

# 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<sup>1</sup> 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.

<sup>1</sup> 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.

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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.

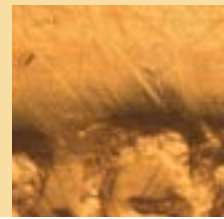
In the sector of **free provision of services**, the Authority received eight new complaints and opened 14 own initiative cases. Full implementation of directives in the **financial services sector** continued to require the Authority's attention. Furthermore, the Authority initiated a review of the **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<sub>2</sub> tax and the selective abolishment of the SO<sub>2</sub> 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.