ANNUAL REPORT

2015

EFTA SURVEILLANCE AUTHORITY

FOREWORD

The EFTA Surveillance Authority (ESA) monitors the compliance of Iceland, Liechtenstein and Norway (the EFTA States) with the Agreement on the European Economic Area (EEA Agreement), enabling them to participate in the Internal Market of the European Union.

Control and guidance in the field of state aid is an important task for the Authority. Recent reform of state aid rules is gradually leading to significant changes in policy, allowing us to use more of our resources on the cases with the greatest impact on the Internal Market.

ESA's work helps remove barriers to trade and opens up new opportunities to some 500 million Europeans, adding to the international competitiveness of the EFTA States. ESA is independent of the EFTA States and safeguards the rights of individuals and undertakings under the EEA Agreement, ensuring free movement, fair competition and control of state aid.

The EEA Agreement has been largely successful for more than two decades. The economies of the European countries are more closely interwoven than ever before. It has become easier for citizens to work, travel, do business and study across national borders.

Keeping markets fair, level and open is good for our economies and societies. It establishes a good environment for business in Europe where companies can generate wealth, create jobs, and invest in the future.

We at ESA will continue to do our part in ensuring that EEA law is applied correctly in the EFTA States, and contribute to the homogeneity and the evolution of EEA law.

The Authority employs highly qualified staff, who enable us to fulfil our role and deal with tasks in an effective and efficient manner. We currently employ over 70 staff members of 15 nationalities. We carry out our functions in a manner which is visible, approachable and transparent. The authority is open to continuous improvement at an organisational and individual level.

This report gives an insight into the Authority's work and highlights a few of the many cases handled in 2015. We welcome any questions you might have about our activities, and should you be interested in looking for a career opportunity with us, we encourage you to get in touch.

Sven Erik Svedman	Helga Jónsdóttir	Frank J. Büchel
President	College Member	College Member

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Glossary of terms

EFTA – European Free Trade Association. An inter-governmental organisation set up for the promotion of free trade and economic integration to the benefit of its four Member States: Iceland, Liechtenstein, Norway and Switzerland.

EEA – European Economic Area. An area of economic co-operation that consists of the 28 EU Member States and three of the four EFTA States: Iceland, Liechtenstein and Norway. Switzerland is not part of the EEA. Inside the EEA, the rights and obligations established by the Internal Market of the European Union are expanded to include the participating EFTA States.

EEA Agreement – The Agreement which creates the European Economic Area.

EEA EFTA States – The three EFTA States that participate in the EEA: Iceland, Liechtenstein and Norway. Referred to as "the EFTA States" for the purposes of this report.

EFTA Surveillance Authority – The organisation which ensures that the three EFTA States fulfil their legal obligations as stated in the EEA Agreement. Referred to as "the Authority" for the purposes of this report.

EFTA Court – The judicial body with jurisdiction regarding the obligations of the EFTA States and the Authority pursuant to the EEA Agreement. The main functions of the Court consist of judgments in direct actions, in particular infringement cases brought by the Authority against the EFTA States, and advisory opinions in cases referred to it by the national courts of the EFTA States.

EEA Joint Committee – A committee of representatives of the EU and the EFTA States competent to incorporate legislation into the EEA Agreement.

Introduction

The EFTA Surveillance Authority monitors compliance with European Economic Area rules in Iceland, Liechtenstein and Norway, enabling those States to participate in the European Internal Market.

The European Economic Area

The European Economic Area (EEA) consists of the 28 Member States of the European Union (EU) and three of the four European Free Trade Association (EFTA) States: Iceland, Liechtenstein and Norway (Switzerland is not part of the EEA). It was established by the EEA Agreement in 1994, an international agreement which enables the three EFTA States to participate fully in the European Internal (or Single) Market.

The purpose of the EEA Agreement is to guarantee, in all 31 EEA States, the free movement of goods, people, services and capital – "the four freedoms". As a result of the agreement, EU law on the four freedoms, state aid, and competition rules for undertakings, is incorporated into the domestic law of the participating EFTA States. All new relevant EU legislation is also introduced through the EEA Agreement so that it applies throughout the EEA, ensuring a uniform application of laws relating to the Internal Market.

The Agreement ensures equal rights to participate in the Internal Market for citizens and economic operators in the EEA, and equal conditions of competition. It also provides for co-operation across the EEA in important areas, such as research and development, education, social policy, the environment, consumer protection, tourism and culture. By removing barriers to trade and by opening new opportunities for some 500 million Europeans, the Internal Market of the EEA creates jobs and growth and adds to the international competitiveness of the EEA States.

The success of the EEA Agreement depends upon uniform implementation and application of the common rules in each of the 31 EEA States. The Agreement provides for a system of supervision where EU Member States are supervised by the European Commission, while the participating EFTA States are supervised by the EFTA Surveillance Authority. The two institutions co-operate closely on policy as well as individual cases.

The role of the EFTA Surveillance Authority

The EFTA Surveillance Authority ensures that the participating EFTA States (Iceland, Liechtenstein and Norway) respect their obligations under the EEA Agreement. The Authority operates independently of the EFTA States and is based in Brussels.

The Authority protects the rights of individuals and market participants who find their rights violated by rules or practices of the EFTA States or companies within those States. Such rules or practices may, for example, be discriminatory, impose unnecessary burdens on commercial activity, or constitute unlawful state aid. The Authority may initiate proceedings against the relevant EFTA State at the EFTA Court, seeking a change in the relevant rules or practices unless the State concerned decides to take appropriate action in response to the Authority's request.

The Authority enforces restrictions on state aid, assessing its compatibility with the functioning of the Internal Market. The Authority has the power to order repayment of unlawful state aid.

The Authority also ensures that companies operating in the EFTA States abide by the rules relating to competition. The Authority can investigate possible infringements of EEA provisions, either on its own initiative, or on the basis of complaints. It can impose fines on individual undertakings and assess mergers between undertakings where certain thresholds are met.

In monitoring and enforcing the Agreement, the Authority has powers that correspond to those of the Commission and there is close contact and co-operation between the Commission and the Authority. The two institutions oversee the application of the same laws in different parts of the EEA.

Organisation of the Authority

College

The Authority is led by a College which consists of three members. Although appointed by the EFTA States, the College members undertake their functions independently and free of political direction.

At present, the College consists of the following members:

- Sven Erik Svedman (Norway), President
- Frank J. Büchel (Liechtenstein)
- Helga Jónsdóttir (Iceland)

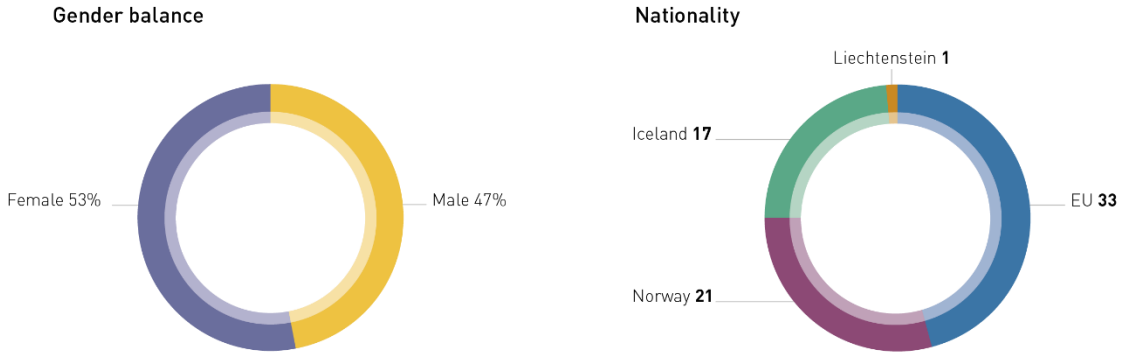
Sven Erik Svedman has been President of the Authority since 1 September 2015. The three College members are appointed until 31 December 2017.

The College is assisted by four departments:

- Internal Market Directorate
- Competition and State Aid Directorate
- Legal and Executive Affairs Department
- Administration Department

Staff and Employment

At the end of 2015, the Authority had a total of 72 staff, including the three College members, staff employed on fixed-term and temporary contracts and trainees. Fifteen nationalities were represented and over half (39) of the staff members were EFTA nationals. In terms of the gender breakdown, 47% of staff were male and 53% female, with 39% of management (College members, Directors and Deputy Directors) being female.



In accordance with the Authority's staff regulations established by the EFTA States, all fixed-term staff are employed for a three-year period, normally renewable only once. As a consequence, the turnover of staff is high and there are, on a more or less permanent basis, employment opportunities for highly qualified candidates within the fields of activity of the Authority.

It is an important goal to maintain competitive employment conditions and high awareness of the Authority as an attractive workplace. To reach this goal, various measures were put in place during 2015 leading to stronger employer branding. The Authority was present at careers fairs for law students, with good results. A successful moot court competition was delivered in collaboration with the University of Oslo and local law firms, and a project was initiated to deliver a competition in Iceland in 2016. In addition, the Authority has continued to increase its presence on social media.

Authority core values project

In 2015, the Authority established its core values project in an extensive joint exercise between the management group (College and directors) and a working group of staff members. The Authority's core values are: Integrity, Openness and Competence.

Based on feedback from management and staff, key behaviours aligned to each of the values were identified. A key priority for 2016 is to ensure that we continue to embed the values and behaviours and to ensure that they are reflected in all our internal and external activities.

Core values of the Authority

Integrity

The Authority operates in a fair, objective and independent manner. The Authority's staff take ownership of their tasks and carry out these tasks in an environment of open discussion and high ethical standards.

Openness

The Authority and its staff carry out their functions in a manner which is visible, approachable and transparent. The Authority is open to continuous improvement at an organisational and individual level.

Competence

The Authority employs highly qualified staff, who have the skills and knowledge required for the Authority to fulfil its role and to deal with tasks in an effective and efficient manner. We develop our competence and continuously improve our skills and knowledge and aim for excellence.

Budget and accounts

The Authority's annual budget for 2015 was EUR 13.2 million, a 0.7% nominal decrease. The activities and operating expenses of the Authority are financed by contributions from Iceland (9%), Liechtenstein (2%) and Norway (89%).

More details on the budget and accounts can be found in the chapter on statistics.

Internal Market

The Authority is responsible for monitoring the EFTA States in order to ensure the effective and timely implementation of the Internal Market rules into their national legal orders. The Authority is also responsible for ensuring that EEA law is applied correctly in the EFTA States. In this context, the Authority performs broadly the same tasks as the European Commission. The two institutions work closely together.

The Internal Market is based on the rules concerning "the four freedoms" – the free movement of goods, persons, services and capital, which have been at the core of European integration since the signing of the Treaty of Rome in 1957. These provisions are supplemented by a number of horizontal provisions, covering areas such as health and safety at work, labour law, equal treatment of men and women, consumer protection, environment and company law.

The Authority may take action if an EFTA State fails to incorporate these rules into its national law in a timely manner or is suspected of breaching EEA law.

Ensuring timely implementation of new legislation

An important part of the Authority's monitoring work involves ensuring the timely implementation of EEA law through its infringement proceedings process.

The common rules found in the EEA are intended, among other things, to ensure that companies have access to the Internal Market without discrimination, and free from the restrictions imposed by arbitrary barriers to trade. For this to work, all new common rules must be introduced simultaneously and be applied equally in the EFTA States.

In 2015, the Authority opened some 220 cases where the EFTA States had failed to implement legislation containing Internal Market rules. The biggest sector concerned food and feed safety and animal health and welfare. This reflects the large volume and legislation generated in this field at the EU level. Other important sectors include goods and transport. Overall, more cases were opened against Iceland than any other EFTA State.

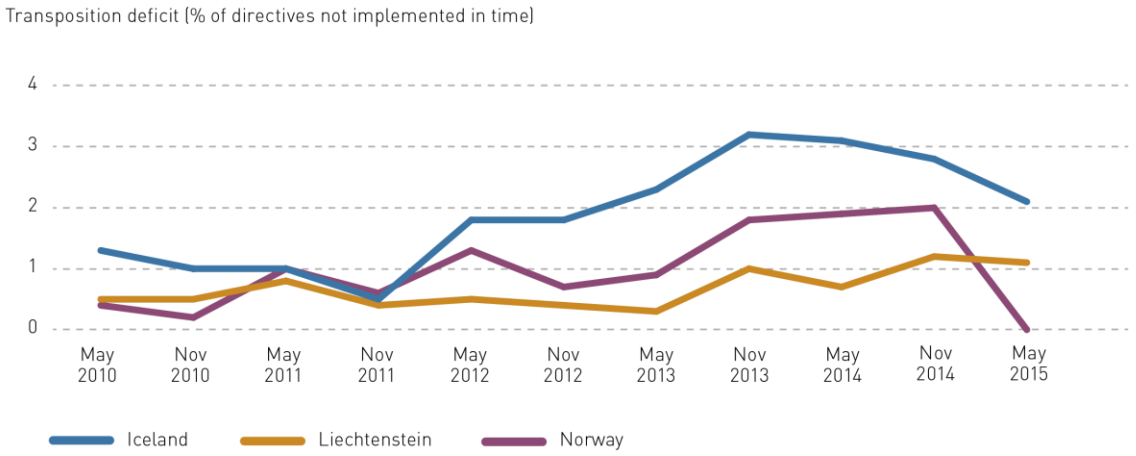
Internal Market Scoreboard

Twice a year, the Authority publishes the Internal Market Scoreboard, indicating how the EFTA States perform with regard to the timely implementation of new EEA directives, in comparison to the EU Member States. The Scoreboard presents the average transposition deficit for each of the EFTA States. The transposition deficit indicates how many directives containing Internal Market rules the EFTA States have failed to transpose and communicate on time.

In the latest Scoreboard, published in October 2015, Norway had the best performance of all the 31 EEA States, with not a single outstanding directive.

For Liechtenstein, there was room for improvement, as only five EEA States showed a higher deficit. Iceland, despite having moved in the right direction, still had the highest deficit by far in the whole EEA.

The average transposition deficit of the three EFTA States is now at 1.1%, compared to an average of 0.7% in the EU Member States. The target set by the European Council to measure transposition performance is 1%. This target is also used as a benchmark by the Authority.



Investigations of national legislation and practices

Where the Authority has information about any domestic legislation or practices that may not comply with EEA law, it can decide to initiate an investigation. This may be based on incorrect implementation of EEA rules or where other domestic laws or practices are incompatible with the rules. Such investigations can be initiated on the basis of the Authority's own surveillance of the EFTA States, or on the basis of a complaint.

Such an investigation may lead to the launching of formal infringement proceedings, which is a three step procedure:

1. **Letter of formal notice**, setting out the Authority's opinion and giving the State a chance to comment and bring forward its arguments.
2. **Reasoned opinion**, asking the State to comply, may be delivered if the case is not solved at the first stage.
3. Referral to the **EFTA Court** which will then adjudicate the case is the final step.

With regard to substance cases, the Authority opened 46 cases in 2015 to investigate whether legislation is being correctly applied and implemented in the EFTA States. These cases spanned a wide range of sectors, reflecting the broad range of areas covered by Internal Market rules.

Alongside this, the Authority received 55 complaints in 2015. The largest number of complaints was received in connection with the sector 'persons', mainly in connection with an alleged breach of the Residence Directive by Norway. The Authority also received a high number of complaints in the field of environment. A significant number of these concern decisions by Norway to allow the dumping of mining waste in fjords.

Anyone may submit a complaint to the Authority against an EFTA State that has failed to comply with its obligations under the EEA Agreement.

Norway restricting right to reunite families

In July 2015, the Authority delivered a reasoned opinion concluding that Norwegian rules do not fully ensure the rights of Norwegians returning home from another EEA State to reunite their families.

This resulted from an in-depth assessment carried out following numerous complaints received in 2013, 2014 and 2015 regarding the rights of family members under EEA law.

Once an EEA national has exercised his free movement rights, he falls under the protection of EEA law, including when he returns to his State of nationality. This protection includes the right, in certain circumstances, to bring his third country national family members along.

However, Norway has established additional criteria which are not supported by EEA law, and are ambiguous. As a result, Norwegians returning home from another EEA State are placed in a state of legal uncertainty. This runs contrary to EEA law, which requires that the implementation of these rights must be precise and clear, so that individuals are made fully aware of their rights and, where appropriate, may rely on them before the national courts.

In its reply to the reasoned opinion, the Norwegian Government does not agree with the Authority that EEA law requires EEA States to ensure this protection to the returning nationals who have not been economically active in another EEA State.

At the time of writing, the issue is pending with the EFTA Court in Case E-28/15 Yankuba Jabbi referred by Oslo District Court in November 2015. The hearing of the EFTA Court will take place in April 2016.

Posten Norge AS partly exempted from public procurement rules

The EFTA Surveillance Authority has decided to grant Posten Norge AS an exemption from public procurement rules for certain logistic services in the postal sector in Norway.

On 23 March 2015, the Authority received a request for exemption of the application of Directive 2004/17/EC, which coordinates procurement procedures in the water, energy, transport and postal services sectors. The directive aims at ensuring that economic operators fully enjoy fundamental freedoms in the competition for public procurement contracts.

The request covers the following services:

- Standard B2B domestic delivery of parcels;
- Standard B2B international parcel delivery (outbound);
- National express “Day 1”/in-night;
- International express delivery (inbound and outbound);
- General cargo and part load.

Article 30 (1) of Directive 2004/17/EC provides that the directive is not applicable when the activity in question is directly exposed to competition on markets to which access is not restricted.

After having carefully examined Posten Norge AS' request, the Authority has exempted the logistic services in question provided in Norway from the scope of application of the directive.

This does not preclude the applicability of EEA rules on public procurement in areas not covered by the decision, including mixed procurement. Neither does it preclude the applicability of EEA rules on competition where relevant.

Liechtenstein to amend rules on entry and residence

In a reasoned opinion delivered in February 2015, the Authority found that Liechtenstein rules did not fully ensure the rights of EEA nationals and their family members under Directive 2004/38/EC on free movement and residence.

The Directive aims to ensure that EEA nationals and their family members can fully enjoy their rights to freely travel, live and work anywhere in the EEA.

The Authority holds the view that Liechtenstein must facilitate entry and residence for certain family members of EEA nationals, such as dependants, members of the household or persons requiring personal care by the EEA national, as well as for the partner with whom the EEA national has a durable relationship. In these cases, Liechtenstein must base its decision on an extensive examination of the personal circumstances with the objective of maintaining the unity of the family.

Liechtenstein must also abolish the restrictions currently in place for EEA nationals residing there to take up employment in another EEA State. Liechtenstein's concerns regarding circumvention of the quota system for residence permits could, in the view of the Authority, be solved in a less restrictive way.

In November 2015, the Liechtenstein Government adopted a Government Bill intended to solve the issues raised in the reasoned opinion. The Liechtenstein Parliament held its first reading on the amendments proposed by the Bill in December 2015. The second reading is foreseen for March 2016 and the entry into force for April 2016.

Compensation for travel, board and lodging for posted workers in Norway

In December 2013, the Authority received a complaint from the Confederation of Norwegian Enterprise which claimed that Norway failed to comply with Article 36 EEA on freedom to provide services and Directive 96/71/EC concerning the posting of workers.

Norway requires that undertakings from other EEA States posting workers in the maritime construction industry, for construction sites in Norway and for cleaning enterprises, provide to the posted workers compensation for travel, board and lodging expenses.

Norway has opted for compensation for travel, board and lodging expenses, but not for an allowance paid in the form of a flat rate, without any direct link to the specific expenditure incurred.

This, in the Authority's preliminary view, goes contrary to Directive 96/71/EC laying down the list of areas of regulatory competence of the EEA State where the workers are posted; otherwise, the law of the home EEA State applies.

Contrary to the arguments from the Norwegian Government, ESA finds that compensation for travel, board and lodging expenses cannot be considered as part of the minimum rates of pay under the Directive. Nor can such compensation be justified on public policy grounds.

Capital controls in Iceland

On 18 February 2015, the Authority closed a case based on a complaint alleging that the capital controls implemented by Iceland subsequent to the financial crisis can no longer be justified on the basis of the substantive criteria prescribed in the second and fourth paragraphs of Article 43 of the EEA Agreement.

When it comes to the protective measures under Article 43, the prescribed procedures provide that the EFTA Standing Committee and the EEA Joint Committee are to be notified and consulted prior to the implementation of the measures. The central institutions for monitoring compliance of an EFTA State with Article 43 are the Standing Committee of the EFTA States and the EEA Joint Committee. The latter brings together the EFTA and EU States party to the EEA Agreement, as represented by the Commission.

Article 43(4) provides a possibility for States to implement a national economic and monetary policy aimed at restoring equilibrium in the trade balance. It is the Authority's view that the safeguard provision provided for in 43(4) represents an extensive exception to the EEA Agreement's provisions, albeit specifically restricted to cases of economic difficulty and crises, which provides a possibility for supporting national economic policy aimed at overcoming economic difficulties. In cases where an EEA State is in difficulties as regards its balance of payments, the provision thus permits the temporary suspension of the EEA Agreement obligations.

In substance, the Authority found that the issue in question touches upon fundamental choices of economic policy and that the State enjoys a certain margin of discretion. Moreover, there was little doubt that Iceland was still experiencing difficulties as regards its balance of payments. Furthermore, nothing in the facts of the case suggested that the measures taken by Iceland were not objective, transparent and proportionate, or that legal certainty was not safeguarded.

The Authority thus concluded that the measures taken by Iceland pursuant to Article 43 presently satisfy the requirements for reliance on that provision.

Liechtenstein must ease its control of service providers

In the field of establishment and cross-border services, Liechtenstein imposes heavy administrative burdens.

Any company providing cross-border services or wanting to establish itself in Liechtenstein is subject to an authorisation scheme. The Authority considers that maintaining a general prior authorisation requirement is running against Internal Market principles and must be changed.

The Internal Market is based on the principle that, except under special circumstances, companies can freely provide services. Liechtenstein is entitled to require controls for companies providing services on its territory, but only once the company has started providing services in Liechtenstein or has established itself in the country.

The current procedure implies hurdles, delays and costs for companies. Consumer protection can be ensured in a different manner and alternative options for achieving the same result should be implemented.

The Authority considers that the legal requirements imposed by Liechtenstein constitute a breach of the Services Directive and the rules on the provision of cross-border services and establishment in the Internal Market.

The Services Directive establishes general provisions in accordance with the principles developed in the case law of the European Court of Justice and the EFTA Court, facilitating the exercise of the freedom of establishment for service providers and the free movement of service within the territory of the EEA Member States. The Directive has been applicable in the EEA since 1 May 2010.

After delivering a letter of formal notice and a reasoned opinion, the Authority decided to refer the case to the EFTA Court. The court hearing will take place in early March 2016 (case E-19/15).

Hydropower and geothermal energy in Iceland

The conditions for the granting and renewal of authorisations for the utilisation of hydropower and geothermal energy in Iceland do not appear compatible with the principles of transparency and impartiality.

The Authority has opened an own initiative case regarding these conditions. It has also invited Iceland to provide clarification on various points of the applicable legal framework.

In 2012, the Authority issued a letter of formal notice indicating that the Icelandic legislation currently applicable to the award and renewal of hydropower and geothermal licences is in breach of EEA law. More specifically, the Authority considered that the Icelandic legislation is contrary to the Services Directive 2006/123 EC and Article 3l EEA.

Despite attempts from the Icelandic Government to find a solution, no legal texts have been adopted. Therefore, in 2015 the Authority delivered a reasoned opinion.

Following the delivery of the reasoned opinion, meetings have been held with the Icelandic authorities. They have established a detailed and clear schedule to remedy these issues by planning a reform of the rules applicable to hydropower and geothermal licenses. If the deadlines indicated by the Icelandic authorities are not met, the Authority will consider bringing the case to the EFTA Court.

Norway will withdraw public funding for Nyt Norge ("Enjoy Norway") brand

In 2014, the Authority opened an own initiative case in relation to the Nyt Norge brand.

The Authority considered that Nyt Norge was in fact a directly discriminatory measure which promoted Norwegian products to the detriment of products from other EEA States. Such a measure infringes the principle of free movement of goods provided for in Article 11 of the EEA Agreement.

In July 2015, the Authority issued a letter of formal notice to Norway making it clear that the Authority considered Nyt Norge a breach of Article 11 of the EEA Agreement.

In its reply submitted in October 2015, the Norwegian Government took note of the Authority's assessment and committed to change the financing for Nyt Norge, so that public funding will be withdrawn for products covered by the EEA Agreement.

The changes were to become effective as of 1 January 2016.

Nyt Norge

Nyt Norge is a brand which aims to promote the sale of food products with Norwegian origin. Nyt Norge is run by the foundation Matmerk and 70% of the funding for Nyt Norge is provided through government intervention by way of direct funding from the Norwegian Government and by way of a mandatory levy on farmers.

In April 2015, Nyt Norge was used for 2,214 different products of which the majority were agricultural products that are not covered by the EEA Agreement. However, 137 products covered by Nyt Norge were not agricultural products, and these products are, therefore, covered by the EEA Agreement.

Complaints against mining waste in Førde Fjord

In 2015, the Authority received a number of complaints regarding the decision of the Norwegian Government to grant a permit to a mining company to dump mining waste in the Førde Fjord. The complaints allege that Norway failed to take into account the requirements of the Water Framework Directive (WFD) when the permit was granted. The complainants are concerned that the introduction of significant amounts of mining waste into the fjord will have far-reaching and long-lasting environmental effects.

The WFD introduced a new legislative approach to managing and protecting water, based not on national or political boundaries, but on natural geographical and hydrological formations and has been in force in the EEA since 1 May 2009.

The purpose of the WFD is to establish a framework for the protection of surface water (including rivers, lakes, transitional and coastal waters) and ground water throughout the EU territory. It imposes strict standards for water quality.

The Authority must now examine whether Norway has complied with its provisions and taken all relevant factors into account.

Environmental Impact Assessment in Iceland

The Authority has been working on a number of cases this year concerning the implementation and application of the Environmental Impact Assessment (EIA) Directive in Iceland.

The EIA Directive establishes procedures to ensure the environmental implications of decisions are taken into account before the decisions on large projects are made. In addition, the legislation is intended to contribute to the integration of environmental considerations into the preparation of projects, plans and programmes with a view to reduce their environmental impact. Consultation with the public is a key feature of the procedures established by the EIA Directive.

The EIA Directive distinguishes between those projects which must always be subject to an environmental assessment because of their size or importance, and others where there is an element of discretion in whether an assessment is needed. In one of the cases the Authority dealt with, the key feature of the complaint was whether Iceland was obliged to carry out an environmental impact assessment at all. The question was important as it determined whether the public in general had a right to participate in decision-making on the project.

Separately, the Authority is also examining the public's right to challenge administrative practice, not only once a decision has been taken, but also in circumstances where a national body has failed to do something that is legally required. This case is still ongoing.

Use of PFOA prohibited in Norway

Changes introduced to the Norwegian product regulation prohibited the use of PFOA (perfluorooctanoic acid, a synthetic chemical used in the production of non-stick coatings) in certain consumer goods. Norway is the only country in the EEA to have introduced such a ban. This means there is an uneven playing field for manufacturers and importers of PFOA products. This has fractured the Internal Market for these goods.

While it's clear that no-one wants unsafe products reaching consumers, legislation has established a strict process to deal with substances where they pose an unacceptable risk to health or the environment. Such substances may be limited or even banned, if necessary. However, before a substance can be banned, countries must present rigorous scientific evidence to demonstrate those risks. Any decision to restrict a substance in this way must be taken at the EEA level.

Instead of following the process set out in EEA law, Norway decided that the risks posed by PFOA were too great and established a national ban. In January 2015, the Authority issued a letter of formal notice to Norway, stating that the ban on PFOA was contrary to EEA law. Norway did not agree with the findings of ESA and in light of the disagreement, the Authority delivered a reasoned opinion to Norway in July 2015.

In February 2016, the Authority decided to refer the case to the EFTA Court.

Cross-border health care

Since 2012, the Authority has received several complaints concerning the rules and practices in Norway applicable to patients seeking medical treatment in hospitals in other EEA States. A letter of formal notice was issued in May 2014 concerning the then applicable legislation.

Norway has since partly changed the legislation in question. A reimbursement scheme has been set up, giving patients entitled to hospital treatment nationally the right to get such treatment in other EEA States refunded, up to the cost of such treatment in Norway.

However, some important aspects in the letter of formal notice have not been addressed. The Authority therefore issued a supplementary letter of formal notice in February 2016 addressing these remaining issues. In instances where it is unclear whether the treatment is equally effective in Norway as in other EEA States, the condition applied by Norway still primarily considers the existence of "adequate health services/competence" in Norway. This is, however, a lower threshold than EEA law requires, and the Authority continues to follow up on this and linked aspect of the case.

Food Safety

The EEA legislation on food safety is based on the principle "from farm to fork". This entails that food safety shall be ensured at all stages of food production, from the farmer to the final consumer.

The tasks of the Authority include monitoring work to ensure timely transposition and correct application of EEA law, case handling related to approval of disease-free statuses, and on-the-spot inspections to verify that Iceland and Norway apply legislation correctly. The EFTA States are obliged to notify the Authority if cases of serious animal disease or food or feed crisis arise. The Authority has various duties when reviewing the measures taken by the EFTA State concerned, to minimize the harm to public or animal health.

When the Authority identifies shortcomings in the control systems set up by the national authorities it will issue recommendations aimed at rectifying the situation. The EFTA States are invited to comment on the draft reports, as well as provide corrective actions in line with the recommendations set forward before the reports are published on the Authority's website.

On-spot inspections

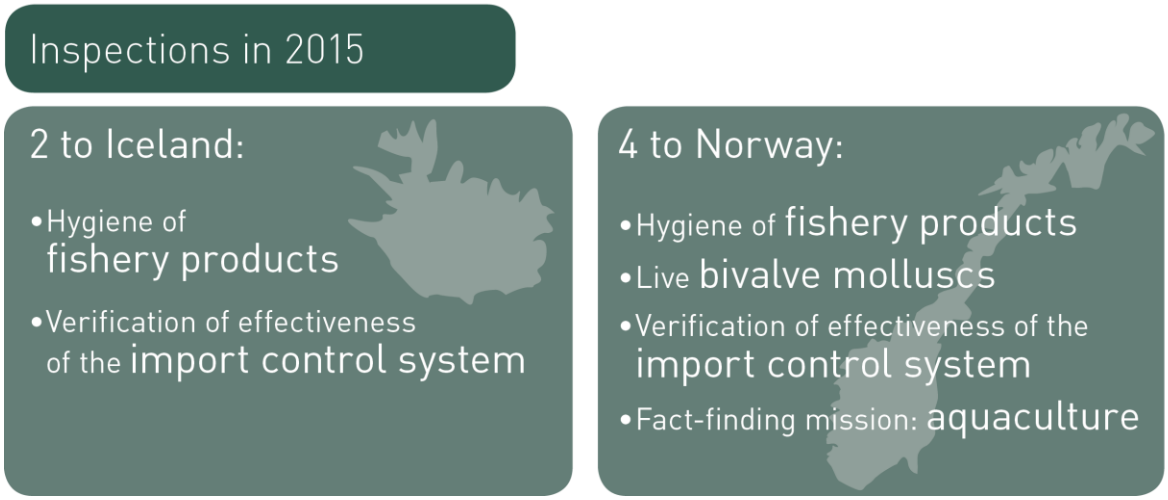
The food and feed safety, animal health and welfare sectors cover a wide range of issues, and audits and on-spot inspections are important tools to assess the performance of EFTA States in these fields. In 2015, the Authority carried out six inspections in various sectors of the veterinary, food and feed field.

The inspections carried out in Iceland covered the following areas:

- Hygiene of fishery products;
- Verification of the effectiveness of the import control system.

The inspections carried out in Norway covered the following areas:

- Hygiene of fishery products;
- Live bivalve molluscs;
- Fact-finding cross-sectoral mission on aquaculture;
- Verification of the effectiveness of the import control system.



For various reasons, the Authority had to postpone three missions in 2015. A mission to Norway on animal by-products not intended for human consumption, and one mission to Iceland on veterinary medicinal products and residues thereof were reintroduced into the program for 2016. In addition, a planned fact-finding mission on aquaculture to Iceland was cancelled.

Restrictions on fresh meat imports in Iceland

Following a reasoned opinion delivered in October 2014, the Authority continued its assessment of the Icelandic legislation on imports of fresh meat.

In May 2015, the Reykjavík District Court submitted a reference for an advisory opinion to the EFTA Court concerning several questions relating to the Icelandic import regime for raw meat products and its compatibility with EEA legislation. Accordingly, the Authority decided to postpone further handling of the infringement case until the EFTA Court had adjudicated that case. The Court delivered its judgment on 1 February, 2016 (see page 37).

The Authority also opened a new case concerning similar restrictions imposed by the Icelandic legislation on the importation of egg and dairy products.

Requirements for the use of clean seawater in fishery production in Norway

EEA regulations concerning the hygiene of food of animal origin allow food business operators to use clean seawater for certain operations, in particular the handling and washing of fishery products in certain conditions.

The Norwegian competent authority requires that clean seawater used in land-based seafood producing establishments must fulfil the requirements for drinking water as set in Directive 98/83/EC on the quality of water intended for human consumption, concerning in particular water supply systems and sampling plans.

The Authority issued a letter of formal notice to Norway in July 2015, in which it considered that Norway's practice was not in line with EEA law. The Authority is analysing Norway's reply to the letter of formal notice before deciding on the next steps in this case.

Transport Security

Efficient, safe and sustainable transport of goods, services and persons complements the development of the Internal Market and is fundamental to a more efficient and competitive EEA economy.

All modes of transport are covered by the EEA Agreement. Due to geographical location or lack of infrastructure, certain legislation applies to a limited degree in some of the EFTA States. The Authority monitors all EEA legislation on transport, be it on land, in the air or at sea. To ensure compliance with aviation and maritime security rules, the Authority also carries out on-site inspections.

In the field of aviation, maritime and rail, the Authority co-operates with the EU transport agencies. The agencies provide the Authority with expert advice and assist with visits and inspections in the EFTA States, either in accordance with their own work programme or at the request of the Authority.

Iceland fails to carry out adequate checks on consignments of dangerous goods

The Authority has investigated checks on the transport of consignments of dangerous goods in Iceland.

The Directive on Checks on Transport of Dangerous Goods (Directive 95/50/EC) stipulates that national transport authorities should carry out checks to ensure that consignments of dangerous goods (e.g. flammable, explosive or toxic substances) are carried safely by road. These rules set out procedures for roadside checks and details of what to check for.

The current Icelandic regulations do not meet the standards set out by EEA law and, furthermore, it does not appear that the required safety checks are carried out on a representative proportion of consignments of dangerous goods.

Iceland fails to carry out technical inspections of commercial vehicles

The Authority's investigations have revealed that Iceland has failed to comply with the provisions of Directive 2000/30/EC on the technical roadside inspection of the roadworthiness of motor vehicles for the commercial use of goods and passengers and their trailers.

Technical roadside inspections are inspections of commercial vehicles. These inspections are not announced by the national authorities, who carry them out or supervise them on public

roads. The Authority has concluded that Iceland does not carry out regular technical inspections on the road, as required by Directive 2000/30/EC.

Accordingly, the Authority takes the view that Iceland is not meeting its EEA law obligations.

Aviation and maritime security inspections

The main objective of the EU's regulatory framework on aviation security is to establish and implement appropriate measures in order to safeguard passengers, crew, ground personnel and the general public against acts of unlawful interference perpetrated on board aircraft or within the confines of an airport.

Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of aviation security forms the basis for the regulatory framework. Multiple regulations supplementing and implementing the common rules have since been adopted in the field of aviation security. By the incorporation of this regulatory framework into the EEA Agreement, the legislation is also applicable in the EFTA States.

One of the key components of the framework on aviation security is the organisation of inspections by the Commission to verify implementation by the Member States. For the EFTA States, these inspections are carried out by the Authority. The Commission and Authority inspections are complementary to the national monitoring by the Member States of airports, operators and entities. The Authority co-operates with the appropriate authorities in the EFTA States and the Commission to work towards the common goal of increasing aviation security within the EEA.

The main objective of the EU maritime security legislation is to introduce and implement measures aimed at enhancing the security of ships used in international trade and domestic shipping and associated port facilities in the face of threats of intentional unlawful acts. By the incorporation of this maritime legislation into the EEA Agreement, the legislation is also applicable in the EFTA States. As in the field of aviation security, the Authority is tasked with inspecting the EFTA States in the field of maritime security and is assisted by the European Maritime Safety Agency (EMSA) in its work.

The co-operation between the Authority and the Commission in this field is further strengthened by means of participation in both common workshops and inspections. This co-operation is one of the most important means of ensuring the harmonised application of the applicable legislation in all EEA States.

Norway referred to Court: Comes short in handling of ship-generated waste

A visit carried out by the European Maritime Safety Agency (EMSA) on behalf of the Authority in 2010, revealed several shortcomings in Norway's implementation of Directive 2000/59/EC. The purpose of this Directive is to reduce the discharges of ship-generated waste and cargo residues into the sea from ships using ports within the EEA. One measure imposed for reaching this purpose is improving the availability and use of port reception facilities for ship-generated waste and cargo residues, thereby enhancing the protection of the marine environment.

One of the main findings stemming from the EMSA visit relates to the lack of development and approval of waste reception and handling plans for all Norwegian ports falling within the scope of the Directive. Furthermore, the outcome of the visit indicated that Norway had failed to fully ensure that all ports have adequate port reception facilities for ship-generated waste and cargo residues. As Norway has failed to take measures to comply fully with the provisions of the Directive, the Authority has brought the matter before the EFTA Court.

STATE AID

State aid is economic assistance provided by public bodies to undertakings active in a market. Such assistance can consist of public support measures in numerous forms. Typical measures include grants, tax breaks, favourable loans, guarantees or investments not based on market terms. Of all existing aid measures in the EFTA States in recent years, more than 60% have been in the form of various tax measures.

The EEA Agreement contains a general prohibition on state aid in order to prevent distortions of competition and negative effects on intra-EEA trade. The rules seek to ensure equal opportunities for companies across Europe, and to prevent government assistance from being used as a form of protectionism in the absence of trade barriers. The prohibition is, however, subject to numerous exceptions, recognizing that government intervention can be necessary to correct market failure and for other purposes.

STATE AID PROCEDURES

State aid procedures are laid down in Protocol 3 to the Surveillance and Court Agreement. Plans to grant state aid must be notified to the Authority prior to implementation. The Authority must then assess whether such a plan constitutes state aid and, if it does, examine whether it is eligible for exemption. The State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision. If the standstill obligation is not respected, the aid is unlawfully granted.

The Authority will undertake a preliminary investigation of an aid proposal and will either decide not to raise objections (concluding that there is no state aid involved at all or that the proposed aid is compatible with the functioning of the EEA Agreement), or open a formal investigation.

As part of such a formal investigation, the Authority will invite comments from the EFTA State seeking to implement the proposals as well as any other interested parties (which may include the proposed aid recipient(s) or its/their competitors). The final decision of the Authority will either be positive (approving the measure either as no aid or as compatible aid), negative (prohibiting the aid), or conditional (approving the aid subject to conditions).

Where negative decisions are taken in cases of unlawful aid, the Authority normally decides that the EFTA State concerned shall take all necessary measures to recover the aid from the beneficiary.

Main activities in 2015

In 2015, the Authority opened 65 new state aid cases and 64 cases were closed. At the end of the year 39 state aid cases were pending. These statistics include pre-notifications, notifications, formal investigations, existing aid review, unlawful aid (including complaints) and recovery cases, while cases of aid under the General Block Exemption Regulation are excluded. The statistics also exclude cases of other state aid matters such as review of guidelines on state aid.

In 2015, the Authority adopted 27 state aid decisions, 19 involving state aid in Norway and 8 in Iceland. A full overview of the Authority's state aid decisions is available from the state aid register on its website at: www.eftasurv.int/state-aid/state-aid-register/decisions

Trends and experiences in enforcement policy

The recent reform of state aid rules, based on the European Commission's communication on state aid modernisation, which entered into force in July 2015, is gradually leading to significant changes in policy and to a broader decentralisation of state aid control within the EEA.

The modernisation involves new and streamlined state aid guidelines in most areas. It also includes a major revision of the procedural regulation on state aid. The revised Procedural Regulation has, however, not yet been incorporated into the EEA Agreement. The Authority has repeatedly indicated to the EFTA States the negative implications of this delay.

Central to the reform is the new General Block Exemption Regulation (GBER), which entered into force on 1 July 2014, both within the EU and the EEA. The new GBER exempts wide categories of aid measures from the notification obligation and therefore involves a significant increase in the possibilities for the EEA States to grant aid without prior notification to either the Commission or the Authority. The idea is that only the larger, more distortive and complex cases will remain subject to prior notification. This is to be balanced with a greater emphasis on monitoring, evaluation and transparency. Thus, the new regime gives more responsibility to national authorities in exchange for higher standards on transparency and accountability. This must be underpinned by a stronger partnership between the EEA States on the one hand and the Commission and the Authority on the other.

Norway has made relatively active use of the GBER, with 95 block-exempted aid measures in 2014–2015. Since the entry into force of the GBER, Iceland has only block-exempted two aid schemes. Liechtenstein has so far not made use of the GBER. It can be expected that the EFTA States will, in the near future, make even better use of the new GBER. An overview of GBER information sheets received by the Authority is available on its website at: www.eftasurv.int/state-aid/gber-information-sheets

When granting aid under the GBER, the Member States are responsible for complying with the detailed provisions of the regulation. As block-exempted measures account for a sizeable and growing share of aid measures, the Authority is stepping up its surveillance activity in this area. It is increasingly engaged in the ex-post evaluation and monitoring of such measures.

To ensure transparency of aid granted under the GBER and the modernised state aid guidelines, the EEA States are also required to set up a comprehensive state aid website providing relevant information on state aid granted (transparency requirement).

New transparency obligations

As an important part of the modernisation process, the Authority has imposed new transparency obligations on Norway, Iceland and Liechtenstein as a compatibility condition for state aid.

In addition to making public summary information sheets on each aid scheme or measure indicating the objective of the aid and the legal basis, the EFTA States are required, for each state aid award above EUR 500,000, to make public the names of aid beneficiaries and the aid amounts involved. Information on aid amounts granted through fiscal aid schemes or under risk-finance schemes can be provided in ranges to ensure confidentiality and the protection of business secrets.

The transparency obligation refers to all new aid granted to large undertakings or small and medium-sized enterprises (SMEs) from July 2016. It applies irrespective of whether the aid is block-exempted under the GBER or approved by the Authority, and irrespective of whether the aid is granted through a scheme or upon individual authorisation.

The EFTA States will introduce a comprehensive transparency website where citizens and competitors can check the aid received by undertakings and related information. Standard formats for data collection and publication will be used by all EU and EFTA States, facilitating data searching.

The aim of the new transparency rules is not only to increase the information on public policies and expenditure, but also to allow further scrutiny, thereby ensuring more compliance with state aid rules.

Decision highlights

Examples of state aid cases dealt with by the Authority in 2015 are as follows.

Norway's zero VAT rating for electric cars approved

In April 2015, the Authority decided to approve Norway's measures in support of electric vehicles, in the form of a 0% VAT rate on the import, sale and leasing of electric cars. The measures were considered to be compatible with the state aid rules of the EEA Agreement since they aim to achieve an objective of common interest: the reduction of greenhouse gas emissions.

The support scheme does provide an indirect advantage for manufacturers and dealers of electric cars. However, the scheme does not discriminate between car manufacturers since all electric car models are eligible for aid.

In its decision, the Authority noted nevertheless that the price of electric cars was decreasing and that technological progress was accelerating. As a consequence, the VAT measures are approved until 31 December 2017. After that, the Norwegian authorities could notify an extension of the scheme. When assessing the need for such an extension, the Authority would take into account the characteristics of the electric car market at the time of the new evaluation.

The Authority has not assessed the exemption from registration tax for electric vehicles, nor free public parking and free charging, but will keep these measures under review.

Review of power contracts in Iceland

In 2015, the Authority reviewed two power contracts signed between Landsvirkjun (a fully state-owned electricity company) and energy-intensive users United Silicon and PCC (Decisions 67/15/COL and 207/15/COL, respectively). No state aid was found.

The sale of energy to energy-intensive users constitutes approximately 80% of the total electricity consumption in Iceland, whereas 20% is attributed to general usage and transmission losses. Iceland has traditionally attracted energy-intensive users.

Public companies that carry out economic activities in competition with private companies must ensure that their transactions reflect market terms, i.e. recovering costs plus a reasonable profit.

The PCC contract was concluded in March 2015, following a decision by the Authority to open an in-depth investigation into a similar contract signed in 2014 (Decision 543/14/COL). As the 2014 contract was terminated by the parties without entering into force, that investigation was closed by Decision 238/15/COL. The power contract with United Silicon was signed on 19 March 2014.

The Authority concluded that a private player would have accepted the terms of those agreements. The Authority looked into the profitability calculations and concluded that the contracts generate a reasonable rate of return for Landsvirkjun.

If Landsvirkjun needs to build new power facilities to provide the required electricity, the expected revenues from the power contracts must recoup those investments. This was the case for PCC's agreement, while the electricity for United Silicon's new plant will be provided from existing facilities.

No aid granted through the tourism platform visitnorway.com

The Authority concluded that Innovation Norway's provision of IT services through its online travel guide visitnorway.com does not entail state aid (Decision 469/15/COL).

Visitnorway.com is a website created by Innovation Norway in 2007 with the objective of promoting travel to Norway. Innovation Norway has been entrusted with the mandate to promote tourism at national level. The Authority considers that the mere promotion of tourism, providing generic tourism information, is a non-economic activity.

However, since 2013, Innovation Norway has also offered certain IT services (web infrastructure and related services) to the Regional Tourism Boards (promoting tourism at a

regional level) and the Destination Management Organisations (promoting tourism at the local level).

Following a complaint from a competitor in July 2014, the Authority opened an in-depth investigation regarding the IT services (Decision 300/14/COL).

In its final decision, the Authority concluded that the IT services constitute economic activities that must be provided at market terms. The Authority verified Innovation Norway's business plan. It also analysed its accounting methodology in order to avoid a risk of cross-subsidisation among services.

The Authority concluded that the accounts allow for identifying costs and revenues of the different services and that Innovation Norway obtains a reasonable profit from the IT services. Consequently, the case was closed.

Enova aid grants to two Norwegian demonstration plant projects approved

In 2015, the Authority approved aid by Enova to two demonstration plant projects through the New Energy Technology Programme (NETP), part of the Energy Fund scheme approved by the Authority in Decision 248/11/COL. The NETP provides support to demonstration projects for innovative technologies in order to foster their market diffusion. In both cases described below, an individual notification for a detailed assessment was required due to the high aid amounts.

Hydro Aluminium AS

In February 2015, the Authority approved a non-reimbursable grant of up to NOK 1.486 million (approximately EUR 165 million) to Hydro Aluminium AS for the construction of a demonstration plant in the municipality of Karmøy, Norway (Decision 37/15/COL).

The purpose of the aid is to enable the construction of a demonstration plant for the verification of a new smelting cell technology. Based on the research so far, this new technology will lead to an important reduction in both the electricity consumption and direct greenhouse gas emissions. Due to the technological risks involved in the design of the new cells and the high investment costs, a verification of the technology at industrial scale is required before it can be put to commercial use.

In its assessment, the Authority found that the project suffers from a funding gap and would not be pursued without aid. Furthermore, the maximum aid intensity of 50% under the Energy Fund scheme is respected. There are also mechanisms to prevent overcompensation. Finally, the new technology will be available to third parties on commercial terms for investments in the EEA once it has been successfully verified in the demonstration plant.

Tizir Titanium & Iron AS

In November 2015, the Authority approved a non-reimbursable grant to Tizir Titanium & Iron (TTI) of around NOK 122.7 million (approximately EUR 12.9 million), for a full-scale demonstration project testing a new environmental-friendly technology (Decision 476/15/COL).

TTI produces high purity pig iron and titanium dioxide slag from an ilmenite ore in a two-step process – pre-reduction and smelting. The purpose of the demonstration project is to verify, at full-scale, the use of a new water-cooled roof technology introduced in the smelting furnace.

The technology is expected to result in both reduced energy consumption and reduced emissions of CO2 during the production process. If this new technology proves successful, it may be applied in the whole metallurgical industry and may contribute to important reductions in energy consumption and CO2 emissions. The new technology will be available to third parties.

In its assessment, the Authority concluded that the project suffers from a funding gap and would not be pursued without the aid. Furthermore, the level of public funding is below the maximum aid intensity of 50% under the Energy Fund scheme. There are also mechanisms to prevent over-compensation.

In-depth investigation into Hurtigruten Coastal Agreement 2012–2019

In December 2015, the Authority opened a formal investigation into potential unlawful state aid granted to the Norwegian ferry company Hurtigruten operating the Bergen–Kirkenes route.

The case concerns public service compensation granted to Hurtigruten under the Coastal Agreement for the period 2012–2019, following a tender procedure. Hurtigruten receives compensation in order to perform daily sailings throughout the year with calls at 34 ports from Bergen to Kirkenes.

The Authority started looking into the matter after receiving two complaints alleging, among other things, that Hurtigruten has been awarded substantially higher compensation than in the previous contract period; and that Hurtigruten sells capacity allocated for public service passengers to cruise passengers while maintaining the compensation at the same level. The complainants also allege that Hurtigruten fails to serve all ports to the extent required.

The EEA Agreement permits public service compensation for well-defined services of general economic interest, provided that it covers only the cost of the services, including a reasonable profit for the providers. However, the Authority cannot exclude that the Coastal Agreement entails an over-compensation of Hurtigruten in violation of those rules.

This opening decision is without prejudice to the final decision of the Authority. The Authority has called for further comments from the Norwegian authorities and third parties with an interest in the case.

Social security contributions in Norway

After the adoption of new guidelines on regional state aid for 2014–2020, the Authority approved Norway's system of regionally differentiated social security contributions in June 2014. The system of differentiated social security contributions aims to reduce or prevent depopulation in the least inhabited regions in Norway. In certain remote areas, employers are granted a reduction in the rate used for calculating their compulsory contribution to the national social security scheme.

In September 2015, the EFTA Court partly annulled this approval, insofar as an exemption rule for ambulant services is concerned. In general, businesses are entitled to this reduction only if they are registered in one of those areas. However, under the exemption rule, businesses registered outside those areas have been granted a reduced rate when their employees carry out work in an eligible area.

In December 2015, the Authority opened a formal investigation into the exemption rule, inviting interested parties and the Norwegian authorities to comment on the preliminary views of the Authority. It is the rule for ambulant services that is the subject of the Authority's formal investigation. Apart from that rule, the Authority's formal investigation has no bearing on the scheme as such.

The decision to open the formal investigation is without prejudice to the final decision of the Authority. The Authority aims to close the formal investigation during the course of 2016.

Competition

The Authority's main task in the field of competition is to ensure that undertakings active in the EFTA States comply with the EEA competition rules. For this purpose, the Authority enjoys wide powers of investigation and may impose fines of up to 10% of global turnover on undertakings that act in contravention of the rules. It is further incumbent upon the Authority to supervise the application of the EEA competition rules by the competition authorities of the EFTA States.

Key reflections from 2015

Investigation of ferry services between Norway and Sweden

A popular ferry route for tax-free sales between Norway and Sweden was under scrutiny in 2015 for a potential breach of the EEA competition rules. The Authority opened an investigation in March owing to concerns related to Color Line's long-term access and preferential sailing times in Sandefjord harbour on the Norwegian side. In the second half of 2015, Color Line and Sandefjord Municipality offered to allow better access for competitors to sailing slots at the harbour. In December, the Authority published a market test notice inviting comments on the proposed commitments from stakeholders before deciding whether to close the case.

Assisting the courts in competition cases

In 2015, the Authority actively assisted the courts in cases involving the EEA competition rules. For example, in May the Authority submitted written observations in a case before the Norwegian Borgarting Court of Appeal concerning alleged collusion in asphalt tenders in Norway. In providing assistance on matters of legal interpretation, the Authority aims to ensure a consistent application of the EEA Agreement so that companies can operate seamlessly in the EEA secure in the knowledge that the competition rules are aligned across countries.

Main activities in 2015

Significant progress in Color Line / Sandefjord Municipality investigation

In March 2015, the Authority opened formal antitrust proceedings against the ferry company Color Line and the Municipality of Sandefjord in Norway to investigate whether they breached the EEA competition rules.

Color Line operates a passenger ferry route with tax-free sales between Sandefjord in Norway and Strömstad in Sweden. Sandefjord Municipality owns and operates Sandefjord inner harbour on a commercial basis and has had a long-term contractual agreement with Color Line for harbour access.

Following commitments discussions, the Authority adopted Preliminary Assessments in October 2015 addressing Color Line's long-term agreements for Sandefjord inner harbour. By upholding Color Line's rights under those agreements, in particular its preferential sailing times, the Authority expressed the view that Color Line and Sandefjord Municipality prevented other ferry operators from viably entering and expanding on the Sandefjord–Strömstad route.

The Authority issued a market test notice in December 2015 inviting comments on proposed commitments received from Color Line and Sandefjord Municipality. In essence, the parties committed to grant another ferry operator, Fjord Line AS, viable sailing times from Sandefjord inner harbour and to re-allocate sailing times from 2020 based on criteria that seek to safeguard competition and ensure equal treatment and non-discrimination.

This case follows a decision taken by the Authority in 2011, where it fined Color Line EUR 18.8 million for infringing the EEA competition rules in relation to access to Strömstad harbour in Sweden. Color Line's agreements with Sandefjord Municipality were not addressed in that decision.

Advancing the Authority's general investigative activity

In 2015, the Authority advanced its investigation of Telenor's wholesale pricing and business contract clauses for mobile communications services in Norway. This follows the Authority's decision to open formal antitrust proceedings against the company in mid-2014.

The Authority continued to assess the compatibility of certain behaviour and measures in the Norwegian airline sector with the EEA competition rules. As part of this assessment, the Authority progressed its examination of information obtained during unannounced inspections at the premises of Widerøe's Flyveselskap AS in Norway in June 2014.

During 2015, the Authority also continued to receive market information/complaints concerning other suspected infringements of the EEA competition rules.

Close co-operation with the European Commission in the enforcement of the EEA competition rules

In 2015, the Authority continued to co-operate closely with the Commission's Directorate General for Competition on the enforcement of the EEA competition rules.

The Commission applies the EEA competition rules (for both mergers and antitrust) alongside the EU competition rules in a significant number of cases. Cases handled by the Commission can have a considerable impact on markets and market players in the EFTA States. The EEA rules on co-operation in competition cases ensure that the Authority and the EFTA States can make their voices heard in cases that concern the territory of the EFTA States.

Rules on co-operation between the Commission and the Authority in the EEA Agreement also allow the Authority and the competition authorities of the EFTA States to be involved in discussions on competition policy at EU level, in particular within the European Competition Network (ECN).

Mergers are examined at European level if the annual turnover of the companies concerned exceeds specified thresholds in terms of global and European sales. The rules on jurisdiction are such that, in practice, the Commission is the competent authority to assess mergers under the EEA Agreement. The Authority is involved in merger cases by virtue of the EEA co-operation rules.

The co-operation rules under the EEA Agreement also mean that the Authority is kept closely informed of specific antitrust cases in which the Commission applies Articles 53 or 54 of the EEA Agreement, in parallel to Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

Articles 53 and 54 of the EEA Agreement
(Equivalent in substance to Articles 101 and 102 TFEU)

Article 53 EEA	***Article 54 EEA***
A prohibition on agreements or practices that restrict or distort competition (Art. 53(1) EEA) with the exception of restrictions necessary for improvements which benefit consumers and which do not eliminate competition (Art. 53(3) EEA).	A prohibition on the abuse of a dominant position by market participants.

Continuing to work co-operatively and constructively with the EFTA competition authorities on competition cases

National competition authorities and courts in the EFTA States apply Articles 53 and 54 EEA in parallel to the equivalent national competition rules. To ensure a coherent and efficient application of those provisions, the Authority's activities in the field of competition are co-ordinated with those of the national competition authorities. This is done via the EFTA network of competition authorities.

When acting under Articles 53 or 54 EEA, the national competition authorities in the EFTA States inform the Authority about new investigations. Sharing background information early on helps to identify the most appropriate authority to deal with a given case. In 2015, the national authorities reported a number of new investigations/enquiries concerning cases involving potential breaches of the EEA competition rules both formally and informally to the Authority.

Before adopting decisions applying Articles 53 or 54 EEA, the competition authorities in the EFTA States must also submit a draft decision to the Authority. With a view to ensuring that the competition rules are applied in a consistent manner throughout the EEA, a final decision may only be adopted once the Authority has been given the opportunity to comment. In 2015,

the Authority reviewed three such draft decisions in which an EFTA competition authority envisaged applying the EEA competition rules.

Active assistance to the courts in competition cases under the EEA Agreement

The Authority applies its competition expertise in a number of ways and in 2015 it actively assisted the courts in cases involving the EEA competition rules.

In May 2015, the Authority submitted written observations in a case before the Norwegian Borgarting Court of Appeal concerning alleged collusion in asphalt tenders in Norway. The appeal was by the Norwegian Competition Authority against a judgment by the Oslo District Court reducing an earlier fine it had imposed. In the Authority's opinion, the case raised an important question regarding what constitutes an effect on trade. This is a key principle for the EEA competition rules to apply. The Authority advised the District Court that trade between EEA States may be affected even where the relevant market does not extend beyond Norway's borders. The Court of Appeal upheld the Competition Authority's decision in full. Norway's Supreme Court did not grant leave to appeal and the case has now been closed.

In August 2015, the Authority submitted written observations to the EFTA Court on a request for an Advisory Opinion that it had received from the Norwegian Supreme Court. This case concerns collective actions against a Danish company, Holship, seeking to utilise its own stevedoring services in Drammen Port in Norway. The Authority's observations set out the circumstances under which such collective actions could fall within the ambit of the EEA competition rules.

Submitting observations to the courts

National courts in the EFTA States may, where they find it useful in a particular case, request assistance from the Authority with regard to the application of the EEA competition rules. The Authority, acting on its own initiative, may also submit written observations (amicus curiae observations) to the courts of the EFTA States where the coherent application of Articles 53 or 54 EEA so requires. With the permission of the court in question, the Authority may also make oral observations. Similarly, the Authority can provide observations to the EFTA Court and to the European Court of Justice on competition cases of EEA interest.

New guidance to help companies self-assess compliance of licensing agreements with the competition rules

Following the incorporation of the new Technology Transfer Block Exemption Regulation (TTBER) into the EEA Agreement, the Authority adopted new guidelines in early 2015. The purpose of these guidelines is to assist companies and their legal advisers in assessing the compatibility of technology transfer agreements with the EEA competition rules.

The purpose of technology transfer agreements is to enable companies to license the use of patents, know-how or software held by another company for the production of goods and services.

The TTBER creates a safe harbour for licensing agreements concluded between companies that have limited market power provided that they respect certain conditions set out in the TTBER. Such agreements are deemed to have no anti-competitive effect or, if they do, the positive effects are considered to outweigh any negative effects. The new guidelines provide guidance on the application of the TTBER as well as on the application of the EEA competition rules to technology transfer agreements that fall outside the safe harbour of the TTBER.

Outlook for 2016

Ensuring effective enforcement of new and existing cases

The Telenor investigation will continue to provide a key focus for the Authority's investigative work in 2016 with a view to reaching a possible conclusion in 2017. The Authority will also progress its assessment of the airline transport sector in Norway.

Any further complaints or market information regarding potential competition law infringements in the EFTA States will also be scrutinised thoroughly to check the compatibility of such business practices with the EEA competition rules.

Making a complaint regarding a potential breach of EEA competition law

Competition law protects businesses and consumers from anti-competitive business practices which are illegal. The Authority enjoys wide powers of investigation and may impose fines of up to 10% of global turnover on undertakings that breach the competition rules. Businesses which are subjected to restrictive practices or abuses by other market operators may submit *market information* or lodge a *formal complaint* to the Authority. The Form C provides guidance on the relevant content and format required for submitting formal complaints on suspected infringements of the EEA competition rules. Further information on the Authority's complaints procedure is available on the Authority's website at: www.eftasurv.int/competition/complaints.

Continuing strong information exchange with the EFTA competition authorities

The Authority works side-by-side with the competition authorities of the EFTA States to ensure that the EEA competition rules are applied in a consistent manner. Effective communication and close co-operation within the EFTA network of competition authorities will continue to be a key priority for the Authority in 2016 to ensure legal certainty for businesses operating across national borders in the EEA. For its part, the Authority will continue to meet regularly with the competition authorities of the EFTA States and to share information about new investigations, as well as regarding key investigative steps.

Promoting greater awareness of the EEA competition rules amongst businesses

To maximise the impact of its work, the Authority plans to continue to raise awareness of the EEA competition rules and to communicate pro-actively with the wider business and legal community. Effective compliance schemes can help reduce the risk of companies breaking the law. To communicate the importance of preventative measures and of fostering a culture of compliance, the Authority will endeavour to attend competition law conferences and events for businesses and their legal representatives in the EFTA States over the coming year.

Ongoing assistance to the courts in competition cases of EEA interest

The Authority will continue to avail itself of the option to submit observations in court proceedings in cases of particular EEA interest. This is an effective instrument for the Authority to communicate important messages regarding the interpretation of key aspects of the EEA competition rules. Providing guidance on matters of legal interpretation can help contribute towards a more consistent and predictable outcome in competition law proceedings across the EFTA territory.

Legal and Executive Affairs

Legal and executive affairs are handled by a separate internal service of the Authority, the Legal and Executive Affairs department (LEA). As the Authority's legal service, LEA provides legal advice to the Authority's College and services on all aspects of EEA law, reviews all Authority decisions and represents the Authority in court. In addition, LEA provides support to the College with regards to policy formulation, co-ordination and communication and responds to requests for public access to documents. Also, the Authority's press and communication unit is part of LEA.

The EFTA Court

Bringing a case against an EFTA State for failure to live up to its obligations under EEA law is the final step in the Authority's formal surveillance procedure. Upon request, the EFTA Court also advises national courts in the EFTA States on the interpretation of EEA law. Finally, the Court hears appeals brought by companies and persons to review the lawfulness of decisions taken by the Authority which affect them directly.

The Authority participates in all cases in the EFTA Court. In 2015, this concerned a total of 35 new cases, a record high. The full list of cases can be found in Appendix I.

Cases lodged before the EFTA Court in 2015

Infringements

The EEA Agreement covers both the EU and EFTA States. It essentially guarantees consumers and companies equal access to do business, invest, study or work in all 31 EEA States. To that end, all participating States have committed to align their national laws to the common EEA rules. This entails a dynamic process which generally runs smoothly even though it requires frequent changes to national laws in all countries. The EFTA Surveillance Authority follows up on these obligations for Iceland, Liechtenstein and Norway just as the European Commission does for the EU Member States. Most shortcomings can be solved out of court,

either before or after ESA raises matters in a formalised dialogue with the States (infringement procedure). However, in 2015 the Authority had no other choice than to bring 20 cases before the EFTA Court because the three EFTA States delivered too little too late. Once more, this is a record number.

Fifteen of these infringements cases had to be brought simply because Iceland (on 11 occasions) and Liechtenstein (in four cases) had breached their EEA law obligations by overrunning for at least one year the binding deadlines by which they should have adapted national law to new or modified EEA provisions.

For Iceland, this concerned EEA-wide rules in fields as diverse as consumer rights, copyright, environmental protection, the fight against falsified medicinal products, petrol vapour recovery or safety labelling of flammable aerosol dispensers.

The cases brought against Liechtenstein concerned consumer rights, driving licences, the fight against falsified medicinal products as well as quality and safety rules for human organs intended for transplantation. In another case, decided in March 2015 (E-19/14), Norway had failed to adapt its laws even more than one year after the EFTA Court had declared in July 2012 that national provisions on the ownership and voting rights in stock exchanges breach EEA law (E-9/11).

The States usually do not dispute these delays. Unlike in the EU, the EFTA Court cannot impose penalty payments for such breaches. It is limited to reminding the EFTA States that timely implementation is crucial for the proper functioning of the EEA Agreement also in Iceland, Liechtenstein and Norway. However, as in the EU, consumers or companies that suffer harm from being denied their EEA rights are entitled to compensation (state liability), an EEA right that they can enforce in their national courts.

New European laws often require new national rules. Also, existing national laws may deprive businesses and consumers of their EEA rights. The EFTA Court has the final word where the Authority and the EFTA States disagree on what this means in a given situation, or where the States agree with the Authority but are too slow in fixing the problem.

In 2015, the Authority brought five such cases. Three of these cases concerned Norway. As regards the failure to meet air pollution thresholds (E-7/15), the EFTA Court agreed with the Authority that air pollution is at unacceptably high levels in numerous places across Norway. It is the larger cities in particular that are struggling to reduce air pollution, which is a widespread problem across the EEA.

The EFTA Court also concurred with the Authority (E-6/15) that an authorisation scheme under which construction work companies have to meet specific requirements and obtain permission from the local municipalities before they start their activity in Norway is an unjustified restriction to the freedom to provide services under the Services Directive 2006/123. Although Norway had acknowledged since July 2012 that it cannot prove that this prior authorisation scheme is necessary, legislative changes to fix the problem were foreseen only as of January 2016.

In December 2015, the Authority brought a case against Norway concerning the protection of the marine environment (E-35/15). The "port reception facilities" Directive 2000/59 aims at

reducing the discharges of ship-generated waste and cargo residues into the sea. The Authority argues that Norway has failed to comply with key obligations of the Directive. In particular, Norway has still not ensured that ships find adequate facilities to dispose of their waste in all Norwegian ports nor that waste reception and handling plans have been drawn up and implemented.

Iceland was brought to the EFTA Court in September 2015, for its failure to immediately stop and quickly make benefitting businesses pay back any advantages received under an investment incentive scheme that the Authority found in October 2014 to be in breach of the EEA state aid rules (E-25/15). First, Iceland should have immediately cancelled the payments of the unlawful aid as of October 2014. Second, it should have informed the Authority by December 2014 of the total amounts to be recovered and evidence of measures already taken to comply with the decision. Third, Iceland should have completed the recovery of the unlawful aid by February 2015.

As regards Liechtenstein, the Authority brought the state before the EFTA Court because of national provisions that require service providers to always seek prior national permission to lawfully operate in that EFTA State (E-19/15). The case concerns requirements under the 2006 Trade Act for undertakings wishing to establish themselves or provide cross-border services in Liechtenstein, to be approved by national authorities. The approval must be obtained prior to the establishment or the provision of cross-border services. This case is further elaborated on in the chapter on the Internal Market.

Referrals from national courts

Another way of enforcing the rule of EEA law is that national courts from Iceland, Liechtenstein and Norway send questions to the EFTA Court when a case before them depends on how to apply European law. In 2015, the EFTA Court received 14 new requests. ESA systematically participates by giving written and oral advice to the EFTA Court. This included the following cases.

Icelandic ban on raw meat imports

Before allowed into Iceland, imports of fresh meat from other EEA countries have to be deep frozen for one month. The Authority objected to this regime and had already addressed a second warning to Iceland in October 2014, when the Reykjavík District Court asked the EFTA Court about the matter in 2015 (E-17/15). The Authority and the Commission advised the EFTA Court that the practice falls foul of the veterinary checks Directive 89/662. The EFTA Court agreed. As a rule, veterinary checks are to be carried out at the place of dispatch only. Additional veterinary controls in the State of destination are essentially limited to suspicious or irregular cases. Iceland is therefore wrong to systematically require importers of raw meat products to produce certificates confirming that the meat has been stored frozen for a certain period prior to customs clearance.

Holship

A shipping company that wants to have freight unloaded in the port of Drammen by its own staff is faced with a planned boycott by which a trade union tries to make the company accept a local collective labour law agreement under which local dockworkers have to be used instead.

The Norwegian Supreme Court has referred questions to the EFTA Court on whether EEA competition law applies in these circumstances and, as the shipping company is owned by a Danish firm, on whether the EEA right of establishment is breached (E-18/15). The Authority argues that the exclusion of certain collective agreements from the scope of EEA competition law should not apply here. Although certain restrictions on competition are inherent in collective agreements between organisations representing employers and workers, and the priority of engagement is arguably of benefit to the local dockworkers, it is detrimental for other workers, such as those employed by the shipping company. Further, the boycott restricts the freedom of establishment contrary to Article 31 EEA. This, the Authority argues, is not justified because the measure is disproportionate in that a boycott goes beyond what is necessary to achieve aims such as the protection of resident dockworkers.

Residence rights of third country family members

Family members of Norwegians returning from other EEA States are often refused the right to stay in Norway. The Authority objected to this practice and had already addressed a second warning to Norway in July 2015, when the Oslo District Court asked the EFTA Court in November 2015 whether the refusals are in line with the Residence Directive 2004/38 (E-28/15).

The Authority considers that that is not the case. Once EEA nationals have exercised their free movement rights, they fall under the protection of EEA law, including when they return to their State of nationality. This protection includes the right, in certain circumstances, to bring family members along who are not themselves EEA nationals.

However, it has become clear from numerous complaints lodged with the Authority that Norway applies additional and ambiguous criteria and does so inconsistently and in a discretionary manner. As a result, Norwegians and their families returning home from another EEA State are faced with legal uncertainty contrary to EEA law which requires that national rules make individuals aware of their rights in a precise and clear manner.

The Authority considers that Norway must base decisions to allow or deny entry or residence instead on an extensive examination of the individual circumstances, with the objective of maintaining the unity of the family.

Matja Kumba

In a Norwegian dispute on allegedly unfair dismissal, the Eidsivating Court of Appeal sought guidance from the EFTA Court on the interpretation of the working time Directive 2003/88/EC (E-5/15).

On the distinction between working time and rest periods, the EFTA Court replied that the one is mutually exclusive with the other. According to case-law from the Court of Justice of the

European Union, what matters is whether the worker is obliged by the employer to be present at the workplace or not. Working time therefore does not cover periods during which a worker is not required to be physically present in a particular place, but merely required to be contactable at all times.

Nevertheless, and contrary to what the Authority and the Commission had argued, the EFTA Court considered that rest periods also comprise time during which a worker is required to be on call at home, as well as time where it is possible for family members to live with the worker although he or she is required by the employer to be present in individual housing close to work.

As regards maximum average weekly working time, both the Commission and the Authority had argued in line with previous case law of the EU Court of Justice that 84 hours should not be allowed and that exceptions from the rule on compensatory rest should be limited to instances where a regular working time arrangement could not be applied. In contrast, the EFTA Court held that although a planned weekly working time of 84 hours would not allow for equivalent compensatory rest as is required under the Directive, exceptions may apply where granting equivalent periods of compensatory rest is objectively impossible.

On the question whether a worker's consent to work more than 60 hours per week in a cohabitant care arrangement can or cannot be revoked, the EFTA Court held that without an explicit provision in the working time Directive, this is for the EEA States to determine, provided that the general principles of the protection of the health and safety of workers are observed. In contrast, the Commission and the Authority had argued that a worker must be free to revoke a consent because of the importance of the worker's right to a maximum limit on weekly working time.

Finally, the EFTA Court held that dismissal following a failure to consent to a working time arrangement of more than 48 hours over a seven-day period is typically an unlawful detriment under the working time Directive. However, contrary to the Authority's and the Commission's advice, the EFTA Court decided that this does not apply where a dismissal combined with an offer of re-engagement on terms that exceed the maximum weekly working time under the Directive is based on urgent operational requirements such as the employer's difficult financial situation and therefore independent of the worker's refusal.

Right to challenge environmental impact assessments

In the context of a planned extension of a landfill site in Vaduz, the State Court of the Principality of Liechtenstein referred questions on the interpretation of the Environmental Impact Assessment (EIA) Directive 2011/92 (E-3/15).

In line with what the Authority and the Commission had suggested, the EFTA Court responded that Article 3 EEA requires the EFTA States to take all measures necessary to ensure that a directive which has been implemented into the national legal order prevails over conflicting national law, and to guarantee the application and effectiveness of the directive.

In the case at hand, the EIA Directive aims at ensuring wide access to justice for the public concerned by certain projects. This includes non-governmental organisations promoting environmental protection. Although the EFTA States have a margin of discretion to choose at

what stage an EIA decision may be challenged under national law, any solution must not make it practically impossible or excessively difficult to exercise the rights conferred by the Directive.

In this case, national law could thus foresee a two-staged authorisation procedure, but not limit legal challenges by eligible parties to the first step of the assessment procedure, when crucial issues were only dealt with at a subsequent stage. That would deprive the public concerned of their right of challenge under the EIA Directive.

Review of Authority decisions

With just one new case, the number of appeals lodged in the EFTA Court in 2015 against decisions of the Authority has been low. This compares to two appeals registered in 2014 and seven in 2013.

The only appeal lodged in 2015 (E-4/15) concerns the latest decision concerning existing state aid to the Icelandic Housing Financing Fund (HFF). The role and the services provided by the HFF have been scrutinised by the Authority on several occasions. In July 2014, the Authority finally closed the case (Decision 298/14/COL) because Iceland had accepted measures to modify the existing scheme as suggested by the Authority in in 2011 (Decision 247/11/COL) following an earlier judgment by the EFTA Court (E-9/04). The applicant is an association of private banks. The Authority considers that the applicant is wrong to claim that the aid measure is new as opposed to existing aid, that the contested decision was inadequately reasoned, and that the service provided by the HFF is not one of general economic interest pursuant to Article 59 of the EEA Agreement. The case is pending.

During the course of 2015, the EFTA Court handed down judgments on two appeals cases lodged in 2013 and 2014. Another appeal case on public access to documents brought in 2014 (Schenker VI) was withdrawn by the applicant (E-22/14).

Konkurrenten II (E-19/13) concerned an appeal against two state aid decisions regarding the financing of public transport in the Norwegian capital by the City of Oslo. The EFTA Court confirmed that applicants other than the EFTA States, to which the Authority addresses state aid decisions, may challenge such decisions only if they can show that the alleged state aid in question has a direct impact on their own business.

In cases where the Authority has carried out a full investigation, applicants have to show that their market position has been substantially affected by the aid concerned. This test is lighter in cases where the Authority closes a case without proceeding to a full investigation. Here it is sufficient to show that the applicant's competitive position would be adversely affected by the aid measure. In Konkurrenten II, the Court concluded that the applicant, a long-distance bus operator from outside Oslo, had demonstrated neither and dismissed the application as inadmissible.

In Kimek Offshore (E-23/14), the EFTA Court in September 2015 partially annulled a state aid decision by which the Authority in June 2014 had approved the renewal of the Norwegian system of regionally differentiated social security contributions until 2020. The EFTA Court held that the Authority had prematurely closed the case insofar as it had insufficiently examined an exemption rule in the scheme concerning ambulant services. While the Authority's decision

to approve the scheme as such stands, the Authority opened a formal investigation into the specific aspect of ambulant services in December 2015.

The Court of Justice of the European Union

As the EEA Agreement forms part of the EU legal order the Court of Justice has jurisdiction to interpret it and apply it. The Authority therefore participates in cases before the EU courts that have a particular impact on EEA law and its future development. The Authority can participate in the following ways:

In a preliminary reference where a court of an EU Member State asks the Court of Justice to interpret EU law, the Authority may make written or oral submissions if the subject matter of the proceedings is in an area covered by the EEA Agreement.

In other cases, the Authority may seek leave to intervene in support of one of the parties under the conditions laid down in Article 40 (3) of the Statute of the Court of Justice.

Interventions/observations

Knauer

The Authority participated in a case before the Court of Justice in which the Austrian Administrative Court asked the Court of Justice on the interpretation of the Social Security Regulation 883/2004 (C-453/14). The case concerned the coordination of social security systems and in particular the question whether old-age pensions under an occupational pension scheme in Liechtenstein ("second pillar") and old-age pensions under a statutory pension scheme in Austria are equivalent within the meaning of the Regulation. This matters for the question whether Austria can collect sickness insurance contributions also on the payments that former frontier workers receive under the Liechtenstein scheme.

The Court of Justice confirmed that benefits fall under the Social Security Regulation when they are mentioned in a declaration by an EEA State under Article 9 of Regulation No 883/2004 as was the case here. Further, the Court held that the concept of "equivalent benefits" within the meaning of Article 5(a) of the Regulation must be interpreted as referring to two old-age benefits that are comparable.

What matters is the aim pursued by the benefits at issue and by the legislation, which established them. In the case at hand, both the old-age benefits paid under the Liechtenstein occupational pension scheme and those paid under the Austrian statutory pension scheme seek to ensure that recipients maintain a standard of living commensurate with that which they enjoyed prior to retirement.

The Court of Justice added that an obstacle to free movement would arise in circumstances where contributions for sickness benefits were levied in Austria on the old-age benefits provided under the Liechtenstein occupational pension scheme, even though such contributions had already been levied in Liechtenstein.

The Court followed closely the argument presented by the Authority in its written and oral submissions.

Asociación Profesional Elite Taxi (Uber)

The Authority participates in a case in which the Barcelona Commercial Court asks the Court of Justice what EEA law rules apply to the activities of the Spanish subsidiary of Uber Technologies Inc. (C-434/15). Uber Systems Spain is linked to the Uber platform which provides solutions to enable and facilitate contact between people seeking, and car owners offering, urban journeys. Both the platform and the car owner are paid for their services. Hearing a case brought against Uber by a Spanish taxi association, the national court essentially asked whether Uber Spain provides transport services, electronic intermediary services or information society services, as defined in the Information Society Directive 98/34.

The Authority argues that the Uber's activities of connecting through its online software application persons who own motor vehicles with people who want to make urban journeys are not transport but information society services and therefore governed by the e-commerce Directive 2000/31. That Directive in principle prohibits authorisation schemes, unless they are exceptionally justified, which it is for the Spanish court to assess.

Legal issues concerning new technologies

The Authority is currently taking a particular interest in the rapidly-developing legal issues surrounding the use of usually Internet-based new technologies in traditional industries, harnessing the disruptive power of innovations, such as Uber, Airbnb or Coursera, while ensuring that the legitimate interests of other stakeholders, and in particular consumer protection, are not compromised.

Amicus curiae

To ensure the coherent application of the EEA competition rules, the Authority may, of its own initiative, give written advice to courts of the EFTA States. This assistance is part of the Authority's duty to defend the public interest. Therefore, the Authority in its observations does not formally support one or other side and fully respects the independence of the national court.

In May 2015, the Authority advised the Norwegian Borgarting Court of Appeal in a case concerning a fine set by the Norwegian competition authority to sanction a regional cartel. The Authority limited its observations to the criterion of effect on trade between contracting parties, explaining the relevant European case law and describing the Authority's guidelines on the issue. In particular, the Authority warned that a too narrow interpretation of the criterion could lead to unequal conditions of competition within the Internal Market because trade between EEA States may also be affected in cases where the relevant market is national or sub-national.

Openness and Transparency

Communication and outreach activities are aimed at increasing knowledge about the Authority's role and tasks and strengthening compliance with the EEA Agreement.

The Authority and its staff carry out their functions in an approachable and transparent manner, while still showing due concern for information that needs to be protected.

Media relations

In 2015, the Authority issued a total number of 61 press releases. Around 3,600 articles referring to the activities of the Authority were observed in online and printed news media in the EFTA States.

Website

The Authority's website www.eftasurv.int is the principal channel for communication with stakeholders and the general public. In addition to press releases, it provides general information about the Authority, extensive information about its various fields of work, decisions taken by College, a public document database (see below), information on the status of implementation of directives in the EFTA States, as well as reports and speeches. In 2015, the website had around 113.000 visits.

Public access to documents

Documents handled by the Authority are, as a main rule, publicly available upon simple request. The Authority can, however, refuse disclosure of certain documents. Once a document has been disclosed, it is uploaded to the Authority's searchable online Public Document Database, available to anyone (see: www.eftasurv.int/access). The Authority received a total of 145 access requests in 2015.

Requests for public access:

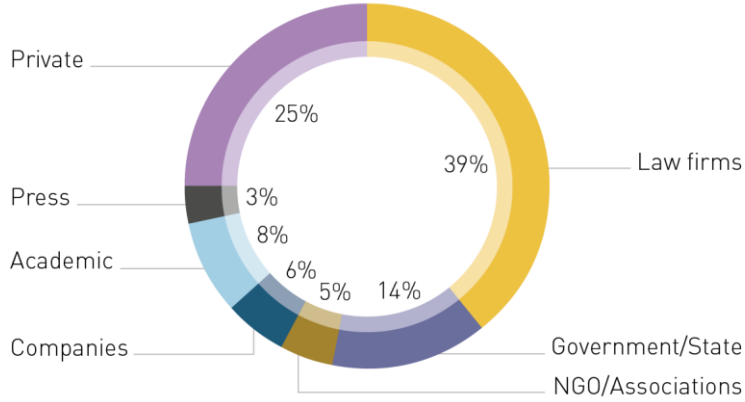
Access requests received in 2015	145
Requests received in 2014	155

Some requests concern several documents.

Total number of documents assessed:	318
Full access granted:	255
Partial access granted:	24
Access denied:	39

5 requests were withdrawn

The requests came from the following groups:



Origin of the applicant:

Norway	115	80%
Iceland	18	12%
Liechtenstein	0	
EU	6	4%
Other	6	4%

Visitor groups and seminars

Staff members frequently give public presentations to interested parties visiting Brussels. Such direct communication is well suited to give more in-depth information about the Authority and to invite for further contact. A total of 45 groups visited the Authority in 2015, ranging from upper secondary school classes and student groups to trade unions, public servants and politicians.

The Authority's College, directors and staff members also participate in a range of seminars and meetings in EFTA and EU Member States.

Statistics and Budget

Statistics

Definitions

In this section, a "case" refers to an assessment of the implementation, or application, of EEA law, or to tasks executed for the purpose of fulfilling the Authority's obligations under EEA law, registered before and during the year 2015. Such cases do not necessarily lead to the initiation of infringement proceedings against one or more EFTA State(s) or undertakings, or the opening of formal investigations.

Complaints are cases where the Authority examines information received from economic operators or individuals regarding measures or practices in the EFTA States which are not considered to be in conformity with EEA rules.

Notifications cover state aid measures, draft technical regulations, and telecommunications market notifications that are submitted to the Authority by the EFTA States for examination or approval.

Management Tasks are cases which are opened on the basis of an obligation on the Authority deriving from the EEA Agreement directly, or from secondary legislation, such as eCOM Notifications and Draft Technical Regulations.

Own Initiative cases are those opened by the Authority at its own instigation. Such cases include the non-implementation of directives, the non-incorporation of regulations, for Iceland and Norway, and the examination of the implementation and application of EEA law. This also covers food safety and transport inspections.

Key figures

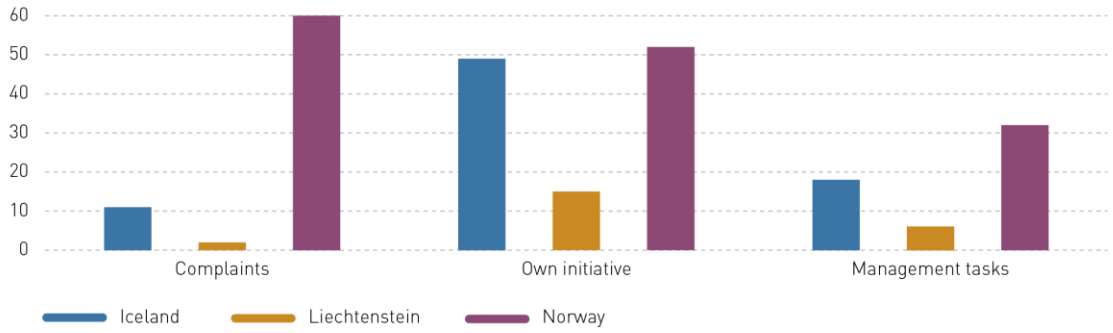
Total number of cases opened in 2015	574
Total number of cases closed in 2015	665
Pending complaints at the end of 2015	139

Internal Market

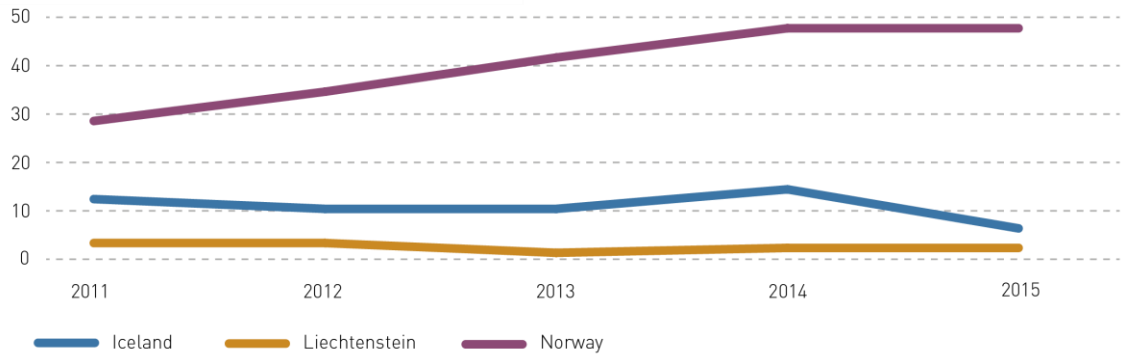
Pending cases at the end of 2015

	Complaints	Own initiative	Management tasks	Total
Iceland	11	49	18	78
Liechtenstein	2	15	6	23
Norway	60	52	32	144
Total	73	116	56	

Pending cases at the end of 2015



Complaint cases opened 2011–2015

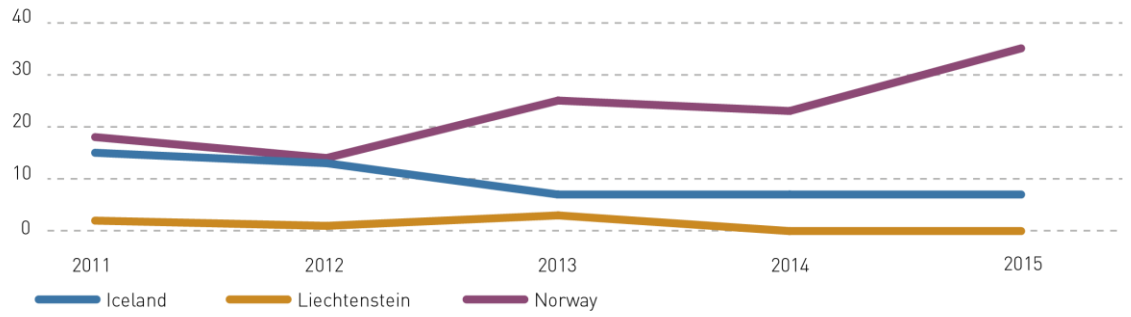


State aid

Notifications and pre-notifications received 2011–2015

	2011	2012	2013	2014	2015
Iceland	15	13	7	7	7
Liechtenstein	2	1	3	0	1
Norway	18	14	25	23	35
Total	35	28	35	30	43

State aid notifications and pre-notifications received 2011–2015



Budget

The activities and operating budget for the Authority are financed by contributions from Iceland (9%), Liechtenstein (2%) and Norway (89%). The Authority's total budget for 2015 was EUR 13.2 million, a nominal decrease of 0.7% compared with 2014.

On 10 June 2015, the Authority submitted its Financial Statement for the financial year 2014 and the accompanying Audit Report by the EFTA Board of Auditors (EBOA), to the EFTA States. On 15 December 2015 the Financial Statements for 2014 were approved and the Authority was discharged of its accounting responsibilities for that period by the EFTA States.

TOTAL BUDGET	**Budget 2015**	**Budget 2014**
Financial income	5,000	5,000
Contributions & Other income	13,167,000	13,259,240
Other income	19,500	17,500
Contributions from the EEA/EFTA States	13,127,500	13,241,740
Total Income	13,172,000	13,264,240
Salaries, Benefits, Allowances	-9,925,200	-9,894,150
Travel, Training, Representation	-810,800	-823,600
Office Accommodation	-1,176,000	-1,163,400
Supplies and Services	-1,254,000	-1,378,090
Financial costs	-6,000	-5,000
Other Costs	0	0
Total expenditure	**-13,172,00**	**13,264,240**

APPENDIX I

Cases initiated in the EFTA Court in 2015

Case E-35/15	ESA v Norway	Failure to comply with Directive 2000/59 (port reception facilities) / maritime safety and environment	NOR
Case E-34/15	ESA v Iceland	Failure to implement Directive 2012/46 amending Directive 97/68 on harmonisation relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery	ICE
Case E-33/15	ESA v Iceland	Failure to implement Directive 2012/26 amending Directive 2001/83 as regards pharmacovigilance	ICE
Case E-32/15	ESA v Liechtenstein	Failure to implement three Directives on driving licences (Directive 2006/126 on driving licences, and amending Directive 2011/94 and Directive 2012/36)	LIE
Case E-31/15	ESA v Iceland	Failure to implement Directive 2011/77 amending Directive 2006/116 on the term of protection of copyright and certain related rights	ICE
Case E-30/15	ESA v Iceland	Failure to implement Directive 2011/62 amending Directive 2001/83 on the Community Code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products	ICE
Case E-29/15	Sorpa bs. v The Competition Authority	Competition law (definition of undertaking under 54 EEA) Applicability of EEA competition law to waste management services provided by a municipality or a cooperative co-owned by municipalities; scope of the concept of an undertaking under Article 54 EEA	ICE
Case E-28/15	Yankuba Jabbi v The Norwegian State	Free movement of persons; derived right of residence of family members of EEA nationals; European Union Citizenship and the EEA Agreement	NOR
Joined cases E-26/15 and E-27/15	Criminal Proceedings against A and A v Finanzmarktaufsicht (FMA)	Financial services Due diligence obligations of trust and company services providers (TCSPs) under EEA law on money laundering and terrorist financing; applicability of host state legislation to TCSPs established in other EEA Member States	LIE
E-25/15	ESA v Iceland	State aid (recovery)	ICE

		Failure to comply with ESA decision on recovery of state aid Investment Incentives Scheme	
E-24/15	Walter Waller v Liechtensteinische Invalidenversicherung	Social security (invalidity pension) Interpretation of implementing Regulation 987/2009 on the coordination of social security systems	LIE
E-23/15	ESA v Liechtenstein	Failure to implement Directive 2010/45/EU on standards of quality and safety of human organs intended for transplantation	LIE
E-22/15	ESA v Liechtenstein	Failure to implement Directive 2011/62/EU on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products; and Directive 2012/26/EU as regards pharmacovigilance	LIE
E-21/15	ESA v Iceland	Failure to implement Directive 2011/88/EU as regards the provisions for engines placed on the market under the flexibility scheme	ICE
E-20/15	ESA v Iceland	Failure to implement Directive 2013/10/EU on the approximation of the laws of the Member States relating to aerosol dispensers in order to adapt its labelling provisions to Regulation (EC) No. 1272/2008 on classification, labelling and packaging of substances and mixtures	ICE
E-19/15	ESA v Liechtenstein	Services Directive 2006/123 (authorisation schemes) National provisions of the Trade Act amounting to unjustified authorisation schemes incompatible with the Services Directive; alternatively, provisions amount to unjustified restrictions on freedom of establishment or provision of cross-border services	LIE
E-18/15	ESA v Iceland	Failure to implement Directive 2010/65/ on reporting formalities for ships arriving in and/or departing from ports of the Member States	ICE
E-17/15	Ferskar kjötvörur ehf. v the Icelandic State	Veterinary controls Compatibility of national provisions on importation of raw meat products with EEA law	ICE
Joined cases E-15/15 and E-16/15	Hagedorn a.o. v Vienna-Life Lebensversicherung AG	Life assurance Interpretation of Directive 2002/83 concerning life assurance – applicability and scope of duty to provide information for unit-linked life assurance policy contract in the case of acquisition of second-hand policies	LIE

E-14/15	Holship Norge AS v Norsk Transportarbeiderforbund	Competition law (applicability of exemption under competition rules to boycott) Establishment (whether boycott constitutes a restriction)	NOR
E-13/15	Abuelo Insua Juan Bautista v Liechtenstein-ische Invalidenver-sicherung	Invalidity pension – interpretation of implementing Regulation (EC) No. 987/2009 on the coordination of social security systems	LIE
E-12/15	ESA v Liechtenstein	Failure to implement Directive 2011/83/EU on consumer rights	LIE
E-11/15	ESA v Iceland	Failure to implement Directive 2011/83/EU on consumer rights	ICE
E-10/15	ESA v Iceland	Failure to implement Directive 2009/126/EC stage two petrol vapour recovery	ICE
Joined cases E-8/15 and E-9/15	Financial Services Compensation Scheme Limited and The Dutch Bank N.V. v The Depositors' and Investors' Guarantee Fund (TIF)	On the scope of the payment obligations of a national deposit guarantee scheme in the event of systemic crisis under Directive 94/19/EC on deposit guarantee schemes	ICE
E-7/15	ESA v Norway	Breach of obligations under Directive 2008/50/EC on ambient air quality and cleaner air for Europe	NOR
E-6/15	ESA v Norway	Services Directive 2006/123 (authorisation scheme) Compatibility of an authorisation scheme under the national Building and Planning Act	NOR
E-5/15	Matja Kumba T. M'bye and others v Stiftelsen Fossumkollektivet	Working time Directive 2003/88/EC Validity of dismissals and a subsequent offer of reengagement with new working time arrangements	
E-4/15	Icelandic Financial Services Association v ESA	State aid Seeks annulment of closing Decision regarding existing aid to the Icelandic Housing Financial Fund	ICE
E-3/15	Liechtensteinische Gesellschaft für Umweltschutz v Gemeinde Vaduz	Right of complaint under Directive 2011/92/EU (Environmental Impact Assessment)	LIE
E-2/15	ESA v Iceland	Failure to incorporate Regulation 104/2013 (methods of screening of passengers)	ICE
E-1/15	ESA v Iceland	Failure to implement Directive 2010/26 (emissions from internal combustion engines)	ICE