 36 % for Norway. In other words, Iceland and Norway seem more likely to react to a letter of formal notice by accepting the Authority's position than Liechtenstein does.

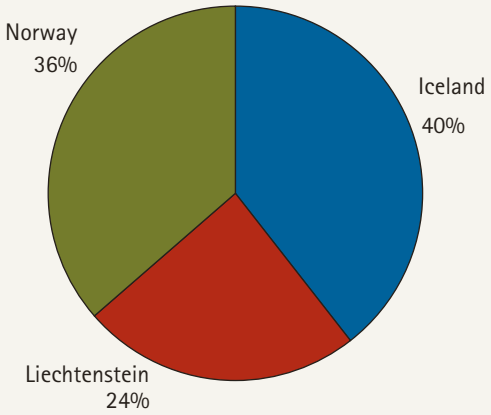
Figures 4.21 and 4.22 show how the letters of formal notice and reasoned opinions were distributed between the various sectors in 2002.

If an EFTA State fails to comply with the reasoned opinion within the period laid down therein, the Authority may refer the matter to the *EFTA Court*.

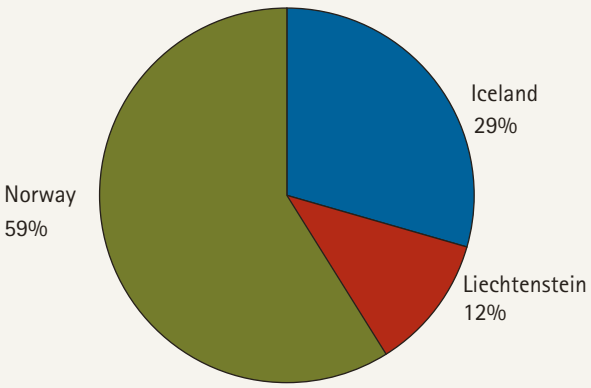
4.16 Letters of formal notice 2002, by country



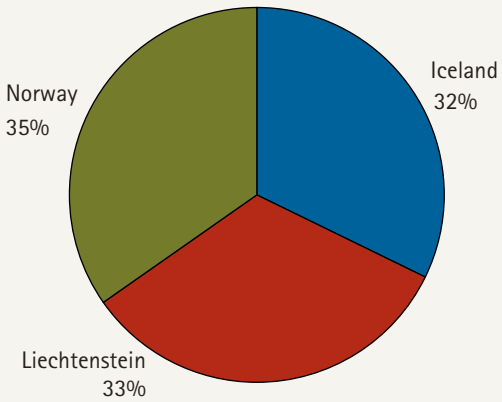
4.17 Letters of formal notice 1998 - 2002, by country



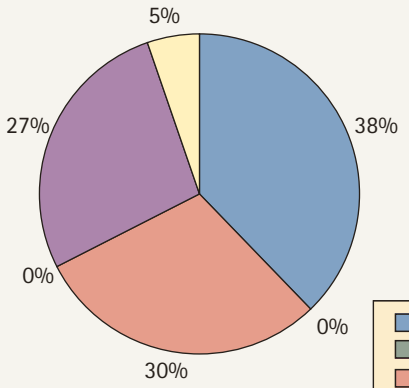
4.19 Reasoned opinions 2002, by country

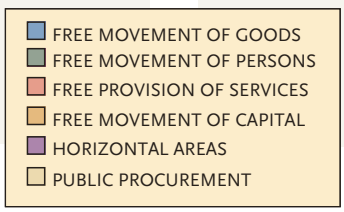


4.20 Reasoned opinions 1998 - 2002, by country

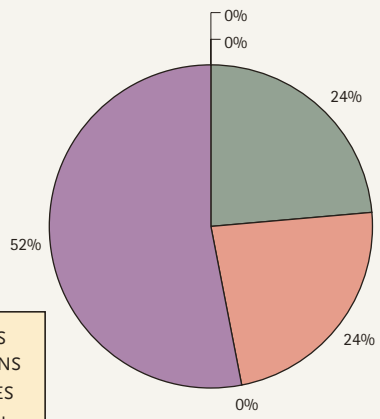


4.21 Letters of formal notice 2002, by sector





4.22 Reasoned opinions 2002, by sector



4.23 Referrals to the EFTA Court 1998-2002

Country	1998	1999	2000	2001	2002	Total 1998-2002
Iceland	0	0	0	0	0	0
Liechtenstein	0	0	0	1	0	1
Norway	0	1	2	0	1	4
Total	**0**	**1**	**2**	**1**	**1**	**5**

The Authority referred one case to the EFTA Court in 2002. This case was lodged against Norway, and concerned equal treatment of men and women. This case is further mentioned below in Chapter 8.1. Figure 4.23 shows the cases referred from 1998 to 2002.

4.2.6 CLOSURES AND OPEN CASES

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 can be *closed*. The Authority closed 50 % less *own-initiative cases* during 2002 as compared to the previous year. This reflects the shift in the work of the Authority away from non-transposition cases and towards more complicated cases concerning partial implementation and application (figure 4.24).

Figure 4.25 shows that the number of complaints cases closed during the year remained stable.

The Authority keeps separate records of 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, as

4.24 Own-initiative cases closed in 1998-2002

Sector	1998	1999	2000	2001	2002	Total 1998-2002
FREE MOVEMENT OF GOODS	49	32	32	83	27	223
FREE MOVEMENT OF PERSONS	1	7	5	5	9	27
FREE PROVISION OF SERVICES	20	21	32	29	12	114
FREE MOVEMENT OF CAPITAL	0	0	1	0	3	4
HORIZONTAL AREAS	40	12	32	45	28	157
PUBLIC PROCUREMENT	2	12	3	7	2	26
OTHER SECTORS	0	0	0	1	0	1
Total	**112**	**84**	**105**	**170**	**81**	**552**

4.25 Complaint cases closed in 1998-2002

Sector	1998	1999	2000	2001	2002	Total 1998-2002
FREE MOVEMENT OF GOODS	4	8	11	4	9	36
FREE MOVEMENT OF PERSONS	6	5	0	17	12	40
FREE PROVISION OF SERVICES	3	0	1	8	3	15
FREE MOVEMENT OF CAPITAL	0	0	0	0	0	0
HORIZONTAL AREAS	1	3	1	5	3	13
PUBLIC PROCUREMENT	7	9	9	9	15	49
OTHER SECTORS	0	0	1	0	7	8
Total	**21**	**25**	**23**	**43**	**49**	**161**

4.26 Open own-initiative and complaint cases in 1998-2002

	1998	1999	2000	2001	2002
Own-initiative cases	94	103	131	84	99
Complaints	40	39	33	43	45
Closures - Measures taken	119	95	104	181	99
Closures - Other reasons	14	14	24	32	31
Open cases at the end of preceding year	284	285	318	354	268
Open cases at the end of the year	285	318	354	268	282

compared to 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 was actually no breach). Figure 4.26 shows the evolution in the closure of *own-initiative* and *complaint* cases during the last five years, as well as in the total number of open cases at the end of each year. The two types of closures are presented separately.

Figure 4.26 illustrates a reduction in the number of closures during 2002 because the measures requested by the Authority have been taken by the EFTA State concerned. Most of the cases the Authority open as non-notification cases fall within this category, and these cases are closed once a notification of full implementation is received. The number of cases closed for other reasons have remained stable. This trend reflects the increasing proportion of complaints and complicated implementation cases that the Authority is dealing with. Such cases are more likely to be closed for reasons other than the adoption of measures requested by the Authority.

The figure further shows that the overall number of open cases is again on the rise.

It is worth noting that, in addition to the cases referred to in figure 4.26, the number of preliminary examinations, management tasks and reports dealt with by the Authority in 2002 have increased over the last year.

4.3 FREE MOVEMENT OF GOODS

4.3.1 INTRODUCTION

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 thereto (Article 10), quantitative restrictions and measures having equivalent effect thereto (Articles 11, 12 and 13), discriminatory taxation of imported goods (Article 14) and non-discrimination requirement on State monopolies of a commercial character (Article 16). These rules establish the principle of free movement of goods under which EEA States may not maintain or impose barriers to trade in areas not harmonised by EEA law, except in special justified circumstances.

Specific provisions and arrangements on the free movement of goods are set out in a number of protocols to the Agreement and in the acts referred to in the annexes to the Agreement relating to the free movement of industrial goods, processed agricultural products, and fish and marine products. Two annexes refer to a large number of acts containing detailed provisions concerning technical requirements for industrial goods (Annex II) and concerning veterinary and phytosanitary rules (Annex I). Three annexes refer to acts concerning product liability, energy and intellectual property.

In addition to general surveillance in these areas, the Authority operates several notification procedures, intended to secure the free movement of goods and ensuring that only safe products are placed on the market. These procedures are further outlined in paragraph 4.3.5. below.

4.3.2 BASIC PROVISIONS ON THE FREE MOVEMENT OF GOODS

With regard to quantitative restrictions and measures having equivalent effect thereto and other technical barriers to trade (Article 11, 12 and 13 of the EEA Agreement), a number of complaint cases remained outstanding from previous years. The Authority also continued to receive complaints in the field during the reporting period.

Since the EEA Agreement entered into force, the Authority has received various complaints concerning different aspects of alcohol legislation in Norway.

In late 2000, the Authority referred to the EFTA Court the application of national measures whereby two methods of sale at the retail level were applied in Norway. These measures provided that beer with an alcohol content between 2,5 % and 4,75 % by volume could be sold in grocery stores, while other beverages with the same alcohol content could only be sold through the State monopoly. In the view of the Authority, this led to discrimination contrary to Article 16 of the EEA Agreement. Furthermore, the Authority considered that the application of more restrictive measures regarding licences to serve certain products, the majority of which are imported, compared with other products containing a similar percentage of alcohol by volume, constituted a measure having equivalent effect to quantitative restrictions on imports within the meaning of Article 11 of the EEA Agreement. The ruling of the EFTA Court was delivered in March 2002 (Case E-9/00), in which the Court found that, by maintaining the abovementioned measures, Norway was in breach of Article 16 and Article 11 of the EEA Agreement (see also chapter 8).

In September 2002, the Authority received a complaint arising from Norway's late implementation of the judgment of the EFTA Court in the Case E-9/00. The Authority's subsequent correspondence and meetings with the Norwegian Government led to Norway notifying amendments to its alcohol legislation, which seem to ensure compliance with the judgment.

Other aspects of the Norwegian alcohol legislation have also been assessed by the Authority. In 1998, the Authority sent a letter of formal notice to Norway concerning the Norwegian requirements that undertakings obtain and maintain licences to import, wholesale and serve alcoholic beverages. These requirements impose substantial additional costs on the importation of alcoholic beverages, which the Authority considered to be contrary to Article 11 of the EEA Agreement. Moreover, the Authority found the requirement of double authorisation for restaurants wishing to import alcoholic beverages to have an effect equivalent to quantitative restrictions on imports within the meaning of Article 11 of the EEA Agreement. During the reporting period, the Authority has had meetings and correspondence with the Norwegian Authorities regarding the need for amendments in the Norwegian legislation. The Authority will continue its work on the matter in 2003.

In September 2001, the Authority received a complaint against Norway regarding the operation of the product selection system of the Norwegian wine monopoly, *AS Vinmonopolet*. Based on its high sales volumes, the complainant, a Norwegian distributor of wine, had applied for one of its products to be placed in the Monopoly's *Basic assortment*. The request was turned down by the Monopoly, and the complainant alleged that this was not in conformity with the applicable national regulations on the Monopoly's purchasing practices etc. Whilst the Authority was examining the case, the Monopoly changed its position, and added the product in question to its *Basic assortment*. As the individual case has consequently been solved at national level, the Authority closed the case during the reporting period.

In 1998, the Authority received a complaint from a producer from an EU Member State regarding smoke emission requirements in Norway on wood fired stoves. The requirements on emissions of particulates are included in a regulation that refers to a Norwegian standard. In the opinion of the Authority the requirements constituted a quantitative restriction or measures having equivalent effect within the meaning of Article 11 of the EEA Agreement. Therefore a letter of formal notice was sent to Norway in 1999. Norway subsequently provided the Authority with scientific studies that showed that wood fired stoves represented a major source for particulate emission in Norway and that such emission constitutes a serious health hazard for the Norwegian population. At the end of 2001, the Norwegian authorities informed the Authority that Norway had introduced a mutual recognition clause in the disputed regulation. On the basis of the scientific evidences provided by Norway and due to the introduction of the mutual recognition clause the Authority concluded that the Norwegian requirements on particulate emissions were justified by Article 13 of the EEA Agreement, and closed the case at the end of the reporting period.

During 2002, the Authority closed a complaint concerning the fact that Norway allows the use of a certain type of plugs for connecting caravans and mobile homes on camping sites. The complainant alleged that the rules in question

constituted a technical barrier to trade, and therefore a breach of EEA rules governing the free movement of goods. The Authority pointed out that the Norwegian legislation did not prohibit the import or use of other types of socket outlets, and that no discrimination of imported products had been demonstrated. The complainant was given the opportunity to present further arguments but did not do so, and the case was subsequently closed.

During the reporting period the Authority started its assessment of Iceland's rules on tobacco monopoly and their compatibility with Articles 11 and 16 of the EEA Agreement. This action arose to a large extent from the update of Protocol 3 to the EEA Agreement the product coverage of which has, as from 1 January 2002, been extended. This Protocol has now specified tobacco products in its table I that were not previously to be found in that table. The Authority sent a letter to Iceland in December 2002 requesting information on the rules applicable to the tobacco monopoly and comments concerning their compatibility to the EEA provisions, especially Article 11 and 16 of the EEA Agreement.

In December 2002, the Authority received a complaint against Norway alleging a breach of Article 11 of the EEA Agreement. The alleged infringement concerned the Norwegian prohibition on the use of personal watercrafts. In the complainant's view the effect of this prohibition is equivalent to that of an import ban on such products, which are otherwise lawfully marketed within the EEA area. The legislation in question was introduced by amendments made to the Act of 26 June 1998 no 47 "*Lov om fritids- og småbåter*" in July 2000. The Authority will assess the case further in 2003.

4.3.3 DISCRIMINATORY TAXATION

The Authority is examining whether certain provisions of the Norwegian value added tax (VAT) legislation constitute a breach of Article 14 of the EEA Agreement prohibiting discriminatory taxation. The examination was initiated following a complaint from a company that imports dental products into Norway for resale to providers of dental health care. The disputed provision, Article 5(1)(b), states that dental technicians' *own production* of dental products used by providers of dental and health care in Norway is exempted from the scope of the VAT legislation. The complainant alleges that this legislation discriminates against imported products, and consequently is not compatible with Article 14 of the EEA Agreement. The Authority will continue its examination of the provision in question in 2003.

Another alleged breach of Article 14 of the EEA Agreement by Norway, arising again from a complaint, relates to different administrative practices for the imposition of surcharges for value added tax (VAT) offences. The complainant is a company that imports certain raw materials for use in its own production of goods. According to the complainant, no surcharge will be levied with regard to VAT offences involving domestic transactions, provided the Norwegian State has not suffered loss of fiscal income. However, such surcharges (additional VAT) will in many cases be imposed where the offence is related to import of goods. The Authority had correspondence and meetings with Norway concerning the case during the reporting period and will revert to the matter in 2003.

The Authority is also considering a complaint against Iceland for possible infringement of Article 14 of the EEA Agreement regarding value added tax (VAT). The complainant purchased a computer while residing in another EEA State, and when moving to Iceland, brought it with him as part of his removal goods. Once in Iceland, he discovered the computer had a faulty hard-drive. The hard-drive was returned to the retailer in the State where the computer had been purchased. The retailer subsequently supplied a new hard-drive under the terms of the guarantee. Upon import to Iceland, the complainant had to pay VAT. The complainant alleges that this practice leads to different treatment of consumers who exercise their rights under a product guarantee depending on whether the product is bought domestically or abroad. The Authority had correspondence and meetings with Iceland concerning the case during the reporting period and will revert to the matter in 2003.

In 1996, the Authority received a complaint regarding import and distribution of radiopharmaceuticals in Norway. The complainant raised, inter alia, points regarding possible discriminatory taxation (Article 14 of the EEA Agreement) as the Institute for energy technology (IFE) held a government supported monopoly position on import and distribution of radiopharmaceutical products and radiopharmacuticals produced by IFE were not subject to value added tax (VAT), thus being treated favourably compared to foreign product. Furthermore, the complainant maintained that public procurement routines on the basis of the Council Directive 93/36/EEC coordinating procedures for the award of public supply contracts could have been breached. The system for import radiopharmaceutical products was subsequently changed by the Norwegian Government and was no longer limited to IFE only and the company taking over the sale of radiopharmaceutical products from IFE, Isopharma AS,

was made subject to VAT. Furthermore, it was laid down that IFE would not enter into commercial production of radiopharmaceuticals, except for specific manufacturing of radiopharmaceuticals where commercial manufacturers cannot offer the demanded products. The Council Directive 93/36/EEC had not been applied to the procurement of radiopharmaceutical products by Norwegian hospitals, as no single procurement did exceed the threshold value of ECU 200.000 (NOK 1.600.000). Taking into account the amendments made by Norway with regard to the system of sale of radiopharmaceuticals and the measures taken by Norway to comply with the Directive 89/343/EEC[7] on radiopharmaceuticals the Authority concluded that Norway was not in breach of EEA law. The case was subsequently closed during the reporting period.

In May 2002, the Authority received a complaint regarding the practice of the Norwegian customs authorities not to reimburse the registration tax when a used vehicle was to be returned to a foreign car dealer due to a fault shortly after importation. The Authority has received Norway's observations on the issue and has assessed the applicable Norwegian rules, especially under Article 14 and Article 12 of the EEA Agreement. It will conclude its examination in 2003.

During the reporting period the Authority initiated a general examination of the applicable rules in the EFTA States regarding taxation on the import of second hand vehicles. Following recent judgments of the Court of Justice of the European Communities, particular attention has been given to the method used to calculate the depreciation in value of such vehicles. The issue has so far been raised in relation to Iceland and Norway, regarding which the assessment will continue in 2003.

4.3.4 SECONDARY LEGISLATION WITH REGARDS TO TECHNICAL REGULATIONS, STANDARDS, TESTING AND CERTIFICATION

Annex II to the EEA Agreement has 32 chapters dealing with various areas, which have been subject to harmonisation through a substantial amount of secondary legislation. A number of directives incorporated into Annex II of the Agreement had compliance dates during the reporting period. Although the EFTA States have notified implementing measures regarding the majority of these directives, there are still some outstanding notifications, which are listed below under the relevant field. Furthermore, the Authority had complaint cases, and own assessments on going in some of the fields in Annex II during the reporting period.

In the fields not specifically mentioned, all directives have been notified as fully implemented by all the EFTA States.

4.3.4.1 Motor Vehicles

During the reporting period, eight new directives were to be complied with in this field by the EFTA States.

Full implementation has been notified by all the EFTA States of all the acts in the field, apart from the *Amending Directive on Emissions from Motor Vehicles* (2001/100/EC) and the *Amending Directive on Type-approval of Motor Vehicles and their Trailers* (2001/116/EC), for which Iceland has not notified implementing measures. Both Directives were to be complied with in October 2002.

4.3.4.2 Construction Plant and Equipment

Only one new directive was to be complied with during the reporting period in this field, the *Directive on Noise Emissions from outdoor equipment* (2000/14/EC). While both Norway and Liechtenstein have notified full implementation of the Directive, implementing measures had not been notified by Iceland at the end of the reporting period. The Directive was to be complied with in April 2002.

4.3.4.3 Medicinal products

During the reporting period the Authority continued its correspondence with Norway regarding the *Directive relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems* (89/105/EEC "the price transparency Directive"). A reasoned opinion was sent to Norway concerning this Act in 1999. The reasoned opinion arose from the Authority's own assessment and complaints on incomplete implementation of the Directive. Furthermore, several meetings were held with the Norwegian authorities on the matter during 2002, as Norway is in the process of amending its national legislation on reimbursement of pharmaceutical products. The Authority will examine the case further in 2003.

In relation to Iceland, the Authority is still awaiting promised amendments to the implementing measures regarding

[7] Recently codified by Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use.

Directive 89/105/EEC. The matter will be further pursued in 2003. In September 2002, the Authority received a complaint concerning rules on import and marketing of medicinal products in Iceland. The Authority has requested information from Iceland on the issue and the complaint will be further examined in 2003.

In the field of veterinary medicinal products (VMP), 15 regulations setting maximum residue limits for VMP in foodstuffs were to be incorporated into their national legislation by the EFTA States in 2002. At the end of the reporting period a letter was sent to **Iceland** asking the Government to send to the Authority information on measures considered to ensure compliance with 11 of these acts forthwith.

4.3.4.4 Environment Protection

During the reporting period, the Authority continued its examination of the implementation in **Iceland** of the national measures implementing the *Directive on packaging and packaging waste* (94/62/EC).

4.3.4.5 Machinery

During the reporting period, two new directives were to be complied with in this field.

Full implementation has been notified by all the EFTA States for all the acts in the field, apart from the *Amending Directive on emissions from engines in mobile machinery* (2001/63/EC), for which **Iceland** has not notified implementing measures. The Directive was to be complied with in October 2002.

4.3.4.6 Medical Devices

In this field, only one new directive was to be complied with during the reporting period, the *Amended Directive on Medical Devices* (2001/104/EC). While both **Norway** and **Liechtenstein** have notified full implementation of the Directive, implementing measures had not been notified by **Iceland** at the end of the reporting period. The Directive was to be complied with in October 2002.

4.3.4.7 Dangerous Substances

Liechtenstein transposed all acts on dangerous substances that were to be implemented during the reporting period. **Iceland** did not notify implementing measures for the *Restrictions Directive on creosote* (2001/90/EC). **Norway** did not notify implementing measures for either that Directive or the *Restriction Directive on hexachlorethane* (2001/91/EC). The compliance date for these Directives was at the end of the reporting period.

In the reporting period the Authority sent a letter to **Iceland** requesting information on its implementing measures concerning the *Regulation concerning the fourth list of priority substances as foreseen under Council Regulation (EEC) No 793/93* (2364/2000/EC). The Regulation should have been transposed in 2001. Iceland responded to the letter and notified implementing measures after adopting the necessary amendments to its national legislation on dangerous substances.

The progress with respect to the notification of dangerous substances is described in paragraph 4.3.5.3 on the notification procedures on chemicals.

4.3.5 OPERATION OF CERTAIN PROCEDURES

The Authority is operating several notification procedures, intended to secure the free movement of goods and ensuring that only safe products are placed on the market. Below is information on some of the main procedures:

4.3.5.1 Information procedure on draft technical regulations

The *Directive on an Information Procedure on Draft Technical Regulations* (98/34/EC), 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-month standstill period is triggered, during which the Authority and the other EFTA States, as well as the European Commission, may comment on the notified draft regulation. Notifications are examined to establish whether they contain provisions that 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 are in conflict with EEA secondary legislation. In 2001, Directive 98/48/EC amending Directive 98/34/EC became applicable to the EFTA States under the EEA Agreement. The Directive extended the notification obligation to cover draft rules on Information Society Services.[8] Within the framework of this information procedure, the Authority received 49 notifications from the EFTA States during 2002; 38 notifications from **Norway**, seven from **Liechtenstein** and four from **Iceland**. Of these, five were in the field of Information Society Services.

[8] Further information on the procedure can be found on the Authority's website www.eftasurv.int

The notifications concerned *inter alia* the labelling of foodstuffs, growing media and soil improvers, chemicals, precious metals, construction of fishing vessels, mobile offshore units, electrical energy meters, radio interface, electronic commerce and electronic signatures. One of Iceland's notifications concerned import restrictions on *poultry meat*. Although the notification procedure covers all *agricultural* products (including fish products) as well as all *industrially manufactured* products, the application of Articles 11 and 13 of the EEA Agreement is, by means of Article 8(3) of the Agreement, limited to products falling within Chapters 25 to 97 of the Harmonised Commodity Description and Coding System (industrial products) and to products specified in Protocol 3 to the EEA Agreement. The Authority did not, therefore, comment on the substance of the Icelandic notification.

In four cases, the Authority made comments on notifications by the EFTA States. The European Commission made eight comments, which the Authority forwarded to the respective EFTA State. Furthermore, the Commission has made intermediate comments and requested supplementary information regarding one notification.

In 2002, the Authority received 508 notifications from the European Community. One of these notifications led the Authority to forward to the European Commission the comments of the EFTA States in the form of a *single co-ordinated communication*. Single, coordinated communications are drawn up by the Authority on the basis of any comments made by EFTA States on notifications made by EU Member States. The communications are forwarded by the Authority to the Commission following approval by the EFTA States.

The Authority initiated infringement proceedings against Norway in 2001 regarding a technical regulation that had not been notified in its draft form (import prohibition on Spanish olive residue oil). A letter of formal notice was sent in May 2002. Discussions with the Norwegian Government aimed at bringing the infringement to an end took place towards the end of the reporting period. The case will be pursued further in 2003.

Following the receipt of a complaint lodged in late 2001 by a Norwegian company operating commercial gaming machines, the Authority is furthermore investigating whether Norway has failed to fulfil its obligation to notify technical regulations at a draft stage with regard to certain aspects of national legislation pertaining to lotteries. The Authority is assessing this legislation in light of information submitted by the Norwegian Government, and the examination will continue in 2003.

4.3.5.2 National measures derogating from the principle of free movement of goods

The Decision establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods (3052/95/EC) came into force under the EEA Agreement in 1998. The Act provides that, when the person responsible for a product invokes its compliance with the regulation in force in another EEA State where the product is lawfully produced or marketed, an EFTA State must notify the Authority of any national measure impeding the free movement of goods. During 2002, the Authority received 17 notifications from EU Member States, which is significantly less than in the previous years. The

Draft technical regulations

	EFTA notifications	Comments from the Authority	EC Notification	Single Coordinated Communications
1994	61	30	389	4
1995	8	6	438	3
1996	30	5	522	3
1997	12	6	900	3
1998	37	13	604	3
1999	18	4	591	2*)
2000	19	3	751	0
2001	22	5	530	1
2002	49	4	508	1

*) transmitted in 2000

notifications were forwarded to the EFTA States. No notifications were received from the EFTA States.

4.3.5.3 Notification procedures on chemicals

The notification procedures on chemicals are divided into the following schemes:

- notification of new chemicals according to the *Directive on Substances* (92/32/EEC), the *Directive on Preparations* (88/379/EEC) and the *Directive on Risk Assessment of New Chemicals* (93/67/EEC);
- notification of existing substances according to the *Regulation on Existing Substances* (793/93/EEC) and the supplementing *Regulation on Risk Assessment* (1488/94/EC);
- notification according to the *Export/Import Regulation* (2455/92/EEC).

These procedures entail technical, scientific and administrative work for the Authority and the EFTA States in collaboration with the European Chemicals Bureau (ECB) and the EU Member States. The scientific and technical tasks in relation to the procedures are carried out by the ECB.

Iceland has sent the Authority a plan for completing the notification of new chemicals. This task concerns notification of new chemicals (92/32/EEC) on the Icelandic market, which are not found in the European Inventory of Existing Commercial Chemical Substances (EINECS). According to the plan, this work will be done in 2003 and 2004 and an inventory of substances will be organised at the beginning of 2005.

4.3.5.4 Safeguard measures with regard to unsafe products in accordance with specific Directives

New Approach directives[9], found primarily in Annex II to the EEA Agreement, include a safeguard clause, which obliges EFTA States to restrict or forbid the placing on the market and the putting into service of dangerous - or, according to some directives, otherwise non-compliant - products, or to have them withdrawn from the market. The national measures shall have binding legal effects. As a general rule, this safeguard clause procedure is restricted to products which are: covered by New Approach directives; CE marked; and ascertained by the State to present a substantial hazard, even if the products are correctly constructed, installed and maintained, and used according to their intended purpose. The EFTA State must notify the Authority immediately after invoking the safeguard clause. Thereafter, the Authority enters into consultations with the interested parties, with the aim of establishing whether or not measures taken under the safeguard clause are justified.

The Authority received a notification from **Norway** of safeguard measures on the basis of Article 7 of the *Machinery Directive* (98/37/EC) in 2001. During the reporting period Norway informed the Authority that the disputed products had been put into conformity by manufacturers, and therefore withdrew the safeguard measures. The Authority subsequently closed the case.

In Autumn 2002, the Authority received two notifications from **Norway** of safeguard measures on the basis of Article 9 of the *Radio equipment and telecommunications terminal equipment Directive* (1999/5/EC). The Authority has had correspondence with Norway regarding the issue and will revert to the matter in 2003.

The Authority received eight notifications of safeguard measures taken under Article 9 of the *Low Voltage Directive* (73/23/EEC) from **Iceland** in 2002, compared to 13 notifications during the preceding period. A safeguard clause notified according to this Directive is examined only if other EEA States raise objections as regards the measures taken. No objections were raised. Furthermore, the Authority received 42 notifications from EU Member States in 2002, which were forwarded to the EFTA States. In addition, six information communications on unsafe products were received from Iceland and one from an EU Member State.

The Authority received three notifications from the European Commission under the *Directive concerning products which, appearing to be other than they are, endanger the health or safety of consumers* (87/357/EEC), which are distributed within the General Product Safety network. No notifications were received from EFTA States.

4.3.5.5 Notification of conformity assessment bodies

All new approach directives and some of the old approach 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 assessment of the conformity of specific products

[9] A new regulatory technique and strategy that was laid down by the *Council Resolution of 1985 on the New Approach to technical harmonisation and standardisation.*

or families of products, as set out in the relevant Directives. These notifications are forwarded to the European Commission, which publishes them, together with the notifications received from the EU Member States, in the Official Journal of the European Communities. In 2002, the Authority received six notifications concerning such conformity assessment bodies from Norway.

4.3.6 ENERGY

During the reporting period the Authority pursued its assessment of the conformity of national legislative provisions of the EFTA States with the EEA legislation relative to the Internal Market in Energy. For Iceland and Liechtenstein the *Internal Market in Electricity Directive (96/92/EC)* entered into force on 1 July 2002. It has applied in Norway since 1 July 2000. Liechtenstein notified the Authority of its implementing measures. No notification was received from Iceland. The Authority received notification of Norway's partial implementation of the *Internal Market in Gas Directive (98/30/EC)*. Iceland notified the Authority that it had no upstream or downstream gas activity and that no implementing measures, therefore, had been taken. No notification was received from Liechtenstein.

The Authority issued letters of formal notice for the failure by Norway, Iceland and Liechtenstein to notify to the Authority the measures intended to implement the *Directive on energy efficiency requirements for ballasts for fluorescent lighting* (2001/55/EC). All three States subsequently notified their respective implementing measures and the Authority closed the cases within the reporting period.

4.3.7 PRODUCT LIABILITY

The EEA rules on product liability are laid down in Annex III to the Agreement, which makes reference to the *Product liability Directive* (85/374/EEC) as well as an amending Directive 1999/34/EC. All the EFTA States have notified full implementation of these Acts. During the reporting period the Authority received a complaint against Norway, alleging non-implementation of the Directive, as amended. The Authority assessed the case, and concluded that the Directive did not apply to the factual situation at hand. The case was subsequently closed.

4.3.8 INTELLECTUAL PROPERTY

The *Directive on the legal protection of designs* (98/71/EC) should have been implemented by 28 October 2001. In November 2002, Liechtenstein notified the implementation of the Directive. In December 2002, the Authority sent a letter of formal notice to Norway due to its failure to notify the implementation of the Directive. Norway has informed the Authority that new legislation in the field of intellectual property will be discussed in Parliament during the first half of 2003 and might be adopted before summer 2003.

4.4 FOOD SAFETY

4.4.1 INTRODUCTION

As a follow up of the conclusions of the European Commission's White Paper on Food Safety (January 2000), *Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety* entered into force in the European Community on 21 February 2002.

The Regulation provides the basis for the assurance of a high level of protection of human health and consumers' interest in relation to food. It establishes the European Food Safety Authority (EFSA) and the general principles governing food and feed in general, and food and feed safety in particular, at European Community and national level. Establishing procedures for matters with a direct or indirect impact on food and feed safety, it applies to all stages of production, processing and distribution of food and feed. The Regulation lays down the general principles of food law, the obligations for the traders and the responsibilities for food and feed manufacturers.

Existing EC legislation related to animal health, food and feed is, furthermore, in the process of being reviewed and amended.

According to a draft EEA Joint Committee Decision for incorporation of Regulation 178/2002/EC into the EEA Agreement, the Act will be incorporated into Chapter I (Veterinary issues) and Chapter II (Feedingstuffs) of Annex I to the EEA Agreement and Chapter XII (Foodstuffs) of Annex II to the Agreement. Consequently, the Act will become the framework legislation in the EFTA States, covering food, feed and veterinary issues. The preparation of the Joint Committee Decision, a process in which the Authority contributed, will be finalised early 2003.

The Rapid Alert System for Food has been expanded in the European Community to cover feedingstuffs and Border

Inspection Posts (BIP's). Following the process initiated by the White Paper on Food Safety, the legal basis for the system has also been transferred from the *General Product Safety Directive* (92/59/EEC) to Regulation 178/2002/EC, and the system has changed name to the Rapid Alert System for Food and Feed (RASFF). However, Directive 92/59/EEC will continue to apply to the EFTA States until Regulation 178/2002/EC has been incorporated into the EEA Agreement.

4.4.2 FOODSTUFFS

In the Chapter on foodstuffs in Annex II to the EEA Agreement 41 acts were to be complied with in 2002. Of these, 18 are directives, 17 regulations and six decisions. During the reporting period improvements have been seen both in the implementation of these acts in the EFTA States and in notification of implementing measures to the Authority. However, regarding the obligation of reporting specific tasks to the Authority, based on the provisions of acts on foodstuffs already incorporated into the EEA Agreement, the situation has not improved in 2002. This is especially relevant for **Liechtenstein**.

4.4.2.1 Implementation control

In the reporting period **Norway** transposed all acts that were to be complied with. However, regarding the *Directive on substances for foods for particular nutritional uses* (2001/15/EC) the date of entry into force of the Norwegian legislation seems not to be in accordance with the provisions of the Directive. This case will be evaluated further in 2003.

Six acts on pesticide residues were to be complied with in 2002. At the end of the reporting period **Liechtenstein** had not notified implementing measures for two of these Directives (2001/62/EC and 2002/23/EC) and **Iceland** had not notified implementing measures for Directive 2002/23/EC.

Apart from the two Directives on pesticide residues **Liechtenstein** had notified implementing measures for all acts that were to be complied with in 2002. However, **Iceland** had not notified implementing measures for three Directives on *cereal based foods and baby foods* (96/5/EC, 98/36/EC and 1999/39/EC) and for the *Directive on meat labelling* (2001/101/EC). These acts were to be complied with at the end of the reporting period. The same applies to the *Directive on plastic materials and articles* (2001/62/EC).

The Authority sent a letter of formal notice to **Iceland** for non-notification of implementing measures for the Directive amending *Directive 95/2/EC on food additives other than colours and sweeteners* (98/72/EC). A letter was also sent to Iceland for shortcomings in the implementation of Directive 95/2/EC. In the reporting period Iceland notified new national legislation on food additives, implementing Directive 98/72/EC and correcting the shortcomings in implementing measures for Directive 95/2/EC.

At the end of the reporting period the Authority sent letters to **Iceland** requesting information on the incorporation measures for the *Regulation on organic production* (2491/2001/EC) and the *Regulation on aflatoxins* (257/2002/EC). The incorporation measures for these regulations will be evaluated at the beginning of 2003.

4.4.2.2 Reporting tasks

The EFTA States are obliged to report their monitoring plans and/or results from official control and monitoring of pesticides and certain contaminants to the Authority. The European Commission also annually recommends a coordinated control programme for the official control of foodstuffs to the EU Member States and a coordinated monitoring programme to ensure compliance with maximum levels of pesticide residues in and on foodstuffs. The Authority recommends corresponding programmes to the EFTA States.

Under the *Directive on the Official Control of Foodstuffs* (89/397/EEC), **Norway** and **Iceland** reported data on the national programmes laying down the nature and frequency of inspections carried out in 2001. The reports from both Iceland and Norway included data on the coordinated control programme for 2001 based on the Authority's recommendation. No information was received from **Liechtenstein** and consequently a letter was sent by the Authority asking the Government to send the required information forthwith. The European Commission is in the process of collecting information on the results of the official control of foodstuffs in the EEA States in 2000 and 2001. The Authority has forwarded the results from the EFTA States for 2000 and from Iceland and Norway for 2001 to the Commission.

Norway and **Iceland** reported the results of national monitoring of pesticide residues in 2001 based on two *Directives on pesticide residues* (86/362/EEC and 90/642/EEC) and the Authority's recommendation on a coordinated monitoring programme for pesticides in 2001. The monitoring results were forwarded to the European Commission for inclusion in a report on the monitoring of pesticide residues in the EEA. No information was received from **Liechtenstein** and consequently a letter was sent from the Authority asking the Government to send the required information.

In 2002, the Authority received the plans on the national programme for pesticide monitoring for 2003 from Iceland and Norway. At the end of the reporting period a letter was sent to Liechtenstein asking the Government to send the monitoring plan to the Authority before the end of January 2003.

The EFTA States did not report any monitoring of the levels of nitrate in lettuce and spinach in 2001 to be undertaken in compliance with the provisions of the *Regulation setting maximum levels for Contaminants in Foodstuffs* (194/97/EC). Norway and Iceland informed the Authority that no samples had been analysed in 2001, but no information has been received from Liechtenstein. Regulation 194/97/EC has now been replaced by Regulation 466/2001/EC, which was incorporated into the EEA Agreement in 2002.

Norway notified results from the monitoring of the irradiation facility approved for irradiation of foodstuffs according to the provisions of the *Directive concerning foods and food ingredients treated with ionising radiation* (1999/2/EC). However, Norway had no results to report of checks carried out at the product marketing stage. The same applies to Iceland. No information was received from Liechtenstein.

4.4.3 VETERINARY ISSUES

Annex I of the EEA Agreement, which is divided into three Chapters, contains some 1000 acts, out of which around 300 are directives, some with transitional periods. The acts in the veterinary field (Chapter I) not related to fishery products do not apply to Iceland. Annex I is not applicable to Liechtenstein.

Throughout 2002, the Authority placed particular emphasis on the EFTA States' obligations on implementation and notification of safeguard measures. Improvements were seen during the year, in particular in relation to the notification of the measures to the Authority.

Inspections related to border inspection posts were carried out in Iceland and Norway in 2002. One inspection, relating to the legislation regulating the production of fresh meat, was carried out in Norway. Furthermore, inspections related to legislation regulating production and placing on the market of fishery products and live bivalve molluscs were carried out in Iceland and Norway.

In order to assure correct application of the relevant legislation within the EEA, the Authority's inspectors participated as observers during three of the inspections carried out by the European Commission's Food and Veterinary Office to the EU Member States. However, in 2002 the Food and Veterinary Office could not find time to participate in the Authority's inspections carried out in Iceland and Norway.

4.4.3.1 Implementation control

During 2002, the Authority issued four letters of formal notice to Iceland for failure to ensure compliance with *Council Directive 91/67/EEC of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products*, and the acts amending that Directive. The Authority's approval of the Icelandic control programme for the two fish diseases viral haematopoietic septicaemia (VHS) and infectious haematopoietic necrosis (IHN) is depending on the Icelandic notification to the Authority of the national measures ensuring compliance with the Acts.

For parts of the Act related to trade in certain aquaculture animals and products, the transitional period for Iceland ended on 30 June 2002, while the transitional period for parts of the same Directive for Norway terminated on 31 December 2002.

In February 2002, the Authority issued one letter of formal notice to Iceland and one letter of formal notice to Norway for failure to comply with the obligations to notify the Authority of the national measures taken to ensure compliance with *Council Directive 2000/27/EC of 2 May 2000 amending Directive 93/53/EC introducing minimum Community measures for the control of certain fish diseases*. During Spring 2002, both Iceland and Norway notified the measures considered by the two countries as ensuring full compliance with the Directives.

In February 2002, the Authority also issued one letter of formal notice to Norway for failure to comply with the obligation to notify the Authority of the national measures taken to ensure compliance with *Council Directive 2000/15/EC of the European Parliament and the Council of 10 April 2000 amending Directive 64/432/EEC on health problems affecting intra-Community trade in bovine animals and swine*. In March 2002, Norway notified the measures considered to ensure full compliance with the Directive.

4.4.3.2 Complaints

During 2002, one case concerning veterinary issues against Norway was formally registered on the basis of a complaint. The complaint concerns the alleged breach by the competent Norwegian Authority of the EEA rules regulating trade in

Internal Market Affairs Directorate
Behind from left to right: Tor Arne Solberg-Johansen, Gunnar Thór Pétursson, Rúnar Örn Olsen, Frank Büchel, Ingela Söderlund, Director Jónas Fr. Jónsson, Ásta Magnúsdóttir, Jóhannes Sigursson, Jón Gislason, Ragnhild Behringer
In front from left to right: Vincent Kronenberger, Paulina Dejmek, Outi Saarialho, Andrea Weiss, Inger-Lise Thorkildsen, Adinda Batsleer, Joseph Noel Sengco Vasquez
Not present: Erik Jønsson Eidem, Erik A. Mathisen, Thomas Langeland, Ketil Rykhus, Nicola Britta Holsten

fishery products. In October 2002, Norway replied to a letter from the Authority and the examination of this complaint and the complaints received during 2001 will continue in 2003.

4.4.3.3 Application of the Agreement

Following the Authority's inspections during 2001 and in the beginning of 2002, the Authority adopted a Decision in May 2002 whereby four new border inspection posts in Iceland and one in Norway were added to the list of border inspection posts agreed for veterinary checks on products from third countries.

Due to the withdrawal by the Norwegian Competent Authority of the approval of one of the inspection centres in Norway, the Authority initiated a new process for amending the list of border inspection posts late 2002.

In the beginning of 2002, the Authority carried out a mission to Norway related to the legislation regulating production of fresh meat. During the mission particular focus was placed on traceability of animals, animal products and waste throughout the production.

Additionally, the Authority observed that most of the conclusions and recommendations following the inspection in the same field in 2000 had been followed up. However, the surveillance of the local food control authorities by the Norwegian Food Control Authority and the co-operation between the different national competent authorities, in particular those responsible for supervision of waste and fresh meat establishments, needed further improvement.

During 2002, the Authority also carried out inspections in both Iceland and Norway with regard to the application of the Directives regulating production and placing on the market of fishery products. For the first time checks were also made with regard to the application of the legislation regulating production and placing on the market of live bivalve molluscs.

In addition to checks on the follow-up by the competent national authorities of the conclusions and recommendations following the Authority's inspections related to fishery products carried out in 2000, particular focus was placed on application of HACCP principles (Hazard Analysis Critical Control Points) in the establishments and the official control related to these principles.

The Authority observed that not all the conclusions and recommendations from the inspections carried out in 2000 had been satisfactorily followed up. Additionally, some deficiencies were revealed with regard to the application of the HACCP principles.

With regard to the production of live bivalve molluscs, particular focus was placed on the competent authorities' procedures for classification of production areas, co-ordination of the laboratory network and the systems for monitoring the microbiological quality and the possible presence of toxin-producing algae in production areas and in live bivalve molluscs.

In January 2002, the Authority visited Norway in order to check the compliance with the EEA Legislation of the Norwegian system for identification and registration of bovine animals. Some deficiencies were observed and in order for the Authority to recognise the database for bovine animals as fully operational, it was agreed that the necessary documentation should be submitted to the Authority before 1 September 2002. Since the Authority received the information from Norway in late December 2002, the process for recognising the Norwegian cattle database as fully operational will continue in 2003.

In March 2002, Norway informed the Authority that the confirmed outbreak of VHS in Norway in 1998 was most likely due to a contamination of the sample at the analysing laboratory. Following an assessment of the information received from Norway, the Authority adopted Decision 244/02/COL of 11 December 2002 in which Norway's status with regard to the two diseases IHN and VHS was re-established.

4.4.4 FEEDINGSTUFFS

Norway and Liechtenstein notified implementing measures for all the acts in the feedingstuffs sectors that were to be complied with in 2002. Two letters of formal notice were sent to Iceland during the reporting period, one for failure to provide information to the Authority and the other for failing to implement *Directive 2001/102/EC amending Directive 1999/29/EC on undesirable substances*. At the end of the reporting period Iceland had failed to notify nine acts in the field.

The Authority was able to conclude an assessment of the conformity of the Norwegian feedingstuffs legislation after Norway adopted a new framework Regulation comprising all relevant legislation. A few outstanding issues remain with regard to the interpretation by Norway of the EEA legislation and a letter requesting information about a substance banned in the European Community was sent to Norway at the end of 2002.

4.4.5 SEEDS

Six directives in the phytosanitary sector were taken into the EEA Agreement during 2002. Three of these acts (1999/54/EC, 2001/64/EC, and 95/6/EC) concern the marketing of cereal seeds and one (2002/8/EC) relates to conditions for examining vegetables. Directive 98/95/EC regulates genetically modified plants and Directive 98/96/EC amends, *inter alia*, Directives 66/400/EEC, 66/401/EEC, 66/402/EEC, 66/403/EEC, 69/208/EEC, 70/457/EEC and 70/458/EEC as regards unofficial field inspections. By the end of 2002, Norway had not implemented any of these Directives, Iceland had failed to implement Directives 2001/64/EC, 2002/8/EC, 98/95/EC and 98/96/EC and Liechtenstein had failed to implement 98/95/EC and 98/96/EC.

4.4.6 PRODUCT SAFETY

The *General Product Safety Directive* (92/59/EEC) provides for the application of an emergency procedure regarding the rapid exchange of information in cases of serious and immediate risk to the health and safety of consumers in a notification procedure laid down by Article 8 thereto. Article 7 of the Directive also introduces a general safeguard procedure, which is applicable insofar as there are no specific provisions in rules of European Community law governing the safety aspects of products.

In 2002, the Authority received 21 alert and 35 non-alert notifications from the EFTA States under the food emergency procedure. The Authority received a total of 434 alert notifications from the European Commission in the framework of the food and feedingstuffs network. Additionally, some 1451 non-alerts were processed in the foodstuffs network making up to a total of 1875 notifications in the food area, follow-ups and addenda not included. The Authority received some 88 alert notifications, which did not relate to food, none of which came from EFTA States.

The European Commission has developed an extranet tool, CIRCA (Communication and Information Resource Centre Administrator), where all notifications are uploaded. The EFTA States now download them directly from this website and the CIRCA system has replaced earlier communication methods.

4.4.6.1. Rapid Alert System for Food and Feed (RASFF)

In February 2002, the Council and European Parliament adopted *Regulation 178/2002/EC laying down the general*

The emergency procedure

	EFTA notifications			EC notifications		
	Food	Non food	Total	Food	Non food	Total
1994	2	2	4	9	6	15
1995	4	0	4	12	15	27
1996	1	0	1	15	53	68
1997	2	2	4	67	52	119
1998	0	0	0	74	47	121
1999	6	3	9	91	100	191
2000	18	4	22	115	91	206
2001	35	2	37	302	75	377
2002	59	0	59	434	84	518

principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. Among the new rules, Article 50 of the Regulation establishes a rapid alert system for the notification of a direct or indirect risk to human health deriving from food or feed (RASFF).

Currently, Regulation 178/2002/EC is not a part of the EEA Agreement. Until it is, the food notification procedure remains governed by the emergency procedure in Article 8 of the *General Product Safety Directive* (92/59/EEC). Feedingstuffs and Border Inspection Posts will not be included in any EFTA notification procedure until Regulation 178/2002/EC has been made part of the EEA Agreement.

4.4.6.2. Non-food products (RAPEX)

Directive 2001/95/EC of the European Parliament and of the Council on general product safety states that the *General Product Safety Directive* (92/59/EEC) shall be repealed at the beginning of 2004. However, Directive 2001/95/EC has not yet been taken into the EEA Agreement.

Directive 2001/95/EC is a recast of Directive 92/59/EEC and consequently the general safeguard procedure under Article 7 of the *General Product Safety Directive* will continue to be used for non-food products when Directive 2001/95/EC enters into force.

Once Regulation 178/2002/EC becomes part of the EEA Agreement, the food/feed (RASFF) and non-food (RAPEX) procedures will have different legal bases. Until then, both procedures remain under the *General Product Safety Directive* for the EFTA States.

4.5 FREE MOVEMENT OF PERSONS

4.5.1 FREE MOVEMENT OF WORKERS

Freedom of 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. This includes the right to accept offers of employment actually made, to move freely within the territory of an EEA State for the purpose of employment, and to remain on the territory of an EEA State after having been employed there.

4.5.1.1 Implementation control

In June 2000, EEA Joint Committee Decision No. 191/1999 (JC Dec. 191/1999) entered into force. It added special adaptations to Annex V (free movement of workers) and Annex VIII (right of establishment) to the EEA Agreement applicable to Liechtenstein until 31 December 2006. Nationals of Iceland, Norway and the EU Member States may take up residence in Liechtenstein only after having received a permit from the Liechtenstein authorities. No such residence permit shall be necessary for a period of less than three months per year provided no employment or other permanent economic activity is taken up, nor for persons providing cross-border services in Liechtenstein. EEA nationals have a right to obtain a residence permit, subject only to the restrictions specified in Joint Committee Decision 191/1999. According to this Decision, Liechtenstein may restrict the number of residence permits granted to EEA nationals. A fixed number of 250 to 300 short-term permits must be continuously re-allocated to economically active EEA nationals who wish to stay in Liechtenstein for a period of less than one year. Liechtenstein is obliged to ensure an

annual minimum net increase in residence permits which are valid for a period of five years. The obligatory net increase in 2002 amounted to 56 for economically active persons (employed or self-employed persons) and to 16 for economically non-active persons. For each quota group half of the net increase in the permits must be granted in accordance with a procedure that gives an equal chance to all applicants. This is done in Liechtenstein by a ballot procedure, performed twice a year, which determines in two draws the EEA nationals to whom permits are to be granted. The second half of the net increase in permits is granted by ordinary administrative procedure. The Liechtenstein authorities are bound to do so in a way that is not discriminatory and does not distort competition.

In January 2001, the Authority started an assessment of Liechtenstein rules on EEA nationals' rights of residence and their practical application as to their conformity with EEA law and the special adaptations of Joint Committee Decision 191/1999. Following a preliminary examination by the Authority, questions were raised including *e.g.* the specific national permits, definition of beneficiaries, documentation that may be required from applicants and procedural aspects of the permit allocation. In January 2002, Liechtenstein notified amendments of national provisions in order to ensure compliance with the Acts referred to in Annex V and VIII to the EEA Agreement. These concerned *inter alia* the validity and the prolongation of a residence permit in case of involuntary unemployment, the abolishing of certain conditions for the grant of a residence permit like e.g. proof of means for financing housing, the right of residence of family members, or the conditions under which a person may remain in the territory. Other questions, in particular those related to the permit system and the practical use of the permit quota, were still under examination in the reporting period, and will need further assessment in 2003.

In 2002, the Authority initiated a systematic assessment of the conformity of national immigration laws of Iceland and Norway. Pre-Article 31 letters have been sent to both EFTA States regarding what seems to be incorrect implementation of certain provisions of the Acts referred to in Annex V and VIII to the EEA Agreement and the corresponding administrative practice in the States concerned.

4.5.1.2 Complaints

The Authority continued its examination of cases based on complaints lodged with the Authority in the year 2000 or earlier during the reporting period. The Authority received four new complaints in 2002.

In 1998, a complaint against Liechtenstein was lodged with the Authority where a Dutch national alleged discriminatory rules on the grant of permanent residence permits, which favour Austrian nationals as compared to other EEA nationals. Although the Liechtenstein Government informed the Authority about interim measures intended to ensure compliance with EEA law, the Authority was still awaiting notification from Liechtenstein of final national measures rectifying the breach at the end of the reporting period.

A complaint against Liechtenstein lodged in 1998 concerning alleged discriminatory requirements regarding access to a traineeship at the Liechtenstein courts was still subject to examination by the Authority in 2002. In February 2002, the Liechtenstein Government notified amendments to the rules on legal traineeship at Liechtenstein courts. At the end of the reporting period, the Authority was finalising its assessment of the matter.

In 1999, the Authority received a complaint against Norway arising from an alleged breach of Article 3 of *Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals, which are justified on grounds of public policy, public security or public health*. The complainant had been expelled from Norway after having been sentenced to imprisonment for importation of prohibited drugs. In February 2001, the Authority received another complaint against Norway concerning the same issue. During the reporting period the Authority requested further information from Norway. The rules concerning expulsion were also subject to discussions between the Authority and the competent Norwegian authorities. The Authority will further examine the cases in 2003.

In 1999, the Authority received a complaint against Norway concerning expulsion of an individual. An Austrian national was refused a residence permit and expelled from Norway on the alleged grounds that his travel document had expired. In 2001, the Authority requested and received further information from Norway. The Authority will continue to examine the case in 2003.

In 2000, the Authority received a complaint against Norway concerning an Icelandic flight controller who was refused employment in Norway on grounds of nationality. In the course of the examination, the Authority found that the ranking system applied by the Norwegian Air Traffic and Airport Management appeared to discriminate against EFTA and EU nationals with professional experience in other EEA States. The Norwegian Government informed the Authority that, in Spring 2002, the necessary adjustments had been made in the collective agreement concerned in order to guarantee a non-discriminatory practice in accordance with

Article 28 of the EEA Agreement. The case was closed in November 2002.

In January 2002, the Authority received a complaint against Norway concerning an alleged infringement of the principle of free movement of workers. The complainant company, which owns a fishing vessel registered in Norway, had been held liable under Norwegian law for engaging in fishing with a Dutch captain and Dutch crew. The pertinent provision of Norwegian law states that at least 50 % of the crewmembers or share men on a Norwegian fishing vessel must be Norwegian nationals or resident in Norway. During the reporting period, the Authority examined the issue in light of Article 28 (2) of the EEA Agreement and Article 4 (1) of Regulation 1612/68. These provisions prohibit discrimination based on nationality between workers of the EEA States as regards employment and restrictions on access of foreign nationals to employment opportunities, in particular by number or percentage. In August 2002, the Authority sent a Pre-Article 31 letter to Norway seeking further information. In February 2002, the Authority received a complaint against Norway regarding tax rules governing the importation of foreign-registered motor vehicles by workers as part of their household goods. The complainant alleged that the Norwegian rules restricted the free movement of workers since the rules made workers pay full import taxes on their vehicles when moving their residence to Norway from another EEA State. The case was still under examination at the end of the reporting period.

In July 2002, a complaint against Norway was lodged with the Authority alleging a breach of the principle of free movement of workers by a rule of the Norwegian Basketball League according to which basketball clubs of the national league must ensure that, at any time during a match, at least two players in the field must be Norwegian nationals. The Authority examined the said rule in light of its application both to professional and to amateur players. The case will be further examined in 2003.

In October 2002, the Authority received a complaint against Norway concerning the refusal by Norwegian authorities to recognise an EEA national engaged in part-time work who contributed to the national security system as a "worker" within the meaning of Articles 28 and 29 of the EEA Agreement for the purpose of residence and payments under the social security system. Examination of the case will continue in 2003.

In October 2002, the Authority received a complaint against Norway concerning alleged discriminatory treatment by the complainant's employer of EEA nationals who are resident in a country other than Norway. Whereas the employer grants employees resident in Norway reimbursement of commuting costs between their work place and their families' homes, employees resident in an EEA State other than Norway are not entitled to such payments. At the end of the reporting period, the Authority has not been able to establish discrimination attributable to Norway.

4.5.1.3 Own-initiative cases

In 2001, based on information received on national rules on study finance in the EFTA States, the Authority started a systematic assessment of the conformity of these rules in Iceland, Liechtenstein and Norway. The examination of the Liechtenstein legislative measures was in its final stage at the end of the reporting period.

In June 2001, the Authority opened an own-initiative case against Iceland, as it appeared that, in respect of migrant workers, self-employed persons and their families, the Icelandic rules on the grant of student loans were not in conformity with the EEA Agreement and Council Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community. Under the Icelandic legislation, only those workers who had been resident in Iceland for one year and who had completed an employment period of five years in the EEA prior to settlement in Iceland were entitled to student loans. Furthermore, only those children of migrant workers who were, either under the age of 21 years or, were supported by the workers in Iceland were entitled to student loans. In August 2002, the Icelandic Government submitted a draft of amendments to the national provisions at issue to the Authority. Following the Authority's assessment of the draft, further amendments of the draft text were received from Iceland in November 2002. The Authority aims at finalising the examination of the case in 2003.

In July 2001, the Authority opened an own-initiative case against Norway. It appeared that the Norwegian rules were not in conformity with the EEA Agreement as part-time workers and their children were excluded from financial support from the State Education Loan Fund *("Statens lånekasse for utdanning").* Furthermore, only those children of migrant workers who either were under the age of 21 years or were supported by the workers were able to profit from the rules on study grants. At the end of the reporting period, the Norwegian Government informed the Authority that the draft regulations for the study year 2002 - 2003 were amended in conformity with the EEA Agreement. In June 2002, the Norwegian Government submitted information on the amended rules on study finance. Following

the Authority's assessment thereof, further amendments of the Loan Fund's guidelines became necessary in order to ensure full compliance with EEA law by administrative practice. The Authority aims at finalising the examination of the case in 2003.

In June 2001, the Authority opened an own-initiative case against Iceland concerning rules governing the importation of foreign-registered motor vehicles by workers as part of household goods. The examination will continue in 2003.

Following the closure of two complaints against Norway concerning a nationality requirement for captains and first officers on board of Norwegian ships, the Authority undertook a preliminary examination of the national rules in light of EEA law. The national laws reserved the employment of captains and first officers on board of Norwegian vessels to Norway's own nationals. At the same time, Norway, in practice, opened this specific employment market to EEA nationals. Whereas the Authority accepted, at least in a case-by-case approach, that according to Article 28 (4) of the EEA Agreement, the EFTA States may restrict employment to their own nationals if the occupation involves the exercise of public authority, Norway did not make use of this provision. At the core of the issue is the legal question, not yet settled by case law, whether a captain and a first officer must be regarded as exercising public authority in the meaning of Article 28 (4) of the EEA Agreement in all circumstances, i.e. irrespective of the size or kind of vessel they command or of the waters in which they operate. Similar questions on the interpretation of Article 39 (4) of the EC Treaty, to which the wording of Article 28 (4) of the EEA Agreement corresponds, have been referred to the Court of Justice of the European Communities. Depending on the Court's judgement, Norway reserved its right to invoke Article 28 (4) of the EEA Agreement in future. The Authority has so far examined the contradiction of Norwegian law and Norway's practice in light of the general principle of EEA law on legal certainty. The Authority completed its assessment in November 2002 for the time being but may revisit the matter following judgement in the mentioned case.

4.5.2 MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS

Under Article 30 of the EEA Agreement, the Contracting Parties shall take the measures necessary to ensure 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.

4.5.2.1 Implementation control

In 1998, Liechtenstein notified national measures implementing the Directives on medical professions. In its subsequent letters of formal notice of November 2001, the Authority concluded that the *Doctors Directive* (93/16/EEC) and its amendment by *Directive 97/50/EC* have not been fully implemented. Moreover, no implementing measures had been adopted for *Commission Directives 98/21/EC, 98/63/EC* and *1999/46* amending the *Doctors Directive* (93/16/EEC). Following notification of national implementing measures for the above-mentioned Acts, the cases were closed in December 2002. Full implementation of the *Nurses Directive* (77/452/EEC) and the *Acquired Rights Directive* (81/1057/EEC) were notified by Liechtenstein in February 2002. The cases were subsequently closed.

Formal infringement proceedings by the Authority with regard to the implementation of the *Second General System Directive* (92/51/EEC) by Liechtenstein were, in principle, terminated in October 2000. However, examination of national provisions governing the profession of auditors and trustees falling within the scope of the Directive continued during the reporting period and will be finalised in 2003.

The Authority continued its conformity assessment, started in 1999, regarding the implementation measures in Liechtenstein of *Architects Directive* (85/384/EEC). In April 2002, Liechtenstein notified national measures intended by that State to ensure full implementation of the *Architects Directive* (85/384/EEC). At the end of the reporting period, the Authority was still examining the notified national legislation.

In October 2001, the Authority commenced examination of Liechtenstein's failure to implement *Commission Directive 2000/5/EC of 25 February 2000 amending Annexes C and D* to the *Second General System Directive* (92/51/EEC). Following notification of implementing measures in March 2002, the case was closed.

In 2001, the Authority initiated systematic implementation controls for Iceland, Liechtenstein and Norway concerning the national transposition of the general systems. Conformity assessments for the *First General System Directive* (89/48/EEC) and the *Second General System Directive* (92/51/EEC) were started in March 2001. Those for the *Third General System*

Directive (1999/42) were initiated in November 2001. The examination of all cases will continue in 2003.

In 2002, the Authority opened an own-initiative case in order to monitor the adoption by Norway of national measures to ensure implementation of the *First* and *Second General System Directives* in the mining field for the professions of *"bergingeniør"* and *"stiger"*. The examination of the case will continue in 2003.

4.5.2.2 Complaints

During the reporting period, the Authority continued to examine cases that were registered in 2000. In 2002, the Authority received one new complaint.

In January 2000, the Authority received a complaint against Iceland concerning the alleged refusal of a nursing license by the Icelandic Ministry of Health and Social Security to an EEA national who is a psychiatric nurse. The refusal was based on the grounds that the complainant had not completed general nursing studies. As the Authority did not establish a breach of the principles of mutual recognition of professional qualifications, it finalised it examination and closed the case during the reporting period.

In November 2000, a British national with an American qualification in nursing lodged a complaint against Norway for breach by that State of the rules on the recognition of third country diplomas. In August 2001, the Authority was informed that the complaint had been solved on an individual basis. The Authority finalised its general examination in 2002 and closed the case.

In December 2000, a complaint against Norway on an alleged non-recognition of the British title "Bachelor of Science" as equivalent to the Norwegian academic title "sivilingeniør" was lodged with the Authority. The Authority finalised examination of the case in 2002 and concluded that there was no breach of EEA rules. The case was subsequently closed.

In August 2002, a complaint against Liechtenstein was lodged with the Authority alleging a breach of the provisions of *Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field* and of the fundamental principles of freedom of establishment and freedom to provide services. The complaint concerned in essence the national rules relating to requirements of professional qualifications for EEA nationals who wish to take up and pursue investment services in Liechtenstein in self-employed capacity either by cross-border services or by means of establishment in the territory. At the end of the reporting period, the Authority was still examining the case.

4.5.3 RIGHT OF ESTABLISHMENT

4.5.3.1 Implementation control

In June 2000, EEA Joint Committee Decision No. 191/1999 (JC Dec. 191/1999) entered into force. It added special adaptations to Annex V (free movement of workers) and Annex VIII (right of establishment) to the EEA Agreement applicable to Liechtenstein until 31 December 2006. Nationals of Iceland, Norway and the EU Member States may take up residence in Liechtenstein only after having received a permit from the Liechtenstein authorities. The special adaptations for Liechtenstein are discussed in more detail in the Chapter on free movement of persons.

In relation to the Authority's reporting obligation on the practical implementation of *Council Directive 90/364/EEC of 28 June 1990 on the right of residence, Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self employed persons who have ceased their occupational activity and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students*, the systematic assessment of the conformity of national immigration laws was extended to Iceland and Norway, including all Acts referred to in Annex V and VIII to the EEA Agreement. Pre-Article 31 letters were sent to both States for incorrect implementation of certain provisions of the Acts referred to in Annex V and VIII to the Agreement. The Authority's report on the practical implementation of *Directives 90/364/EEC, 90/365/EEC* and *93/96/EEC* will be published in 2003.

4.5.3.2 Complaints

In the reporting period the Authority continued to examine cases, which were registered in 2000 or earlier. The Authority received one new complaint in 2002.

In 1998, the Authority initiated formal infringement proceedings against Liechtenstein on the basis of two complaints regarding the single practice rule for doctors and dentists. The single practice rule implies that a doctor or dentist, once established in a particular EEA State, would only be able to enjoy the freedom of establishment under the EEA Agreement in Liechtenstein by abandoning the establishment he/she already had. The Liechtenstein Administrative Court *(Verwaltungsbeschwerdeinstanz)* had asked the EFTA Court for an advisory opinion on the interpretation of Article 31 of the EEA Agreement as regards the single practice rule in similar cases which were pending before the national court. In June 2001, the EFTA Court concluded, in case E-6/00, that "a national provision of a Contracting Party to the EEA Agreement which provides that

a physician may not operate more than one practice, regardless of location, is incompatible with Article 31 EEA". In September 2001, the Liechtenstein Administrative Court delivered its judgments and concluded that the single practice rule was not in conformity with the EEA Agreement. In 2002, the Liechtenstein Government informed the Authority that all individual cases had been solved. The Authority subsequently closed the complaint cases. At the same time, it registered a new case in order to examine the moratorium on the grant of concessions for general practitioners, which had been adopted by the Liechtenstein Government subsequent to the EFTA Court's judgment. Moreover, the Authority followed the legislative process of the new Health Care System in Liechtenstein. The case will be further pursued in 2003.

In 1998, the Authority received two further complaints against Liechtenstein alleging discriminatory restrictions on the freedom of establishment for doctors and dentists. The complainants had been refused the right to establish themselves in Liechtenstein on the grounds of Liechtenstein's legislation requiring a balanced proportion between Liechtenstein nationals and foreigners in the profession concerned. Liechtenstein argued that the provision referred to was in accordance with its obligations under the EEA Agreement taking into account Article 112 of the EEA Agreement and Protocol 15 thereto. In February 2000, the Authority sent a letter of formal notice in both cases to Liechtenstein for failure to comply with Article 31 of the EEA Agreement. The Liechtenstein Government explained that in December 1999, the competent body for granting licences, "Sanitätskommission", had refused to grant concessions to the complainants on the basis of the single practice rule (see above, second paragraph under this point) and not on the basis of the Ordinance in question, "*Verordnung über den Personenverkehr im EWR*" which was therefore no longer relevant for the decision of the pending cases. In 2002, following the EFTA Court's advisory opinion in cases E-4/00 and E-5/00, the complainants' problems were solved, and the cases were subsequently closed.

In a complaint lodged with the Authority in February 2000, a German dentist claimed that his right of establishment in Liechtenstein had been restricted. Under the single practice rule he had been refused the right of residence in Liechtenstein. The complainant, who was granted the status of frontier worker, claimed, *inter alia,* a breach of Liechtenstein's standstill obligation under the EEA Agreement by amendments of the provisions on priority categories of persons eligible for a residence permit which placed him in a less favourable group of priority. At the end of the reporting period, the case was still open, and the examination will continue in 2003.

In 1998, the Authority received a complaint against Liechtenstein concerning a residence requirement in the national Trade Act for EEA nationals who wanted to establish a business in Liechtenstein. The law applicable at the time required a self-employed person who wanted to establish a business or set up agencies, branches, or subsidiaries in Liechtenstein to reside in that State or employ a manager residing in that State in order to obtain a trading license. According to a second complaint, registered in 1998, concerning a similar provision of Liechtenstein law, which requires that in order to register a company in Liechtenstein the owner must reside in the State or appoint a representative residing there. Both cases were closed in 2002 pursuant to information from Liechtenstein that national measures had been adopted in order to rectify the situation.

In 1998, the Authority's attention was also drawn to a similar residence requirement in the Liechtenstein Persons and Company Act. In 1999, the Authority initiated infringement proceedings against Liechtenstein but rested the case when the Liechtenstein Administrative Court *(Verwaltungs-beschwerdeinstanz)* referred the legal question at issue to the EFTA Court. On 22 February 2002, the EFTA Court had delivered its advisory opinion on 22 February 2002 (E-2/01). It held that a provision of national law requiring that at least one member of the board of directors of a domiciliary company, having authority to manage and to represent the same, must be permanently residing in that State, was in breach of Article 31 of the EEA Agreement. The Authority still awaits notification from the Liechtenstein Government of national measures rectifying the legislative situation (see also chapter 8).

In 1999, a complaint was lodged against Norway for alleged discriminatory legislation and practice as regards allocation of licences within the sector of aquaculture. According to the national rules, preference was to be given to applicants registered in the region where licences were to be allocated and owned, to the extent possible, by locals or by local shareholders. Following the Authority's reasoned opinion of November 2001, concluding that the so-called "local ownership" criterion was in breach of Articles 31 and 40 of the EEA Agreement, the Norwegian Government informed the Authority about national measures intended by that State to rectify the breach. According to the Norwegian Government the criterion of "local ownership" should be replaced by a criterion of "economic integration". Under this criterion consideration should be given to an applicant's positive effect on the socio-economic development in the region where licences were to be allocated. The Authority invited the Norwegian Government to specify, *inter alia,* this criterion in light of the principle of transparency and to

ensure that its practical application was in conformity with EEA law, in particular with the principle of non-discrimination enshrined in the fundamental principles of free movement. The Government was also invited to keep the Authority informed about the application of the criterion in a new allocation round scheduled for Autumn 2002. While the Authority intended to close the complaint case, it was to open a new case to monitor the application by the Norwegian administration of the criterion of "economic integration". In December 2002, however, the Authority received a new complaint against Norway alleging that the national legislation on the allocation of aquaculture licences for the breeding of salmon and trout adopted in 2002 and as applied by the administration in November 2002, was in breach of Articles 11, 28, 31, 36 and 40 of the EEA Agreement. The complainant alleged that, by virtue of the selection criterion of "economic integration", the Norwegian Government, *inter alia,* gave preference to companies with local ownership, which procured local goods and services, which recruited staff locally and made these allocation terms conditional for maintaining the licence. Pursuant to the complaint the Authority started investigations of the administrative practice regarding allocation of aquaculture licences. The examination of the case will continue in 2003.

In January 2001, the Authority received a complaint by a Danish company concerning the State production monopoly of strong alcoholic beverages in Norway. Following discussions between the Authority and the Norwegian authorities, Norway informed the Authority that the monopoly had been repealed as from 1 July 2002. The Authority consequently closed the case.

In March 2001, a complaint against Norway was lodged with the Authority claiming that the so-called *"fastlegeordning"*, the Norwegian Regular General Practitioner Scheme, was preventing general practitioners from other EEA States from establishing a practice in Norway. The *"fastlegeordning"* concerns the system for contracting out posts for general practitioners, primarily self-employed, by municipalities. The number of available posts is limited in accordance with medical care needs in the municipality concerned. In order to be reimbursed by the Social Insurance Scheme, the patients are obliged to receive medical services by a doctor who they have chosen as their general practitioner and with whom the municipality has entered into a contract. The Authority is still examining the case.

In June 2001, the Authority received another complaint against Norway within the field of health services. The complainant alleged that the regime governing funding contracts *("driftstilskudd")* restricted the freedom of establishment of physiotherapists in Norway. In order to get reimbursement from the National Social Insurance Scheme patients must seek treatment from physiotherapists with funding contracts. This entails that patients pay a higher fee to physiotherapists without funding contracts. According to the complainant, the system prevents non-Norwegian physiotherapists from establishing a practice in Norway. Examination of the case will continue in 2003.

In June 2001, the Authority received a complaint against Norway relating to the calculation of taxable income. The provision in question concerns the deductibility from taxable Norwegian income of so-called standby costs by foreign undertakings operating vessels in Norwegian waters. Although the tax rules themselves do not treat resident companies and permanent establishments differently in respect of these expenses, the complainant alleged that the current practice discriminated against permanent establishments by prohibiting them from deducting any part of their expenses incurred during the standby periods, while allowing resident companies to deduct all such expenses. In the Norwegian Government's opinion, there is no discrimination as the deductibility is dependant on whether or not the expenses relate to the permanent establishment. The examination of the case continued in 2002 and the merits of the complaints will be further assessed in 2003.

In March 2002, the Authority received a second complaint against Norway concerning the deductibility of standby costs from taxable Norwegian income by foreign undertakings operating vessels in Norwegian waters. In the same complaint a second point was raised concerning rules on depreciation of equipment that is moved in and out of Norwegian fiscal territory. It is maintained that the Norwegian rules on depreciation of equipments are more favourable for domestic undertakings than foreign undertakings. Higher depreciation rate is permitted for domestic undertakings. In the Norwegian Government's opinion, the rules entail no discrimination. The merits of the complaint will also be further assessed in 2003.

In February 2002, the Authority delivered a reasoned opinion to Norway concerning restrictions on the acquisition of concessions on waterfalls for the production of energy, contained in certain provisions of the Act on Industrial Concessions. This case is discussed in the chapter concerning free movement of capital.

4.5.4 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, the aggregation of all periods taken into account under the laws of several countries. The purpose of this is two fold. It is for the acquisition and retention of the right to benefit and for calculating the amount of benefit, and the payment of benefits to persons resident in the territories of those States.

4.5.4.1 Implementation control

In January 2002, Norway notified the Authority of the implementation of *the Supplementary Pension Rights Directive* (98/49/EC). The final date implementation of this Act was 25 July 2001. As concerns Iceland, the Icelandic Government had, in 2001, informed the Authority that there was no need for Iceland to implement the Directive because the only pension funds that would fall under the scope of the Directive were already covered by the *Social Security Regulation 1408/71* and therefore exempted from the Directive. In June 2002, the Authority sent a letter to Iceland reiterating the Authority's position that it did not agree with the Government's conclusion. The case will be further pursued in 2003.

4.5.4.2 Complaints

In 2001, the Authority initiated infringement proceedings against Norway, based on three complaints it had received concerning the refusal by Norway to pay Norwegian Child Care Benefit ("*Kontantstøtten*") to people living outside Norway but within the EEA Area. According to Regulation 1408/71, workers and self-employed persons insured under the Norwegian Social Insurance Scheme are entitled to family benefits from Norway in respect of their family members who reside in another EFTA or EU State, as if they were residing in Norway. The purpose of this provision is to overrule the residence requirement in national schemes. In December 2002, the Authority sent a reasoned opinion to Norway concerning these cases. The Authority now awaits reaction from Norway to the reasoned opinion.

In April 2001, the Authority received a complaint against Norway alleging that the Norwegian rules concerning the scope of application of persons entitled to benefits under the National Insurance Act were in conflict with Regulation 1408/71. The Authority will finalise its examination of the case in 2003.

In September 2001, the Authority received a complaint against Norway regarding social security contributions for pensioners. The complainant alleged that the Norwegian rules providing for deductions from pensions in respect of contributions for sickness are in conflict with Regulation 1408/71. The Authority is in communication with Norway and the case will be further pursued in 2003.

In February 2002, the Authority received a complaint against Norway concerning the slow case handling of pension claims by the Norwegian Authorities. As a result of the Authority's examination the Norwegian Authorities have solved the case giving rise to the complaint and informed the Authority that it has introduced improved administrative procedures intended to prevent the recurrence of such cases.

In April 2001, the Authority received a complaint against Norway alleging that the Norwegian rules concerning persons entitled to benefits under the National Insurance Act were in conflict with Regulation 1408/71. The complainants claimed that Regulation 1408/71 extended to the Continental Shelf. As a result, the Norwegian legislation in question discriminated against Norwegian seafarers and petroleum workers residing outside Norway. Following an examination of the case, the Authority concluded that the alleged discrimination would only affect workers residing outside the EEA Area. The EEA Agreement did not, therefore, apply to the subject matter. Since no infringement of the EEA Agreement could be established the case was closed in July 2002.

In 2002, the Authority continued its examination of a complaint against Norway concerning a special supplement to family allowances *("Finnmarkstillegget")*. The complaint concerned a frontier worker who worked in the Norwegian region of Finnmark. The complainant was granted family allowances from Norway but refused the special supplement because the children concerned did not live in Finnmark. The Authority sent a letter of formal notice to Norway in October 2000 concluding that it had failed to comply with Regulation 1408/71. In its reply, the Norwegian Government indicated that it did not agree with the Authority's assessment. The case will be further examined in 2003.

In June 2002, the Authority closed a case based on a complaint concerning individual entitlement to sickness benefits during a temporary stay in an EEA State other than Norway. Following communication with the Authority, Norway had agreed with the opinion of the Authority and amended the National Insurance Administration administrative statements of 10 May 2001. It follows from the amended administrative statements that persons who are covered by the EEA Agreement are entitled to cash sickness benefits during a stay in another EEA State if they otherwise fulfil the conditions for entitlement to sickness benefits in Norway.

4.6 FREEDOM TO PROVIDE SERVICES

The freedom to provide and to receive services is one of the four basic freedoms on which the EEA is founded. It aims at opening national borders within the EEA for those who wish to secure equal access to the market for the provision of services in EEA States other than their own. Article 36 of the EEA Agreement provides that, throughout the EEA, services shall be provided without restrictions. Only non-economic grounds may allow EEA States to justify restrictions to this freedom. Annexes IX to XI of the EEA Agreement contain a number of specific provisions on the freedom to provide services. These concern financial services, audiovisual services, postal services, information society services and data protection. In addition, the provisions of Annex XIII to the EEA Agreement contain rules on all modes of transport. When they are not governed by rules providing for full harmonisation at EEA level, cross-border services fall within the scope of Article 36 of the EEA Agreement. These are called "non-harmonised services sectors".

4.6.1 FINANCIAL SERVICES

The freedom to provide financial services across borders within the EEA area is established in Article 36 of the EEA Agreement. The relevant secondary legislation is referred to in Annex IX to the Agreement. The objective of the rules is to promote a single European financial market. The financial service sector is divided into three categories, i.e. rules on banking, insurance and securities and stock exchanges.

Due to increasing focus in the European Union on reforms of legislation in the financial sector, presented in Commission's Financial Service Action Plan, the Authority decided to review various legislation in the financial sector of the EFTA States. The review of Norwegian legislation started in Autumn 2001 and of Liechtenstein legislation in 2002. Based on these reviews, the Authority has raised several questions regarding the compliance of the national law with the obligations the States have under the EEA Agreement. Some of the issues raised are discussed in the chapters below. A review of the Icelandic financial sector is expected to be initiated in early 2003.

4.6.1.1 Banking

In 2001, the Authority delivered a reasoned opinion to Norway, concerning lack of implementation of Article 11 of the *Second Banking Directive* (89/646/EEC) and restrictions in national law on ownership of financial institutions (the so-called 10 % rule). Developments in 2002 are discussed under chapter 4.7 on free movement of capital.

In December 2001, the Authority delivered a reasoned opinion to Liechtenstein concerning restrictions on the establishment of and the investment in financial institutions. The Liechtenstein Banking Act provided that those banks over which a dominant foreign influence is exercised were not allowed to refer in their name to a Liechtenstein character or to pretend to have such a character. In the Authority's view, this rule hindered the establishment in Liechtenstein of credit institutions and financial institutions subject to foreign ownership or other dominant foreign influence. Furthermore, the Authority concluded that this rule could hinder foreign EEA nationals and economic operators from investing in Liechtenstein credit institutions and financial institutions. In September 2002, Liechtenstein notified the Authority of amendments to the Banking Act repealing the disputed provision. Consequently, the Authority closed the case in October 2002.

The time limit for the EFTA States to adopt necessary measures to comply with the *Cross-border Credit Transfers Directive* (97/5/EC) expired on 1 February 2000. The Authority has received notifications from all three States of the full implementation of the Directive and initiated a conformity assessment project on the implementation of the Directive in all three States in 2001. The assessment was finalised in 2001 for Iceland and Norway without formal action. The Liechtenstein implementation has been assessed during 2002. The Authority will conclude its examination in early 2003.

The time limit for the EFTA States to take the measures necessary to comply with the *Settlement Finality Directive* (98/26/EC) expired on 1 February 2000. Since Liechtenstein had not notified national measures to implement the Directive, the Authority issued a letter of formal notice to Liechtenstein in April 2001. Liechtenstein has now informed the Authority that the national measures to implement the Directive entered into force in December 2002. The case should be closed in early 2003.

The time limit for Iceland, Liechtenstein and Norway to take the measures necessary to comply with the *Directive on Definition of Credit Institute* (2000/28/EC) expired in April 2002. By that time, the Authority had not received any notifications of implementing measures from the three States. Iceland notified partial implementation in May 2002 and full implementation in September 2002. The Authority sent a letter of formal notice to Norway and Liechtenstein in

September 2002. Since notification of full implementation has not been received from Norway and Liechtenstein the Authority will consider whether to pursue the case further in 2003.

The time limit for Iceland, Liechtenstein and Norway to take the measures necessary to comply with the *Electronic Money Institutions Directive* (2000/46/EC) expired in April 2002. By that time, the Authority had not received any notifications of implementing measures from the three States. Iceland notified partial implementation in May 2002 and full implementation in September 2002. The Authority sent a letter of formal notice to Norway and Liechtenstein in September 2002. Since notifications of full implementation have not been received from Norway and Liechtenstein the Authority will consider whether to pursue the cases further in 2003.

In Autumn 2001, the Authority decided to initiate a review of Norway's legislation in the financial sector and check its conformity with EEA law in relevant areas. The Authority sent four Pre-Article 31 letters to Norway in October and November 2001 asking for information on various rules in the Currency Act, Commercial Bank Act, Saving Bank Act, Act on Financial Institutions, Securities Trading Act, Act on Insurance Activity etc. The project continued in 2002 with communications between the Authority and Norway in order to clarify various issues raised by the Authority. Additional Pre-Article 31 letters were sent by the Authority to Norway in the course of the year. The project will continue in 2003.

A corresponding horizontal review of the Liechtenstein financial sector was initiated in 2002. The Authority has been examining legislation in the banking, insurance, pension and securities sector. A letter requesting information on several rules in the aforementioned laws was sent to Liechtenstein in October 2002. The issues raised were still under assessment at the end of the reporting period.

In order to fulfil the reporting duty provided for in Article 12 of the *Cross-border Credit Transfers Directive* (97/5/EC), the Authority initiated a survey on various aspects of cross-border credit transfers in Norway, Iceland and Liechtenstein. The survey also investigated costs of cash withdrawals by credit and debit cards. The resultant report will be prepared in early 2003.

4.6.1.2 Insurance

In March 2001, the Authority referred a case to the EFTA Court regarding Liechtenstein's failure to ensure full compliance with the *Legal Expenses Insurance Directive* (87/344/EEC). The EFTA Court gave a judgment on the merits of the case in December 2001 whereby the infringement was confirmed. Liechtenstein has notified national measures, considered to fully implement the Directive, which entered into force on 1 January 2002. The case was closed in January 2002.

The time limit for Iceland, Liechtenstein and Norway to take the measures necessary to comply with the *Directive on the Supplementary Supervision of Insurance Undertakings in an Insurance Group* (98/78/EC) expired on 1 July 2000. By that time, the Authority had not received any notifications of implementing measures from the three EFTA States. Consequently, the Authority sent a letter of formal notice to all three States in October 2000. Norway notified full implementation in October 2001 and Iceland in February 2002. Liechtenstein has not notified implementation of the Directive and in December 2001 the Authority issued a reasoned opinion due to the delay of implementation. The national measures to implement the Directive have now been adopted in Liechtenstein. The Authority intends to close the case in early 2003.

In 1998, the Authority received a notification from Liechtenstein of partial implementation of the *Second Life Assurance Directive* (90/619/EEC). The Authority sent a reasoned opinion to Liechtenstein in July 1999 due to a delay in full transposition of the Directive. In its observations to the reasoned opinion, the Liechtenstein Government indicated that the necessary implementing measures would be adopted in 2000. In July 2001, the Authority received a notification of full implementation of the Directive from Liechtenstein. In 2002, the Authority assessed whether the measures taken were sufficient and decided thereafter to close the case.

The time limit for Iceland, Liechtenstein and Norway to take the necessary measures to comply with the *Fourth Motor Insurance Directive* (2000/26/EC) expired in July 2002. In July 2002, Norway notified the Authority of national measures partially implementing the Directive. Norway notified full implementation in December 2002. The Authority did not receive any notifications of implementing measures from Iceland and Liechtenstein and sent letters of formal notice to these states in October and November 2002 respectively.

In December 2000, the Authority sent a Pre-Article 31 letter to Norway requesting information on the interpretation to be given to Norwegian rules providing that costs that are accrued when a life assurance contract is entered into are not to be included in the cost element for the establishment of the premium tariff. The rules provide rather that they be charged and paid by the policyholder separately and at no

point later than the first premium payment. This rule is, *inter alia*, applicable to branches of insurance undertakings authorised in other EEA States. In 2001, the Authority examined the conformity of these rules with the framework provided for in the Life Assurance Directives. Emphasis was particularly placed on the provisions of the *Third Life Assurance Directive* (92/96/EEC) concerning the scope of insurance supervision by the home State competent authorities and the competence of host State supervisory authorities as regards branches of life assurance undertakings authorised in other EEA States. The examination continued in 2002 and a second Pre-Article 31 letter was sent to Norway where the Authority's opinion was reiterated.

In 1998, the Authority received a complaint against **Iceland** alleging an infringement of the EEA Agreement arising from the provisions of the Icelandic pension fund legislation. The complainant maintained that the national provisions were discriminatory and restricted the free movement of services due to the requirement that insurance companies have their place of business in Iceland in order to be permitted to offer agreements on supplementary insurance benefits and individual pension savings. The complainant further maintained that limitations as to the investment policy of pension funds were discriminatory and restricted the free movement of capital. In the course of the examination of the complaint, the Authority sent two letters to Iceland requesting information on the pension fund legislation. In 2000, the Icelandic Pension Fund Act was amended in such a way that pension funds are now allowed to invest up to 10 % of their net assets in unlisted securities that are issued by parties within the OECD. In May 2002, the Authority received a notification from Iceland of changes in legislation authorising pension funds to invest in unlisted shares issues by parties in Liechtenstein. The remaining issue will be assessed in light of the development in case law concerning pension legislation in the EEA Area.

In October 2000, the Authority received a complaint against **Norway** alleging an infringement of EEA rules concerning insurance and consumer protection. The complainant maintained that Norwegian rules restricting the conversion of a paid-up-policy into a unit trust were incompatible with the EEA Agreement. The Authority did not establish a breach of the EEA Agreement and decided to close the case in December 2002.

As mentioned under paragraph 4.6.1.1 Banking, the Authority started a review of **Norway**'s legislation in the financial sector in 2001. The investigation covered insurance legislation in Norway. The project continued in 2002 with communications between the Authority and Norway in order to clarify various issues raised by the Authority. The project will continue in 2003.

4.6.1.3 Stock exchange and securities

In December 2001, the Authority sent a letter of formal notice to **Norway** concerning its failure to fully and correctly implement the *Investor Compensation Scheme Directive* (97/9/EC). One issue remains problematic. It concerns the upper limit required under Norwegian legislation for the total amount of compensation investors can claim if an investment firm does not meet its obligations. Under the Directive no maximum amount exists. During the reporting period, the Authority continued to assess this question in light of Norway's reply and discussions that took place during the year.

In 1999, the Authority received a complaint against **Norway**, where it was alleged that the national system of investor compensation created a barrier to the entry by non-national service providers to the Norwegian market in the field of investment services. The complaint has been examined in connection with the assessment of the conformity of Norwegian provisions with the *Investor Compensation Scheme Directive* (97/9/EC) in Norway. The assessment of this case will be finalised in 2003.

The Authority pursued the assessment of the conformity of the implementation of the *Investor Compensation Scheme Directive* (97/9/EC) in **Iceland**. Following an exchange of letters in mid-2002, most issues were clarified and adoption of new legislation is expected in 2003.

In 2001, the Authority initiated an assessment of the national transposition measures aiming at implementing *the Prospectus Directive* (89/298/EC) in **Norway**. In January 2002, the Authority decided to close the case without further action being needed.

The Authority also opened an own-initiative case in 2002 concerning share ownership restrictions in undertakings in the field of securities in **Norway**. This case is discussed in the Paragraph 4.7 relating to free movement of capital.

The Authority continued the assessment of the national transposition measures aiming at implementing *the Insider Dealing Directive* (89/592/EC) in **Iceland** in 2002. Following an exchange of letters, Iceland clarified most issues raised by the Authority. During the reporting period, Iceland also informed the Authority of an amendment to the Act on Securities Transactions aiming at clarifying the scope of the

notion of insider dealing following a judgment by the Reykjavík District Court. At the end of the reporting period, the Authority was still awaiting notification of that amendment.

During the reporting period, the Authority initiated an assessment of the conformity of the implementation of the *Directive on investment services in the securities field* (93/22/EC) in Iceland. The Authority sent requests for information to Iceland in May and August 2002. Iceland informed the Authority that new legislation in the field of investment and financial services will be adopted and subsequently notified in the beginning of 2003. These new legislative measures will be included in the Authority's assessment.

In September 2002, the Authority began to scrutinise the implementation of the *Directive on investment services in the securities field* (93/22/EC) in Liechtenstein, hereby focusing on the Liechtenstein concept of trustees in light of this Act. The Authority will continue this assessment in 2003.

4.6.2 INFORMATION SOCIETY AND POSTAL SERVICES

4.6.2.1 Audiovisual Services

The EFTA States were required to implement the *Conditional Access Directive* (98/84/EC) by 1 October 2001. Both Iceland and Norway notified full implementation in 2001. However, in the absence of notification by Liechtenstein, in February 2002, the Authority initiated infringement procedures for non-implementation against that State by sending a letter of formal notice.

Notification of full implementation of the *Revised Television Without Frontiers Directive* (89/552/EEC as amended by 97/37/EC) by Liechtenstein is still awaited. The Authority is currently examining the implementation measures submitted so far by Liechtenstein.

The *Revised Television Without Frontiers Directive* provides for the free transmission of television broadcasts across borders within the EEA. The right to broadcast certain programmes, such as important sports events, is generally subject to commercial negotiations between rights' owners and broadcasters. In order to prevent the restriction of broadcast of events considered to be of major importance to society to premium-rate television channels with a limited coverage, the EEA States may take measures to ensure that broadcast of such events is open to broadcasters with a minimum national coverage. EFTA States are required to notify the Authority when they wish to make use of their right under the Directive to take such measures. No EFTA State has, hitherto, taken such action.

4.6.2.2 Electronic communication services

A new regulatory regime for electronic communications networks and services was adopted in the European Community in the first half of 2002. This "New Package" consists of six directives, one regulation, and one decision. It enters into force on 25 July 2003, superseding the current regime. Transitional provisions are in place to avoid possible vacuums given the instant repeal of the old regime and pending the full assumption by National Regulatory Authorities (NRAs) of their duties.

The incorporation of the new regulatory package into the EEA Agreement is currently pending; the aim is a contemporaneous entering into force of the new regime in both the EC and the EFTA pillars. However, potential constitutional requirements under Article 103 of the EEA Agreement will have to be awaited.

The following four policy objectives characterise the new regulatory framework for electronic communications: flexibility, legal certainty, technological neutrality and harmonisation. It is marked by a move towards competition law. Broadly speaking, a NRA may not impose any regulatory measure on an economic operator until it has first established that the market concerned is not effectively competitive. This is done by using a competition law approach employing the concept of single or joint dominance and by designating one or more market players as having Significant Market Power (SMP) in the relevant market.

The Authority will –replicating the efforts of the Commission – assist NRAs of the EFTA States in their tasks by issuing a Recommendation on relevant product and service markets and Guidelines on market analysis and the assessment of significant market power. In discharging their duties, NRAs will have to cooperate closely with their counterparts in other countries and National Competition Authorities (NCAs). To consolidate and harmonise the internal market, a consultation and scrutiny mechanism is introduced whereby NRAs have to notify draft measures in a number of areas to the Authority prior to their adoption. The Authority has a right to intervene on these measures within a very limited period of time. This procedure creates a new kind of task for the Authority. Internal preparations to cope with these new duties are presently under way, but it is clear that this will require additional resources.

In March 2001, the *Unbundling Regulation* (2887/2000/EC) was incorporated into the EEA Agreement. After the Authority

had sent a letter of formal notice to Iceland in February, that country notified full implementation in May 2002.

According to the *UMTS Decision* (128/1999/EC), the EFTA States were to have in place an authorisation system for the granting of UMTS licences by 1 January 2000. They were to take the actions necessary in order to allow the introduction of UMTS services in their country by 1 January 2002 at the latest. As no authorisation system is yet in place in Iceland, the Authority opened infringement proceedings against Iceland in February 2002. The case is now being examined further in light of the reply from the Icelandic authorities.

In August 2002, the Authority received a complaint concerning the costs involved for not being listed in the telephone subscriber directories in Norway. The examination of this complaint is pending at present.

Throughout the year, the Authority has been in contact with operators as well as with regulatory authorities in all the EFTA States in order to discuss matters of general interest as well as specific cases. Furthermore, the Authority has been liasing with the EFTA Secretariat regarding the incorporation of the new regulatory package. The Authority has also been cooperating with the European Commission on general and specific matters and participated as an observer in the now abolished Open Network Provision Committee, the High Level Committee and the newly established Communications Committee and European Regulators Group.

4.6.2.3 Data protection

The *Data Protection Directive* (95/46/EC) was incorporated into the EEA Agreement in 2000. After the Authority had instituted infringement proceedings against Liechtenstein in 2001 for partial and incorrect implementation, that country notified full implementation of the Directive in August 2002. The Authority subsequently conducted an in-depth conformity assessment that revealed shortcomings of the national implementing legislation in several areas. The Authority requested detailed information regarding the issues raised and will be investigating the case further. The Authority is currently conducting an in-depth assessment of the national implementation measures taken by Norway and Iceland with regard to the *Data Protection Directive*.

The examination of a complaint submitted by European Citizen Action Service against Iceland, relating to the Icelandic Health Sector Database, has continued throughout 2002 and is now in its final stages.

The year 2002 saw several Decisions by the European Commission on standard contractual clauses for the transfer of personal data to third countries and to processors established in third countries and on the adequacy of the protection of personal data in Hungary, Switzerland, and Canada incorporated into the EEA Agreement. For further references please consult the Annex to this Report.

4.6.2.4 Information society services

In July 2001, the *Electronic Signatures Directive* (1999/93/EC) entered into force for the EEA States. Iceland and Norway notified compliance with the Directive in the same month. As regards Liechtenstein, the Authority initiated infringement proceedings in October 2001 and issued a reasoned opinion in March 2002. In October 2002, Liechtenstein notified a draft law under the procedure for Draft Technical Regulations (DTR). A notification of full implementation is still awaited.

The *E-commerce Directive* (2000/31/EC) had to be complied with by the EFTA States by January 2002. Iceland notified full implementation of the Directive in April 2002. In December 2002, the Authority sent letters of formal notice for non-implementation of the Directive to Liechtenstein and Norway.

4.6.2.5 Postal services

In 2002, the Authority examined the implementation of the *Postal Services Directive* (97/67/EC) by all the three EFTA States. It is worth noting in this respect that a *New Postal Services Directive* (2002/39/EC), which amends the Directive currently in force, was adopted by the European Community in 2002. The new Directive is currently awaiting fulfilment of constitutional requirements by all EFTA States before incorporation into the EEA Agreement.

The examination of a complaint received in 1999 concerning the implementation by Norway of the *Postal Services Directive* (97/67/EC) has been put on hold and thus delayed pending the outcome of a case before Norwegian courts concerning similar issues.

4.6.3 TRANSPORT

The relevant provisions of the EEA Agreement governing transport can be found in Chapter 6 of Part III thereto, Articles 47 to 52 thereto, Protocols 19 and 20 and Annex XIII thereto. Article 47 provides that Articles 48 to 52 of the Agreement are applicable to transport by rail, road and inland waterways. Annex XIII to the EEA Agreement contains specific provisions on all modes of transport.

4.6.3.1 Road, inland and railway transport

Full implementation has been notified by all the EFTA States for all the acts adopted in the field, apart from the *Directive on Technical roadside inspection* (2000/30/EC) for which the time limit for the EFTA States to adopt necessary measures expired in June and *the 2001 Directive on Checks on transport of dangerous goods* (2001/26/EC), for which the time limit expired in April 2002. The Authority has received notifications from Iceland and Norway on full implementation of both these Acts. Liechtenstein had not notified implementing measures by the end of the reporting period.

By the end of the reporting period, Liechtenstein had not notified any implementation measures regarding the *1996 amendment to the Driving Licences Directive* (96/47/EC). The transitional period granted to that country for implementation expired at the end of 1999. A reasoned opinion was issued in February 2002. However, due to technical difficulties, the printing of the new driving licences was still meeting problems. According to Liechtenstein, full implementation of the Act should, according to plans, take place in January 2003.

With regard to *the Regulation on Recording Equipment in Road Transport* (2135/98/EC), no information on incorporation measures had been received from Iceland and Norway by the end of the reporting period. Furthermore, the Authority had no information on incorporation measures as regards the following regulations: *the Regulation on Carriage of Passenger by Coach and Bus* (2121/98/EC), *the Regulation on Recording Equipment in Road Transport* (2135/98/EC), *the Regulation on International Carriage of Passengers by Coach and Bus* (11/98/EC), *Regulation on Passenger Transport by Non-resident Carriers (cabotage)* (12/98/EC), and the Regulations on Ecopoints (3298/94/EC, 1524/96/EC, 609/2000EC and 2012/2000) from Iceland.

During the reporting period the Authority received a complaint concerning an alleged breach of the *Regulation on Social Legislation in Road Transport* (3820/85/EEC) by Iceland. The complaint is under assessment and will be further considered in 2003.

In August 2002, the Authority sent a letter to Norway concerning its notified implemented measures in connection with the *Directive on Road Charges* (1999/62/EC). The questions raised by the Authority were also discussed at the package meeting in Oslo in the beginning of October 2002. The information provided by Norway at the end of 2002 will be further assessed by the Authority in the beginning of 2003.

In December 2000, the Authority received a complaint concerning the duties imposed by Norway on vehicles with total weight larger than 12000 kg. The Authority subsequently received a written explanation from the Norwegian authorities. The case is still under assessment.

There were no new developments in the field of inland transport in the reporting period.

In the field of rail transport, no cases of non-implementation were opened during the reporting period.

However, in March 2002, the Authority received information that the Norwegian Railways (NSB) had refused to grant student travel reductions to students from other EEA countries who are performing unpaid traineeship in Norway as an integral part of their studies. The Authority sent a letter to Norway requesting all available information concerning student reductions on Norwegian railways. As it appeared that trainees in general are, as such, not entitled to student reductions on public transport in Norway, this part of the examination was not pursued. Nevertheless, from the information received, the question remained whether non-Norwegian students studying in other EEA countries and travelling on Norwegian railways are entitled to the same rebate as students studying at Norwegian schools and universities and Norwegian students studying abroad. This issue will, therefore, be further considered during 2003 in light of the non-discrimination principle of the EEA Agreement.

4.6.3.2 Inland waterway transport

Since there are no inland waterways in any of the three EFTA States, they are not, for the time being, under an obligation to implement measures in this sector.

4.6.3.3 Maritime transport

No new cases of non-implementation were opened in the maritime field during the reporting period. Nevertheless, neither Iceland nor Norway had notified implementing measures regarding *the Directive on Ship-generated Waste* (2000/59/EC). The Act was to be implemented by the end of the reporting period.

With regard to the *Regulation on Ballast Space Measurement* (417/2002), information on incorporation measures had yet

to be received from Iceland and Norway at the end of the reporting period. Furthermore, information on incorporation measures regarding the *Regulation on Safety management of ro-ro ferries* (179/98/EC) had not been received from Iceland.

A letter of formal notice was sent to Norway concerning possible discriminatory coast charges in that country. According to Norwegian legislation, vessels of 200 tonnes gross weight or more shall, on entry or exit from Norwegian internal waters, pay a general coast charge unless otherwise exempted. Such exemption is made *inter alia* for vessels "travelling from one Norwegian harbour to another". Norway, therefore, seems to levy a general coast charge, which distinguishes between domestic services and services to and from other EEA States. Such a distinction would secure a special advantage for the domestic market in contravention of the principle of free provision of services. According to Norway, the legislation is under revision. The Authority will follow up the case during 2003.

In 2001, the Authority received a complaint concerning the bidding for a licence to operate a ferry service in Norway. According to the complainant, Norwegian authorities failed to provide fair and equal treatment of candidates in the tender process. The complaint was still under assessment in 2002.

According to the *Port State Control Directive* (95/21/EC), each EEA State shall carry out an annual total number of inspections corresponding to at least 25 % of the number of individual ships, which entered its ports during a representative calendar year. According to the 1999 annual report of the Paris MoU on Port State control, Norway's performance during that year only amounted to an inspection rate of approximately 20 %. Norway had therefore been requested to provide an explanation. As the inspection numbers had improved slightly in 2000, and, when being assessed again in 2002 in light of the total inspection numbers for 2001, the performed checks had risen to somewhat above 25 % of all ships, no formal action was finally taken.

According to *the Directive on Registration of Persons on board Passenger Ships* (98/41/EC), EEA States can exempt passenger ships from the obligation to communicate the number of persons on board to the shore-based services of its owner. The ships must then be operating regular services of less than one hour between port calls, exclusively in protected sea areas. In such cases, the Authority shall be informed and assess the exemption granted by the EFTA State. Where the Authority is not in agreement with the decision made by the national authorities, a Committee procedure is launched, in accordance with procedures laid down in the Act, in order to have a final decision on the matter. In October 2001, Norway had informed the Authority that they had exempted nine Norwegian shipping routes from this rule. After having consulted maritime experts on the matter, the Authority drew the conclusion that two of these routes did not fulfil the criteria for exemption laid down in the Act. In conformity with the established Committee procedure, the issue was, therefore, taken up in the Working Group on Transport assisting the EFTA Surveillance Authority. The Working Group, which is chaired by the Authority (without voting rights), consists of representatives from the EFTA States. The members of the Working Group did not, however, follow the Opinion proposed by the Authority. The matter was subsequently sent to the Standing Committee of the EFTA States for final decision in accordance with the procedure laid down in the Act. The Standing Committee made a decision in accordance with the Norwegian proposal.

During autumn 2002, Norway notified four other exemptions from the same Act. These were still under consideration by the Authority by the end of the reporting period. A final decision can, therefore, only be foreseen in the beginning of 2003.

EEA States may also apply for additional safety requirements, equivalents, exemptions and safeguard measures according to the *Safety on passenger ships Directive* (98/18/EC). A similar Committee procedure to that provided for under *Council Directive on Registration of Persons on board Passenger Ships* (98/41/EC) (see above), applies. In 2002, both Iceland and Norway wanted to make use of this option and notified such proposed measures to the Authority.

In the case of Iceland, exemptions and equivalent safety measures, were requested in respect of a passenger vessel operating on the route from Dalvík to Grímsey in the Northern part of the country. The Working Group on Transport assisting the EFTA Surveillance Authority felt that the proposed Icelandic measures could not be authorised under the Act. As a result, the Icelandic request was withdrawn.

However, at the end of the reporting period, Iceland re-notified certain amended measures with the aim of exempting the shipping route in question from some of the safety requirements of the Act. As the Authority did not consider that the notification included all information necessary in order to make a proper assessment, the Icelandic authorities were requested to provide some further

information. The notification will, therefore, be assessed during the first part of 2003.

Likewise, in 2002, Norway requested a number of exemptions and equivalent measures to be introduced on board Norwegian passenger vessels according the same Act. Further information was, once again, requested by the Authority. The request was, therefore, still under examination by the end of the reporting period.

4.6.3.4 Civil Aviation

Liechtenstein had a transition period for implementation of national provisions governing civil aviation, which expired at the end of 2001. Since there is no airport for regular air services in Liechtenstein (only a heliport), no specific implementing measures have been deemed necessary for the majority of the aviation acts. However, as concern, *inter alia*, the *Directive on Investigation of Civil Aviation Accidents* (94/56/EC) and the *Directive on Mutual Acceptance of Licences* (91/670/EEC), the Authority is of the opinion that legislative measures must be introduced in Liechtenstein. Despite information from that country that such measures are being prepared, no notifications had yet been received by the Authority at the end of 2002. The Authority will, therefore, pursue this issue further in 2003.

In November 2001, a letter of formal notice was sent to Iceland since no information concerning national measures implementing the *Ground-handling Directive* (96/67/EC) had been received from that country. After receipt of such information in April 2002, the case was eventually closed later that year.

By the end of the reporting period Iceland had not reported on incorporation measures concerning the 1999 *amending Regulation on a Code of Conduct for CRS* (computer reservation systems) (323/1999/EC), *the Regulation on Air Carrier Liability* (2027/97/EC*), amending Regulation on the limitation of the operation of aeroplanes* (991/2001/EC), as well as *the second* and *third Regulation on adaptations to scientific and technical progress* (1069/1999/EC and 2871/2000/EC). With regard to the *Regulation on Procurement of ATM Equipment* (2882/2000/EC), similar information on transposition measures was also outstanding from Norway at the end of the reporting period.

In 1999, the Authority sent reasoned opinions to Iceland and Norway raising the possibility that these countries, by charging air transport taxes which discriminated between domestic flights and flights to other States of the EEA, secured a special advantage for the domestic market and the internal air transport services in Iceland and Norway. This is in contravention of the principle of free provision of services enshrined in the EEA Agreement. The Norwegian tax was abolished in April 2002 and the case subsequently closed.

In summer 2002, Iceland informed the Authority that a proposal to amend the air transport tax would be put before the Icelandic Parliament in Autumn 2002. The Authority, therefore, undertook to await further development until the end of 2002. Not having received any such information by the end of the reporting period, the Authority referred the case to the EFTA Court in the beginning of 2003.

During the reporting period, the Authority assisted Norway in publishing impositions of public service obligations on air routes in Norway for the period 1 April 2003 – 31 March 2006 and the related invitations to tender in accordance with *Regulation on access to intra-Community air routes* (2408/92/EEC) in the Official Journal of the European Communities and the EEA Supplement thereto. In the same way, it also assisted Iceland in connection with imposition of Public Service Obligations on the air route Reykjavik – Höfn.

4.6.4 NON-HARMONISED SERVICE SECTORS

During 2002, the Authority received seven complaints in this sector. It also continued to assess a number of complaints lodged in previous years under Articles 4 and 36 of the EEA Agreement. The Authority also started several own initiative cases during the reporting year. Of particular importance was an examination of the application of tax legislation in the three EFTA States affecting the four freedoms of movement, given the increased number of complaints received in this area.

4.6.4.1 Complaints

Complaints assessed by the Authority in the non-harmonised services sectors during the reporting period can be classified into six categories: complaints relating to the use of foreign registered vehicles and their taxation, complaints relating to lottery activities, complaints concerning services in the medical sector, complaints alleging restrictions on access to courts, complaints in the financial sector, and miscellaneous other matters.

Complaints concerning the use of foreign-registered vehicles and their taxation

As reported last year, the Authority has registered five complaints against Norway in the years 1998 to 2001 concerning national rules on the import of motor vehicles to Norway. They concern the levying of taxes and duties for second-hand cars temporarily or finally imported to Norway by EEA nationals in the course of the exercise of their right of free movement of persons. More specifically the complaint cases concern, *inter alia*, the importation of a second-hand car by a service provider established in another EEA State for business and private purposes or by a worker who took up employment in Norway and to this end imported his car as household goods to Norway. Other cases concern the temporary importation of a foreign-registered car to Norway for business and private use, where the car has been rented or leased in another EEA State in which the complainant was employed.

During the reporting period all the five cases have been subject to discussions between the Authority and the Norwegian Government. Examination of the cases will continue in 2003.

In March 2002, a complaint was lodged with the Authority against Iceland in which the complainant alleged that Icelandic regulations and administrative practice governing taxation of vehicles imported to Iceland were discriminatory. It is maintained that vehicles temporarily imported for travel purposes were taxed at a higher level and by a different method than vehicles registered in Iceland. Iceland informed the Authority that the government proposed to change this tax regime. It also informed the Authority that, if the bill were to be adopted, the problem raised in the complaint would no longer exist. The Authority will reconsider the case in 2003 and monitor whether the legislation has been changed.

Complaints relating to lottery activities

In 1995, several complaints were filed with the Authority concerning restrictions which the Norwegian Lottery Act introduced on operation of gaming machines with pay-outs, insofar as the pursuit of these activities were being reserved for charitable organisations. In 1999, the European Court of Justice gave judgments in two cases concerning gaming legislation in Finland and Italy.

Having examined the case in light of the judgments and the current situation it was decided to close the cases.

In November 2002, the Authority received a complaint concerning discriminatory income tax exemption of lottery prizes in Norway. The complainant referred to the own-initiative case opened by the Authority in 2000 and is discussed below.

Complaints concerning access to courts

In May 2002, the Authority received a complaint against Norway concerning alleged discriminatory rules governing the time limits for submission of observations to national courts. The Norwegian legislation makes a distinction depending on whether submissions are posted within Norway or in other EEA States. A request for information letter was sent in August 2002. The issue was under assessment at the end of the reporting period.

In September 2002, a complaint was lodged with the Authority against Liechtenstein. The complainant alleged that the Liechtenstein rules requiring non-resident plaintiffs to provide security for costs in court proceedings in that State were contrary to the EEA Agreement, in particular the principle of non-discrimination on the basis of nationality. The complainant referred to the Authority's own-initiative case discussed below.

Complaints concerning services in the medical sector

A complaint was lodged against Iceland in 1999, alleging that the Act No. 139/1998 on a Health Sector Database was not in compliance with the EEA rules on the free provision of services. The Icelandic Act provides that processing of the data contained in the Icelandic Health Sector Database must take place in Iceland. The Act also provides for a system of monitoring the data processing. The complainant alleges that these provisions concerning the processing of data constitutes a restriction in the free provision of services within the EEA. The Authority expects to conclude its examination of the case in 2003.

In April 2002, the Authority received a complaint against Norway concerning access to medical treatment in another EEA State. The primary issue at stake is the mobility of patients, i.e. whether patients can choose where they buy health care services or if and to what extent States can control where patients receive the services by reimbursing only services given by certain health care providers. It was alleged that the Norwegian legislation and practice on access to medical treatment abroad were not in accordance with the EEA rules on freedom to provide services and social security. The Authority will continue with the assessment of the complaint in 2003.

Complaints in the financial sector

In August 2001, a complaint was filed with the Authority against Norway concerning taxation of insurance payments. It was alleged that the Norwegian rules and practice on the taxation of insurance payments were discriminatory since

payments received from a source in another EEA State were subject to double taxation. After having received information from Norway on the tax regime, the Authority concluded that the Norwegian rules did not provide for double taxation of insurance payments from foreign sources. Consequently, the Authority decided, in December 2002, to close the case.

In November 2002, the Authority received a complaint against Norway regarding taxation of pension contributions. The complainant maintains that Norwegian tax rules preclude companies from deducting contributions to voluntary pension insurances from its taxable income if the service provider is a foreign company. Contributions to domestic undertakings are on the other hand deductible. It was alleged in the complaint that the Norwegian tax rules applicable to pension contributions constituted a restriction to the freedom to provide services and the free movement of workers, and that it discriminated between domestic and foreign insurance undertakings. The Authority will assess the complaint in 2003.

Complaints in other areas

In 1998, the Authority received a complaint against Norway alleging discriminatory restrictions on freedom to provide services as regards aerial photography services. Following a letter of formal notice in 1999, the Norwegian Government informed the Authority that it intended to amend its legislation and practice in order to make similar rules applicable to both Norwegians and other EEA nationals. As the envisaged legislative amendments were postponed by Norway several times, the Authority issued a Reasoned Opinion in August 2002. The required amendments to the Norwegian legislation were communicated to the Authority in December 2002. Consequently, the Authority intends to close the case in the beginning of 2003.

In 1998 and 1999, the Authority received two complaints alleging discriminatory restrictions regarding access to angling in Norway. The issues concern residence and nationality requirements relating to angling in State-owned inland rivers in Norway. Following Norway's reply to the Authority's letter of formal notice of June 2001, the Authority continued the assessment of this case during the reporting period.

In July 2002, the Authority received a complaint against Norway alleging discriminatory practice by local tax authorities with regard to the granting of exemptions from the joint and several tax liability of employers and providers of contractual workers. Upon investigation by the Authority, the Norwegian authorities have communicated that the need for updated central guidelines will be reviewed. The Authority will continue to monitor the matter in 2003.

In November 2002, the Authority received a complaint concerning the application of VAT rules in several countries in the European Union. Since the complaint concerns possible breaches by EU Member States, the complaint was transferred to the European Commission for handling.

4.6.4.2 Own-initiative cases

In 2002, the Authority decided to look into the application of tax law in Norway, Iceland and Liechtenstein. The examination covered, amongst other things, tax legislation on income and net worth, capital gains and VAT. The Authority has identified several issues that it considers appropriate to investigate further such as rules on joint liability of employee and employers for payment taxes if the worker is foreigner, different rules on valuation of securities distinguishing between securities listed on domestic and foreign stock exchange, difference in rules on calculation of annual yields of saving from a life assurance contract, etc. The Authority sent letters to all three States requesting further information and explanation on the problems identified. The project will continue in 2003.

In August 2002, the Authority delivered a reasoned opinion to Norway concerning discriminatory income tax exemption of lottery prizes won in Norwegian national lottery by persons residing in Norway as compared to similar prizes won in other EEA States by these persons. The latter is considered as taxable income. The Authority considers this situation to be contrary to Article 36 of the EEA Agreement. In November 2002, in reply to the Authority's reasoned opinion, Norway indicated, that it would amend the tax legislation.

The Authority also requested Iceland to provide additional information concerning its national legislation on taxation of lottery prizes. Following an exchange of letters during the reporting period, the Icelandic authorities informed the Authority, in October 2002, of the preparation of a bill to replace the existing tax provisions. The Authority will continue to follow the development of this question during 2003.

In 2002, the Authority continued to track developments in Liechtenstein leading to an amendment to that State's national provisions requiring non-resident plaintiffs to provide security for costs in court proceedings. Following the

Authority's reasoned opinion in 2001, the Liechtenstein authorities undertook to modify the relevant provisions of the Act on Civil Proceedings. Liechtenstein set up a working group to that effect. At the end of 2002, Liechtenstein had not yet adopted amendments to its legislation.

In October 2002, the Authority requested that Norway provide information concerning the practice of Norwegian banks governing issue of credit and debit cards to non-nationals and non-residents. The Norwegian reply was not yet due at the end of the reporting period.

4.7 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 2002, the Authority issued one reasoned opinion and closed three cases in the field of capital movements. The Authority also received three complaints. In addition, the Authority continued the assessment of cases started in previous years, in particular, in respect of the financial sector in Norway and the acquisition of land in the three EFTA States.

4.7.1 APPLICATION CONTROL

In February 2002, the Authority issued a reasoned opinion to Norway concerning restrictions, contained in certain provisions of the Act on Industrial Concessions, on the acquisition of concessions in waterfalls used for the production of energy. According to that Act, only certain Norwegian public-owned companies are granted unlimited concessions for the management of waterfalls. Other companies are only granted concessions for a maximum of 60 years. After that time, or when the remaining time of the concession has elapsed, the waterfalls must be returned to the State without compensation. The Authority considers this rule to be discriminatory and contrary to both the freedom of establishment and the free movement of capital. In April 2002, Norway indicated that it would amend the legislation in dispute. The process of amending the Act on Industrial Concessions was launched at the end of the reporting period.

During the reporting period, the Authority continued its assessment of the national legislation relating to acquisition of land in Norway and Liechtenstein. The main issue raised by the two legislative provisions at issue concerns the fact that the acquisition of land is subject to prior authorisation by the competent national authorities, unless otherwise provided for by the relevant national provisions. In several judgments the Court of Justice of the European Communities has considered that a prior authorisation system to acquire building land was neither necessary nor proportionate to the aims pursued by national authorities. In those cases, the Court of Justice has ruled that such a system could be properly replaced by a less restrictive measure, such as a declaration procedure. A declaration procedure, with appropriate sanctions in case of breach of the law, would ensure a better balance between compliance with the law and the free movement of capital. In both Norway and Liechtenstein, the Authority also inquires whether this line of reasoning could be extended to the acquisition of agriculture land. In Norway, reform of the Land Act is in preparation. With regard to Liechtenstein, in September 2002 the Authority submitted a request for information to the relevant national authorities. The request included a wish for more details concerning the system of prior authorisation of acquisition of land and concerning the circumstances in which the exceptions provided in the Liechtenstein Land Act were applied. At the end of the reporting period, the Authority had completed its assessment of neither the Norwegian nor the Liechtenstein legislation. As far as the acquisition of agricultural land is concerned, the Authority continues to closely follow the developments occurring in the European Community, in particular the case *Ospelt* (C-452/01) pending before the Court of Justice of the European Communities.

In October 2001, the Authority issued a reasoned opinion concerning ownership restrictions in the banking sector in Norway. Under the Norwegian relevant legislation, no one should own more than 10% in the share capital of financial institutions, unless otherwise authorised (so-called 10% rule). Although applicable without distinction on the basis of nationality, the Authority considers this prohibition to be incompatible with the right to free movement of capital. In the Authority's view, such restrictions are likely to dissuade EEA individuals and companies from investing in financial institutions. In addition, the Authority requests Norway to implement Article 16 of the *Banking Directive* (2000/12/EC), which provides that the acquisition of a "qualifying holding" (equal or above 10% in the share capital or voting rights in credit institutions) shall be subject to an information and notification procedure to the competent national authorities. In its reply to the Authority's reasoned opinion, Norway proposed to establish a working group charged with consideration of amendments to the legislation at issue. Following the working group's report, Norway informed the Authority that the 10 % rule would be replaced by a system

close to the notification procedure laid down in the *Banking Directive* (2000/12/EC). The legislative proposal leading to the replacement of the 10 % rule should be submitted to the Parliament in early 2003.

Subsequent to this case, the Authority commenced investigations in relation to other share ownership restrictions (10 or 20 % rules) similar in nature to the 10 % rule. This followed a review of the Norwegian financial legislation carried out by the Authority during 2001 and 2002. The restrictions under investigation concern share ownership rules in the stock exchange, the central and securities depositary and the clearing-house undertaking. At the end of the reporting period, the Authority had not completed its assessment of these issues.

In September 2002, the Authority closed an infringement case concerning the prior authorisation procedure provided in the Act on the acquisition of business undertakings in Norway after that State decided, in June 2002, to repeal the whole Act.

The Authority also closed two cases concerning Iceland and Norway, both cases relating to unfavourable tax treatment of investments in foreign securities as compared to domestic securities. In both States, the unfavourable treatment provisions were repealed. The Authority consequently closed both cases in January 2002.

4.7.2 COMPLAINTS

During the reporting period, three complaints were lodged with the Authority against Norway. The first complaint concerned alleged restrictions on the acquisition of agricultural land and the obligation to reside permanently on the associated farm. According to the second and related complaint, a requirement was imposed on individuals by Norwegian municipalities to reside permanently on property, including land on which construction had taken place, a rule known as "*boplikt*". The third complaint related to the pre-emptive rights, granted to Norwegian municipalities by an Act of 1977, to acquire apartment blocks on sale in certain cities. The Authority requested information from the Norwegian authorities on matters arising from the three complaints. At the end of the reporting period, the Authority had not completed its assessment of those cases.

In 1999, a complaint was lodged against Norway arising from alleged discriminatory legislation and practise as regards allocation of licenses within the aquaculture sector. According to the relevant national rules, preference was to be given to applications for licences by companies registered in the allocation region. To the greatest extent possible, such companies were to be owned by local people, or have shareholders who were local people. The degree of local ownership was thus taken into account. This case and a new complaint received by the Authority in December 2002 concerning the new legislation, and administrative practice governing allocation of aquaculture licenses in Norway, are further discussed in Paragraph 4.5.3.2 above.

In 2001, after having received a complaint concerning the tax valuation in Norway of non- listed shares, the Authority commenced investigations in relation to Section 4-12 of the Norwegian Tax Act. That provision chiefly provided for an unfavourable tax valuation of shares in foreign companies as compared to shares in Norwegian companies. In March 2002, following the Authority's intervention, Norway informed the Authority that Section 4-12 of the Tax Act had been amended as from the 2002 tax year. As a result, shares held in non-listed foreign companies may be valued in a similar way to shares in Norwegian companies. This case should, consequently, be closed in 2003.

Following a complaint against Iceland alleging that provisions in the Icelandic Act on Land concerning pre-emptive rights were contrary to the EEA Agreement, the Authority sent a letter of formal notice to Iceland in July 2001. According to the Icelandic Act on Land, acquisition of land is subject to two prior authorisation procedures by the relevant Icelandic authorities. Moreover, a person wishing to acquire land for agricultural purposes must have practised agriculture in Iceland for the two years prior to the acquisition. According to the Authority's letter of formal notice, these rules are contrary to the free movement of capital and to the freedom of establishment. During 2002, the Icelandic authorities indicated that they would propose a new Land Act to the Parliament.

4.8 HORIZONTAL AREAS RELEVANT TO THE FOUR FREEDOMS

4.8.1 INTRODUCTION

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.

4.8.2 HEALTH AND SAFETY AT WORK

In Articles 66 and 67 (1) of the EEA Agreement, the parties to the Agreement have agreed on the need to promote

improved working conditions and an improved standard of living for workers. They have committed themselves to paying particular attention to encouraging improvements in health and safety aspects of the working environment. Minimum requirements shall be applied to gradual implementation, but this shall not prevent any State from maintaining or introducing more stringent measures for the protection of working conditions provided these are compatible with the EEA Agreement.

Annex XVIII to the EEA Agreement refers to several directives laying down such minimum requirements. The areas covered by these directives include the work place environment, 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.

In October 2001, the Authority initiated assessments of the conformity of national measures adopted by **Iceland** in order to implement the *Chemical Agents Directive* (98/24/EC) and the *Biological Agents Directive* (2000/54/EC). The examination concerning the *Biological Agents Directive* (2000/54/EC) was completed in 2002 and the case subsequently closed. Implementation control for the *Chemical Agents Directive* (98/24/EC) will continue in 2003.

In 1997, the Authority initiated an assessment of the conformity of the implementation by **Iceland** of the *Improvement of Safety and Health at Work Directive* (89/391/EEC). In 1998, a letter of formal notice was sent to Iceland arising from its partial non-implementation of the provisions of the Act governing land-based activities. In September 2000, the Authority received an implementation plan from Iceland, which indicated that transposition would be further delayed until spring 2001. Later implementation was projected for the end of 2001. Having received no notification the Authority sent a reasoned opinion to Iceland in February 2002 and was expecting a notification by the end of December 2002. At the end of the reporting period, however, the Authority had not received the required notification and will therefore consider whether to proceed further with the case.

As regards the partial non-implementation of the *Temporary or Mobile Construction Sites Directive* (92/57/EEC) in **Liechtenstein**, the Authority started its examination in 1999. It sent a letter of formal notice in January 2001 for failure by Liechtenstein to implement Articles 3 to 7 of the Directive. These provisions concern in essence the co-ordination of the preparation and realisation of construction projects and the responsibilities of clients, project supervisors and employers. This includes the requirement to appoint co-ordinators entrusted with specific tasks as to health and safety at the construction site. Since implementation was further delayed, the Authority sent a reasoned opinion to Liechtenstein in December 2001. At the end of the reporting period, the Authority had not received notification of national implementing measures. Implementation control will continue in 2003.

In 1999, the Authority started examination of measures notified by **Norway** as implementing the *Carcinogens at Work Directive* (90/394/EEC). At the end of the reporting period, examination of Norwegian legislation in the maritime sector had not been finalised. Questions which still need to be clarified relate to the correct implementation of Articles 6(b), 8(1) and 11(1)(a) of the Directive on board of Norwegian vessels. These provisions concern specific obligations of the employer to inform both, the competent national authority and the employee, about particular risks described in the Directive and to consult workers or their representatives before specific measures described in the Directive are adopted. Implementation control will continue in 2003.

The assessment of the conformity of the implementation by **Iceland** and **Norway** of the *Surface and Underground Mineral-Extracting Industries Directive* (92/104/EEC), which the Authority initiated in 1998, continued in the reporting period. Further measures to ensure full implementation are expected from Iceland. The preliminary examination of the Norwegian legislation has not yet been finalised. Both cases will be further pursued in 2003.

It is the Authority's task to ensure that the EFTA States fulfil their obligations laid down in certain acts adopted under the EEA Agreement to report to the Authority, in specified time intervals, on the practical implementation of the provisions of the act concerned. The scope of the reporting obligation equals the scope of application of the Directive. This comprises, as the case may be for the EFTA State concerned, the land-based, maritime and petroleum sector. In the field of health and safety at work, numerous acts foresee reporting duties of the EFTA States. In 1997, the Authority invited all EFTA States to comply with their reporting obligations that followed from the following acts:

Improvement of Safety and Health at Work Directive (89/391/EEC)

Safety and Health Requirements for the Workplace Directive (89/654/EEC)

Work Equipment Directive (89/655/EEC)

Protective Equipment Directive (89/656/EEC)

Manual Handling of Loads Directive (90/269/EEC)

Work with Display Screen Equipment (90/270/EEC)

Short-term Employment Directive (91/383/EEC)

Medical Treatment on Board Vessels Directive (92/29/EEC)

Temporary or Mobile Construction Sites Directive (92/57/EEC)

Furthermore, the Authority invited all three EFTA States to submit reports on the practical implementation, in 1998, of the *Pregnant and Breastfeeding Workers Directive* (92/85/EEC), and, in 1999, of the *Safety and Health Signs at Work Directive* (92/58/EEC),

Surface and Underground Mineral-Extracting Industries Directive (92/104/EEC),

Mineral-Extracting Industries (Drilling) Directive (92/91/EEC) and the

Work on Board Fishing Vessels Directive (93/103/EEC).

As reported before, Liechtenstein and Norway completed fulfilment of their reporting obligations in their relevant sectors in 1999 and 2001 respectively. Iceland submitted its national reports in 1999 and 2000. Following examination of the reports, the Authority concluded that Iceland had not submitted a report concerning the *Improvement of Safety and Health at Work Directive* (89/391/EEC) and had failed to report on the practical implementation of all directives in the maritime sector. In 2002, the Authority initiated formal infringement proceedings against Iceland for its failure to comply with its reporting obligation by sending a letter of formal notice in May 2002, and a reasoned opinion in July 2002. In December 2002, Iceland submitted all outstanding reports.

4.8.3 LABOUR LAW

Article 68 of the EEA Agreement obliges the EEA States to introduce measures necessary to ensure the good functioning of the EEA Agreement in the field of Labour law. Annex XVIII to the Agreement refers to directives which 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, the protection of young people at work, parental leave and the posting of workers in the framework of the provision of services.

In 1999, the Authority initiated a conformity assessment project regarding the implementation by all three EFTA States of the *Working Time Directive* (93/104/EC) and the *Protection of Young People Directive* (94/33/EC). The project continued in 2002. The conformity assessment showed that Liechtenstein had not adequately implemented the *Working Time Directive*. A letter of formal notice was, therefore, sent to Liechtenstein in November 2000. Following new information from the Liechtenstein Government the Authority supplemented its first letter of formal notice sent to Liechtenstein by another letter of formal notice in December 2002. The examination of the case will continue in 2003. The assessment also showed that there were some shortcomings in the way Norway and Iceland had implemented the Directive. A letter of formal notice was sent to Norway in July 2001. In July 2002, Norway notified further implementation measures. These measures did not address all shortcomings addressed by the Authority. New measures are, therefore, required. In December 2002, the Norwegian Government informed the Authority that it had adopted interim measures, which were to ensure full implementation of the Working Time Directive during the time the national implementing legislation was under review. To this end, the Government instructed, by letter, all responsible organisations to apply the disputed national provisions allowing for derogations from certain principle rules of the Directive and concerning working time of night workers whose occupation involves special hazards of heavy physical or mental strain in compliance with Articles 8 (2) and 17 (3) of the Directive. Equally, the Labour Inspectorate has been instructed to grant permission to derogate from certain rules of the Directive only if the conditions of Article 17 (2) of the Directive were met. The Authority will continue to monitor the legislative process in 2003. Iceland informed the Authority that it was facing further delays in adopting legislative measures ensuring full implementation of the Directive. Notification of the necessary measures was expected to reach the Authority by December 2002. At the end of the reporting period, the Authority had not received the notification and, therefore, will consider initiating formal infringement proceedings in 2003.

In 1997, a complaint was lodged with the Authority against Iceland, alleging that that country had failed to timely and correctly implement the *Working Time Directive* (93/104/EC). The complainant alleged that the Directive, in particular Articles 3 and 5 thereof concerning daily and weekly rest periods, had not been timely implemented in Iceland by means of the relevant collective agreement applicable to him, and that the collective agreement derogated from the general principles laid down in these provisions. Having examined the case the Authority failed to establish the alleged breaches in the complainant's case in light of the entry into force of the collective agreement and Article 17 of the Directive. The Authority closed the case in 2002.

The assessment of the conformity of national implementing provisions with the *Protection of Young People Directive* (94/33/EC) showed that Liechtenstein had not implemented the Directive adequately. Thus, a letter of formal notice was sent to Liechtenstein in November 2000. Notification was expected by December 2002. At the end of the reporting period, the Authority had not received the expected notification and will therefore consider continuing formal infringement proceedings in 2003. As regards Norway, the Authority concluded that the Directive was not fully implemented and, in July 2001, sent a letter of formal notice to Norway. In July 2002, Norway notified further measures intended by that State to ensure full implementation of the Directive. Having received information about further national measures giving guidance to administrative bodies to correctly apply the implementing measures in December 2002 the Authority was finalising its examination at the end of the reporting period. In July 2001, Iceland informed the Authority that the national measures intended to implement the Directive in Iceland had not been passed by Parliament. In May 2002, the Icelandic Government informed the Authority that it faced further delays in adopting implementing measures. A notification by Iceland was expected by end of December 2002. At the end of the reporting period, the Authority had not received the notification of national implementing measures from Iceland and will, therefore, consider initiating formal infringement proceedings in 2003.

In January 2000, the Authority initiated a preliminary examination of the non-implementation by all three EFTA States of the *Part-time Work Directive* (97/81/EC). In January 2001, the extended implementation period for the social partners to implement the Directive by collective agreement expired. In April 2001, the Authority started formal infringement proceedings against all three EFTA States by sending a letter of formal notice for non-implementation of the Directive to each of them. In September 2001, Norway notified national measures considered to ensure full implementation of the Directive. The examination of the notification was completed in 2002 and the case subsequently closed. Liechtenstein notified national measures to ensure full implementation of the Directive in April 2001. The assessment of these measures was about to be finalised at the end of the reporting period. Iceland continuously informed the Authority that it faced further delays in implementing the Directive. A notification from Iceland was expected by end of December 2002. At the end of the reporting period the Authority had not received the notification from Iceland and will therefore consider continuing formal infringement proceedings in 2003.

In September 2001, the Authority initiated an examination on the non-implementation of the *Fixed-term Work Directive* (1999/70/EC) by Iceland. The Authority was informed that the social partners did not reach an agreement for implementing the Directive by collective agreements. In 2002, Iceland informed the Authority that it faced further delays in adopting national measures implementing the Directive. A notification was expected by end of December 2002. At the end of the reporting period, the Authority had not received the notification from Iceland and will therefore consider initiating formal infringement proceedings in 2003.

Liechtenstein had a transitional period for implementing the *Parental Leave Directive* (96/34/EC). This period expired on 1 July 2001 without the Directive being implemented. In 2002, Liechtenstein informed the Authority that it faced further delays in implementing the Act. In December 2002, the Authority sent a letter of formal notice to Liechtenstein arising from its failure to comply with its obligations under the EEA Agreement. Implementation control will continue in 2003.

In November 2001, the Authority commenced examination of the non-implementation by Liechtenstein and Iceland of the *Council Directive 98/50/EC of 29 June 1998* amending the *Transfer of Undertakings Directive* (77/187/EEC). Iceland notified the necessary implementing measures in May 2002, Liechtenstein in August 2002. Both cases were subsequently closed.

In July 2002, the Authority commenced examinations of the non-implementation by Iceland of the *Working Time of Seafarers Directive* (1999/63/EC). Iceland notified national measures considered by that State to ensure full implementation of the Act in September 2002. Since the Icelandic notification was not complete, implementation control will continue in 2003.

4.8.4 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, *inter alia,* to three directives dealing with equal treatment at work, and three directives concerning equal treatment in matters of social security and occupational social security schemes.

The EEA Joint Committee Decision No.43/99 of 26 March 1999, by which the *Burden of Proof Directive* (97/80/EC) was added to the EEA Agreement, entered into force on 1 February 2000 and with a compliance date for the Act of 1 January 2001. In December 2000, Liechtenstein notified the Directive as fully implemented. In March 2001, the Authority received notifications from Iceland and Norway of full implementation of the Directive. In 2001 and 2002, the Authority assessed the conformity of the national measures in all three States. Cases against Norway and Liechtenstein were closed without further action. The Authority sent a letter to Iceland expressing the opinion that the Act had been incompletely implemented by that State. Iceland has informed the Authority that a regulation will be issued to rectify the situation.

In August 2000, the Authority initiated a case on the basis of a complaint raised against Norway, alleging that by reserving a number of academic positions at the University of Oslo for women only, Norway was in breach of Council Directive 76/207/EEC *on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions.* The University of Oslo had officially reserved 20 post-doctoral positions for women only, in order to favour the recruitment of women to permanent academic positions. According to the University's Plan for Equal Treatment 2000 – 2004, another 10 post-doctoral positions and 12 permanent academic positions were to be reserved for women. Having finalised its examination of the case, the Authority initiated infringement proceedings in June 2001. Although positive action measures for women in fields where women are underrepresented are, to a certain extent, in accordance with EEA law, the Norwegian measures, which automatically and unconditionally give priority to women and where applications from men consequently are not even considered, appear to go beyond the limits of the exception permitted by the Directive. Therefore, the Authority sent a reasoned opinion to Norway in November 2001 for failure to comply with Article 70 of the EEA Agreement and the *Equal Access to Work Directive* (76/207/EEC). Since Norway did not agree with the reasoned opinion, the Authority referred the case to the EFTA Court in April 2002. In its judgment, rendered in January 2003, the EFTA Court declared that the Norwegian legislation was in breach of the EEA Agreement (see also Chapter 8).

In June 2001, the Authority received a complaint against Norway regarding pension rights. The complainant alleged that the rules on survivors' pension under the Norwegian Public Pension Fund are in some cases discriminatory. Widows, whose deceased spouses became members of the Public Pension Fund before 1976, have right to a full survivors' pension, irrespective of their current financial situation. By contrast, widowers' survivors' pensions may in identical situations be subject to curtailment. The case was still under examination at the end of the reporting period.

4.8.5 CONSUMER PROTECTION

Annex XIX to the EEA Agreement refers to 12 directives concerning consumer protection. This includes, in particular, the *Directive on the prohibition of misleading advertising and the use of comparative advertising* (84/450/EEC, amended by 97/55/EC), the *Directive on consumer credit* (87/102/EEC), the *Directive on unfair terms in consumer contracts* (93/13/EEC), the *Directive on package travel, package holidays and tours* (90/314/EEC), and the *Directive on distance contracts* (97/7/EC).

During 2002, the Authority sent two letters of formal notice and one reasoned opinion to the EFTA States in the field of consumer protection. In June 2002, the Authority sent a letter of formal notice to Iceland and Liechtenstein respectively, for failure to implement the *Directive on certain aspects of the sale of consumer goods and associated guarantees* (1999/44/EC). In the absence of the adoption of the measures necessary to comply with that Directive, the Authority, in December 2002, issued a reasoned opinion to Iceland. Liechtenstein implemented this Directive in December 2002.

During the reporting year, the Authority also decided to close three own-initiative cases concerning the absence of implementation or the notification of implementing measures of Directives in the field of consumer protection. Two closures related to Norway and Iceland respectively, following the adoption by these countries of the national measures necessary to comply with the *Directive on injunctions for the protection of consumer's interests* (98/27/EC). The third closure concerned Liechtenstein following the adoption by that

State of the national measures necessary to transpose the *Directive on distance contracts* (97/7/EC).

During the reporting period, the Authority has also initiated several projects comparing the national measures of the EFTA States with Directives in the field of consumer protection. These projects concern the implementation of Directives 97/7/EC and 98/27/EC in Norway. At the end of the reporting period, the Authority had not completed its assessment in these cases. In September 2002, the Authority completed the assessment of the conformity of the implementation of the *Directive on unfair terms in consumer contracts* (93/13/EEC) in Norway without further action being necessary.

As far as Liechtenstein is concerned, the closure of the case concerning the non-implementation of the *Directive on distance contracts* (97/7/EC) was followed by the initiation of an assessment of the conformity of the notified Liechtenstein implementing measures. The Authority sent a request for information at the end of the reporting period. The Authority also undertook the assessment of the conformity of the national measures aiming at the full implementation of the *Directive on misleading advertising* (84/450/EEC). At the end of the reporting period, the Authority decided to close the case without further action being deemed necessary.

Finally, it should be mentioned that the Authority received notifications under the *Directive concerning products which, appearing to be other than they are, endanger the health or safety of consumers* (87/357/EEC). This question is further addressed in Paragraph 4.3.5.4 above.

4.8.6 ENVIRONMENT

Article 73 of the EEA Agreement provides that the objectives of the EEA States' action relating to the 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.

4.8.6.1 General provisions

Following an assessment of the conformity of the measures notified by Iceland to comply with the *Directive on environmental impact assessment* (85/337/EEC) as amended by Directive 97/11/EC, the Authority informed Iceland that the Directive had not been correctly implemented since certain categories of projects listed in Annex II to the Directive had not been transposed into the Icelandic legislation. The Icelandic Government informed the Authority in May 2002 that it was preparing new legislation on environmental impact assessment, taking into account the comments of the Authority. Towards the end of the reporting period Iceland had not notified new legislation.

In April 2002, Norway notified full implementation of Directive 96/61/EC *on Integrated Pollution Prevention and Control* (IPPC) that had entered into force in October 1999. The Authority made an assessment of the conformity of the notified measures with the Act and subsequently closed the case.

4.8.6.2 Water and Air

In 2002, the Authority completed assessments of the conformity of national provisions implementing the *Drinking Water Directive 98/83/EC* in Iceland and Norway. The examination did not lead to action on the behalf of the Authority. In September 2002, Liechtenstein notified partial implementation of the Directive.

In 2002, the Authority finalised examination of the implementation in Liechtenstein of the following Directives in the water sector:

- *Directive 75/440/EEC concerning the quality of surface water intended for the abstraction of drinking water in the Member States,*
- *Directive 76/464/EEC on pollution caused by certain dangerous substances discharged into the aquatic environment and its daughter directives,*
- *Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances,*
- *Directive 80/778/EEC relating to the quality of water intended for human consumption as amended* and
- *Directive 91/271/EEC on Urban Waste Water Treatment.*

As a result of the examination, the cases against Liechtenstein were closed in July 2002.

In April 2002, Iceland notified the implementation of *Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations, which* was incorporated into the EEA Agreement in 2001.

In April 2002, Iceland notified the implementation of *the Ambient Air Quality Directive* (1999/30). Norway notified the implementation of that Directive in October 2002.

In November 2002, Iceland notified implementation of *Regulations 2037, 2038 and 2039/2000 on substances that deplete the ozone layer.*

In December 2002, The Authority sent a letter of formal notice to Iceland and Liechtenstein arising from their failure to notify implementation of the *Directive relating to the availability of consumer information on fuel economy and CO2 emissions in respect of the marketing of new passenger cars* (1999/94/EC).

In 2002, an external consultant finalised a report on the implementation of directives in the water sector. The results of the report will be published on the Authority's website after its adoption in 2003.

The Authority continues to examine the implementation of the *Urban Waste Water Directive* (91/271/EEC) in Norway. The examination focuses on the application of secondary treatment of wastewater in certain agglomerations, in particular in the biggest cities in Norway. In 2002, Norway submitted new information in the case, followed by information on the foreseen adoption of new regulations in Norway on the subject matter. The Authority is examining the new information from Norway.

4.8.6.3 Chemicals, industrial risk and biotechnology

In April 2002, Iceland notified the Authority of the implementation of the *Directive on the contained use of genetically modified micro-organisms* (98/81/EC) amending Directive 90/219/EEC. Norway had notified partial implementation of the Directive in 2001, but submitted the complete notification early in 2002.

4.8.6.4 Waste

In July 2002, the Authority adopted a report on the implementation of acts in the waste sector, based on information submitted by the EFTA States for the years 1995-1997. The report concerns the following Directives:

Directive 75/442/EEC on waste as amended by Directive 91/156/EEC

Directive 75/439EEC on the disposal of waste oils as amended by Directive 87/101/EEC

Directive 86/278/EEC on the protection of the environment, in particular of the soil, when sewage sludge is used in agriculture

The report is available on the Authority's website. This report will be followed up by a report on the implementation of the waste directives for the years 1998 - 2000 for the same directives. In addition the following two directives will be covered:

Directive 91/689/EEC of 12 December 1991 on hazardous waste

Directive 94/62/EC *on packaging and packaging waste*

In November 2002, the Authority sent a letter of formal notice to Iceland concerning its failure to implement the *Landfill of Waste Directive* (1999/31/EC). Liechtenstein and Norway notified implementation of the Directive in April and May 2002 respectively.

In December 2002, the Authority sent letters of formal notice to Iceland and Liechtenstein concerning the failure to implement the *End-of-Life Vehicles Directive* (2000/53/EC). Norway had notified the implementation of the Directive in September 2002.

4.8.6.5 Complaints

In December 2002, the Authority closed a complaint case against Iceland regarding application of the *Directive on Environmental Impact Assessment* (85/337/EEC) as amended by Directive 97/11/EC. The complaint concerned the decision by Iceland not to subject planned salmon farming in Mjóifjörður to an environmental impact assessment. The complainant alleged that, based on scientific evidence, the possible generic impact and spread of diseases from farmed salmon to wild salmon fish stocks is likely to adversely affect the latter and this project should have undergone environmental impact assessment to address this issue of concern. Following an examination of the case, the Authority was of the opinion that Iceland had conducted a case-by-case examination of the intended projects in accordance with requirements in the Directive. There had not, therefore, been a breach of the EEA Agreement.

In January 2001, the Authority received a complaint regarding the decision of Iceland not to subject an intended salmon farming in Berufjörður to an environmental impact assessment. The basis for the complaint is similar to the complaint regarding the project in Mjóifjörður. At the end of the reporting period the complainant had been informed of the Authority's intention to close the case.

4.8.7 COMPANY LAW

Annex XXII to the EEA Agreement refers to 11 acts in the company law sector. This sector can be divided into two groups. One group deals with *"basic"* company law issues, such as safeguards to protect the interests of certain parties, mergers

and division of companies, disclosure requirements, and the so-called European Economic Interest Grouping (EEIG). The second group concerns *accounting* and *auditing* issues. The transition periods granted to Iceland and Norway for the implementation of the acts expired at the beginning of 1996. Liechtenstein had a transitional period until 1 May 1998.

It should be noted that, in 2002, the *Regulation on the Statute for a European Company* (SE) (2157/2001/EC) was incorporated into the EEA Agreement. However, it has not yet entered into force.

4.8.7.1 Basic Company law

As in previous years, the Authority's activity in 2002 focused mainly on the control of implementation of the company law directives in the EFTA States. In addition, the Authority received one complaint.

4.8.7.1.1 Implementation control

In 1996, the Authority initiated conformity assessment projects regarding the implementation by Iceland and Norway of the directives concerning *"basic"* company law issues. Following notification by Liechtenstein of full implementation of the company law directives, a similar project was started in 2002 in respect of this country.

The conformity assessment projects regarding five of the seven company law directives, namely the *First, Second, Third, Sixth* and *Eleventh Company Law Directives* (68/151/EEC, 77/91/EEC, 78/855/EEC, 82/891/EEC and 89/666/EEC), in respect of Iceland was completed in 1998.

Concerning Norway, the assessment of the conformity of its company law legislation with EEA provisions reached a final stage at the end of the reporting period. As far as the *First Company Law Directive* was concerned, the Authority decided, in September 2002, to close the case that it had commenced in relation to this Act. This decision followed receipt by the Authority of information from Norway that the relevant national legislation had been amended to comply with the Authority's letter of formal notice in the matter. In August 2002, the Authority issued a reasoned opinion to Norway concerning the *Second* and *Eleventh Company Law Directives*. This reasoned opinion essentially addressed the lack of implementation in Norway of certain disclosure requirements laid down by those Acts. At the end of the reporting period, Norway informed the Authority of its intention to comply fully with the reasoned opinion. The Authority will consider closing this case in early 2003. The Authority issued a reasoned opinion in August 2002 in respect of the *Third* and *Sixth Company Law Directives*. The sole question at issue concerning these Acts related to the existence of the so-called Norwegian trilateral merger (and division) procedure. This procedure, laid down in the Norwegian Public Companies Act, enables an acquiring company, where it belongs to a group of companies 90 % owned by the parent company, in the case of a merger, to grant shares to the shareholders of the acquired company, as a consideration for the merger, in one of the others companies which make up part of the group rather than shares in the acquiring company. According to the Authority, the trilateral merger procedure may not ensure sufficient protection for minority shareholders as guaranteed by the *Third Company Law Directive* (and the *Sixth Company Law Directive* as far as the division of companies is concerned). At the end of the reporting period, Norway indicated that it did not intend to comply with the Authority's reasoned opinion. Norway chiefly claims that the trilateral merger (and division) procedure is neither governed nor prohibited by the Third (and Sixth) Company Law Directives. In any event, Norway believes that its system ensures an equivalent protection of shareholders than the one provided for under the Directives. The Authority will now decide whether to proceed further with the case.

In 2002, the Authority initiated a conformity assessment procedure concerning the implementing measures of the *First*, *Second*, *Third*, *Eleventh* and *Twelfth Company Law Directives* and the *Regulation on the European Economic Interest Grouping (EEIG)* (2137/85/EEC) in Liechtenstein. An initial exchange of communication between the Authority and Liechtenstein allowed the Authority to close the cases concerning the *First*, the *Eleventh* and the *Twelfth Company Law Directives*. As far as the *Regulation on the EEIG* was concerned, the Liechtenstein implementation was deemed sufficient, without any additional action being considered necessary. As to the *Second* and *Third Company Law Directives*, some issues remain to be assessed. At the end of the reporting period, the Authority was still waiting for additional explanations and clarification from Liechtenstein. Upon receipt of this information, the Authority will decide whether to proceed further with the cases.

Finally, it should be noted that, following the Authority's review of financial legislation in Norway, carried out in 2001 and 2002, the Authority initiated an investigation relating to the mandatory repeal by national authorities of shareholders' preferential rights in credit institutions. The mandatory repeal by national authorities appears to be laid down in the Norwegian Acts on Commercial Banks and on

the Guarantee Schemes for Banks. Within the EEA, the rules concerning preferential shareholders' rights and their possible repeal are governed by the *Second Company Law Directive*. The Authority will assess the compatibility with the *Second Company Law Directive* of the Norwegian provisions in 2003.

4.8.7.1.2 Complaints

In February 2002, the Authority received a complaint against Norway alleging that the fines imposed by Norwegian legislation in case of belated filing of a company's annual accounts were disproportionate. The *First Company Law Directive* (68/151/EEC) states that the EEA States shall provide for appropriate penalties in case of failure to disclose the balance sheet and profit and loss account. After investigation of the matter and correspondence with the Norwegian authorities, the Authority concluded that the case was unfounded. It was subsequently closed in October 2002.

4.8.7.2 Accounting and auditing

In the fields of *accounting* and *auditing*, the Authority carried out an assessment of the conformity of the Icelandic and Norwegian provisions implementing the *Fourth, Seventh* and *Eighth Company Law Directives* (78/660/EEC, 83/349/EEC and 84/253/EEC) in 2000. Both States have notified the complete implementation of these Acts to the Authority. Having assessed the notified measures, the Authority concluded that further examination of the transposition by both States of several provisions of the Acts was needed. In December 2000, the Authority sent two letters of formal notice to Iceland concerning the *Fourth* and the *Eighth Company Law Directives*. The Authority continued its assessment of the implementation of the Acts in 2001 and in February of that year sent a letter of formal notice to Iceland regarding the *Seventh Company Law Directive*. In April 2002, Iceland notified the Authority of additional national measures ensuring the correct implementation of the *Eighth Company Law Directive*. Consequently, the Authority decided to close that case in May 2002. In the same month, the Authority issued a reasoned opinion to Iceland concerning its implementation of the *Fourth* and the *Seventh Company Law Directives*. Examination of the implementation by Norway of the *Fourth* and the *Seventh Company Law Directives* is still ongoing.

Following three reasoned opinions in 1999, at the beginning of 2001 the Authority received notification of the full implementation of the *Fourth, Seventh* and *Eighth Company Law Directives* in Liechtenstein. A conformity assessment was carried out in 2002. As far as the *Eighth Company Law Directive* is concerned, the case was closed without any further measures being considered necessary. As to the *Seventh Company Law Directive*, the Authority closed the case after assessment of additional information communicated by Liechtenstein. At the end of the reporting period, the Authority was still assessing the Liechtenstein reply with regard to the *Fourth Company Law Directive*.

4.8.8 STATISTICS

In Article 76 of the EEA Agreement the Contracting Parties undertook to ensure the production and dissemination of coherent and comparable statistical information for describing and monitoring all relevant economic, social and environmental aspects of the European Economic Area. To this end the EEA States are required to develop and use harmonised methods, definitions and classifications as well as common programmes and procedures organising statistical work at appropriate administrative levels and duly observing the need for statistical confidentiality. Annex XXI of the EEA Agreement contains specific provisions on statistics. They encompass acts on statistical principles and confidentiality, as well as acts concerning statistics on, *inter alia,* business, transport, tourism, foreign trade, demography, economics, agriculture, fisheries or energy. Some of the Acts referred to in Annex XXI entrust the Authority with management tasks.

Council Regulation (EC, Euratom) No 58/97 of 20 December 1996 concerning structural business statistics and *Council Regulation (EC) No 1165/98 of 19 May 1998 concerning short-term statistics* provide for the possibility of the EFTA States to derogate from certain provisions during a transitional period. The EFTA States have to apply for such derogation to the Authority. The Authority may accept these derogations in so far as the national statistical systems require major adaptations. In carrying out this task the Authority is assisted by a committee of the EFTA Heads of National Statistical Institutes (the Committee) and is require to act in accordance with the latter's opinion.

In June 2001, the Authority received an application from Norway to derogate from certain provisions of the Annexes of *Council Regulations 58/97* and *1165/98*. After the Committee had been established in December 2001, the Authority initiated the necessary comitology procedure. Following the Committee's favourable opinion, delivered during the reporting period, the Authority accepted Norway's application for derogation. Following publication of the Norwegian derogation from certain provisions of *Council Regulations 58/97* and *1165/98* the management task of the Authority was completed in August 2002.

5 Public Procurement

5.1 INTRODUCTION AND GENERAL OVERVIEW

The main objective of the provisions in the EEA Agreement governing 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. This is 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 and in the database Tender Electronic Daily (TED). In addition, public procurement complaint bodies must be established at a national level.

In the field of public procurement, work related to the monitoring of the application of the procurement rules by the EFTA States continued to be the main task of the Authority during the reporting period. The Authority was also able to assess cases initiated in the previous years, thereby closing a number of cases where satisfactory solutions had been found. In addition, own initiative cases arising from possible failure by the EFTA States to apply the procurement rules correctly were opened, or preliminary examinations initiated. With a view to safeguarding the interests of potential suppliers and service providers, the Authority continued its practice of ensuring the correction of non-compliance by EFTA States with the procurement legislation through immediate contacts with national authorities before contracts had been concluded.

The Authority also spent substantial time and resources on assessment of the conformity of the national measures of the EFTA States intended to implement the public procurement acts of the EEA Agreement. Both Norway and Liechtenstein made further amendments to their existing laws on public procurement in the course of 2002.

Providing information and guidance for the understanding of the EEA procurement rules, both to the contracting entities and to suppliers, was also part of the Authority's work in the procurement field during the reporting period.

In the course of the reporting period, the Authority examined 44 cases relating to the application of the EEA procurement rules. This was in addition to the 24 cases relating to the assessment of conformity of national implementing measures with EEA procurement provisions. 20 cases were closed either because it was concluded that infringement had not taken place or because the EFTA State concerned either took corrective measures or admitted that the alleged infringements actually had taken place. In the latter case, the national authorities and the contracting authorities concerned undertook to correctly apply the EEA procurement rules in the future.

At the end of the reporting period, the Authority had 22 open cases that concerned alleged infringements of the EEA procurement laws in the EFTA States. Of those cases one each concerned Iceland and Liechtenstein. The remaining 20 concerned Norway.

5.2 IMPLEMENTATION CONTROL

The *Directive on the use of standard forms in the publication of public contract notices* (Commission Directive 2001/78) took effect in the EEA Agreement on 9 November 2002. In December 2002, the Authority sent letters to the EFTA States reminding them of their obligations to implement the Act and notify the implementing measures to the Authority. By the end of the reporting period the Authority had not received any notification from the EFTA States.

Regarding the assessment of the conformity of notified measures with EEA provisions on public procurement, the Authority was working on 24 open cases relating to national measures in the EFTA States intended to implement the public procurement acquis of the EEA Agreement at the end of the reporting period. Norway submitted new notifications of the implementing measures relating to the *Service Directive* (92/50/EEC), *Supply Directive* (93/36/EEC), *Works Directive* (93/37/EEC), and the *Public procurement Directive (GPA)* (97/52/EC), as certain amendments were made to existing national laws.

Regarding Liechtenstein, the Authority continued the conformity assessment of the notified measures that had been initiated in 2001. Some issues, which have been brought to the attention of the Liechtenstein Government, remain unresolved. The Authority expects to finalise the conformity assessment during 2003.

The Authority sent letters to Iceland pointing to what appeared to be certain shortcomings in the measures that the Icelandic Government had notified to the Authority in

the second half of 2001 as national implementing measures for public procurement provisions. The Authority began examining the answer from the Icelandic Government during the reporting period and will continue assessment of the conformity of the Icelandic procurement laws with relevant EEA provisions during 2003 taking into account the comments submitted by the Icelandic Government.

5.3 APPLICATION OF THE RULES ON PUBLIC PROCUREMENT

In September 2002, the Authority issued a letter of formal notice to Norway relating to the use of framework agreements, in a case that was initiated on the basis of two complaints submitted to the Authority in November 2000 and April 2001, respectively. The framework agreements, which concerned Information Technology (IT) and telecommunication services, had been awarded jointly by the Norwegian Association of Local and Regional Authorities (KS) and the Norwegian Ministry of Administration to a series of undertakings. The contracts provided that all entities subject to the Norwegian Law of public procurement could use the framework agreement for their purchases of IT and telecommunication services without applying the EEA procurement provisions. The framework agreements also provided that contracting authorities would have to organise a second competition between the undertakings that were parties to the framework agreement prior to placing an actual order for the delivery of the service required. The Authority concluded, in its letter of formal notice, that Norway had failed to fulfil its obligations under the EEA Agreement, in particular Article 65(1) thereof, by allowing public authorities, and bodies governed by public law which were subject to the EEA public procurement provisions, to award public service contracts while not applying procedures adapted to the EEA public procurement provisions, thus infringing Article 3(1) of the *Service Directive* (92/50/EEC).

The Authority further concluded that the Ministry of Administration (AAD) and the Norwegian Association of Local and Regional Authorities (KS), had failed to apply the provisions of Article 36 of the *Service Directive* (92/50/EEC) by not identifying the successful tenders according to their economic merit.

The Authority also concluded that the Ministry of Administration (AAD) and the Norwegian Association of Local and Regional Authorities (KS), by limiting the competition to the undertakings that were parties to the framework agreement, discriminated against other potential tenderers that might want to submit tenders for actual delivery, thereby infringing Article 3(2) of the *Service Directive* (92/50/EEC).

Finally, the Authority concluded that local and regional authorities, or other individual contracting authorities controlled by local or regional authorities, which are members of KS, were not parties to the framework agreement. It was further concluded that contracting authorities which are legally distinct from central government or KS, and which have not mandated central government or KS to enter into contracts falling within the scope of the EEA public procurement provisions on their behalf, were not parties to the framework agreement either.

The Norwegian Government had not provided the Authority with a reply to the letter of formal notice by the end of the reporting period. The Authority will move ahead to consider whether to issue a reasoned opinion on the case in 2003.

During the reporting period, the Authority received 17 new complaints, all lodged against Norway.

One complainant claimed that a Norwegian Municipality had not applied the provisions of the *Works Directive* (93/37/EEC) to a tender procedure for works related to general construction of road infrastructure. After examination of the case, the Authority concluded that the value of the contract was below the threshold value referred to in the Act, and that the Act, therefore, did not apply to the contested award procedure. The case was consequently closed within the reporting period.

Another two complaints, submitted by a single complainant, alleged that certain contracting authorities had failed to apply the EEA procurement rules when purchasing equipment for industrial washing machines. In both cases, following intervention by the Authority, the contracting authorities in question accepted that they fell within the scope of the EEA procurement rules and proceeded, within the reporting period, to initiate award procedures in accordance with the EEA procurement rules. The cases were subsequently closed within the reporting period.

Two other complaints, also submitted by a single complainant, claimed that several Norwegian public authorities unlawfully denied potential tenderers access to the tender documents if the potential tenderers could not provide proof of required qualifications at the time that the tender documents were requested. The Authority, in both cases, concluded that the practice was unlawful. In one of the cases the contested award procedures were completed, but the Authority received

guarantees that the practice would cease in the future. In the second case, following the Authority's intervention, the tender documents were released to the candidate that had requested them. Both cases were consequently closed within the reporting period.

A case received during the reporting period concerned a works project relating to the construction of homes for the elderly. The complainant claimed that the contracting authority in question intended to award a public works contract without applying the EEA procurement rules. Following the Authority's intervention, it was established that the works contract in question fell within the scope of the EEA procurement rules due to its value. The contracting authority subsequently initiated an award procedure in accordance with the EEA procurement rules. The case was consequently closed within the reporting period.

Two complaints received in 2002 concerned award procedures for the purchase of public transportation services. In the first case, the complainant claimed that the contract notice published in the *Official Journal of the European Communities* did not contain all necessary information to enable potential tenderers to assess whether they would qualify to submit tenders, and that the principle of equal treatment was, therefore, infringed. The Authority received all requested documentation concerning the case from the Norwegian Government, but did not complete its examination of the case during the reporting period. In the second case, the complainant claimed that the contracting authority had applied the wrong legal basis for the award procedure. The Authority received all requested documentation from the Norwegian Government, but did not complete its examination of the case.

One complaint concerned an award procedure for supplies. The complainant alleged that the contracting authority had described the articles to be tendered for by reference to specific product names/brands, which effectively excluded competition. The Authority received all the requested documentation from the Norwegian Government, but did not finalise its examination of the case during the reporting period.

Another complaint concerned an award procedure for general construction works in relation to rehabilitation of the sewage and waste water infrastructure in a municipality. The complainant alleged that the contracting authority had not applied the provisions of the *Works Directive* (93/37/EEC). After examination of the case, the Authority concluded that the value of the contract was below the threshold value referred to in the Act, and that the Act did not, therefore, apply to the contested award procedure. The case was consequently closed within the reporting period.

During the reporting period a complaint was received by the Authority regarding the purchase of research and development services by national authorities. The complainant claimed that the contracting authority had applied the wrong procedure and that the successful tenderer had been given preferential treatment as other potential tenderers had not been given access to all relevant documents. The complainant, therefore, claimed that the principle of equal treatment had been infringed. The Authority received all requested documentation from the Norwegian Government, but did not complete its examination of the case during the reporting period.

Another complainant claimed that some local authorities had infringed the EEA procurement rules by purchasing home computers for its staff on the basis of a framework contract that had been awarded by another contracting authority. The complainant consequently claimed that the local authorities in question were not party to the framework contract and that they had, therefore, to initiate a new award procedure in accordance with the EEA procurement rules. The Authority received all requested documentation from the Norwegian Government, but did not complete its examination of the case during the reporting period.

A complaint received during the reporting period concerned a pre-qualification procedure for engineering consultants, initiated by a Municipal contracting authority for consultant services in relation to the construction of several sewage and waste water treatment plants. The complainant alleged that the contracting authority had breached several provisions of the *Service Directive* (92/50/EEC). The first alleged breach arose from a claim that neither a notice of the existence of a qualification system nor a notice for a restricted procedure was published. The complainant alleged that it was unclear which procedure the contracting entity intended to follow. Secondly, the complainant claimed that it was either unclear or not stated in the invitation to "pre-qualify", which criteria service providers should satisfy in order to be "pre-qualified", what the award criteria were, or type of procedure applying. Consequently, it was alleged that the "pre-qualification" procedure breached the fundamental principles of transparency, equal treatment and legal certainty. Finally, the complainant alleged that, according to the invitation to "pre-qualify", a maximum of five qualified service providers would be chosen, whereas the contracting authority chose six and, by doing so, breached the principle of equal treatment and legal certainty. The Authority is still examining the complaint.

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A complaint received during 2002 concerned the joint purchase of renovation services by a group of local authorities. The complainant claimed that the existing service provider had not been able to fulfil its contractual obligations. The local authorities had proceeded to award a new contract to one of the candidates from the preceding award procedure rather than initiate a new award procedure. The complainant, therefore, claimed that the group of local authorities had failed to apply the EEA procurement rules for the award of the contract. The Authority received all requested documentation from the Norwegian Government, but did not complete its examination of the case during the reporting period.

Another complaint concerned an award procedure initiated by a municipality in relation to waste water removal services. The complainant alleged that the contracting authority had breached the provisions of the *Service Directive* (92/50/EEC) by not publishing an invitation to tender in the *Official Journal of the European Communities* and initiating negotiations with one service provider. The Authority will examine the complaint during 2003.

Finally, the Authority received a complaint in late December 2002 concerning the in-house award of a works contract. The contracting authority in question had carried out an award procedure, but decided to reject all submitted bids only to award the contract in-house. The in-house division that was awarded the contract was later transformed into a separate independent legal entity. The complainant claims, on one hand, that the stated grounds for rejecting the submitted bids were illegal. On the other hand, it claims that the fact that the in-house division, after the award of contract, was transformed into a separate legal entity de facto means that the contracting authority awarded the contract without applying the EEA procurement rules. The Authority will examine the complaint during 2003.

The Authority was also able to close a number of cases initiated on the basis of complaints received in previous years:

Of these, one case concerned the purchase of snow clearing services by a Norwegian municipality. The complaint was lodged against Norway in 2001. It claimed that the municipality in question had infringed the provisions of the *Service Directive* (92/50/EEC) by stating, as a condition for the award of the contract for snow clearing services, that the potential service provider must demonstrate that it had executed services for the same municipality prior to the contested award procedure. It was alleged that this effectively barred any potential new service provider from being awarded the contract. It was also claimed that the municipality had not stated all criteria that it might use for the evaluation of bids. On the basis of the documentation provided to it, the Authority concluded that the provisions of the *Service Directive* (92/50/EEC) had been infringed in this tender procedure, as the criteria for the award of the contract were discriminatory. Having obtained acknowledgement of the infringement from the Norwegian government and the municipality in question, and having informed the complainant thereof, the Authority was able to close the case.

Another case concerned a joint award procedure for the purchase of refuse collection services initiated by two Norwegian municipalities. The complaint was lodged in 2001. It claimed that the municipalities had infringed the *Service Directive* (92/50/EEC) by applying award criteria that had not been listed in the invitation to tender and by giving favourable treatment to a tenderer who undertook to establish offices in the municipalities. On the basis of the documentation provided to it by the Norwegian Government, the Authority concluded that the *Service Directive* (92/50/EEC) had been infringed as discriminatory award criteria had indeed been applied in the award procedure. Having obtained acknowledgement of this by the Norwegian Government and the municipalities, and having informed the complainant thereof, the Authority was able to close the case.

Another case concerned a complaint that was lodged against Norway in 2000 concerning the practice of awarding contract in-house between branches of central government, *inter alia*, between subsidiaries of one ministry and another. The complainant claimed that the various branches of central government should be considered to be separate legal entities and that the EEA provisions of public procurement should, therefore, be applied to the contested practice. In correspondence with the Authority, the Norwegian Government stated that it considered that, since central government and its ministries constitute a single legal entity, they must be perceived as a single contracting authority. The Authority did not find grounds to question that statement. The Authority, therefore, took the view that the EEA provisions on public procurement would not apply to situations where one ministry, or its subsidiary, performed a service or supplied goods for another ministry, or its subsidiary. The complainant was informed of the Authority's views and invited to submit observations or new information that might lead to a reassessment to its analysis. The complainant did not do so. The Authority subsequently closed the case.

One case concerned a complaint against Norway lodged in 1998 in relation to an award procedure for supplies. The complainant alleged that some of the requirements in the tender documentation were of such a nature that they breached the principles of equal treatment and non-discrimination on basis of nationality. The Authority's assessment of the case led to the conclusion that the tender requirements equally applied to national and non-national tenderers and consequently, that the contracting authority had not breached the provisions of the *Supply Directive* (93/36/EEC). The Authority subsequently closed the case.

Another case concerned a complaint that was lodged in a previous reporting period against Iceland in relation to the implementation of the EEA public procurement acquis into national legislation. In particular, the complainant alleged that the review mechanism was not in conformity with the requirements of the *Remedies Directives* (89/665/EEC and 92/13/EEC), as Iceland had neglected to establish a review body and lay down rules for its functioning. The Authority brought the matter to the attention of the Icelandic Government, which on numerous occasions notified changes to the legislation in the field of public procurement. The latest notification was received in 2001. The Authority is currently performing a conformity assessment of the notified legislation and consequently the case was closed.

The Authority also closed a case concerning an award procedure for the purchase of public transportation services in Liechtenstein. The case arose from a complaint that was lodged against Liechtenstein in February 2000. The same year, the Authority issued a letter of formal notice for failure to respect the distinction between selection criteria and award criteria, and for not making public all criteria that would be used for the evaluation of bids. In January 2002, the Liechtenstein Government acknowledged that not publishing all criteria constituted an infringement of the EEA public procurement provisions. The Authority, consequently, closed the case in 2002. The award procedure in question was, however, subject to several complaints, and the Authority will continue to examine the award procedure during 2003 in light of new information submitted by one complainant in the course of 2002.

Another case concerned an award procedure, initiated in 2001, for transport services in Norway. The contracting authority had applied a negotiated procedure with publication. Furthermore, the contracting authority had used award criteria which seemed to be a mixture of technical requirements, contract performance requirements, selection criteria and award criteria in a way that would not be in conformity with the provisions of the *Service Directive* (92/50/EEC). The Authority's examination of the case and of the justifications put forward by the Norwegian Government lead to the conclusion that the award procedure did not breach the provisions of the Act. Consequently, the case was closed.

Finally, a case opened at the Authority's own initiative in 1998, concerning the planned purchase of a Coast Guard vessel in Iceland, was also closed during 2002. The Authority opened the case because the Icelandic Government planned not to apply the EEA public procurement provisions to the award procedure. The Icelandic Government had argued that it would rely on the derogations provided for in Article 123 of the EEA Agreement in order not to organise an award procedure in accordance with the *Supply Directive* (93/36/EEC). While the Authority disputed the legal basis that the Icelandic Government had planned to use for the future purchase of the Coast Guard vessel, the Authority closed the case in 2002 as no award procedure had actually taken place by late 2002. The Authority did, however, receive an undertaking from the Icelandic Government that it would inform the Authority, prior to an award procedure being initiated, of the legal basis it would rely on for such a procedure.

5.4 MANAGEMENT TASKS

The Authority compiled a list of Authority and EFTA States public holidays in 2003 during the reporting period. The list was published in the *Official Journal of the European Communities* C 301, 5.12.2002, and in the EEA Supplement thereto No 60, 5.12.2002 in accordance with the *Time Limits Regulation* (Regulation (EEC, Euratom) 1182/71).

6 Competition

6.1 INTRODUCTION

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. Only Article 59 of the EEA Agreement extends to measures taken by EEA States for the purpose of applying, *inter alia,* the EEA competition rules.

The EEA competition rules are virtually the same as those of the EC Treaty. The three cornerstones of the EEA competition regime are reflected in Articles 53, 54 and 57 of the EEA Agreement respectively:

- a prohibition on 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, and
- 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 EU Member States or third countries. Similarly, the Commission may, in certain circumstances, have jurisdiction to address the actions of undertakings located in the EFTA States. Competition case allocation under the EEA Agreement is based on a one-stop shop principle, implying that either the Authority or the Commission is competent to handle a given case, never the two authorities in parallel. This is particularly clear in merger cases, where the transposition of the EC merger control regime into the EEA Agreement results in the Commission having EEA-wide jurisdiction over all mergers with a Community dimension.

Jurisdictional issues are the subject of regular consultation between the two surveillance authorities on a case-by-case basis. Co-operation mechanisms must also be respected when it comes to the handling of individual cases that affect both EFTA and EU Member States (so-called mixed cases).

Cases involving anti-competitive behaviour by a public undertaking, an undertaking to which an EFTA State has granted special or exclusive rights within the meaning of Article 59(1) of the EEA Agreement, or an undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly within the meaning of Article 59(2) of the EEA Agreement may also be addressed by the Authority. Where a breach of Article 53 and/or Article 54 of the EEA Agreement follows from measures taken by an EFTA State, the Authority has sole competence to address the State in question under Article 59(3) of the EEA Agreement.

In the field of competition, the Authority focuses on the handling of individual cases. In 2002, the Authority's Competition and State Aid Directorate continued to work on current and new cases. The volume of complaints made to the Authority remains high, and the Authority is regularly consulted informally as regards important projects in the EFTA States that may raise concerns under the EEA competition rules.

The procedural rules to be followed by the Authority when handling competition cases are laid down in Protocol 4 to the Surveillance and Court Agreement. Decisions by the Authority in competition cases may be challenged before the EFTA Court.

The Authority co-operates with the European Commission in securing homogeneous application of the EEA competition rules across the European Economic Area. Time spent by the Authority on important mixed cases and other matters handled by the Commission which involved the Authority under the EEA co-operation rules (pursuant to Protocols 23 and 24 to the EEA Agreement) remained significant. The Authority focused its resources on cases and issues that had a particular impact on market conditions in the EFTA States. In 2002, the Authority continued to take part in numerous discussions concerning the reform of competition rules (both substantive and procedural) and practice. The Authority also issued a number of notices and guidelines concerning the interpretation of the EEA competition rules.

Another task of the Authority in the field of competition is implementation control, *i.e.* ensuring that the relevant competition rules introduced through the EEA Agreement are in place in the national legal orders of the EFTA States. Most of the Authority's activities also involve close co-operation with national authorities.

6.2 CASES

6.2.1 OVERVIEW

At the start of 2002, there were 26 competition cases pending with the Authority. Three of these cases related to Article 59 of the EEA Agreement (State measures) in combination with Articles 53 and/or 54 of the EEA Agreement. In the course of the year, 10 new cases were opened, six of which were based on complaints, the others being opened *ex officio*. In total 12 cases were closed by administrative means during the same period. Thus, by the end of 2002, 24 cases were pending: these cases were based on 16 complaints (three of which raised Article 59 issues), five cases initiated *ex officio* (including the sector inquiry in telecommunications) and three notifications.

By the end of 2002, the Authority had initiated formal proceedings under the EEA competition rules against two Norwegian associations concerning anti-competitive practices instituted through *standard film rental terms applicable in relation to cinemas* in Norway. This is the fifth time that the Authority has initiated such proceedings under the EEA competition rules.

The cases under consideration by the Authority in 2002 have continued to raise important issues in respect of the application of EEA competition rules. The increased emphasis on own-initiative cases is in line with the policy objective of using the Authority's available resources to pursue a more pro-active role and concentrate on the most serious anti-competitive practices.

The number of formal and informal complaints received in 2002 indicates a growing awareness among market players in the European Economic Area of the EEA competition rules. Similarly the Authority is regularly approached by market players seeking, on an informal basis, to present projects that might have implications in the EFTA States.

In order to make efficient use of the Authority's resources in the field of competition, cases are prioritised following a preliminary assessment of their importance. The Authority gives priority to matters which are particularly relevant to the proper functioning of the EEA Agreement, *e.g.* cases which raise a new point of law, cases concerning the possibilities for firms from other EEA States to access markets in the EFTA States, and cases involving alleged anti-competitive behaviour by public undertakings or undertakings to which an EFTA State has granted special or exclusive rights.

Economic operators or their legal representatives frequently contact the Authority, often with a view to establishing whether there are grounds for making a formal complaint or notification. The Authority seeks to encourage a certain amount of preparatory work before formal submissions are made to the Authority in respect of potential competition concerns. It is important that legal arguments be expressed as clearly as possible and that available supporting materials be provided. This gives the Authority a better opportunity to make an informed preliminary assessment of the matter and of the extent to which a case may present a sufficiently strong interest under the EEA Agreement to justify further action by the Authority.

The Authority also seeks to encourage economic operators to examine possible remedies available at national level. National competition authorities may have more detailed and precise knowledge of the markets and businesses concerned, in particular those with highly specific national features. National courts are able to ensure that competition rules will be respected for the benefit of individuals and to determine civil law effects, including the question of nullity and the right to claim damages, of infringements of the EEA competition rules.

As regards substantive matters, the European Commission and the Authority have sought to maintain a homogeneous approach to competition matters throughout the EEA.

6.2.2 BROADCASTING AND MEDIA

In March 2002, Oslo Kinematografer AS lodged a complaint with the Authority against the so-called *film rental agreements* concluded in January 2002 between Film&Kino, an association of mainly municipal cinemas, and Norske Filmbyråers Forening (the Norwegian Film Distributors' Association). The agreements divide Norwegian cinemas into four categories according to their yearly admission rates and lay down the fees and other conditions for the distribution of films to each category of cinemas. Oslo Kinematografer is the only cinema in Norway that is not bound by these agreements.

At the end of 2002, following an in-depth investigation of the agreements, the Authority decided to initiate formal proceedings against Film&Kino and Norske Filmbyråers Forening. In its statement of objections to these associations, the Authority took the preliminary view that the Norwegian film rental agreements contain price-fixing provisions infringing Article 53(1) of the EEA Agreement. The Authority stated its view that the agreements could not qualify for an

exemption under Article 53(3) of the EEA Agreement. Price fixing provisions represent serious restrictions on competition and can be exempted only in exceptional circumstances. Despite the fact that the film rental agreements may have some advantages, e.g. in terms of reduced transaction costs for smaller cinemas, the Authority took the view in its statement of objections that the benefits alleged by the parties were unlikely to outweigh the negative effects on competition resulting from the agreements. These negative effects on competition are serious as virtually the entire Norwegian market for the distribution of films to cinemas is affected by the arrangement with the result that price competition is excluded from this market. In addition, the Authority stated its belief that the alleged benefits, which mostly relate to smaller cinemas, could be achieved by introducing alternative measures that are less restrictive of competition. Proceedings will continue in 2003.

The Authority continued its review of the complaint by the Modern Times Group (MTG) and its Norwegian subsidiary Viasat AS concerning an alleged *agreement between the Norwegian commercial channel TV2 and Canal Digital Norway* (CDN) as a result of which CDN has obtained an exclusive right to distribute TV2 via satellite to so-called DTH (direct-to-home) viewers in Norway. MTG/Viasat also alleged that Article 59 of the EEA Agreement is infringed by the Norwegian State. Examination of the case is on-going.

In 2002, the Authority closed a case concerning the activities of Norwegian musical rights copyright management society, Tono, and Norwaco, which manages licensing on behalf of Tono. In this case, the Authority found that *the tariff structure applied by Norwaco on behalf of Tono for the cable retransmission of TV programmes containing music* was discriminatory. Since Tono and Norwaco enjoyed a dominant position in this market, the Authority took the view that the tariff structure infringed Article 54 of the EEA Agreement. The Authority therefore urged Norwaco to implement a new tariff structure that would more accurately reflect the difference in music content between different channels. Having received a proposal for a new tariff structure and after being satisfied that the tariff structure would be implemented in the contracts with cable operators, the Authority closed the case.

A second case concerning *the copyright fees for the cable retransmission of TV programmes containing music* applied by Norwaco on behalf of Tono is still pending. This case *inter alia* raises the question whether the tariffs applied by Norwaco are excessive.

6.2.3 TELECOMMUNICATIONS

The Authority continued to follow market developments in the telecommunications sector, through informal meetings with operators and contacts with representatives of the EFTA States and the European Commission. The Authority still had a number of cases concerning the use of telecommunications infrastructure and the provision of telecommunications services under review.

The first half of 2002 saw the adoption at European Union level of a new *regulatory regime for electronic communications networks and services.*[10] The new framework, in addition to providing for the application of updated sector specific rules, seeks to rely on established EU/EEA competition law principles as a pre-condition for the adoption of *ex ante* regulatory measures. These principles apply to the determination of markets to be regulated and the assessment of whether effective competition prevails in a particular market. Under the new framework it is further required that co-operation procedures be established, involving consultation and the exchange of information between national competition authorities and national regulatory authorities, so as to secure an effective and coherent application of the rules. The Authority arranged meetings with the national competition and regulatory authorities both in Norway and Iceland, to discuss the implications of the incorporation of the new package into the EEA legal framework.

In parallel with the European Commission, the Authority pursued the assessment of the data gathered through its *telecoms sector inquiry*, initiated in 1999 by the Authority in respect of the EFTA States, regarding certain aspects of the telecommunications sector (leased lines, mobile roaming services and the unbundling of the local loop).

As regards the *local loop unbundling* part of the sector inquiry, questionnaires were sent to new entrants by the Authority and the European Commission in July 2001. The questionnaires were intended to assess the competitive situation on the local loop after the entry into force of the new act requiring local loop unbundling,[11] as well as potential abuses of Article 54 of the EEA Agreement by incumbent operators. This yielded a fresh assessment, in 2002, of the

[10] More detailed information on the new regulatory framework can be found in paragraph 4.6.2 above.

[11] EEA Joint Committee by Decision 47/2001of 30 March 2001 incorporated *Regulation No 2887/2000* of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop (OJ L 336, 30.12.2000, pp. 4-8) at point 5ce of Annex XI (Telecommunications services) of the EEA Agreement, which entered into force on 1 October 2001.

situation of local loop unbundling in the 18 EEA States and of problems encountered by new entrants in obtaining access at fair and competitive conditions. In July 2002, findings were presented to market players.[12]

As regards *leased lines*, the first phase of the inquiry involved the collection and analysis of comparative market data for all the EEA States. Based on the findings, the Authority gathered further information relating to the situation in Iceland and in 2002 continued to review this information.

As regards *mobile roaming*, the Authority continued its involvement, under the EEA co-operation rules, in the European Commission's review of *Vodafone's Eurocall* and the *GSM Association's STIRA/IOT* notifications.

The Authority will continue to follow closely the implications for the development of the competitive environment of the changes to the regulatory regime in the telecommunications sector in the EFTA pillar.

6.2.4 POSTAL SERVICES

In 2002, the Authority continued its *ex officio* review of *the discount system applied by Norway Post in the field of commercial parcel services* in Norway. The Authority informed Norway Post at the end of 2001 that after a preliminary assessment, it was critical of Norway Post's rebate system as this discriminated between customers. Norway Post responded with a proposal for a new rebate system and, in particular, a new method for calculating the amount of the rebates. During 2002, the Authority concentrated on assessing this new system. The case was still pending at the end of the reporting period.

The Authority received a new complaint in 2002 concerning Norway Post's behaviour on the market for commercial parcels. The complainant, a competitor of Norway Post, alleged that Norway Post concluded exclusive agreements for the distribution of mail order parcels with food retail chains and petrol stations. Since these agreements cover a significant part of the market, it was alleged that they foreclosed the market and thereby amounted to an abusive behaviour contrary to Article 54 of the EEA Agreement. In a further complaint received in 2002, it was alleged that Norway Post engaged in anti-competitive practices in relation to *cross-border mail entering Norway from elsewhere in the EEA*. The examination of these two complaints will continue in 2003.

6.2.5 ENERGY

In 2002, the Authority received a complaint from Conoco Jet Norge AS, a Norwegian company belonging to the international energy group ConocoPhillips, which runs unmanned petrol stations in Norway. Conoco Jet Norge claimed that the major oil companies active on the retail markets in Norway infringed the EEA competition rules by *denying Conoco Jet Norge access to the depot storage facilities* which these oil companies allegedly share and use to supply their service stations with petroleum products. The Authority sent extensive requests for information to the oil companies which together or individually own, run and use the different depot facilities for petroleum products in Norway. The Authority's investigation is ongoing.

6.2.6 INSURANCE

In 2002, the Authority completed its review of six notifications concerning various types of co-operation among insurance companies in Norway, thereby closing *inter alia* all but one of the remaining cases relating to submissions by the Association of Norwegian Insurance Companies in 1994.

One notification concerned co-operation between insurance companies on setting *standardised policy conditions for security measures applicable to buildings*. The Authority found that, although Article 53(1) of the EEA Agreement was applicable, no further action was needed as the co-operation benefited from the insurance block exemption applicable in accordance with the terms of the EEA Agreement.[13]

Another case concerned co-operation on setting *uniform standards for determining the value of building materials*. The Authority held that the co-operation fell under Article 53(1) of the EEA Agreement, but that there were sufficient grounds for granting an individual exemption under Article 53(3) of the EEA Agreement. In reaching this view, the Authority considered in particular that the co-operation lead to cost savings (benefiting consumers in form of lower premiums) and simplified consumer comparisons of offers from insurance companies. Furthermore, the co-operation was non-binding and third parties had access to the methods and evaluations. The case was closed by means of a comfort letter.

[12] See also the Authority's press release PR(02)03: *Local loop unbundling: publication of EEA-wide report.*

[13] Act referred to at Article 15a of Annex XIV to the EEA Agreement (Commission Regulation (EEC) No. 3932/92 of 21 December 1992 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector).

A third notification related to co-operation among insurance companies *on medical risk assessment*. The co-operation concerned guidelines and individual decisions issued by the Nevnd for helsebedømmelse (the Health Assessment Board). The Authority found that, while the co-operation fell under Article 53(1) of the EEA Agreement, several factors meant that an individual exemption under Article 53(3) of the EEA Agreement was justified. The co-operation did not involve the fixing of insurance premiums, and any company offering life insurance in Norway could take part in the co-operation. Furthermore, the guidelines of the Health Assessment Board and its rulings on claims were not binding on the insurance companies. The co-operation reduced uncertainty as to risks involved in providing insurance to persons suffering from illness, such that the co-operation most likely lead to an increase in insurance policies offered. The co-operation facilitated a high level of professional medical risk assessment experience which the insurance companies most likely would not have been able to develop and maintain individually. The Authority also took into account that the number of cases handled (and claims rejected) by the Health Assessment Board was relatively small. The case was closed by the Authority in 2002 by means of a comfort letter.

A fourth notification under consideration by the Authority concerned standards for the *time to be used by garages in spraying motor vehicles and materials used* for repairs of damages covered by motor vehicle insurance policies. The Authority was of the opinion that Article 53(1) of the EEA Agreement applied but that an individual exemption under Article 53(3) of the EEA Agreement was justified. The Authority considered that the co-operation facilitated a better assessment of motor vehicle repair work and lead to cost and time-effective assessments of such work. Both garages and insurance companies were able to compete on other factors in setting their prices. The co-operation lead to cost savings and improved services, which benefitted consumers. The case was closed by means of a comfort letter.

A fifth notification concerning co-operation on the *classification of municipal fire services and common discounts* was closed by the Authority as the co-operation between the insurance companies had ceased to exist.

Finally, the Authority closed a case relating to a notification made in 1999 of guidelines between insurance companies in Norway covering the *exchange of bonus information and a common system for bonus calculations for motor insurance policies*. The Authority noted that the part of the agreement covering a common system for bonus calculations had been withdrawn on the basis that the notified agreement was no longer applied or in force. The exchange of bonus information between insurance companies did not appear to contain restrictions of competition falling under Article 53(1) of the EEA Agreement insofar as the information exchange was restricted to giving information on the risks of a policyholder, was not aimed at adopting a common position by insurance companies on the risk in question, was non-binding and was open to any company offering motor vehicle insurance in Norway.

At the end of 2002, the Authority had one remaining case under review. This concerned co-operation in relation to pharmaceutical product liability insurance between insurance companies in Norway through the *Legemiddelfor-sikringspool (the Norwegian Pharmapool)*.

6.2.7 OTHER CASES

In 2002, the Authority decided not to take further action in an *ex officio* case concerning the possible foreclosure effect of a 10-year contract awarded by the *Liechtenstein Bus Anstalt* (LBA) to *Schweizer Post* for the provision of public transport services in Liechtenstein.

6.3 CO-OPERATION WITH THE EUROPEAN COMMISSION

The EEA Agreement emphasises the need for close and constant co-operation between the Authority and the European Commission in order to develop and maintain uniform application and enforcement of the EEA competition rules. Article 109(2) of the EEA Agreement calls for co-operation, the exchange of information and consultations between the two authorities with regard to general policy issues and the handling of individual cases. A special rule on co-operation in the field of competition is laid down in Article 58 of the EEA Agreement and detailed co-operation rules are contained in Protocols 23 and 24 thereto.

The European Commission and the Authority co-operate in the handling of individual cases that affect both EFTA and EU Member States (so-called mixed cases).[14] In these cases, both authorities submit copies of notifications and complaints to each other and inform each other about the opening of *ex officio* procedures.

The Authority considered that three of the 11 cases opened by the Authority in 2002 potentially affected one or more EU

14 Details of past mixed cases handled by the Commission can be found at: www.eftasurv.int/fieldsofwork/fieldcompetition/activities/coopwithec/

Member States and consequently copies of the relevant documents were forwarded to the European Commission for comment. During the same period, the Authority received copies of relevant documents from the Commission under the co-operation rules in respect of 23 mixed cases handled by the Commission.

The EEA rules on co-operation in competition cases provide the authority that is not handling a case with a right to comment formally on the case at various stages of the procedure. A specific aspect of the rules on co-operation laid down in Protocols 23 and 24 to the EEA Agreement is the right of both authorities to take part and express views in each other's hearings (when held at the request of interested parties in the case of formal proceedings) and to take part in Advisory Committee meetings (made up of representatives from the EU/EFTA national competition authorities). In all such proceedings, the views of the Authority remain independent from those of the EFTA States.

In terms of co-operation cases falling under the competence of the European Commission, the Authority focused on those cases in which it considered the EFTA aspects to be of particular importance. Overall, there were fewer mixed cases than usual in 2002. However, they included important cases such as the *Aker/Kvaerner II merger re-notification*, which became the object of a partial referral by the Commission to Norway, and the settlement of the case concerning the *Norwegian Gas Negotiation Committee (GFU)*.

6.3.1 CO-OPERATION IN INDIVIDUAL MERGER CASES

Nine new cases in which the Authority was involved under the EEA co-operation rules in 2002 related to notifications under the EC Merger Regulation, two of which were still pending at the end of the reporting period.

COMP/M.2283 - Schneider Electric / Legrand II
COMP/M.2416 - Tetra Laval / Sidel
COMP/M.2639 - Compass/Restorama/Rail Gourmet/Gourmet Nova
COMP/M.2698 - Promatech / Sulzer Textil
COMP/M.2720 - Alcoa / Elkem
COMP/M.2821 - Hitachi / IBM Harddisk Business
COMP/M.2922 - Pfizer/Pharmacia
COMP/M.3004 - Bravida/Semco/Prenad/Totalinstallatören
COMP/M.3030 - Eaton / Delta

The Authority devoted fewer resources in 2002 to participating in the assessment of concentrations in accordance with the rules on co-operation set out in the EEA Agreement than in the two previous years.

In 2002 use was made, for the first time, of the cross-pillar merger referral provisions of Article 6 of Protocol 24 to the EEA Agreement. In January 2002, the European Commission made a partial referral to the Norwegian authorities of the proposed merger between the *Norwegian company Aker Maritime and the Anglo-Norwegian company, Kvaerner*. Both companies are active in the oil and gas sector, specifically on the Norwegian continental shelf, and in shipbuilding. The referral was made following a formal referral request by the Norwegian government and related to the second notification of the proposed concentration to the Commission, in December 2001. [15]

6.3.2 CO-OPERATION IN OTHER COMMISSION CASES

14 new cases in which the Authority became involved in 2002 under the EEA co-operation rules concerned the application by the European Commission of Articles 81 and/or 82 EC, together with the corresponding provisions of the EEA Agreement (Articles 53 and/or 54 of the EEA Agreement).

New and ongoing co-operation cases to which the Commission made public reference in 2002 were as follows:

COMP/29.373 - Visa International/Multilateral Interchange Fee
COMP/35.470 - ARA
COMP/35.473 - ARGEV
COMP/35.587 - PO Video Games
COMP/36.072 - GFU
COMP/36.583 - SETCA - FGTB/FIFA
COMP/37.124 - Piau/FIFA
COMP/37.152 - Plasterboard
COMP/37.398 - UEFA Champions League
COMP/37.519 - Methionine
COMP/37.638 - Leased Lines Sector Inquiry
COMP/37.667 - Speciality Graphite
COMP/37.671 - Food Flavour Enhancers
COMP/37.784 - Fine Art Auction Houses
COMP/37.978 - Methylglucamine
COMP/38.014 - IFPI Simulcasting
COMP/38.464 - TF1 + Eurosport SA + Consortium Eurosport

The Authority devoted resources to those of the above cases where EFTA aspects were considered to be of particular

[15] The case was first notified in 2000: an in-depth investigation was initiated by the European Commission at the time but the notification was subsequently withdrawn.

importance. Thus it was closely involved in the case concerning the Norwegian *Gas Negotiation Committee (Gassforhandlingsutvalget - GFU)*, which was closed in July 2002 following a settlement reached between the parties and the European Commission.[16]

The European Commission opened the case in 1996, at which time the Authority carried out inspections in Norway at the request of the Commission. The Commission's assessment of the GFU became clear in the summer of 2001 when the Commission initiated formal proceedings against gas producers active on the Norwegian continental shelf. The Commission's Statement of Objections addressed competition concerns that arose as a result of the joint selling of Norwegian gas under the auspices of the GFU. Although it welcomed the announcement by the Norwegian Government that the GFU was to be discontinued, the Commission stated that it wanted the discontinuation of the GFU to be translated into fact by the companies. Furthermore, the Commission expressed concerns about the long-term adverse effects of the joint selling system, which, in its view, had to be adequately remedied. The proceedings came to an end after the Commission accepted commitments offered by the gas producing companies. In particular, Statoil and Norsk Hydro agreed to make a certain amount of gas available for new customers over a period of four years. They also promised to discontinue all joint marketing and sales activities unless these were compatible with European competition law, as did six other groups of companies which had sold Norwegian gas under the GFU scheme.

In the GFU case, the European Commission was the competent authority to apply Article 53 of the EEA Agreement vis-à-vis the companies, pursuant to Article 56 of the EEA Agreement, as trade between EU States was appreciably affected. Competence to act against the Norwegian State lies with the Authority. The Authority did not initiate formal proceedings against Norway regarding the GFU pending the Commission's assessment of the facts that led to the Statement of Objections. The Authority did, however, request information from Norway that would confirm that the GFU scheme had been abolished and that the companies operating on the Norwegian continental shelf were free to sell their gas individually.

In 2002, the European Commission continued to give high priority to the investigation of secret cartels. A number of these cases qualified for co-operation with the Authority under the EEA co-operation rules. This included the Commission's cases and resulting decisions in respect of the *Fine Art Auction Houses, Food Flavour Enhancers, Methionine, Methylglucamine*, and *Speciality graphite*. Cartels are among the most serious violations of the EEA competition rules, ultimately leading to higher prices and less favourable terms for consumers. The Authority is supportive of the Commission's action against cartels in the context of the enforcement of the EEA competition rules across the European Economic Area.

6.3.3 CONSULTATION ON LEGISLATIVE REFORM AND GENERAL POLICY

Protocol 23 to the EEA Agreement provides for the exchange of information and consultations on general policy issues. This typically includes proposals for revised legislation in the competition field as forwarded by the European Commission as well as other policy-related questions, some of the latter being addressed in the meetings of Directors General hosted by the Commission. During the reporting period, the Authority was actively involved in discussions concerning several pending reforms of the EU/EEA competition rules.

Discussions on modernisation continued in 2002, leading to the ultimate adoption in December of *Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the EC Treaty*. The new Regulation modernises the procedural rules for implementing the provisions of the EC Treaty on agreements between undertakings that restrict competition (Article 81) and abuses of dominant position (Article 82). It also significantly strengthens the way these rules are enforced.

The core features of the reform are the possibility for national competition authorities and national courts to apply Articles 81 and 82 EC in full, the abolition of the obligation for companies to notify their commercial agreements to the European Commission in order to ensure individual exemption and the granting of increased investigative powers to the Commission. In order to ensure the effective and consistent application of the rules in a system with many enforcers, the Commission and the national competition authorities of the EU Member States will put into place a *European Competition Network (ECN)*, with defined co-operation procedures involving consultations and the exchange of information within the network. The ultimate responsibility for safeguarding consistency and for developing policy remains, however, with the Commission. The new rules will come into force on 1 May 2004.

[16] European Commission Press Release IP/02/1084.

During 2002, the Authority continued discussions with the European Commission and the EFTA States on the *implications of the future incorporation of the modernisation reform into the EEA legal framework* and, in particular, on the necessary amendments to Protocols 21 and 23 of the EEA Agreement. One important element that was underlined was the need to secure rapid incorporation of the reform into the EEA context so as to ensure that the reform enters into force simultaneously across the whole European Economic Area.

The Authority continued to be involved in discussions initiated by the European Commission concerning the need for a *review of the technology transfer block exemption mechanism.*[17]

In 2002, the Authority also participated in the European Commission's consultation procedure regarding the revision of the block exemption for certain categories of agreement in the insurance sector.[18]

Finally, the Authority continued to take part in discussions on the functioning of the EC Merger Regulation and on possible improvements to the merger control regime. These discussions resulted in the publication by the European Commission of a *Proposal for a Council Regulation on the control of concentrations between undertakings*[19] at the end of 2002. This was accompanied by a *Draft notice on the appraisal of horizontal mergers*[20] and draft *Best Practice Guidelines on the conduct of EC Merger Control Proceedings*. The Commission also launched discussions on best practice guidelines for divestiture commitments in merger cases. The Authority continued to welcome the Commission's overall initiative, while stressing that substantive and procedural improvements proposed should be rendered equally effective in the wider context of the European Economic Area.

6.4 NEW ACTS

6.4.1 LEGISLATION

During 2002, the EEA Joint Committee adopted two decisions incorporating new acts into the EEA Agreement in the field of competition.

The first decision concerned the incorporation of a new block exemption relating to certain categories of vertical agreements and concerted practices in the motor vehicle sector.12 The new act contains stricter exemption condition for distribution of and after-sales services for new motor vehicles than was previously the case. The new act applies to all motor vehicles (passenger cars, light commercial vehicles, trucks and buses). It does not prescribe a single rigid model for motor vehicle distribution in Europe but rather leaves open a range of choices to carmakers, distributors and dealers, with the aim of increasing competition and facilitating greater consumer choice. [21]

The new act, which is to last until the end of May 2010, entered into force on 1 October 2002. There is, however, a one-year general transition period during which pre-existing distribution agreements must be brought in line with the new rules.

The second EEA Joint Committee decision concerned consultations on passenger tariffs and slot allocation at airports.[22] This amends the existing act on the same topic: it does not involve any substantive changes but extends the duration of the existing block exemption until 30 June 2005.

6.4.2 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 thereof when applying the EEA competition rules. Listed are notices and guidelines, issued by the European Commission before the EEA Agreement was adopted, concerning the interpretation and application of various parts of EC competition legislation.

Through Article 25 of the Surveillance and Court Agreement, the Authority has the power and obligation to adopt acts corresponding to the ones listed in Annex XIV. This obligation is read in the light of Article 5(1)(b) of the Surveillance

17 Commission Regulation (EC) 240/96 on the application of Article 81(3) of the Treaty to certain categories of technology transfer agreements, incorporated into the EEA Agreement as the Act referred to in Point 5 of Annex XIV to the EEA Agreement.

18 Commission Regulation (EEC) No 3932/92 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector.

19 European Commission document COM(2002) 711 final, 11.12.2002.

20 OJ C331, 31.12.2002, p. 18.

21 EEA Joint Committee Decision No 136/2002 of 27.09.2002, inserting a new point 4b in Annex XIV to the EEA Agreement which corresponds to Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of the EC Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector.

22 EEA Joint Committee Decision No 137/2002 of 27.09.2002, inserting a new point 11b in Annex XIV to the EEA Agreement which corresponds to Commission Regulation (EC) No 1105/2002 of 25 June 2002 amending Regulation (EEC) No 1617/93 as regards consultations on passenger tariffs and slot allocation at airports.

and Court Agreement. Article 5(1)(b) provides that the Authority shall, in accordance with EEA legislation and in order to ensure the proper functioning of the EEA Agreement, ensure the application of the EEA competition rules. When EEA relevance is established as regards non-binding acts adopted by the European Commission after the signing of the EEA Agreement, the Authority is to adopt corresponding acts.

In the field of competition, the Authority adopted three new notices in 2002, corresponding to similar guidelines issued by the European Commission.

In June 2002, the Authority adopted *guidelines on the method for setting fines* in EEA competition cases. According to the Authority's method of determining the amount of a fine, a base sum, defined with reference to the duration and the gravity of the infringement of the EEA competition rules, will be calculated without reference to turnover. This amount can be increased when aggravating circumstances exist or reduced to take account of extenuating circumstances. Corrections can be made to the resulting amount to take account of the individual circumstances of the case. The final amount calculated according to this method may not, in any case, exceed 10% of the world-wide turnover of the undertakings, as laid down by Article 15(2) of Chapter II of Protocol 4 to the Surveillance and Court Agreement.

At the same time, the Authority adopted a *revised leniency policy* for companies that come forward with information on secret cartels. The purpose is to create greater incentives for companies to blow the whistle on the most serious violations of the EEA competition rules. Under the new rules the Authority will grant total immunity from fines to the first company to submit evidence on a cartel unknown to, or unproved by the Authority, where the Authority is competent to handle the case under the EEA Agreement. The leniency policy updates a previous 1997 document and aligns the Authority's policy in this field with the revised approach of the European Commission. The new policy enhances overall transparency and predictability.

In October 2002, the Authority also adopted a new *notice on agreements of minor importance*, replacing its previous notice of 1998. In this notice the Authority quantifies, with the help of market share thresholds, what is not considered to be an appreciable restriction of competition under Article 53(1) of the EEA Agreement. In the new notice market shares not exceeding 10% for agreements between competitors and not exceeding 15% for agreements between non-competitors are generally considered not to raise competition concerns. However, the new notice sets a 5% market share threshold for networks of agreements producing cumulative anti-competitive effects. The notice contains detailed rules on the calculation of market shares. The notice also lists hard-core restrictions, such as price fixing and market sharing, which are prohibited irrespective of the market shares of the companies concerned.

The preparation by the Authority of non-binding acts corresponding to those adopted by the European Commission is subject to internal resource allocation. It is anticipated that in 2003 the Authority will concentrate on the preparation and adoption of notices relating to the new common regulatory framework for electronic communications networks and services insofar as these deal with the application of EEA competition principles.[23] The Authority also aims to adopt any notices that are to apply upon the entry into force of modernised procedural rules for implementing Articles 53 and 54 of the EEA Agreement.

The texts of the Authority's current notices (in English and in the languages of the EFTA States) and a comparative list of applicable notices adopted by the Authority and the European Commission in the field of competition are available in the competition section of the Authority's website.[24]

6.4.3 HEARING OFFICER

In October 2002, the Authority adopted a *decision on the terms of reference of Hearing Officers in certain competition proceedings* in order to enhance the role of the Hearing Officer in its proceedings. The Hearing Officer plays an important role in safeguarding a party's rights of defence, which is a well-established principle of EC/EEA law.

The Hearing Officer ensures that hearings are conducted in a fair and objective manner. The Hearing Officer's report on the proper observance, throughout given proceedings, of the parties' rights of defence, is the main instrument with which the Hearing Officer exercises influence on a competition proceeding. The report must be communicated to the EFTA States and will systematically be attached to the draft decision

[23] In 2002 the European Commission adopted Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (OJ C 165, 11.07.2002, pages 6-31). See also paragraph [4.6.2] above. It is anticipated that the Authority must adopt and equivalent notice, and also issue a recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation under the new framework.

[24] www.eftasurv.int/fieldsofwork/fieldcompetition/otherpublications/

Competition and State Aid Directorate:

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Middle from left to right: Gry Evensen, Alexandra Antoniadis, Monica Wroldsen, Diane Tanenbaum, Cécile Odello

In front from left to right: Rolf-Egil Tønnessen, Director Amund Utne, Anny Tubbs

Not present: Eggert B. Ólafsson

submitted to the College of the Authority. The report will be disclosed to the parties and published with the final decision in the Official Journal of the European Union.

6.5 IMPLEMENTATION CONTROL

The Authority is required 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 EEA Agreement, but also to the relevant provisions in Protocols 21 to 25 to the EEA Agreement, the acts referred to in Annex XIV to the EEA 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 EC block exemption regulations), and the procedural rules in Protocol 4 to the Surveillance and Court Agreement.

According to information received from Norway, the acts incorporated into the EEA Agreement by the EEA Joint Committee in 2002 in the field of competition (as referred to in paragraph 6.4.1 above) have been implemented at national level during the reporting period.

As concerns Iceland, the acts in the fields of competition incorporated by the EEA Joint Committee into the EEA Agreement in 2002 had not been implemented at national level at the end of the reporting period. The Authority will continue to monitor developments in 2003.

As regards Liechtenstein, international agreements entered into by that State automatically become a part of the national legal order. It is not necessary to undertake specific implementation measures to the same extent as in Norway and Iceland. The Authority has not found that any specific implementation measures were necessary in Liechtenstein as a consequence of the new competition acts included in the EEA Agreement during 2002.

In 2002, the Authority repeated its longstanding concerns about the lack of publication of amendments to the Surveillance and Court Agreement. Amendments made since 1992 include the procedural rules to be followed by the Authority when handling competition cases (Protocol 4). The Authority is also concerned that the date of entry into force of such amendments, being the date of deposit of instruments of acceptance by the EFTA States with the Government of Norway, is not systematically made public. The Authority considers this to be unacceptable. Neither individuals nor EFTA States subject to the rules in question, nor even the EEA institutions entrusted with the task of applying and enforcing these rules, can properly ascertain which rules apply at any given time. The Authority considers that amendments to the Surveillance and Court Agreement should be published in the Official Journal of the European Union and the EEA Supplement thereto, failing which the principles of transparency and homogeneity in the EEA are seriously undermined. The Authority must consider formal action if this situation is not remedied.

6.6 LIAISON WITH NATIONAL AUTHORITIES

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

As regards co-operation in individual cases, the relevant national authorities of the EFTA States were invited to comment on a number of cases handled by the Authority. In the case described above concerning the *film rental agreements* concluded between two Norwegian associations, the Norwegian Competition Authority had received an application for exemption under the Norwegian Competition Act when the complaint was lodged with the Authority by Oslo Kinematografer. Given the circumstances of the case, the Authority asked the Norwegian Competition Authority to take measures to avoid the risk that the two authorities would take divergent decisions in the two cases. Following this, and by reference to the need to secure a consistent application of national and EEA competition rules, the Norwegian Competition Authority in 2002 limited its extension of a preliminary exemption of the agreements under the Norwegian Competition Act until 1 May 2003 pending the outcome of the Authority's case. In a number of other instances, the Authority liased with the Norwegian and Icelandic competition authorities with a view to ascertaining which authority was best placed to handle a given case.

The national authorities of the EFTA States were also involved in those cases falling under the European Commission's competence which were being considered by the Authority in the context of the EEA co-operation procedures outlined above. Norway made a formal referral request in accordance with the provisions of Article 6 of Protocol 24 to the EEA Agreement in respect of the *Aker/Kvaerner II* case, as referred to at paragraph 6.3.1 above.

In terms of general co-operation, the Authority continued during 2002 to liase with the national competition authorities on procedures for handling competition cases under the EEA Agreement, so as to maintain a smooth working relationship between the national competition authorities and the Authority.

Further, the Authority and the EFTA States met to discuss the implications of proposed reforms of the EU competition rules on the EFTA pillar following their transposition into the EEA Agreement. The relevant authorities met in the context of the EFTA Working Group on competition to discuss the implications for the EFTA pillar of the modernisation reform. Meetings were also initiated by the Authority with the competition authorities and telecommunications regulators in Iceland, Liechtenstein and Norway to discuss the implications, from a regulatory and competition perspective, of the forthcoming extension to the EEA legal framework of the new regulatory framework for electronic communications networks and services.

Such liaison is a necessary and constructive step towards preserving a homogeneous set of competition rules and procedures throughout the EEA, by identifying and discussing any EEA-specific concerns at an early stage of any proposal. Further liaison takes place in the wider context of the European Competition Authorities (ECA) forum and the ICN (International Competition Network). The Authority took part in the ECA's Air Traffic Working Group, which was set up in 2002 to look at competition and enforcement issues in the aviation sector.

EFTA SURVEILLANCE AUTHORITY

7 State Aid

7.1 MAIN RULES OF THE EEA AGREEMENT

Article 61(1)[25] of the EEA Agreement stipulates the general principle that state aid is prohibited save as otherwise provided in the EEA Agreement.

Public support measures are only caught by the general prohibition of state aid if the conditions laid down in Article 61(1) of the EEA Agreement are fulfilled. The concept of state aid is a broad one, embracing not only subsidies in the strict sense of the word, but also public support measures in the form of derogations from general tax measures, differentiated social security contributions, State guarantees, or other interventions by public authorities on terms not acceptable to a private investor. For public support measures to constitute aid within the meaning of Article 61(1) they have to favour certain undertakings ("selectivity"). General measures benefiting all economic operators and that are not *de facto* reduced in scope through, for example, the discretionary power of the State to grant them or through other factors that restrict their practical effect, do not constitute aid within the meaning of Article 61(1). The question of whether or not a particular measure confers a real economic advantage on an undertaking where that undertaking receives compensation from the State for the provision of services in the general economic interest is currently pending before the Court of Justice of the European Communities[26]. The outcome of the pending proceedings will hopefully shed more light on this important issue. Finally, public support measures are only prohibited to the extent they distort or threaten to distort competition and affect trade between the Contracting Parties to the EEA Agreement.

The EEA Agreement contains several exemption possibilities, in particular in Article 61(2) and (3). In the Authority's state aid practice, the provision which is most used is Article 61 (3)(c)[27]. According to this provision "aid to facilitate the development of certain economic activities or of certain economic areas" may be regarded as compatible with the functioning of the EEA Agreement. It is on the basis of the provisions in Article 87(2) or (3) of the EC Treaty that the European Commission adopts guidelines clarifying the conditions under which e.g. aid for regional development, aid to specific industrial sectors, such as for the aviation and maritime transport sector or aid for horizontal objectives such as R&D or environmental protection may be regarded as permissible. These guidelines are adapted for the purpose of the EEA Agreement and incorporated into the Authority's State Aid Guidelines (cf. point 7.2.2 of this Annual Report). In addition, the EEA Agreement contains other exemption possibilities. These include Article 59(2)[28] concerning undertakings entrusted with the operation of services of general economic interest and Article 49[29] regarding transport, which declares aid that represents "reimbursement for the discharge of certain obligations inherent in the concept of a public service" as being compatible with the EEA Agreement. These two provisions are of increasing importance in the Authority's state aid practice.

The task of ensuring compliance with Article 61 of the EEA Agreement is divided between the Authority and the European Commission (cf. Article 62). The Authority is competent when aid is granted by an EFTA State. On the other hand, if aid is granted by an EU Member State, the Commission is competent. In fulfilling its tasks, the Authority is entrusted with similar powers and functions as the Commission (cf. Protocol 26 of the EEA Agreement). In order to ensure uniform application of the state aid rules within the EEA, the EEA Agreement lays down rules on co-operation between the Authority and the Commission (see also paragraph 7.4 of this Annual Report).

The rules governing state aid procedures are laid down in Protocol 3 to the Surveillance and Court Agreement. The applicable procedure depends on the qualification of the aid in question as "new" or "existing". With respect to "new aid", EFTA States are under an obligation to notify any plans to grant or alter aid to the Authority. The EFTA State concerned shall not put the aid into effect until the Authority has approved it. Following a notification the Authority carries out a preliminary investigation of the aid measure in question. If it considers the aid to be compatible with EEA state aid

[25] This Article corresponds to Article 87(1) of the EC Treaty.

[26] Case C-280, "Altmark Trans GMBH", see second opinion of Advocate General Léger delivered on 14 January 2003 and Case C-126/01, Ministre de l'Économie, des Finances and de l'Industrie v Gemo SA, see opinion of Advocate General Jacobs delivered on 30 April 2002.

[27] This Article corresponds to Article 87(3)(c) of the EC Treaty.

[28] This Article corresponds to Article 86(2) of the EC Treaty.

[29] This Article corresponds to Article 73 of the EC Treaty.

provisions, it adopts a decision not to raise objections. If the preliminary investigation raises doubts regarding the compatibility of the aid in question, the Authority is obliged to open a formal investigation procedure. The Authority's decision to open a formal investigation procedure is published (in the EEA Section of the Official Journal of the European Communities and the EEA Supplement thereto) giving interested third parties the opportunity to submit their comments. At the end of the formal investigation procedure, the Authority adopts a final decision that can be positive (approving the aid), negative (prohibiting the aid), or conditional (approving the aid subject to conditions).

On the other hand, "existing aid" is kept under constant review. If the Authority finds that existing measures are incompatible with the state aid rules, it shall propose appropriate measures to the EFTA State concerned to amend, introduce procedural requirements or to abolish the measures. If such a proposal is declined or if the measures adopted by the EFTA State concerned are considered to be incompatible with the state aid rules, the Authority is required to open a formal investigation procedure. Decisions by the Authority in state aid cases may be challenged before the EFTA Court.

7.2 DEVELOPMENT OF STATE AID RULES

7.2.1 LEGISLATION

By April 2002, all EFTA States had finally submitted the necessary notifications regarding the implementation of the *Commission Directive on the transparency of financial relations between Member States and public undertakings* ("Transparency Directive")[30] that was incorporated into Annex XV to the EEA Agreement in January 2001.[31] Consequently, the new transparency rules entered into force on 1 June 2002.

In June 2002, the three so-called group exemption regulations concerning *aid in favour of small and medium-sized enterprises*, *aid for training*, as well as *de minimis aid*[32] were incorporated into the EEA Agreement.[33] By December 2002, all EFTA States had finally submitted the necessary notifications regarding the implementation of these regulations. Consequently, the new rules will enter into force on 1 February 2003.

By December 2002, all EFTA States had finally submitted the necessary notifications regarding the implementation of the *EC Council Regulation laying down detailed rules for the application of* [ex] *Article 93 of the EC Treaty* ("Procedural Regulation") [34] which was incorporated into the EEA Agreement (Protocol 26 thereto)[35] as well as into the Surveillance and Court Agreement (Protocol 3 thereto) in December 2001. Consequently, the new procedural rules will enter into force on 1 February 2003.

In December 2002, Council Regulation (EC) No 1177/2002 of 27 June 2002 concerning a temporary defensive mechanism to shipbuilding[36] was incorporated into the EEA Agreement. It entered into force on 7 December 2002.

The relevant state aid legal texts of the EEA Agreement and the Surveillance and Court Agreement can be found in the state aid section of the Authority's website[37].

7.2.2 THE AUTHORITY'S STATE AID GUIDELINES

Points 2 to 37 of Annex XV to the EEA Agreement refer to acts, adopted by the European Commission up to 31 July 1991, of which the Authority shall take due account (non-binding acts) when applying the EEA state aid rules. These acts comprise communications, frameworks, guidelines and letters to Member States, which the Commission, at various points of time, has issued for the interpretation and application of Articles 87 and 88 (previously 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,

30 Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, published in OJ L 193, 29.07.2000, p. 75.

31 Decision of the EEA Joint Committee No 6/2001 of 31 January 2001, published in OJ L 66, 8.3.2001, p. 48 and EEA Supplement No 12, p. 6.

32 OJ L 10, 13.01.2001, p. 20-42.

33 EEA Joint Committee decision No 88 of 25 June 2002; published in OJ L 266, 3.10.2002, p. 56 and EEA Supplement No 49, p. 42.

34 OJ L 83, 27.03.1999, p. 1.

35 Decision of the EEA Joint Committee No 164/2001 of 11 December 2001 published in OJ L 65, 7.3.2002, p. 46 and EEA Supplement No 13, p. 26.

36 OJ L 172, 02.07.2002.

37 www.eftasurv.int/fieldsofwork/fieldstateaid/legaltexts/

guidelines and notices issued by the European Commission have been codified by the Authority in one single document, the Procedural and Substantive Rules in the Field of State Aid, also referred to as the State Aid Guidelines. The Authority initially issued these Guidelines in January 1994. They have since been regularly updated.

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. They also include all substantive state aid guidelines adopted by the Authority. The Guidelines contribute to increased transparency in the field of state aid by providing guidance on substantive and procedural matters to national authorities and interested parties.

The Authority has closely followed the development on new non-binding state aid acts being prepared by the European Commission and has contributed to the preparation of such acts.

The State Aid Guidelines were amended four times in 2002.

In July 2002, the Authority decided to extend the validity of the rules on aid for R&D until 31 December 2005[38].

In December 2002, the Authority adopted the following new Guidelines: *Methodology for analysing State aid linked to stranded costs in the electricity sector, Multisectoral framework on regional aid for large investment projects and Rescue and restructuring aid and closure aid for the steel sector.*

The new Guidelines on *state aid linked to stranded costs in the electricity sector* sets out the principles on which the Authority will assess the compatibility of state aid designed to compensate for long-term investments or commitments that were made by electricity companies when the electricity market was a closed market and where such investments or commitments have become non-economical as a result of the liberalisation of the sector. Aid schemes satisfying the criteria set out in the new Guidelines will be approved under Article 61(3)(c) as long as they comply with all the other relevant provisions of the EEA Agreement.

The new *Multisectoral framework on regional aid for large investment projects* only applies to regional aid that aims to promote initial investment, including job creation linked to initial investment. The purpose of the new framework is to limit the amount of aid to a level that avoids as much as possible adverse sectoral effects caused by the project. Regional investment aid concerning investments above EUR 50 million are, *inter alia,* subject to adjusted lower regional aid ceilings than smaller projects. The new Framework incorporates the existing guidelines on aid to the synthetic fibres industry and aid to the motor vehicle industry.

The new Guidelines on *Rescue and restructuring aid and closure aid for the steel sector* prohibits rescue and restructuring aid for the steel sector, but allows closure aid subject to certain requirements. All plans to grant aid for rescuing and restructuring firms in difficulty belonging to the steel industry and for closure aid to that sector shall be notified individually to the Authority.

The State Aid Guidelines are published on the website of the Authority[39].

7.3 CASES

7.3.1 STATISTICS ON CASES

At the beginning of the reporting period, 33 state aid cases were under examination by the Authority, including three notifications of new aid, 13 complaints and 17 own initiative cases. 25 new cases were opened in 2002 and 13 cases were closed, implying that 45 cases were pending with the Authority at the end of the year. Of the 25 new cases registered, 15 were notifications of new aid, eight were complaints and two were opened on the Authority's own initiative. One decision was taken by the Authority to open a formal state aid investigation procedure in 2002, while two decisions concerning appropriate measures were taken. Copies of the College Decisions described in points 6.3.2-6.3.9 below can be found in the state aid section of the Authority's website[40].

7.3.2 AID FOR RESEARCH AND DEVELOPMENT (R&D)

In September 2002, the Authority decided not to raise objections to a new Norwegian aid scheme *Tax deductions for R&D expenses* (so-called "SkatteFUNN-ordningen"). This aid scheme replaced the aid scheme *Research and Development (R&D)-projects in enterprises* ("FUNN-ordningen"), which was approved by the Authority in 2001. The overall objective of the scheme is to stimulate enterprises

38 Published in OJ C 293, 28.11.2002, and EEA Supplement 59.

39 www.eftasurv.int/fieldsofwork/fieldstateaid/guidelines/

40 www.eftasurv.int/fieldsofwork/fieldstateaid/stateaidregistry/

to increase their R&D activities through special tax deductions. It is for the Research Council of Norway to assess and approve R&D projects eligible for the tax deduction. The scope of companies eligible for the tax deduction was limited to enterprises of a certain size. The Authority concluded that the scheme met the requirements laid down in the Authority's guidelines regarding aid for Research & Development, in particular as regards the definition of the eligible research stages and the applicable aid ceilings.

In December 2002, the Norwegian Government notified amendments to this scheme, implying an extension of the scope of eligible companies. A decision on these amendments is expected to be adopted by the Authority in the beginning of 2003.

7.3.3 AID FOR ENVIRONMENTAL PROTECTION

In July 2002, the Authority decided to open the formal investigation procedure against several *derogations from environmental taxes* in Norway, namely derogations from the tax on electricity consumption, the CO_2 tax and the SO_2 tax.

With the adoption by the Authority of new environmental guidelines in May 2001, the Authority proposed to the EFTA States, as an appropriate measure, to bring all existing aid schemes, which would fall within the scope of the environmental guidelines, in line with the new guidelines before 1 January 2002. After Norway had signified its agreement to the appropriate measures, discussions took place between the Authority and the Norwegian Government regarding the implementation of the requirements laid down in the new environmental guidelines. The Authority took the preliminary view that several existing tax measures could not be regarded as being in compliance with the new Environmental Guidelines and requested the Norwegian Government to present concrete proposals of adequate implementing measures ensuring that the requirements set out in the new environmental guidelines were met as from 1 January 2002. In response to this request, the Norwegian Government took the view that several of the tax measures in place would constitute general measures which did not favour specific undertakings. It maintained that these tax measures would not constitute aid within the meaning of Article 61 (1) of the EEA Agreement.

In the decision to open a formal investigation, the Authority considered that the exemptions from the electricity tax for certain industries and regions constituted selective measures. The Authority expressed doubts as to whether these derogations could be regarded as justified by the nature or the logic of the tax system in question. Furthermore, the Authority took the preliminary view that the derogation from the CO_2 tax for coal and coke used as raw materials or reducing agents as well as the exemption from the CO_2 tax on coal and coke used in the production of cement and leca would constitute selective measures. Finally, as regards the abolishment of the SO_2 tax on coal and coke and on oil refineries, the Authority took the preliminary view that this abolishment could be regarded as being targeted at specific sectors and thus constituting a selective measure.

According to the environmental guidelines, derogations from environmental taxes may be justified for a limited period if the EFTA State in question enters into agreements with industry to achieve environmental protection objectives or if enterprises eligible for tax reductions pay a significant proportion of the tax. The Authority took the preliminary view that the Norwegian Government had not demonstrated that the derogations were in line with the prescriptions of the environmental guidelines.

The decision to open the formal investigation procedure was expected to be published in the Official Journal of the European Communities and the EEA Supplement thereto early in 2003, giving interested parties the possibility to comment on the case.

7.3.4 STATE GUARANTEES

In December 2002, the Authority decided to propose as an appropriate measure to Norway to abolish any incompatible aid resulting from the *Act on State Enterprises* ("*Lov om Statsforetak*") with effect from 1 January 2003.

Undertakings established under the Act on State Enterprises were exempt from the normal bankruptcy proceedings. In case of dissolution of a State enterprise, the Norwegian State was under an obligation to cover losses incurred by state enterprises if the obligations could not be covered by the enterprises' own funds. The Norwegian State's obligation to satisfy all the state enterprises' outstanding claims improved the creditworthiness of the state enterprises and resulted in more favourable funding terms than they would have obtained otherwise. The provision of such implicit guarantees without charging an appropriate guarantee premium, constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

After having initiated the review procedures regarding existing aid, the Authority informed the Norwegian Government that the guarantees under the Act on State Enterprises were regarded as incompatible with the EEA Agreement and asked the Norwegian Government to make the necessary changes to the Act.

In the following months, the Norwegian Government introduced a guarantee premium on existing loans covered by the implicit state guarantee. Furthermore, the Norwegian Government proposed to replace the implicit state guarantee with a limited liability with effect from 1 January 2003. However, as regarded the state enterprises' existing obligations, the current guarantee scheme was maintained.

The Authority took the view that the introduction of a guarantee premium in relation to the state enterprises' loan obligations, did not ensure the elimination of the aid element resulting from the Act on State Enterprises, in particular since the level of premiums was established without a proper risk assessment related to individual loans and since the guarantee also covered other (non-loan) obligations.

Against that background, the Authority proposed to the Norwegian Government to abolish the implicit guarantee with effect from 1 January 2003. According to the Authority, the proposal to abolish incompatible aid would also apply to existing loans and other obligations, unless the Norwegian Government demonstrated that transitional arrangements were objectively necessary and justified. The Norwegian Government's response to the appropriate measure was foreseen early in 2003.

7.3.5 AID TO THE FILM INDUSTRY

In February 2002, the Authority decided not to raise objections to a *support scheme for film production and film related activities* in Norway.

The aid scheme covers several support measures, including the so-called "50/50 grants" providing public support limited to 50% of production costs and "feature film production support" which could cover up to 75% of production costs. In addition, film producers may benefit from the so-called "box office returns", calculated as a certain percentage of box office revenues. In practice, the level of aid under these schemes was limited to around 60% of film production costs through the introduction of absolute aid ceilings and a repayment obligation.

In line with its previous practice, the Authority assessed the film support schemes under Article 61 (3)(c) of the EEA Agreement, taking into account the criteria established by the European Commission in assessing public support for film support measures in the EU Member States under the "cultural exemption" (i.e. Article 87 (3)(d) of the EC Treaty). The Authority verified that public support under the notified film support scheme would also be available for foreign film producers, that the film support schemes did not contain requirements to spend a given amount of the production budget in Norway (so-called "territorialisation") and that the aid awarded under the film support schemes was necessary and proportionate to the objectives pursued. The Authority concluded that, given the absence of elements of territorialisation and further given the limited market potential for Norwegian films, public support exceeding 50% of total production costs could be accepted.

In September 2002, the Authority decided not to raise objections to *support measures to film production companies* in Norway. These aid measures, and other film production related support measures which were approved by the Authority in February 2002, are administered by the Norwegian Film Fund. The new support measures pursue two main objectives: to contribute towards the production companies' project development ("project development grants") and to develop the companies' in-house skills as well as to improve the film production companies' access to financing ("business development loans"). In accordance with established practice, the Authority assessed the notified "project development grants" in light of the relevant European Commission's practice under the so-called "cultural exemption". On the other hand, the "business development loans" were assessed in light of the Authority's Guidelines on State aid to small and medium-sized enterprises. This was because this kind of aid is not directly linked to specific film production projects (i.e. a cultural product for which aid may be granted in accordance with the "cultural exemption") but aims at developing small and medium-sized enterprises which are engaged in film production.

7.3.6 AID TO SHIPBUILDING

In March 2002, the Authority decided not to raise objections to regional investment aid granted to the Norwegian shipyard West Contractors. The investment project concerned the purchase of a new, large tower crane to be used for rig repair services. The aid was granted by the Norwegian State's Industrial and Regional Development Fund ("*Statens nærings- og distriktsutviklingsfond* - SND") under the Regional Development Grant Scheme, as approved by the Authority in 2000. In addition, SND provided a so-called "low risk loan"

which was considered not to contain aid, in particular given that the loan was given with an interest rate above the Authority's reference rate of interest and fully secured through mortgage.

In accordance with Article 7 of the Shipbuilding Regulation (Council Regulation (EC) No. 1540/98), the Authority verified that the aid beneficiary was located in an area eligible for regional aid, that the aid was granted for upgrading or modernising an existing yard and that the amounts granted remained within the aid ceiling of 12.5% of the eligible investment costs.

7.3.7 AID TO MARITIME TRANSPORT

In July 2002, the Authority decided not to raise objections to a *special tax refund scheme for ferry operators* in Norway. This special refund scheme is limited to ferry operators engaged in international trade and registered in the Ordinary Norwegian Shipping Register (NOR). The scheme was introduced to prevent the flagging out of ferries engaged in foreign trade and registered in NOR, to maintain employment on these ferries and to provide the Norwegian ferry operators with a financial framework comparable with that in place in other countries. Under the scheme, ferry operators are reimbursed for collected income tax and social security contributions levied on seafarers and on employers. The general refund scheme that was approved by the Authority in 1998 will continue to apply for those vessels not falling within the scope of the special refund scheme.

The Authority assessed the scheme under the Maritime Guidelines that allow relief from social security contributions and income tax for seafarers up to a maximum of 100 per cent. The Authority was satisfied that the provisions, and in particular the control mechanisms established under the scheme, ensured that the refund scheme contained no element of overcompensation.

7.3.8 AID TO THE AVIATION SECTOR

In May 2002, the Authority decided not to raise objections to aid granted to Air Iceland *as compensation for air transport services on the route between Reykjavik and Höfn.* Following the announcement of Air Iceland's intention to cancel its scheduled air services between Reykjavik and Höfn v.v. as from 1 October 2001, based on its view that air transport services on that route were no longer commercially viable, the Icelandic authorities concluded a contract with Air Iceland regarding the operation of air services on that route.

In line with the Authority's practice in similar cases (cf. Annual Report 2001, paragraph 6.3.7), the Authority verified in particular that compensation awarded to the air carrier serving the route in question was both necessary and proportionate. The Authority was satisfied that the duration of this contract was limited in time until a new air carrier would be selected under the formal tender procedure as provided for in the EEA Agreement (Council Regulation (EEC) No. 2408/92 of 23 July 1992 on access for Community carriers to intra-Community routes, incorporated into Annex XIII to the EEA Agreement).

In May 2002, the Authority decided not to raise objections to the *prolongation of the war insurance for airline companies and airports* offered by Norway and Iceland. In 2001, the Authority had approved the introduction of Governmental "war insurance schemes" in both EFTA States for the first month following the withdrawal of insurance cover by private insurers.

Given that the commercial insurance market did not return to normal after the first month following the terrorist attacks of 11 September 2001, the Norwegian and the Icelandic Governments decided to prolong the Governmental war insurance schemes" until 31 May 2002.

In assessing the compatibility of these measures with EEA state aid provisions, the Authority applied Article 61 (2)(b) of the EEA Agreement (which allows for the possibility to grant "*aid to make good the damage caused by ...exceptional occurrences*"). In light of the criteria established by the European Commission with respect to similar schemes in other EU Member States, the Authority verified that the "war insurance scheme" was limited to remedying the withdrawal of such insurance cover by the commercial insurance market and did not place air carriers in a position which was more favourable than before the terrorist attacks of 11 September 2001. The Authority was satisfied that the airline companies and airports benefiting from the "war insurance scheme" had paid an appropriate premium in line with the level of premiums determined in the Commission's guidelines.

The Authority also assessed whether the payment of a certain percentage of premium income to the insurance companies that administered the insurance scheme on behalf of the respective EFTA State contained elements of aid to the insurance companies. In assessing whether the level of remuneration granted to the insurance companies could be regarded as corresponding to market conditions and thus not constitute aid, the Authority sought to ensure a level playing field within the EEA and took into account the European Commission's approach with respect to similar measures in other EU Member States.

The Authority has been informed by Norway and Iceland of their intention to introduce a further prolongation of the "war insurance schemes".

7.3.9 REGIONAL AID

In May 2002, the Authority approved a proposal from the Norwegian authorities on *amended depreciation rules of the Petroleum Tax Act* for certain petroleum related activities in the northernmost region of Norway and *the application of these rules to the Snøhvit Project*. Petroleum exploration in Norway is subject to a special tax regime. The applicable tax rate is 78 per cent compared to a normal corporate rate of 28 per cent. Under the Petroleum Tax Act the normal depreciation period for tax deductible capital expenditures is six years. The Norwegian Government proposed, in a bill to Parliament, that capital expenses for production facilities linked to large-scale plants for gas liquefaction and located in a specified region in the north of Norway should be able to benefit from a depreciation period of three years. This implies a deferral of tax payments and confers thus a benefit upon involved enterprises. The Snøhvit licensees will benefit from this tax provision. The Snøhvit gas field is located off the very northernmost part of the Norwegian coast. Gas is to be landed onshore via a pipeline, cooled down and liquefied for further transportation by ship to international markets. The Norwegian Government notified the arrangements to the Authority. The Authority concluded that the tax benefits resulting from the accelerated depreciation regime was state aid in the meaning of the EEA Agreement. It also concluded that the aid was compatible with the Agreement. The eligible area, where the Snøhvit project is also located, corresponds to a zone eligible for regional aid according to a Decision of the Authority in December 1999 to establish a regional aid map for Norway. The amount of aid relative to capital investments is well below maximal allowed aid ceilings. Against this background, the Authority decided not to raise objections to the notified arrangements. The case originated with a complaint from the environmental foundation Bellona which objected to the favourable tax regime for the described petroleum activities. After the Authority took its decision, Bellona challenged this decision before the EFTA Court, see Chapter 8.1.

In September 2002, the Authority decided to propose appropriate measures to Norway with regard to state aid in the form of *Regionally Differentiated Social Security Taxation* ("Geografisk differensiert arbeidsgiveravgift"). According to the proposal, the Norwegian authorities shall take the necessary measures to eliminate any state aid within the meaning of Article 61(1) of the EEA Agreement resulting from the system of regionally differentiated social security tax, or to render such aid compatible with Article 61 of the EEA Agreement with effect from 1 January 2004 unless the Authority agrees to a later date should that be considered objectively necessary and justified. The Norwegian authorities shall communicate to the Authority the relevant measures adjusting the aid scheme as soon as possible and in any event no later than 25 March 2003. In September 1999, the Authority decided not to raise objections on a notification regarding the system of regionally differentiated social security tax. The approval was limited in time, not going beyond 31 December 2003. The Norwegian authorities have informed the Authority that they accept the proposal for appropriate measures.

7.3.10 OTHER CASES

The cases described above in points 7.3.2-7.3.9 are cases where the Authority has taken a formal decision in the course of 2002. The Competition and State Aid Directorate has also dealt with several cases that originated in 2002 or earlier and which were still pending by the end of 2002. Amongst these are *Entra A/S* (Own initiative case - Norway), *DeCODE genetics* (Notification and Complaint – Iceland), *TurboRouter* (Complaint – Norway), *Landsvirkjun* (Complaint – Iceland) and *Work Research Institute* (Notification - Norway). *Entra* is a 100% state owned real-estate company established through a demerger. The Authority is currently assessing whether *Entra* has received illegal state aid when it was established. *DeCODE genetics* identifies the genetic causes of diseases and applies, *inter alia*, its discoveries to develop new drugs. The Icelandic Government has notified a proposal to grant a State Guarantee for a bond issue by *DeCODE genetics* for the financing of the establishment of a new drug development unit. *Landsvirkjun* is 100% publicly owned and the main electricity producer in Iceland. A complainant alleges that the company receives illegal state aid through, *inter alia,* favourable tax treatment. The *Work Research Institute* is a 100% state owned research institute that has received state funding in connection with being reorganised into a limited liability company. The Norwegian authorities have notified the funding and reorganisation to the Authority.

7.4 CO-OPERATION WITH THE EUROPEAN COMMISSION

Protocol 27 to the EEA Agreement lays down the various areas in which the European Commission and the Authority

are to co-operate in order to ensure uniform application of the state aid rules. Information and views on general policy issues were exchanged between the two authorities in meetings held at different levels. Formal consultations took place on the Commission's new drafts on non-binding state aid acts (state aid guidelines), 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 with EU Member States also continued. Furthermore, the Authority and the Commission informed each other of all state aid decisions. 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 worked well in practise. The close contacts and co-operation at different levels contributed to a homogenous application of the state aid rules throughout the EEA.

7.5 OTHER TASKS

7.5.1 ANNUAL REPORTING ON EXISTING AID SCHEMES

As is foreseen in the State Aid Guidelines, it has been the Authority's practise to request the EFTA States to submit annual reports on new state aid schemes that it has authorised. The information in these reports is particularly focused on the annual aid expenditure under the schemes and its breakdown with regards to the main recipients as well as according to sectors, forms of aid, etc. Furthermore, based on decisions by the Authority in 1995, Iceland and Norway have agreed to submit standardised annual reports on existing aid schemes.

8 The Authority before the EFTA Court and the European Court of Justice

8.1 CASES BEFORE THE EFTA COURT

In 2002, the EFTA Court gave judgment in seven cases. Of these, six were advisory opinions on the basis of requests lodged by national courts that were confronted with questions of interpretation of EEA Law. The remaining case was an action brought by the Authority against Norway. Moreover, three new cases were registered at the EFTA Court. Of these, one is an action that the Authority has brought against Iceland due to the failure of that State, in the opinion of the Authority, to fulfil its obligations under EEA Law. The second case is an action for annulment of a decision taken by the Authority in the field of state aid. The third a request for an advisory opinion lodged by the Norwegian Supreme Court.

On 22 February 2002, the EFTA Court delivered its advisory opinion in Case E-1/01 *Einarsson* v. *The Icelandic State*. The Court found that a provision in the Icelandic VAT Act, providing that books in the Icelandic language were to be subject to a lower rate of tax than books in other languages, was incompatible with Article 14 EEA.

On 15 March 2002, the EFTA Court delivered its judgment in a direct action that the Authority had brought against Norway in December 2000, Case E-9/00. The Authority had brought the action because it considered that Norway was in breach of Article 16 EEA. In the Authority's view, this breach resulted from application of two differing forms of sale at retail level, distinguishing between beer and other beverages with the same alcohol content. Beer with an alcohol content of between 2.5% and 4.75% by volume, mainly produced domestically, was sold outside the stores of the State retail alcohol monopoly (Vinmonopolet). Other beverages with the same alcohol content, mostly imported from other EEA States, could, however, only be sold through Vinmonopolet. Furthermore, the Authority considered that, by applying more restrictive licensing measures to the service of beverages with an alcohol content of between 2.5% and 4.75% by volume, as compared to beer having equivalent alcohol content, these measures, not being necessary and proportionate in relation to the objective of safeguarding public health under Article 13 EEA, Norway was also in breach of Article 11 EEA. In its judgment, the EFTA Court upheld the Authority's pleas.

On 22 March 2002, the EFTA Court delivered its judgment in case E-8/00, *Norwegian Federation of Trade Unions and others* v. *Norwegian Association of Regional Authorities and others*. The case arose from a reference by the Labour Court of Norway. It concerned the Norwegian municipal pension scheme established through collective bargaining agreements. It raised several issues including possible review of these agreements under Article 53(1) of the EEA Agreement. The EFTA Court held that provisions in collective bargaining agreements that pursued the objective of improving conditions of work and employment fell outside the scope of Article 53(1) EEA. However, provisions that pursued objectives extraneous to that objective may come within the scope of the competition rules. The EFTA Court concluded that it was for the national court to closer examine whether the contested provisions of the collective bargaining agreements in fact pursued the apparent objectives.

On 22 March 2002 the EFTA Court delivered an advisory opinion in Case E-3/01 *Alda Vigósdóttir* v. *Íslandspóstur h.f.*. In response to a reference by the Reykjavik District Court, Iceland, the Court held the Transfer of Undertaking Directive (77/187/EEC) to be applicable in the event of the transformation of a public organization into a limited liability company. The Court further held that, after such transfer, an employee would, in principle, retain his or her rights under national employment law. However, this did not apply if an employee enjoyed protection from dismissal under public law. The Court continued that it was, however, for the national court to assess whether the situation of the plaintiff in the case before it was governed by Icelandic public law. The Court also stated that an employee could not, in connection with a transfer, waive his or her rights under relevant EEA law provisions.

By an application lodged at the Court on 22 April 2002, the EFTA Surveillance Authority brought a direct action against Norway, in case E-1/02, concerned a breach by Norway of Articles 7 and 70 EEA as well as certain provisions of the Equal Treatment Directive (76/207/EEC). The Authority argued that a provision in the Act relating to Colleges and Universities in Norway, which allowed the University of Oslo to reserve certain post-doctoral positions for women only, to be in breach of the EEA provisions on gender equality. In its judgment of 24 January 2003, the EFTA Court held that

such reservation of posts for one gender only was incompatible with Articles 7 and 70 EEA as well as with the Equal Treatment Directive.

On 30 May 2002, the EFTA Court delivered an advisory opinion in Case E-4/01, *Karl K. Karlsson* v. *The Icelandic State*. The Court found that a State monopoly on the import of alcoholic beverages, such as that in force in Iceland until 1 December 1995, was incompatible with Article 16 EEA. Moreover, the Court confirmed its finding in Case E-9/97, *Sveinbjörnsdóttir* that there was a principle of State liability under the EEA Agreement. It rejected the argument that such a principle was in any way contingent upon recognition of a principle of direct effect of EEA rules. The Court held that an EEA State may be liable for loss or damage incurred as a result of the maintenance of an import monopoly. As regards the conditions for State liability, the EFTA Court held that the maintenance of the Icelandic import monopoly on alcoholic beverages after the entry into force of the EEA Agreement constituted a sufficiently serious breach of EEA law to entail State liability, provided that the other conditions for State liability were fulfilled.

By application dated 30 July 2002, the company *Technologien, Bau- und Wirtschaftsberatung GmbH,* together with the Bellona Foundation, brought an action before the EFTA Court claiming the annulment of a state aid decision by the Authority of 31 May 2002. This decision is described in chapter 7.3.9 of the present Annual Report. The EFTA Court registered this case under number E-2/02.

In its advisory Opinion of 9 October 2002, the EFTA Court rendered its judgement in a case between *CIBA Speciality Chemicals Water Treatment and Others and the Norwegian State*. The case concerned the competence of the EEA Joint Committee to provide for a derogation for Norway from certain EEA secondary legislation (Council Directives on classification, packaging and labelling of dangerous substances and preparations). Referring to the review clause in Annex II EEA and the provisions of the EEA Agreement concerning the competences of the EEA Joint Committee, the Court concluded that the Joint Committee was competent to adopt the derogation.

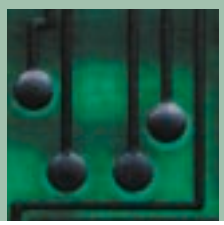
The request for an advisory opinion by the EFTA Court in case E-7/01, *Hegelstad Eiendomsselskap Arvid B. Heglestad and others* v. *Hydro Texaco AS*, came from Gulating Court of Appeal, Norway. The case concerned an agreement on exclusive delivery of motor fuels and lubricants to a petrol station which contained a right for the supplier to buy or lease the station in case of bankruptcy of the operating company. In essence, the case raised the question whether the agreement was caught by the prohibition of Article 53(1) of the EEA Agreement and whether it was exempted from this prohibition by way of the then existing block exemption for exclusive purchasing agreements. On 18 October 2002, the EFTA Court delivered its judgment finding that, although the block exemption did not cover the agreement, the prohibition in Article 53(1) EEA did not apply to that agreement. This was because the agreement made only an insignificant contribution to the cumulative closing-off effect produced by the totality of agreements on the market. Moreover, with regard to the legal effects of an infringement of Article 53(1) EEA, the Court held that the nullity provided for in Article 53(2) EEA applied only to those parts of the agreement affected by the prohibition in Article 53(1) EEA.

The request for an advisory opinion in case E-8/01, *Gunnar Amundsen and Others* v. *Vectura*, came from Borgarting Court of Appeal, Norway. The Authority lodged written observations in this case concerned the application of Article 54 of the EEA Agreement in respect of a cooperation agreement concerning the distribution of wine and spirits in Norway. The case was later settled between the parties and the request was withdrawn.

8.2 CASES BEFORE THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

During 2002, the Authority lodged written or oral observations in eight cases before the Court of Justice of the European Communities. All eight cases flowed from requests from national courts asking the Court of Justice to interpret provisions of Community law that are identical to in substance to EEA Provisions. The Court of Justice also rendered judgement in 2002 in a number of cases in which the Authority had submitted written and oral observations.

On 21 November 2002, the Court of Justice delivered judgment in Case C-436/00, *X and Y* v. *Riksskatteverket*, in which the Authority intervened. The case concerned a Swedish provision on taxation of capital gains. In case of transfer of shares from a natural person to a company in which that person had a holding, a distinction was made depending on whether the company was, on one hand, a Swedish company without foreign owners or, on the other hand, a foreign company or a Swedish company in which the transferor had a holding through a foreign legal person. Tax credits were limited to transfers to a Swedish company without foreign owners. According to the Court of Justice,



the inequality of treatment in the Swedish legislation constituted a restriction on the freedom of establishment. In line with what submitted by the Authority, the Court did not accept any of the justification grounds presented by Sweden. The Court further held that the provisions of the EC Treaty on free establishment only applied in the case of a transfer to a foreign company where the holding of the transferor gave him definite influence over that company's decisions and allowed him to determine its activities. The transfer would nevertheless be a capital movement. None of the justification grounds presented by Sweden could justify such restrictions.

Case C-101/01, *Bodil Lindquist*, concerns the interpretation of the Data Protection Directive (95/46/EC). The question is whether loading certain personal data on a personal homepage falls outside the scope of the Directive or, failing that, whether the Directive allows for such processing of data.

The Court of Justice of the European Communities rendered its decision in case C-206/01, *Arsenal Football Club plc* v. *Matthew Reed*, in which the Authority had intervened, during the reporting period. It concluded that, in a situation which is not covered by Article 6(1) of the Trade Marks Directive (89/104/EEC), where a third party uses in the course of trade a sign which is identical to a validly registered trade mark on goods which are identical to those for which it is registered, the trade mark proprietor of the mark is entitled, in circumstances such as those in that case, to rely on Article 5(1)(a) of the Directive to prevent that use.

Case C-223/01, *AstraZenica*, essentially concerns the right of holders of marketing authorisations for pharmaceutical products to withdraw these authorisations and the net effect of such action, where it is accompanied by a request for marketing authorisation for a therapeutically equivalent product, for generic producers seeking to use the abridged marketing authorisation procedure for a product which is essentially similar to the product withdrawn.

Case C-452/01, *Ospelt*, concerns two main elements. The first element is the relative importance of the EEA Agreement and the EC Treaty in determining whether Liechtenstein, as an EEA State, should be considered a third country. The second element addresses the extent to which EU Member States are permitted to control the sale of agricultural land on their territory.

Case C-422/01, *Skandia & Ramstedt* v. *Riksskatteverket*, concerns national tax provisions governing occupational pension schemes. The national court essentially raises the question whether national tax provisions that entail a difference in treatment with respect to deductions of premiums depending on whether the employer chooses a

Legal & Executive Affairs:

Behind from left to right:

Per Andreas Bjørgan,
Michael Sanchez Rydelski,
Tor Arne Solberg-Johansen

Middle from left to right,
Dóra Sif Tynes,
June Im Sørensen Bédaton,
Matthildur Steinsdóttir

In front from left to right:
Bjarnveig Eiríksdóttir,
Director Niels Fenger,
Claire Taylor

Not present: Elisabethann Wright

national or non-national pension provider can be justified by the need to secure the cohesion of the national tax system and the need to ensure fiscal control.

Case C-42/02, *Lindman*. This case concerns the validity of Finnish taxation provisions according to which prizes won in lotteries authorised under Finnish law are exempt from tax while prizes won in on-national lotteries was subject to a variety of national taxes.

In case C-453/00, *Kühne* raises the question whether the principle of loyalty enshrined in Article 10 EC requires an administrative body to reopen a decision which has become final and which subsequently appears to be wrong in the light of a subsequent ruling from the Court of Justice.

The Court of Justice of the European Communities rendered its decision in case C-136/00, *Danner*, in which the Authority had intervened, during the reporting period. The case concerned the right of residents in an EEA State to deduct contributions to voluntary pension insurance schemes paid in another EEA State from their taxable income. Adopting an approach similar to that adopted by the Authority in its observations, the Court concluded that national legislation which permitted deduction from taxable income of contributions to national voluntary pension schemes while excluding deduction of similar contributions paid to a scheme in another EEA State constituted a breach of Article 49 EC, governing the freedom to provide services, if that national legislation did not, at the same time, preclude taxation of the pension subsequently paid out by the insurance provider.

The Court of Justice of the European Communities rendered its decision in case C-208/00, *Uberseering*, in which the Authority had intervened, during the reporting period. Following the line of argument submitted by the Authority, the Court of Justice rejected the right of Member States to rely on the seat of administration theory to refuse legal capacity to a company from another Member State in which it has its registered office where this preventing that company from bringing legal proceedings to defend rights under a contract unless it is reincorporated under the law of the first Member State. The Court concluded that this constituted a restriction on freedom of establishment which was, in principle, incompatible with Articles 43 EC and 48 EC.

Annex: List of directives taken over into the EEA Agreement in 2002

ANNEX I – VETERINARY AND PHYTOSANITARY MATTERS

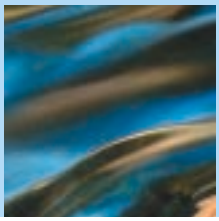
Short Title	Type of act	EC Reference
Authorisation of feedingstuff	Regulation	2013/2001
Concerning provisional authorisation of additives	Regulation	2200/2001
Withdrawal of authorisation of additives.	Regulation	2205/2001
Concerning 10 year authorisation of additives.	Regulation	2380/2001
Provisinal authorisation of additives.	Regulation	256/2002
Feedingsstuffs - official inspections	Directive	2001/46
Minimum conditions for examining vegetables	Directive	2002/8
Fodder and cereal seed	Directive	2001/64
Bluetongue - eradication	Directive	2000/75
Feedingstuffs-undesirable substances and products	Directive	2001/102
Feedingsstuffs - support liver function	Directive	2002/1
Feedingsstuffs - assessment guidelines additives	Directive	2001/79
Seeds - marketing of cereal seeds	Directive	1999/8
Seeds-marketing of seeds and propagating material	Directive	96/18
Seeds - marketing of different seeds	Directive	96/72
Seeds - marketing of cereal seeds	Directive	95/6
Seeds - marketing of cereal seeds	Directive	1999/54
Scrapie	Directive	2001/10
Animal welfare - protection of laying hens	Directive	1999/74
Genetically modified plants	Directive	98/96
Genetically modified plants	Directive	98/95
Approved fish farms	Decision	2001/187
FMD - vaccines	Decision	2001/660
Temporary marketing of seeds	Decision	2002/98
Printing of info. on oil seed packages	Decision	97/125
ANIMO	Decision	2001/301
FMD	Decision	2001/246
FMD	Decision	2001/279
FMD	Decision	2001/257
FMD	Decision	2001/326
FMD	Decision	2001/295
FMD	Decision	2001/303
Vaccines FMD	Decision	2001/181
Bluetongue	Decision	2001/783
FMD - contingency plans	Decision	2001/96
Animal welfare	Decision	2001/298
Brucellosis	Decision	2001/292
IHN and VHS	Decision	2001/139
Fish farms	Decision	2001/188

Annex: List of directives taken over into the EEA Agreement in 2002

Short Title	Type of act	EC Reference
Fish farms	Decision	2001/311
Approved fish farms	Decision	2001/159
Approved fish farms	Decision	2001/185
Bovine tuberculosis	Decision	2001/26
VHS - IHN	Decision	2001/294
Bovine tuberculosis	Decision	2001/24
Bovine leukosis	Decision	2001/28
Trade live bovine animals and swine	Decision	2001/106
Rabies	Decision	2001/296
Fish diseases	Decision	2001/183
IHN - VHS	Decision	2001/100
Animal health - products, other animals, amendment	Decision	2001/7
Fresh meat	Decision	2001/471
Fishery products	Decision	2001/182
List of third countries	Decision	2001/4
Animal feed	Decision	2001/25
ISA - Norway	Decision	2001/313
Reference laboratories fish diseases	Decision	2001/288
Italian avian influenza	Decision	2001/847
Border inspection posts	Decision	2001/812
Movement control	Decision	2001/672
BSE - Portugal	Decision	2001/577
Diseases bivalve molluscs	Decision	2001/293
Poultry and hatching eggs	Decision	2001/867
Approved fish farms Germany	Decision	2001/498
Approved fish farms Germany	Decision	2001/541
IHN/VHS France	Decision	2001/553
Approved fish farms Italy	Decision	2001/552
Rabies	Decision	2001/808
Aujeszky's disease	Decision	2001/746
Salmonella in fowl	Decision	2001/738

ANNEX II – TECHNICAL REGULATIONS, STANDARDS, TESTING AND CERTIFICATION

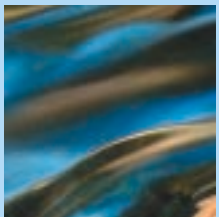
Short Title	Type of act	EC Reference
Organic production - amending 94/92/EEC	Regulation	1566/2000
Organic production - amending Annex II to 2092/91	Regulation	436/2001
Maximum residue limits of VMP	Regulation	1274/2001
Maximum residue limits of VMP	Regulation	1322/2001
Maximum residue limits of VMP	Regulation	1478/2001
Maximum residue limits of VMP	Regulation	1553/2001
Maximum residue limits of VMP	Regulation	1680/2001
Maximum residue limits of VMP	Regulation	1815/2001
Maximum residue limits of VMP	Regulation	1879/2001



Short Title	Type of act	EC Reference
Maximum residue limits of VMP	Regulation	2162/2001
Maximum residue limits of VMP	Regulation	807/2001
Maximum residue limits of VMP	Regulation	2908/2000
Maximum residue limits of VMP	Regulation	749/2001
Maximum residue limits of VMP	Regulation	750/2001
Flavouring substances - evaluation deadlines	Regulation	622/2002
Organic production - amendment/copper	Regulation	473/2002
Organic production - amendment	Regulation	2589/2001
Organic production - amendment	Regulation	1616/2000
Organic production - amendment	Regulation	2426/2000
Organic production - amendment	Regulation	2491/2001
Organic production - amendment	Regulation	331/2000
Organic production - amendment	Regulation	349/2001
Organic production - amendment	Regulation	548/2000
Maximum levels for contaminants - amendment	Regulation	221/2002
Contaminants - dioxin	Regulation	2375/2001
Contaminants - aflatoxins	Regulation	257/2002
Maximum levels for contaminants	Regulation	466/2001
Contaminants - mycotoxin amendment	Regulation	472/2002
Contaminants - nitrate amendment	Regulation	563/2002
Maximum residue limits of VMP	Regulation	1181/2002
Maximum residue limits of VMP	Regulation	2584/2001
Maximum residue limits of VMP	Regulation	77/2002
Export/import of chemicals - amendment	Regulation	300/2002
Testing requirements - existing substances	Regulation	2592/2001
Amending 70/156, Type-approval of vehicles	Directive	2001/116
Gaseous and particulate pollutants	Directive	2001/63
Medical devices	Directive	2001/104
Adapting 88/77, Emissions from motor vehicles	Directive	2001/27
Adapting 92/22 & 70/156, Glazing on motor vehicles	Directive	2001/92
Adapting to technical progress	Directive	2001/3
Noise emission for outdoor equipment	Directive	2000/14
Pesticide residues - amending Annexes	Directive	2001/39
Purity criteria for sweeteners - amendment	Directive	2001/52
Purity criteria for colourants - amendment	Directive	2001/50
Pesticide residues - amending Annexes	Directive	2001/35
Purity of miscellaneous additives - amendment	Directive	2001/30
Cereal-based foods and baby foods - amendment	Directive	1999/39
Cereal-based foods and baby foods	Directive	96/5
Cereal-based foods and baby foods - amendment	Directive	98/36
Miscellaneous additives - amendment	Directive	2001/5
Medicinal products for human use	Directive	2001/83
PPP Directive - triasulfuron	Directive	2000/66

Annex: List of directives taken over into the EEA Agreement in 2002

Short Title	Type of act	EC Reference
PPP Directive - esfenvalerate	Directive	2000/67
PPP Directive - bentazone	Directive	2000/68
PPP Directive - amending Annex 1	Directive	2001/21
PPP Directive - amending Annex I	Directive	2001/28
PPP Directive - amending Annexes II and III	Directive	2001/36
PPP Directive - amending Annex I	Directive	2001/47
PPP Directive - amending Annex I	Directive	2001/49
CMR restrictions - 21st amendment	Directive	2001/41
PPP Directive - active substances	Directive	2001/87
Cableway installations	Directive	2000/9
Cultural objects	Directive	2001/38
Air pollution	Directive	2001/1
Amending 70/220, Emissions from motor vehicles	Directive	2001/100
Amending 92/23, Tyres for motor vehicles	Directive	2001/43
Adapting 70/387, Doors of motor vehicles	Directive	2001/31
Pesticide residues - amending Annexes	Directive	2001/48
Labelling - meat	Directive	2001/101
Pesticide residues - amending Annexes	Directive	2001/57
Pesticide residues - amending annexes	Directive	2002/23
Plastic materials and articles - amendment	Directive	2001/62
Pesticide residues - amending Annexes	Directive	2002/5
Substances for foods for PNU	Directive	2001/15
Sampling and analytical methods for contaminants	Directive	2001/22
Coffee and chicory - amending analysis	Directive	2001/54
Veterinary medicinal products - Community code	Directive	2001/82
PPP Directive - active substances	Directive	2000/80
Restrictions directive - creosote	Directive	2001/90
Restrictions directive - hexachloroethane	Directive	2001/91
Dec. on applic. of Dir 1999/5 to avalanche beacons	Decision	2001/148
Import of star anise - special conditions	Decision	2002/75
Format for national fuel quality data	Decision	2002/159
Conformity of construction products	Decision	2000/447
Fire performance of roof coverings	Decision	2000/553
List of products belonging to list in 94/611/EC	Decision	2000/605
Conformity of construction products	Decision	2000/606
Construction products	Decision	2001/308
Construction products	Decision	2001/596
Construction products	Decision	2001/671
Import from China and Turkey - Special conditions	Decision	2002/233
Import of peanuts - special conditions	Decision	2002/79
Import from Turkey - special conditions	Decision	2002/80
Flavouring substances - register	Decision	2002/113
Methods for contaminants - amendment	Decision	2001/873



ANNEX IV – ENERGY

Short Title	Type of act	EC Reference
Transit of electricity (amending)	Directive	98/75
Transit of gas (amending)	Directive	95/49
Internal market in gas Directive	Directive	98/30

ANNEX IX – FINANCIAL SERVICES

Short Title	Type of act	EC Reference
Fourth motor insurance Directive	Directive	2000/26
Definition of a credit institution	Directive	2000/28
Electronic money institutions	Directive	2000/46
Admission of securities to stock exchange listing	Directive	2001/34/EC
Exchange of information Directive	Directive	2000/64

ANNEX XI – TELECOMMUNICATION SERVICES

Short Title	Type of act	EC Reference
E-commerce directive	Directive	2000/31
Transfer of data - standard contractual clauses	Decision	2001/497
Data protection agreement - Canada	Decision	2002/2
Transfer of data - standard contractual clauses	Decision	2002/16

ANNEX XIII – TRANSPORT

Short Title	Type of act	EC Reference
2002 Amendment to inland waterways	Regulation	336/2002
Ballast space measurement	Regulation	417/2002
Chapter II Aeroplanes-Noise 2001 amendment	Regulation	991/2001
2001 amending Directive on marine equipment	Directive	2001/53/EC
Technical roadside inspection Directive	Directive	2000/30
2001 Roadworthiness tests	Directive	2001/9
Checks on transport of dangerous goods 2001	Directive	2001/26
Taxes on vehicles for road transport of goods	Directive	1999/62
Ship-generated waste Directive	Directive	2000/59
Seafarer minimum training	Directive	2001/25/EC
Seafarers' hours of work Directive	Directive	1999/95
Trans-European network guidelines 2001 amendment	Decision	1346/2001

ANNEX XVI – PROCUREMENT

Short Title	Type of act	EC Reference
Standard forms for contract notices	Directive	2001/78

Annex: List of directives taken over into the EEA Agreement in 2002

ANNEX XVIII – HEALTH AND SAFETY AT WORK, LABOUR LAW AND EQUAL TREATMENT FOR MEN AND WOMEN

Short Title	Type of act	EC Reference
Consolidated transfer of undertakings Directive	Directive	2001/23
Organisation of working time of seafarers	Directive	1999/63

ANNEX XIX – CONSUMER PROTECTION

Short Title	Type of act	EC Reference
Sale of consumer goods and associated guarantees	Directive	1999/44

2002 EFTA Surveillance Authority

EFTA Surveillance Authority
Rue de Trèves 74
B-1040 Brussels

Design: Marc Segond
Print: édition & imprimerie, Brussels