



Summary
Report 2014



In 2014, as in 2013, the EFTA Surveillance Authority has been chasing a high number of non-implementation cases where the EFTA States have been slow or reluctant to implement the common rules of the Internal Market within the timelines agreed by the contracting parties.

The work required in the EFTA States to transpose new Internal Market directives, and to incorporate regulations into the national legal order of those States, starts too late and the procedures take too long to complete. During 2014, the Authority opened a large number of cases concerning late implementation of Internal Market directives and regulations, and the Authority has not hesitated to bring such matters before the EFTA Court.

For Iceland, there appears to be a particular problem in respect of late implementation of legislation in the veterinary field. Both Iceland and Norway have large export industries enjoying the advantages of a common set of technical rules for food and feed. This system allows companies to avoid extensive procedures at the border when exporting fish and fishery products to other EEA countries. It is disappointing that Iceland has not dedicated sufficient administrative resources to ensure a swift implementation.

Control and guidance in the field of state aid is another important task for the Authority. One form of illegal state aid concerns public entities, often at a local level, which offer services in a market on more favourable terms than competing private undertakings because of “cross-subsidisation”. This concerns many sectors and most of the cases concern Norway. In this field, there is still a lot to be done.

Just like the European Commission, the Authority has put a great deal of effort into implementing the recent state aid modernisation reform. Although new guidelines for state aid control are mostly in place, some issues are still on the table of the EFTA States and must be resolved before the reforms can be fully implemented.

These reforms will allow the Authority to use more resources on the cases with the greatest impact on the Internal Market – a change which is also in the interest of the EFTA States.

Oda Helen Sletnes,
President
EFTA Surveillance Authority

Cases opened:

587

Cases closed:

654

Complaints received:

71

Budget 2014: EUR 13.3 million

financed by contributions from Iceland (9%), Liechtenstein (2%) and Norway (89%)

Read the full Annual Report online

This summary report gives a brief overview of the Authority’s activities and highlights a few of the many cases handled by the Authority in 2014. To read more about these and other cases, please visit www.eftasurv.int/2014

Monitoring the Internal Market

The Internal Market is based on the rules concerning “the four freedoms” – the free movement of goods, persons, services and capital. These 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.

Concerned with the broader picture

When the Authority becomes aware of potential systemic problems within an EFTA State, it will investigate the underlying problem in a more general review, rather than by pursuing individual cases.

Hospital treatment in other EEA States

Having received several complaints about the authorisation of hospital treatment abroad, the Authority decided to examine the relevant rules and practices in Norway in detail. In May 2014, the Authority issued a letter of formal notice, focusing on two main concerns:

It has been unnecessarily difficult for patients in Norway to seek recognised in-patient treatment directly from foreign hospitals when effective and timely treatment cannot be provided in Norway within the given deadlines.

The Authority also takes the view that the criteria applied are too strict. The thresholds used by the Norwegian authorities make it more difficult or prevent patients from seeking treatment abroad, which is in breach of EEA law.

Restrictions of family reunification rights

Having investigated a high number of complaints, the Authority found that Norwegian law and administrative practice do not ensure that the family members of Norwegians returning home after living in another EEA State have the right to settle in Norway. Moreover, the rights of family members of EEA nationals coming to live and work in Norway are not respected under Norwegian law.

A letter of formal notice was sent to Norway in December 2014.

Implementing directives and regulations in the EFTA States

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

In late 2014, a very high number of such cases (185) were open against the EFTA States. This correlates with the disappointing results in the most recent Internal Market Scoreboards. See: www.eftasurv.int/scoreboard

EEA rules ensuring food safety and animal welfare

The "hygiene package" comprises a number of regulations which set out general and specific principles in food and feed law. The Authority has pursued a significant number of infringement cases against Iceland for late incorporation of this legislation. At the end of 2014, only a few of these cases remain open.

A number of recent audits in Iceland have revealed concerns with the correct application of food and feed legislation. While the system for official controls appears to be improving, requirements linked to the consistency and verification of official controls are not fulfilled. Similar problems have been observed in Norway. These issues will be followed up in 2015.

Restrictions on fresh meat import in breach of EEA law

In Iceland, the import of raw meat and meat products is subject to a strict authorisation procedure. The Authority considers this to be in breach of the Directive concerning veterinary checks in EEA trade.

The Icelandic Government argues that such import restrictions are necessary to protect public and animal health. In October 2014, the Authority delivered a reasoned opinion to Iceland.



Pursuing breaches of EEA law

Bringing a case to the EFTA Court is the last step in a formal infringement procedure against an EFTA State not complying with EEA law.

In late 2014, the Authority referred Norway to the EFTA Court for its failure to amend rules regarding approval procedures at local level in the building sector. Following a constructive dialogue, Norway accepted in 2012 to change the rules. However, for the third time, Norway decided in 2014 to postpone the entry into force of the new legislation. This gave the Authority no option but to bring the case to Court.

When a breach of EEA law has been confirmed by a judgment of the EFTA Court, the EFTA States must ensure compliance as soon as possible. Therefore, for failing to do so in the Stock Exchange case, the Authority brought Norway to court for the second time.

Air quality in Norway

Air pollution in certain areas in Norway is at unacceptably high levels and not in line with the environmental standards set in relevant EEA law. Moreover, Norway has failed to draw up action plans setting out measures to tackle air pollution. A case was opened following a complaint from the Norwegian Asthma and Allergy Association. In December 2014, the Authority decided to refer the case to the EFTA Court.

Liechtenstein must ease its controls of service providers

Any company which provides cross-border services or which wants to establish itself in Liechtenstein is subject to prior controls and authorisations which lead to additional hurdles, delays and costs. This runs counter to Internal Market principles. The Authority sent a reasoned opinion to Liechtenstein in April 2014.

Regional development

Aid to support regional development is important in both Norway and Iceland and allowed under the EEA Agreement on certain conditions.

In February 2014, the Authority approved public aid to build harbour infrastructure for the development of an industrial site, Bakki, in north-east Iceland. The Authority also approved investment aid for the construction of a silicon metal plant at Bakki. A formal investigation was opened in December 2014 into the project's electricity supply contract, as the Authority has doubts as to whether state aid is involved.

In June 2014, the Authority approved the system of regionally differentiated social security contributions in Norway. The aid scheme entails a reduction of payroll taxes for undertakings operating in very sparsely populated areas.

In October 2014, the Authority concluded an in-depth investigation of agreements entered into by the Icelandic government for investments outside the capital region. The agreements with five companies were found to involve unlawful state aid and the Icelandic State was ordered to recover from the beneficiaries any aid granted unlawfully.

Cross-subsidisation of public entities

A continuing concern is public entities that, as a result of “cross-subsidisation” between public and private sector activities, operate on more favourable terms than competing private undertakings, when offering services in a market.

In 2014, the Authority has assessed cases regarding dental health care, public schools selling safety training courses and municipal laboratory services competing with private business.

It is the view of the Authority that public entities should be subject to the same taxation as private undertakings when engaging in economic activity. In November 2014, the Authority opened a case against Norway, inviting the Norwegian State to amend its legislation.

The state aid rules

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.

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 exceptions, recognising that government intervention can be necessary to correct market failure and for other purposes.

Enforcement of competition rules

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.

Investigation of Telenor

Following unannounced inspections carried out at the premises of the Norwegian telecommunications company Telenor in December 2012, and an examination of the data collected, the Authority decided in June 2014 to open formal antitrust proceedings against Telenor.

Inspection at Widerøe

In June 2014, the Authority carried out unannounced inspections at the premises of the airline company Widerøe in Norway. A significant amount of data was collected. The Authority is assessing the data collected in order to ascertain whether there is evidence of infringements of the EEA competition rules.

Action for damages in competition cases

Following the Authority's decision in December 2011 to fine the Norwegian ferry company Color Line for an infringement of the EEA competition rules, a competitor, Bastø Fosen, has brought an action for damages against Color Line. For the first time, the Authority submitted written observations (amicus curiae) in a case before a national court, the Borgarting Court of Appeal. The Authority's observations focused in particular on the interpretation of national limitation periods for follow-on actions for damages.



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 to review the lawfulness of decisions taken by the Authority.

The Authority participates in all cases before the EFTA Court.

Proceedings against EFTA States

With 17 cases in total, most proceedings lodged before the EFTA Court in 2014 concerned cases brought by the Authority against the EFTA States: a record high, once again. Thirteen of these cases were against Iceland, three against Norway and one against Liechtenstein. In eight of the cases, the Authority obtained judgments confirming that the defendant states failed to adopt the measures necessary to implement, or to correctly apply EEA law in their national legal orders (judgments in cases E-1/14 to E-8/14). By the end of 2014, nine cases were still pending with the Court.

Review of Authority decisions

The number of appeals lodged in the EFTA Court against decisions of the Authority has reduced considerably, from seven in 2013 to two in 2014. One case (E-22/14 *Schenker VII*) concerns public access to documents. In that field the Court, in 2014, fully, or largely rejected three earlier appeals brought by the same companies (E-8/12, E-4/13 and E-5/13). The other case (E-23/14 *Kimek Offshore*) concerns a state aid decision of June 2014 that approved the system of regionally differentiated social security contributions in Norway.

The EFTA Court upheld the Authority's decision to approve Norway's choice that the FIFA World Cup must be broadcast on national, free television (E-21/13 *FIFA*); rejected a state aid appeal concerning a Norwegian VAT exemption (E-8/13 *Abelia*), but annulled a state aid decision on the use of an Icelandic optical fibre cable (E-1/13 *Mila*).



Referrals from national courts to the EFTA Court

The Authority participated in all four cases in which national courts from Norway, Iceland and Liechtenstein asked the EFTA Court in 2014 to interpret various provisions of EEA law (E-9/14 *Kaufmann*; E-10/14 *Deveci*; E-16/14 *Pharmaq*; E-18/14 *Wow air*). The Court handed down judgments in a total of 11 such requests, including on the indexation of loans in Iceland (E-25/13 *Engilbertsson*; E-27/13 *Gunnarsson*); the tendering of a casino concession in Liechtenstein (E-24/13 *Casino Admiral*) and Norwegian taxation of capital held by a trust in a low-tax country (E-3/13 and E-20/13 *Fred Olsen*).

European Court of Justice

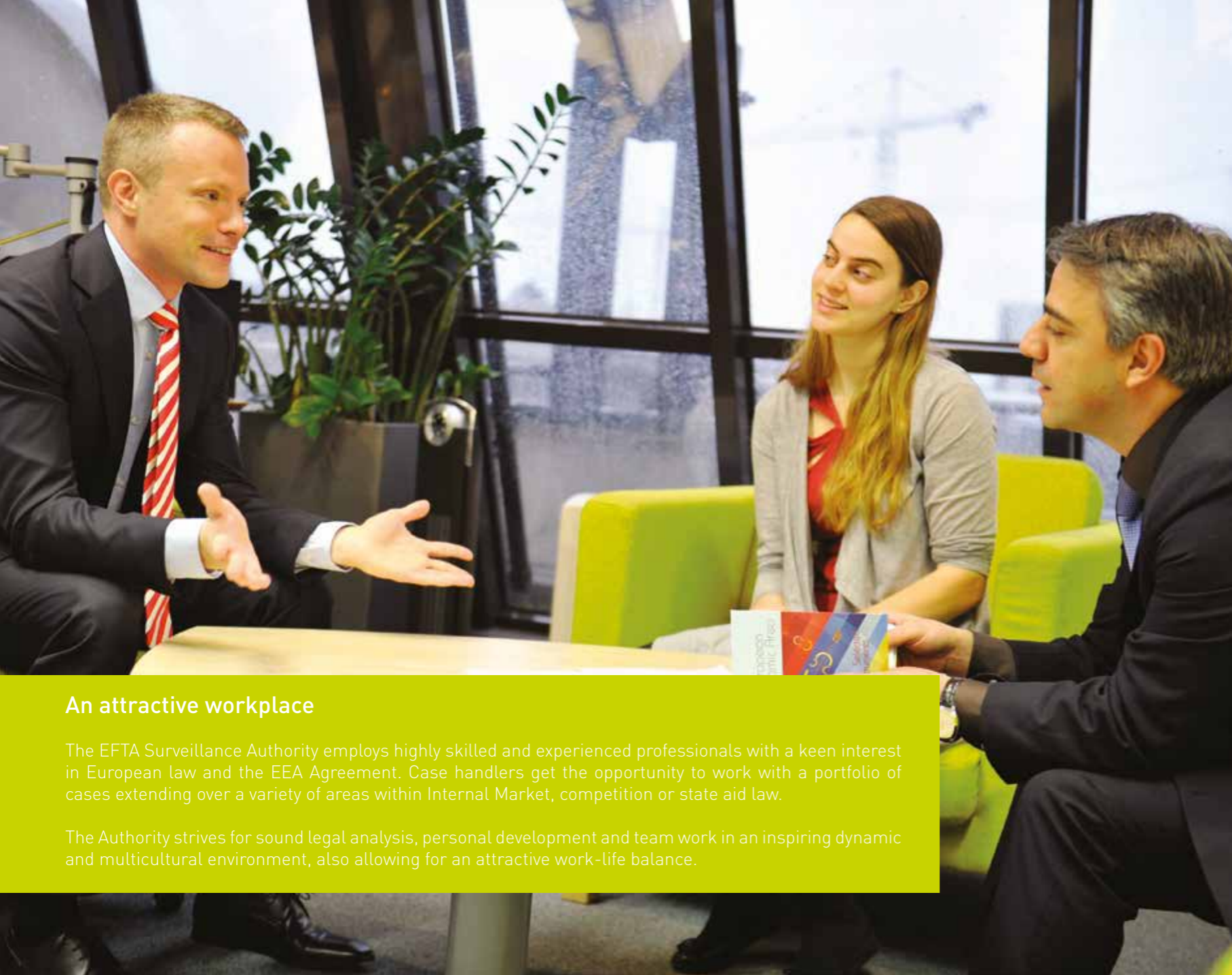
The Authority lodged observations in three cases in which national courts from Denmark and the United Kingdom have asked the European Court of Justice to interpret EEA law on abuse of market dominance (C-23/14 *Post Danmark II*), state aid (C-518/13 *Eventech*) and the free movement of goods (C-333/14 *Scotch Whisky*). In addition, the Authority supported the European Commission in cases concerning antitrust inspections (C-583/13 P *Deutsche Bahn*) and the opening of a formal state aid investigation (T-172/14 *Stahlwerk Bous*).

Access to the Authority's documents online

To ensure transparency and enjoy greater legitimacy in its decision making, documents handled by the Authority are, as a main rule, publicly available. The Authority can, however, refuse disclosure of certain documents. Once a document is disclosed, it is uploaded to the Authority's Public Document Database online, available to anyone.

Also available are the weekly Minutes of the College meetings, listing all formal decisions; and the Document Registry, listing all correspondence with the EFTA States, as well as other types of documents.

See: www.eftasurv.int/access



An attractive workplace

The EFTA Surveillance Authority employs highly skilled and experienced professionals with a keen interest in European law and the EEA Agreement. Case handlers get the opportunity to work with a portfolio of cases extending over a variety of areas within Internal Market, competition or state aid law.

The Authority strives for sound legal analysis, personal development and team work in an inspiring dynamic and multicultural environment, also allowing for an attractive work-life balance.

Interested in international work experience?

Working at the EFTA Surveillance Authority means working in a truly international environment. Strategically located in the European Quarter of Brussels, the Authority employs over 70 dedicated and competent officials of about 15 different European nationalities.

Due to the fixed-term nature of employment in the Authority, vacancies for highly qualified candidates are regularly available and advertised on the Authority website.

See current vacancies at: www.eftasurv.int/jobs

Traineeships

Being a trainee at the Authority is a great way to kick-start a successful career, whether you are looking to work with EEA law in the private or the public sector. Each year, the Authority invites six candidates from the EEA EFTA States to join the team for 10 exciting months. The application process commences in January.

Find out more at: www.eftasurv.int/trainee



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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 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.

The Authority also enforces restrictions on state aid and ensures that companies operating in the EFTA States abide by the rules relating to competition.

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