Chapter 2

Internal Market

Tasks and activities in the field of Internal Market

The role of the Authority's Internal Market Affairs Directorate (IMA) is to monitor the EFTA States in order to ensure that they effectively implement the Internal Market rules into their national legal orders and that they apply those rules correctly. In this context, the Authority performs broadly the same role as the European Commission, and the two bodies 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 centre of European integration ever since the signing of the Treaty of Rome in 1957. Those rules are further 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 Internal Market rules cover most areas relevant to commercial activities in the EEA.

The EFTA States are required to notify the Authority of the measures they adopt to implement directives and, if requested by the Authority, to inform the Authority of the incorporation of regulations into national law. If an EFTA State does not implement the EEA rules, the Authority will intervene and may initiate infringement proceedings against the EFTA State concerned which may ultimately be adjudicated by the EFTA Court.

Where the Authority has information about national legislation or practices that may not comply with EEA rules, it may decide to initiate an investigation. This may be based on incorrect implementation of EEA rules or where national rules 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. Anyone may submit a complaint to the Authority against any EFTA State that has failed to comply with its obligations under the EEA Agreement.

However, problems can often be resolved through informal exchange of information and discussions between the Authority and the EFTA State concerned.

TYPES OF CASES[1] HANDLED BY IMA

COMPLAINTS (COM)

Anyone may submit a complaint against an EFTA State. The Authority examines all complaints falling within its competence and passes on to the European Commission any complaints which fall within the competence of that body.

NON-NOTIFICATION OF IMPLEMENTATION OF DIRECTIVES (NON)

Non-notification cases are opened when an EFTA State has failed to adopt national measures to implement directives by the relevant compliance date.

NON-INCORPORATION OF REGULATIONS (REG)

Non-incorporation cases are opened when an EFTA State has failed to adopt national measures to incorporate regulations into its internal legal order by the relevant compliance date.

CONFORMITY ASSESSMENTS (CON)

Conformity assessment cases are opened on the Authority's own initiative in order to assess the conformity of national measures notified by an EFTA State with an EEA measure.

INCORRECT IMPLEMENTATION OR APPLICATION OF EEA RULES (INC)

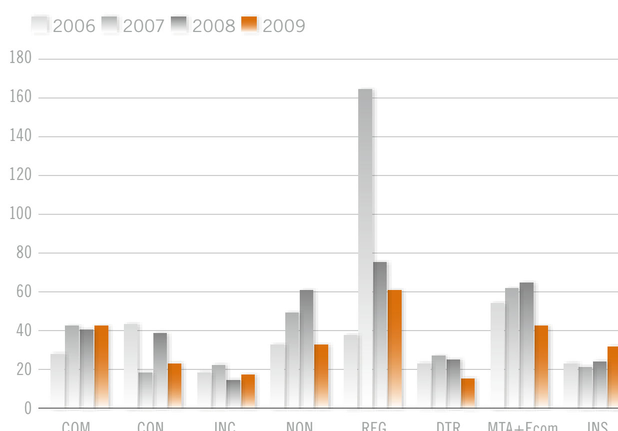
Where the Authority has information that national legislation or practice may not be in compliance with EEA rules and decides to examine the issue further, a case is opened at the Authority's own initiative.

Overview of activities in 2009

New cases in 2009

A total of 276 new cases were opened by IMA during 2009. This amounts to a 22% decrease compared to cases opened in 2008.

Figure 1 New cases/Case types



The majority of new cases opened in 2009 concerned Norway (118) and Iceland (115). The corresponding figure for Liechtenstein was 22[2].

The number of new complaints increased by two compared to 2008, from 42 to 44. As in previous years, the majority of the new complaints – 26 or 59% – were directed against Norway; 16 complaints were received against Iceland and two against Liechtenstein.

The majority of new cases (139 cases) in 2009 were opened on the Authority's own initiative in order to assess compliance of national legislation or practice with Internal Market rules. Such cases are opened by the Authority when it considers that EEA law may have been infringed. However, the cases do not necessarily lead the Authority to initiate formal infringement proceedings, as they might be solved informally or proven unfounded. Furthermore, cases are opened on the Authority's own initiative where Iceland or Norway has failed to incorporate EU regulations into national law. A large portion of the cases opened on the Authority's own initiative in 2009 related to the failure by Iceland to make regulations part of its internal legal order in a timely manner.

In 2009, the Authority opened 34 non-notification cases due to the EEA EFTA States' failure to implement directives in a timely manner. The Authority also initiated 24 conformity assessment cases during 2009 in order to assess whether national rules were in conformity with the EEA Agreement.

Figure 2 New cases/States

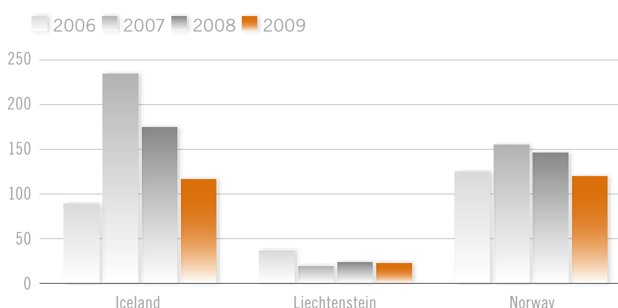
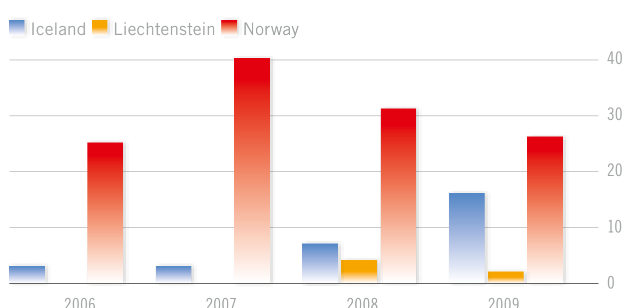


Figure 3 New cases/Complaints by State



[2] The remaining 21 cases concerned either two or all three of the EFTA States or were complaints concerning EU Member States that were forwarded to the European Commission.

Examples include incorrect implementation of EEA rules, national rules or practices that are incompatible with EEA rules, or misapplication of EEA rules.

DRAFT TECHNICAL REGULATIONS (DTR)

The Authority examines draft technical regulations which the EFTA States are obliged to notify to the Authority. Such regulations concern products and information society services.

MANAGEMENT TASKS (MTA)

Management tasks include various administrative tasks concerning, for example, assessments relating to food safety, the telecommunications sector, applications from the EFTA States for derogations from transport rules, reports on health and safety, and calculation and publication of thresholds in the field of public procurement. Included in this category of cases are eCom cases, which concern notifications to the Authority of draft regulatory decisions in the telecommunications sector by the national regulatory authorities in the EFTA States.

INSPECTIONS (INS)

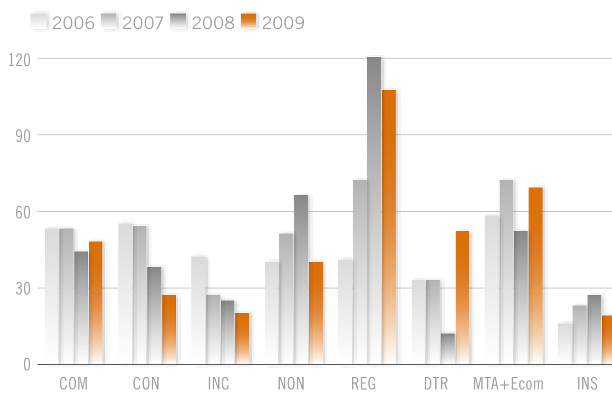
The Authority performs on-the-spot investigations to verify that the EFTA States are complying with their obligations relating to food safety and aviation and maritime security.

1. "Case" is defined here as an assessment relating to the implementation or application of EEA law, or to other relevant tasks registered during the year for the purpose of fulfilling IMA's objectives. A case does not, therefore, need to be related to an alleged infringement of EEA rules, but can also concern administrative tasks performed by the Authority.

Closed cases

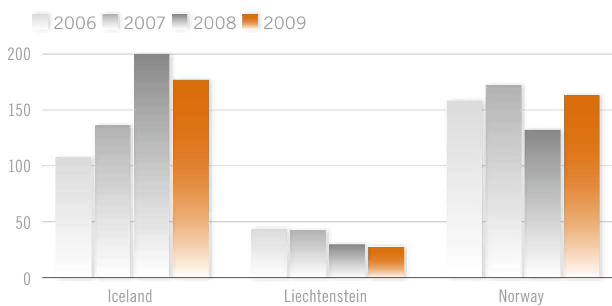
A total of 382 cases were closed during 2009, compared to 384 in 2008.

Figure 4 Closures/Case types



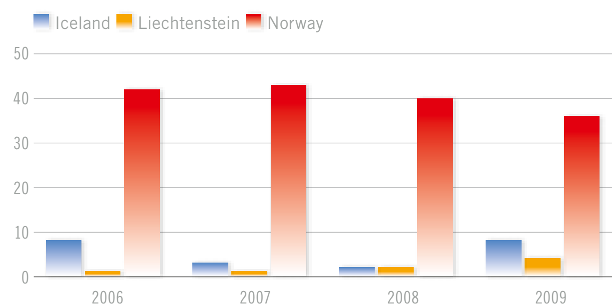
Of the cases that were closed, 164 concerned Norway, 178 concerned Iceland, and 28 concerned Liechtenstein.

Figure 5 Closures/States



A total of 48 complaint cases were closed in 2009.

Figure 6 Closures/Complaints by State

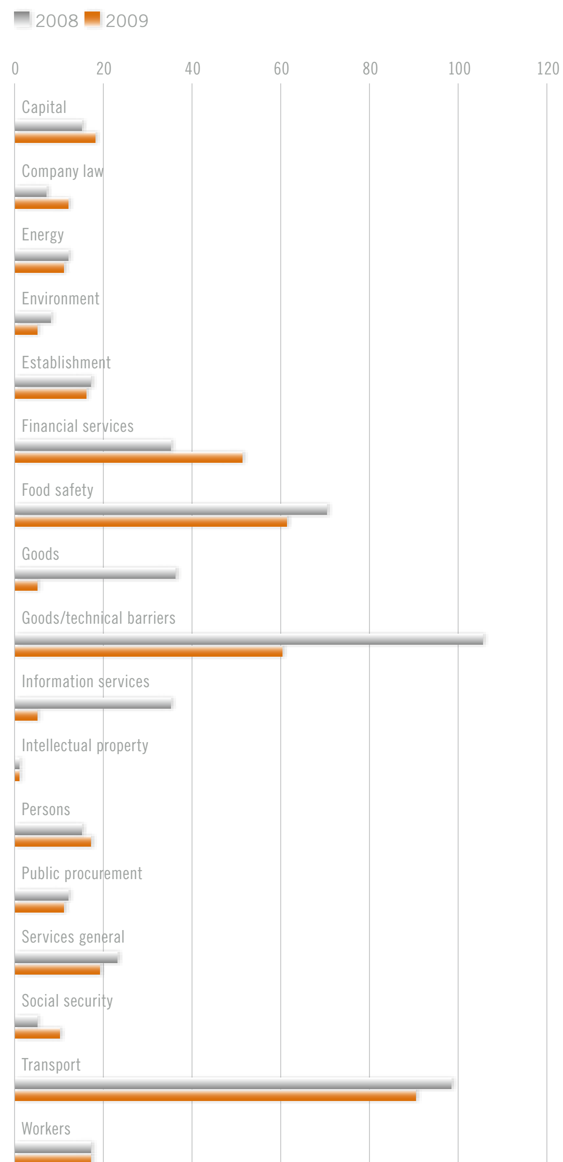


Pending cases

At the end of 2009, IMA had 409 cases under examination, a decrease of 102 cases in comparison to the 511 cases pending at the end of 2008.

There were 87 complaint cases pending, that is, four fewer than at the end of 2008. The remaining 322 cases were initiated either to carry out tasks entrusted to IMA by EEA legislation (reporting tasks, examination of draft technical regulations, food safety and aviation security inspections), or on the Authority's own initiative to examine compliance by the EFTA States with their EEA obligations.

Figure 7 Pending cases/Sectors



The sectors with the highest number of pending cases included transport (90), food safety (61), goods/technical barriers (60), and financial services (51). The number of pending cases decreased in the sectors of goods (77 cases fewer than in 2008) and information society services (30 cases fewer than in 2008), and increased most in the sector of financial services (15 more cases).

Formal infringement proceedings

In 2009, there was a decrease (of 34%, from 239 to 157) in the number of formal infringement actions (LFN, RDO, EFC) taken by the Authority as compared to 2008. The number of new infringement cases opened (by issuing letters of formal notice) decreased by 34% in 2009, and the number of reasoned opinions decreased by 35%. Three cases were brought before the EFTA Court in 2009 in comparison to five in 2008.

Of the new infringement cases initiated in 2009 by sending out letters of formal notice, 73% were directed against Iceland, 21% against Norway and 6% against Liechtenstein.

Figure 8 Infringement actions

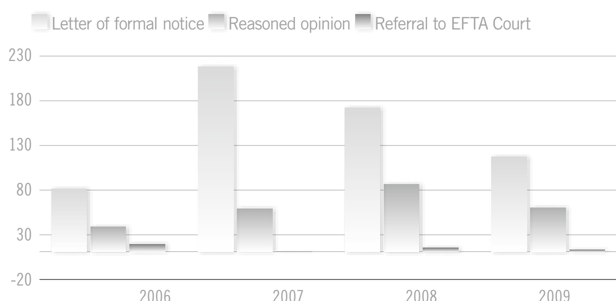
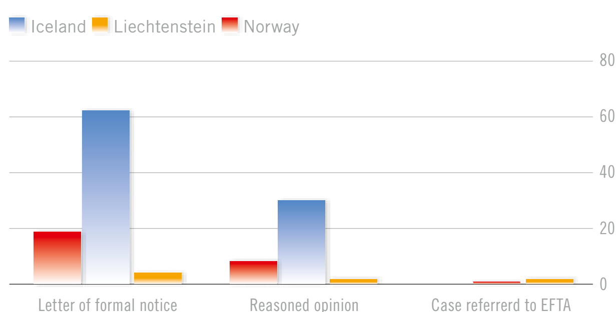


Figure 9 Cases subject to infringement actions by State in 2009



Failure by the EFTA States to implement EEA directives in a timely manner accounted for 30% of the new infringement proceedings launched by the Authority. That is considerably less than in 2008 (37%). Although the number of new infringement proceedings concerning timely incorporation of EEA regulations by Iceland and Norway decreased from 2008 (by 8%), such cases still accounted for half of the new infringement proceedings launched by the Authority in 2009. Of the 49 reasoned opinions delivered in 2009, most related to the failure by Iceland to incorporate EEA regulations into national law.

Most infringement actions in 2009 concerned three sectors: food safety (46), transport (26), and goods/technical barriers to trade (23). Infringement actions increased considerably in the sectors of persons (+9) and social security (+7), whereas infringement actions decreased significantly in the sectors of food safety (–40) and goods/technical barriers (–33) and transport (–28).

Selected infringement cases within the Internal Market field are described in individual reports in this chapter.

Delay in transposition of directives and regulations – a priority for the Authority

Implementation of directives

By the end of 2009, the total number of directives incorporated into the EEA Agreement was 1727. Iceland was required to implement 1490 of these directives, Liechtenstein 1458 and Norway 1648. At the end of the year, Iceland had notified full implementation of 98.5% of the directives. For Liechtenstein and Norway, the figures were 99.2% and 99.3% respectively.

The Implementation Status Database[3] available on the Authority's website contains information on all the directives referred to in the Annexes to the EEA Agreement in respect of which the deadline for implementation has expired. It indicates the status of implementation (full, partial, and no implementation) and the titles of the national implementing measures. The database is updated daily.

The statistics on implementation do not reflect the quality of the implementing measures notified by the EFTA States, or how the measures are applied in practice. An assessment by the Authority can reveal problems concerning the conformity of notified measures with the EEA rules they are intended to implement. Due to the Authority's limited resources, approximately only one third of implementing acts notified have been subject to a full conformity assessment.

Incorporation of regulations

Within the EU, regulations differ from directives in that the former automatically become part of the internal legal orders of the EU Member States and do not need to be incorporated into national law. That is not the case for regulations incorporated into the EEA Agreement, which must be incorporated into the internal legal orders of the EFTA States (Article 7 of the EEA Agreement)[5]. In Liechtenstein, under constitutional law, regulations automatically become part of the national legal order as soon as they are incorporated in the EEA Agreement. In Iceland and Norway, on the other hand, legal measures must be adopted in order to incorporate regulations "as such" into their internal legal orders. The Authority requests both countries to notify the national measures taken to incorporate regulations.

The situation regarding incorporation of regulations has been particularly problematic in Iceland due to a translation backlog and delays in publication. During the past few years, both Iceland and Norway have demonstrated a significant improvement in their performance in incorporating regulations. However, at the end of 2009 the number of unincorporated regulations remained high: 61 in Iceland and 28 in Norway. The figures at the end of 2008 were 89 for Iceland and 11 for Norway. Thus, in 2009 Iceland reduced its deficit from 10.9% to 7.0%, whereas Norway's deficit increased from 1.6% to 3.3%[6].

Cases relating to delays in incorporation of regulations still represent a majority of all infringement proceedings initiated by the Authority. In 2009, 31% of new infringement proceedings concerned non-timely incorporation of regulations by Iceland. Similarly, most of the reasoned opinions sent in 2009 related to Iceland's failure to incorporate regulations into national law (25 out of a total of 49).

[3] The Implementation Status Database is available at http://www.eftasurv.int/internal-market-affairs/implementation-status-/

[5] By the end of 2009, the total number of regulations incorporated into the EEA Agreement was 877. Iceland was required to incorporate 805 of these regulations and Norway 872.

[6] These figures exclude regulations in the field of statistics.

Twice a year the Authority publishes, in parallel with the European Commission, the Internal Market Scoreboard.[4]
The Scoreboard indicates how well the EFTA States perform with regard to the implementation of directives.

At the time of the latest Scoreboard, published in July, the average implementation deficit of the EFTA States was 0.7%.
Liechtenstein and Norway were below the interim target of 1.0% set by the European Council, whereas Iceland was slightly above it:

- Iceland 1.1%
- Liechtenstein 0.5%
- Norway 0.4%

4. The latest Internal Market Scoreboard for the EFTA States was published in July 2009, showing the implementation status of directives as of 11 May 2009. The EFTA Scoreboard can be found at http://www.eftasurv.int/press--publications/scoreboards/internal-market-scoreboards/archive/nr/1127

Important legal activities before the courts

In 2009, the Authority brought three Internal Market cases before the EFTA Court: one against Iceland and two against Liechtenstein. All three cases concerned delays in the implementation of EEA directives. These cases are described in more detail in the following pages.

The Authority has also intervened in a number of other cases before the EFTA Court and the European Court of Justice. When the EFTA Court receives requests for advisory opinions from a national court in one of the EFTA States, the Authority intervenes. The Authority also intervenes in cases before the European Court of Justice that are regarded to be of special interest to the EEA.

NON-IMPLEMENTATION CASES BEFORE THE EFTA COURT

In 2009, the EFTA Court rendered a judgment in five cases where the Authority brought the EFTA States before the Court for failing to implement regulations and directives. The first case, had been brought by the Authority in late 2008 and concerned the failure of Norway to fully implement the Directive on energy efficiency of buildings. The second of these cases was noteworthy as it was the first time the EFTA Court had given a judgment in default when it found that Iceland had failed to incorporate a Regulation on the fees and charges levied by the European Aviation Safety Agency. In addition, both Iceland and Liechtenstein were referred to the Court for their failure to implement the Directive on cross-border mergers of limited liability companies. Finally, Liechtenstein was also found to have breached its obligations under the EEA Agreement by not implementing the Directive on reinsurance.

Financial services, capital

The financial crisis in Iceland

The Icelandic economy was particularly hard hit by the financial crisis in 2008 and 2009. In October 2008, Iceland adopted various measures to restructure its banking system following the collapse of its biggest banks: Kaupthing, Glitnir and Landsbanki.

In October 2008, the three largest Icelandic banks, Kaupthing, Glitnir and Landsbanki, had to cease operations due to refinancing and liquidity problems. The Icelandic authorities took control of the three banks and introduced legislation giving depositors priority over other unsecured creditors. Three new separate entities were created, to which the domestic operations of the three banks were transferred, together with certain assets and other liabilities. All three banks had significant business in other EEA States and foreign depositors and other creditors of the banks were strongly affected by the Icelandic measures.

The Icelandic measures have raised questions as regards their compatibility with EEA law, in particular as regards the treatment of depositors and other creditors outside Iceland. In October 2008, the Authority began an investigation on its own initiative. During 2009, the Authority received a number of complaints relating to the Icelandic measures, both from foreign depositors and general creditors (bondholders, etc.).

The foreign depositors and creditors essentially claim that they have been discriminated against as compared to Icelandic depositors/creditors, in violation of EEA rules. Some of the complainants also argue that the Icelandic measures constitute unlawful restrictions on the free movement of capital and the freedom to provide services.

The Authority has discussed the issues in detail with the Icelandic authorities. It has also met with representatives of some of the complainants and exchanged information and views with the European Commission. The Authority will continue its assessment of the issues and aims at reaching a conclusion during 2010.

Free movement of capital

Iceland abolishes restrictions on ownership in savings banks

In 2009, Iceland abolished legislation restricting ownership in savings banks, which required prior approval for transfers of shares and a 5% ceiling on voting rights.

In 2003, the Authority initiated a comprehensive survey to assess the compatibility of the Icelandic financial legislation with EEA law. One of the issues identified concerned restrictions on ownership and voting rights in savings banks. The Authority also received a complaint in relation to the ownership restrictions.

The problematic provisions were: (i) a requirement to seek the approval of the board prior to the sale of shares in a savings bank; a requirement to seek approval from the Financial Supervisory Authority (Fjármálaeftirlitið) for acquisitions of qualified holdings in savings banks; and a 5% ceiling on voting rights in savings banks.

On 19 September 2003, the Authority sent Iceland a letter in which it indicated that the relevant Icelandic provisions (Article 70(2) and (3) and Article 75 (1) of Act 161/2002 on Financial Institutions (Lög 161/2002 um fjármálafyrirtæki)) were contrary to the principle of free movement of capital (Article 40 EEA) and the Capital Movements Directive (88/361/EEC).

According to EEA case law, limitations on ownership and voting rights in undertakings restrict the free movement of capital because they are liable to deter investors from investing in the capital of undertakings.
EEA law, and in particular Directive 2000/12/EC relating to the taking-up and pursuit of the business of credit institutions (Directive of 2000/12/EC of the European Parliament and of the Council of 20 March 2000), requires that proposed acquisitions of large holdings in credit institutions be notified to the competent authority and that an assessment of the effects of the acquisition on sound and prudent management of the credit institutions be carried out.

However, in the view of the Authority, the Icelandic provisions were disproportionate in that they were more restrictive than necessary to comply with the Directive, in particular because they made the acquisition of significant holdings subject to prior approval by the authorities and provided for a ceiling on voting rights.

The case was discussed in various meetings between the Authority and the Icelandic Government and, in 2006, the Icelandic Government informed the Authority that the legislation on savings banks would be revised. In 2007, a committee was appointed to assist the Icelandic Government in that task.

On 14 July 2009, the Icelandic Parliament removed the restrictions by adopting Act 76/2009 amending Act 161/2002 on Financial Institutions. As a result, There are now no restrictions on the transfer of holdings in savings banks, apart from the general rules on the prudential assessments that must be carried out when qualifying holdings in financial institutions are acquired or disposed of.

The Authority closed its investigation in 2009.

Freedom of establishment, free movement of capital

Ownership restrictions in financial services infrastructure institutions in Norway

In December 2009, the Authority sent Norway a letter of formal notice in respect of national legislation restricting ownership in certain types of financial services infrastructure institutions (for example, stock exchanges) considered to be in breach of EEA rules.

Sections 35 and 36 of the Norwegian Act on Regulated Markets (*Børsloven*) and Sections 5-3 and 5-4 of the Act on Registration of Financial Instruments provide for a ban (subject to certain limited exceptions) on ownership of more than 20% holdings in stock exchanges and securities depositories, and a limitation on voting rights to 20% of the total capital of such undertakings or 30% of the capital represented at a general meeting.

The Authority began an own-initiative investigation into the Norwegian legislation on 17 July 2003 on the basis that the Norwegian legislation constituted a restriction of the freedom of establishment (Article 31 EEA) and the free movement of capital (Article 40 EEA), as well as a breach of the Capital Movements Directive (Council Directive 88/361/EEC). The Authority sent a letter of formal notice to Norway concerning the provisions restricting ownership. On 1 June 2004, the Authority delivered a reasoned opinion to Norway on the matter.

Subsequently, the Norwegian Government informed the Authority that a working group had been established to revise the relevant legislation. While the legislation was being assessed, the Authority and the Norwegian Government discussed the issues on a number of occasions.

On 19 June 2009, the Norwegian Parliament adopted legislation amending the ownership restriction rules. The legislation entered into force on 1 July 2009.

The Authority opened a new investigation into the amended legislation, and does not consider that the amendments sufficiently address the issues it raised in 2004. Therefore a new letter of formal notice was issued on 16 December 2009.

According to EEA case law, limitations on ownership and voting rights in undertakings, such as those provided for in the Norwegian legislation, are liable to deter investors from investing in the capital of undertakings. They therefore constitute restrictions on the freedom of establishment and the free movement of capital.

The Norwegian government is of the view that the restrictions are justified in order to ensure well-functioning and transparent financial markets. Article 38 of Directive 2004/39/EC on markets in financial instruments requires that, before a large holding in a stock exchange is acquired, the competent authority in the relevant country is notified of the proposed acquisition in advance, and that an assessment of the effects of the acquisition is conducted based on sound and prudent management of the stock exchange.

The Authority does not dispute that the Norwegian aims are legitimate under EEA law, but considers the measures to be disproportionate: they are more restrictive than what is required by Directive 2004/39/EC and what can be considered necessary in order to achieve those aims.

Tax deductions for donations to charitable institutions

In 2009, the Authority sent reasoned opinions to Liechtenstein and Norway in respect of legislation making the tax deductibility of donations to charitable institutions dependent on certain residency requirements. In Liechtenstein, only donations to charities in Liechtenstein and Switzerland could be deducted, and in Norway, only donations to charities in Norway.

In 2002, the Authority carried out an examination of tax legislation in both Liechtenstein and Norway. One of the issues identified was that both States were limiting the tax deductibility of donations to domestic charitable organisations, although in Liechtenstein donations to organisations in Switzerland were also deductible.

The Authority raised these issues with the Norwegian and Liechtenstein governments, pointing out that the rules constituted an incentive to make donations to charitable organisations located in Liechtenstein, Switzerland and Norway in preference to charities based elsewhere in the EEA.

Unconvinced by the explanations received from Liechtenstein and Norway, in 2003 the Authority sent both countries letters of formal notice to the effect that the national rules were not compatible with EEA law.

Discussions continued, and in 2007 the Liechtenstein Government indicated that a revision of the relevant rules was envisaged.

On 27 January 2009, the European Court of Justice gave its judgment in Case C-318/08 *Persche*, where it concluded that German legislation limiting deductions for tax purposes to gifts made to charitable organisations established in Germany was contrary to the free movement of capital.

Following that judgment, the Authority sent reasoned opinions to Norway and Liechtenstein, finding that the national legislation was incompatible with the free movement of capital.

CASE E-1/09: THE END OF RESIDENCE REQUIREMENTS FOR BOARD MEMBERS IN BANKS, LAWYERS, AUDITORS AND TRUSTEES IN LIECHTENSTEIN

On 6 January 2010, the EFTA Court handed down a judgment condemning Liechtenstein for residence requirements for board members in banks, lawyers, auditors and trustees.

This judgment put an end to the long-standing saga of residence requirements in Liechtenstein. On 1 July 2005, the EFTA Court declared in its judgment in Case E-8/04 that Section 25 of the Banking Act, which imposed a residence requirement in Liechtenstein, was contrary to the principle of freedom of establishment, as laid down in Article 31 of the EEA Agreement. As a consequence, Section 25 of the Banking Act was amended, but still contained a residence requirement, although different from the one ruled upon by the EFTA Court.

The new provision required that all the members of the management board and of the executive management must, by reason of their residence, be in a position to actually and flawlessly perform their functions and duties. At the same time, similar residence requirements were introduced for lawyers, patent lawyers, auditors and trustees.

The Authority lodged an application before the EFTA Court against these new provisions in February 2009. In its judgment, the EFTA Court upheld the position of the Authority by declaring that these provisions were indeed in breach of the freedom of establishment and could not be justified. To comply with this judgment, Liechtenstein will have to repeal these residence requirements.

Free movement of workers, right of establishment, free movement of capital

Discriminatory taxation of profits from the sale of real estate

In 2006, the Authority commenced an own-initiative investigation into Icelandic tax legislation. One of the issues identified concerned the different tax treatment of profits from the sale of owner-occupied residential real estate depending on whether they were reinvested in Iceland or in other EEA States.

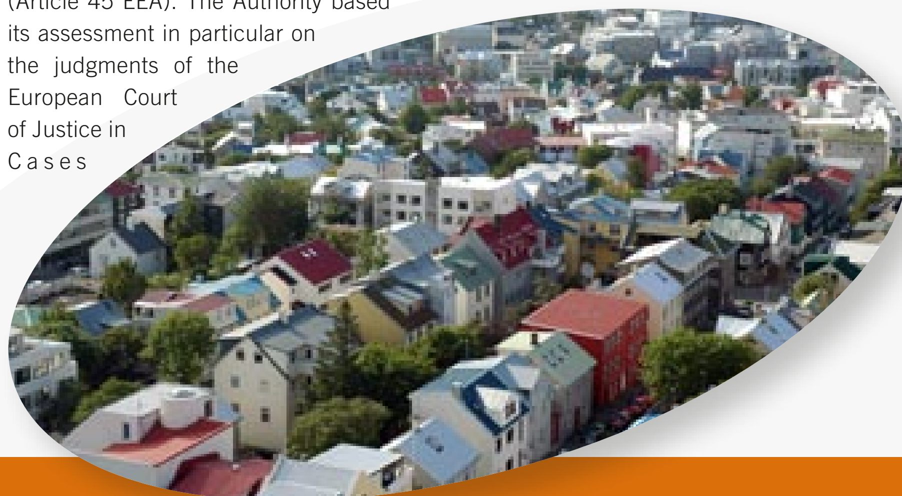
The Icelandic Act on Income Tax 90/2003 (Lög um tekjuskatt 90/2003) was being interpreted by the tax authorities in such a way that deferrals of, and eventual exemption from, taxation of profits from the sale of owner-occupied residential real estate was made dependent on the profits being reinvested, within two years, in comparable real estate located in Iceland.

In 2006, the Authority received a complaint from a person claiming to have been discriminated against by being required to pay such a tax when relocating to Denmark from Iceland.

The Authority considered that the legislation discriminated against workers and persons wishing to relocate from Iceland to other EEA States. The Authority also considered that it discriminates against those wishing to invest in real estate located in other EEA States.

On that basis, in 2007, the Authority sent a letter of formal notice to Iceland for breach of the rules on free movement of workers (Article 28 EEA), freedom of establishment (Article 31 EEA) and free movement of capital (Article 45 EEA). The Authority based its assessment in particular on the judgments of the European Court of Justice in Cases C-345/05 *Commission* v *Portugal* and C-104/06 *Commission* v *Sweden*, which found similar measures to be incompatible with EEA law.

In 2008, the Authority sent a reasoned opinion to Iceland on the same issue. Thereafter, Iceland amended its legislation to include real estate investments in other EEA States and, in 2009, it informed the Authority that it had taken measures to reassess and repay taxes to those persons wrongfully subjected to tax.



CASE C-72/09: SAME PROTECTION AGAINST PROPERTY TAXATION RESTRICTING FREE MOVEMENT OF CAPITAL UNDER THE EC TREATY AND THE EEA AGREEMENT?

In June 2009 the Authority submitted written observations in Case C-72/09 pending before the European Court of Justice. In this case, a Liechtenstein company challenged the imposition in France of a 3% annual tax on the value of property situated in France, before the French courts. The legal basis for the tax had previously been found by the Court of Justice in Case C-451/05 ELISA to be contrary to Article 63 TFEU (ex. 56 EC) dealing with the free movement of capital. In Case C-72/09, the French Supreme Court, the Cour de Cassation, asked whether the result in ELISA applied equally when the capital movement took place between an EU State and an EFTA State.

The Authority submitted to the Court that the same solution as in Case C-451/05 ELISA should apply in this case where a capital movement involves an EFTA State: there was no reason why the solution required under the EC Treaty should not be equally applicable under the EEA Agreement.

Taxation of foreign registered rental cars

EEA States may impose taxes within their territory but must comply with the freedom to provide services principle.

Under legislation in Norway and Iceland, persons that are permanently resident on the territory of the state do not have the right to import tax-free a foreign-registered rental car for temporary use. As a result, it is more attractive for permanent residents to seek the services of car rental companies established in their own state rather than services of car rental companies established in another EEA State. This also hampers companies established in other EEA States offering their services to Norwegian or Icelandic residents. Therefore, the national legislation in both countries amounts to a restriction on the freedom to provide services. The restriction cannot be considered justified by reasons of general interest, such as the prevention of tax fraud, since the measure appears to be unnecessary and disproportionate.

In reply to the Authority's reasoned opinion of 16 July 2008, the Norwegian Government stated that it recognised the breach of EEA law and expressed its willingness to amend the legislation. In the final draft proposal for amendment, it is foreseen that Norwegian residents may import and use a foreign-registered rental car tax-free for a period of up to six weeks per year and a system of prior notification is set up to replace the current system of prior permission. The amended legislation should be adopted and applied early 2010.

On 28 May 2008, a letter of formal notice was sent to Iceland addressing both the issue of the rental cars for personal use and a similar issue concerning company cars. In March 2009, the Icelandic Government sent the Authority a copy of the amended Customs Act, which addressed the issue of the company cars but not the issue of the rental cars. The concerns raised by the Authority do not, therefore, appear to have been addressed entirely and proceedings are, therefore, ongoing.

Electronic communications

Electronic communications

In 2009, the Liechtenstein regulator notified the Authority of three regulatory decisions in the electronic communications markets.

The first two draft regulatory measures submitted by Liechtenstein and assessed by the Authority concerned the markets for wholesale access to the fixed network infrastructure (wholesale physical access and wholesale broadband access). This access is fundamental to foster competition at the retail level.

The third analysis, notified at the end of 2009, concerned retail access to the public telephone network at a fixed location for residential and non-residential customers.

Despite the increase in the number of notifications, the Authority remains concerned about the delay in the application of the regulatory framework in Liechtenstein, as it has not yet notified all of its regulatory decisions.

Year	EFTA notifications	Comments from the Authority	EU notifications	Single coordinated communications
2000	19	3	751	0
2001	22	5	530	1
2002	49	4	508	1
2003	29	5	486	0
2004	37	10	557	1
2005	55	11	733	0
2006	23	6	668	1
2007	28	7	757	0
2008	25	6	601	1
2009	16	9	708	0

Goods

Procedure to prevent new technical barriers to trade

The Technical Standards and Regulations Directive (98/34/EC) establishes a notification procedure the aim of which is to provide transparency. This procedure prevents the creation of new, unjustified barriers to trade which can arise from the adoption of restrictive technical regulations.

According to the Directive, the EFTA States shall notify technical regulations in draft form to the Authority. Following the notification, there is a three-month standstill period during which the Authority, the European Commission and other EEA States have time to examine the measures and issue comments if it appears that questions exist as regards the draft regulation's compatibility with the EEA Agreement.

In 2009, the Authority received only 16 notifications of draft technical regulations from the EFTA States. This is a significant decrease in notifications compared to previous years and constitutes the lowest number of notifications received by the Authority since 1997. Of the 16 notifications received in 2009, nine came from Norway, six came from Liechtenstein and one came from Iceland. Nine of the notifications prompted the Authority to send comments. The Commission commented on eight of the notifications.

The Authority received 708 notifications from the EU Member States, which were forwarded to it by the Commission.

Private import of alcohol

Following a reasoned opinion by the Authority in 2007, Norway removed its ban on the private import of alcoholic beverages and increased the amount of alcohol which is permitted to be brought into Norway.

In 2004, the Authority opened an own-initiative case concerning the ban on the private import of alcoholic beverages for personal use into Norway. Under the Norwegian rules, private import of alcoholic beverages could only take place through the Norwegian retail monopoly, Vinmonopolet. The Norwegian restrictions were similar to a ban on the private import of alcoholic beverages in place in Sweden, which was subject to procedures before the Swedish courts, as well as infringement proceeding by the Commission. In 2007, the European Court of Justice in a preliminary reference ruling from a Swedish court (Case C-170/04 *Rosengren*) found that the restrictions in place in Sweden went beyond the scope and purpose of the retail monopoly on the selling of alcoholic beverages and were in breach of the principle of the free movement of goods.

The Authority issued a reasoned opinion to Norway concerning the ban in 2007 and Norway removed the restrictions in the summer of 2009. Following the removal of the import ban, the Authority closed the case in November 2009.

Aviation safety

Exemptions and derogations from aviation safety legislation

The European Union has, in recent years, taken on an active role in improving aviation safety by developing a legally binding minimum set of aviation safety rules. By the incorporation of this aviation safety legislation into the EEA Agreement the legislation is also applicable in the EFTA States.

There are several EEA Acts within the field of aviation safety which have so called "flexibility provisions". These provisions allow the EFTA States to grant temporary exemptions and long-term derogations from the established rules. In such cases, the EFTA States must adopt measures which are considered equivalent to the harmonised standards.

If the EFTA States wish to grant such derogations or exemptions, their intention to do so should be notified to the Authority. The Authority then assesses whether the notification is in line with the regulatory requirements. The Authority can, based on the outcome of its assessment, either accept the notification or ask the EFTA State to withdraw or amend its decision if considered not justified. The Authority works in close cooperation with the European Aviation Safety Agency (EASA) and the European Commission in order to ensure that the way in which the Authority and the Commission assess notifications is harmonised.

As some of the cases are very complex, cooperation with EASA is essential since the Agency provides the Authority with technical assessments on the various implications an exemption or derogation might have on the level of aviation safety. In some cases, EASA also issues opinions on submitted notifications.

In 2009, the Authority received several notifications on exemptions granted by the EFTA States made with reference to Article 8(2) of the *EU-OPS Regulation* (3922/91) and Article 10(3) of the *EASA Regulation* (1592/2002). Some of these cases have already been closed by the Authority whilst others are still being assessed. So far, all notifications have been considered justified and, therefore, accepted by the Authority.

Aviation security

Aviation security inspections

The main objective of the EU's aviation security legislation 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 flights or within the confines of an airport. By the incorporation of this aviation security legislation into the EEA Agreement, the legislation is also applicable in the EFTA States.

A key component of the EEA Acts within the field of aviation security is the organisation of inspections by the European Commission. For the EFTA States, these inspections are carried out by the Authority.

The Authority has been carrying out airport security inspections since 2005. In 2009, the Authority carried out four airport inspections in the EFTA States. The inspections have been targeted at specific areas of airport operations. Special attention has, in 2009, been paid to airport security, screening of passengers and cabin baggage as well as hold baggage security, and standards for technical equipment. As of 2009, the Authority also started to inspect the implementation of cargo, catering and cleaning security.

The Authority inspections have identified deficiencies in several areas, some more serious than others. This relates especially to access control, staff screening and passenger and cabin baggage screening.

However, monitoring activities have also indicated that there have been improvements within key areas of aviation security in the EFTA States. It is difficult, though, to draw clear conclusions on the level of overall improvements because a different set of airports are selected each year. The Authority inspections have showed a vast divergence in the level of implementation of aviation security at the different airports in the EFTA States. The Authority has not initiated any infringement proceedings linked to findings made on inspections, since the EFTA States have addressed the findings made during these inspections in a satisfactory manner. The majority of deficiencies are now, based on the information provided by the EFTA States and on follow-up activity performed by the Authority, considered to be rectified.

The Authority cooperates with the appropriate authorities in the EFTA States and the Commission to work towards the common goal of increasing aviation security within the EEA.

Transport

Working time in road transport

Iceland and Norway have requested exemptions from EEA working time principles for certain road transport operations within these countries. However, the relevant EEA legislation in the field is intended to ensure safety and improved working practices and all exemptions have to be assessed carefully.

Iceland applied for several exemptions from the *Regulation on social legislation relating to road transport* (561/2006/EC) in 2008. This application was based on Article 14 of the Regulation which only applies in exceptional circumstances which was not the case in the opinion of the Authority. In September 2009, Iceland withdrew its application. Again on 10 November 2009, Iceland applied for exemptions from the Regulation relating, inter alia, to transportation on the route between Reykjavik and Egilstadir via Freysnes and to the transport of perishable food on long-haul routes. This application was not as broad as the previous one; however, it had the same legal basis. In late summer 2008, Iceland had also sent a supplementary application for certain bus lines and transport connected to gravel extraction as permitted by a different Article in the Regulation. A decision in this case is expected to be taken in early 2010. Finally, Norway also applied for exemptions from Article 14 of the Regulation in early summer 2009. Norway is of the opinion that transportation of live animals to slaughterhouses in Norway is carried out in exceptional circumstances.

The *Regulation on social legislation* relating to road transport lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road in order to harmonise the conditions of competition and to improve working conditions and road safety.

These are all considerations the Authority has to take into account before an exemption can be granted. Case law provides that the exemptions under the Regulation are to be interpreted restrictively.

Exemptions from safety rules for passenger ferries in Norway

Norway has exempted most domestic passenger ferries from certain safety rules of the EEA. These decisions have to be notified to the Authority, which may disagree.

The *Directive on registration of persons on board passenger ships* (98/41/EC) provides that before a passenger ship departs the number of people on board the ship must be communicated to the master of the passenger ship and to the company's passenger registrar or to a shore-based company system that performs the same function. EFTA States may give exemptions from this obligation provided certain conditions have been fulfilled, including that the ships are sailing exclusively in a protected sea area. These decisions should be notified to the Authority which must then assess whether the exemptions are justified. Norway notified exemptions for 33 ferries in 2009.

The Authority, based on an expert opinion from an external consultant, has considered the exemptions incompatible with the Directive on several occasions. The Authority has to consult the EFTA States when taking those decisions. The EFTA State may decide on the matter in the Standing Committee of the EFTA States if they disagree with the Authority.

In 2009, the EFTA States disagreed with the Authority on two occasions and decided to permit exemptions which the Authority did not consider justified, as they were not exclusively in a protected sea area and were exposed to the open sea effects.

Incorporation of certain EEA acts on transport by Norway

Article 7 of the EEA Agreement requires the EFTA States to incorporate EEA Regulations as such into their internal legal order. The Authority has been in a continuous dialogue with Norway about the need to incorporate EEA Regulations.

Norway has generally agreed that Article 7 of the EEA Agreement requires incorporation of EEA Regulations into its legal order. However, lately it has contested that several EEA Acts which have limited impact on individuals and undertakings need to be incorporated as such. Norway has stated that these Acts do not merit implementation into the Norwegian legal order because of the nature or content of the Acts. These Acts are the *Regulation on the establishment of the European Maritime Safety Agency (EMSA)* (1406/2002/EC), the *Regulation on multiannual funding of EMSA* (1891/2006/EC) and the *Regulation amending Regulation (EC) No 2099/2002 establishing a Committee of Safe Seas and the Prevention of Pollution from Ships (COSS)* (93/2007/EC).

The Authority does not agree with this view as it considers that Article 7 of the EEA Agreement requires the EFTA States to make these Acts in their entirety part of their internal legal order without regard to their content.

On 1 July 2009, a reasoned opinion was delivered to Norway for the non-incorporation of Regulation (EC) No 1 and a letter of formal notice for the non-incorporation of Regulation 1406/2002. On 15 July 2009, a letter of formal notice was sent for the non-incorporation of Regulation 93/2007. No further action was taken in 2009 as Norway asked to be given until 2 December 2009 to respond to the Authority so that it could reflect on the issue. However, unless a solution is found further action will be considered in 2010.

Road tolls

The Authority received three complaints in 2007 and 2008 in which it was alleged that the levy charged on the toll road in Bergen was in breach of Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructure, because the revenue was used for infrastructure in other places than where the charges were collected.

The aim of Directive 1999/62/EC is to eliminate distortions of competition between transport undertakings by harmonising the levy systems in the EEA States and establishing mechanisms for charging infrastructure cost to haulers. Tolls and user charges may not discriminate between haulers on grounds of nationality, origin or destination.

The toll booths where the contested charges are levied are all located in areas which have to be considered as urban areas. The aim of the tolls on the Bergen ring road is to regulate the traffic in and around Bergen by increasing the share of public transport and, thereby, reduce the use of private cars. It is assumed that this will lead to a better environment and improved traffic safety in the city. Only traffic within, or passing through, the urban areas of Bergen are affected by the charge. On that basis, the Authority concluded that the charges were so-called specific urban charges and therefore outside the scope of the Directive. Moreover, they were not incompatible with other provisions of the EEA Agreement.

In October 2009, the Authority decided that there were no grounds for pursuing these cases further and closed them.

Veterinary and phytosanitary matters foodstuffs
Veterinary medicinal products

Food safety, animal health and welfare

The Authority is responsible for monitoring the EFTA States' implementation and application of EEA legislation related to the whole food chain. The legislation covers fields such as seeds, feed and food, animal health and welfare, animal by-products, residues of medicines, pesticides and contaminants.

The surveillance by the Authority includes controls on the application of EEA legislation in the EFTA States through on-the-spot inspections to verify the effectiveness of the national control systems.

The Authority has the legal competence to adopt decisions related to animal disease status, eradication and monitoring programmes, border inspection posts etc.

In 2007, it was decided to make EEA legislation in the above mentioned fields applicable to Iceland, except for the legislation on live animals. So far, Iceland has only been obliged to apply the legislation on fish and fishery products and feed. In 2007, the EEA Agreement was also amended to incorporate the new Hygiene Package to make it applicable to both Norway and Iceland[7]. National parliamentary procedures for the approval of the extended scope of new EEA legislation applicable to Iceland were completed in December 2009. The legislation is expected to enter into force for both Norway and Iceland during the first half of 2010. Iceland will have an 18-month transitional period in which it must become compliant with the new rules.

Stunning of reindeer in Norway

In 2009, the Authority closed a case against Norway concerning the stunning of reindeer with a curved knife following the adoption of new rules by Norway that enhance animal welfare protection by restricting the use of the curved knife.

Norway had, prior to the adoption of these rules, allowed the use of a traditional curved knife to stun reindeer for private consumption. These rules were challenged by a complainant on the grounds that the curved knife was not included in the list of stunning methods laid down in the so-called Animal Welfare Directive (Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing).

Norway agreed with the Authority that only the methods listed in the Animal Welfare Directive could be used for stunning animals before slaughter. However, 'cultural events' are not covered by the Animal Welfare Directive.

The Authority accepted the statement made by Norway that the traditional use of the curved knife by the Sami people at gatherings which take place once a year in the autumn could have a cultural dimension. Furthermore, on the basis of statistical information assessed by the Authority, it was confirmed that the economic significance of this activity was very small (marginal production of meat).

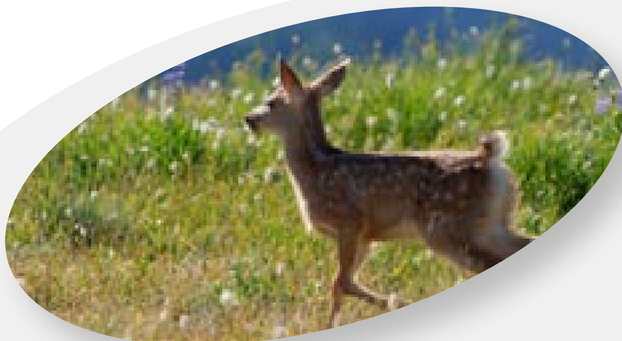
On this basis, the Authority concluded that the use of a curved knife by Sami people for the stunning of reindeer for private consumption could be justified, while its use outside the Sami context should not be allowed. Norway has amended its national rules accordingly, and has given assurances that the Sami people will continue to receive training on the use of the curved knife.

Additives in fishery products

The so-called *Food Additives Directive (95/2/EC)* allows the use of polyphosphates as food additives in certain fishery products provided certain conditions are met. However, incorrect use can result in water retention and an increase in the weight of the product.

The Authority took action in 2009 to ensure that polyphosphates were not used in the production of salted and dried fish in Norway and Iceland, as polyphosphates should not be used in this type of production process. Norway and Iceland agreed with the Authority that it would not be possible to justify the presence of polyphosphates in salted and dried fish as a result of a possible carry over from the salt used in the processing of these products and that polyphosphates cannot be used as a processing aid for the bleeding of fish.

[7] This includes, amongst others, Regulation 178/2002, Regulation 882/2004, Regulation 852/2004, Regulation 853/2004, Regulation 854/2004 and Regulation 1774/2002.



Norway issued additional guidelines 'Presisering ang bruk av fosfater i fiskeindustrien' addressed to the competent authorities in charge of enforcing the legislation in this field. In the guidelines, it is stated that polyphosphates should not be present in fishery products other than those mentioned in the *Food Additives Directive*. The fish industry has been informed and Norway has given assurances to the Authority that controls will be carried out to ensure compliance with the relevant EEA requirements.

The Icelandic Government informed the fish industry that polyphosphates cannot be used as processing aid and that the presence of polyphosphates in fishery products cannot be justified as a result of a carry over from the salt used in the processing of the fish. The enforcement control authorities in Iceland have been instructed to report any illegal use of polyphosphates in the production of salted and dried fish.

Veterinary inspections

The Authority carried out eight planned inspections in the EFTA States in 2009. The programme for the second half of the year was amended because the Hygiene Package had not yet entered into force in the EFTA States.

In addition, the Authority carried out an inspection in Norway, in cooperation with the Food and Veterinary Office of the European Commission (FVO) and the Norwegian competent authority, on the suspected fraudulent import into Norway of frozen meat from a third country.

The inspection programme and the final reports from the missions carried out in 2009 are available on the Authority's website (http://.www.eftasurv.int).

Medicine and pesticide residues in food

Under the EEA Agreement, Norway is required to prepare a national residues monitoring plan every year. Medicine and pesticide residues are included in the plan, with live animals and animal products (such as meat, milk and honey) being checked. The Authority made a number of comments on the Norwegian 2009 monitoring plan, which Norway subsequently amended.

EEA EFTA States in the European Emission Trading Scheme

The EU Emission Trading Scheme (EU ETS), established by the Emission Trading Directive (2003/87/EC), is the main market-based instrument to help EU Member States comply with the commitments made under the Kyoto Protocol. It has been developed as a cap and trade system aiming to reduce greenhouse gas emissions among large emitting companies within the EU. The EFTA States have participated in the EU ETS since 2008.

One core task in the run-up to the implementation of the current scheme was the elaboration of National Allocation Plans (NAPs) by EEA States. Each State determines in its NAP the total number of allowances for the country and individual allocation to installations. The EFTA Surveillance Authority assessed the NAPs notified by EFTA States for the 2008–12 trading period.

The Norwegian National Allocation Plan[8]

The assessment of the NAP notified by Norway in March 2008 led the Authority to raise three main objections in July 2008. These objections made it necessary for Norway to amend its initial NAP before it could take its final allocation decision and allocate allowances to installations. Norway notified in December 2008 the amendments to its NAP aimed at addressing the objections. The Authority evaluated the proposed amendments against the criteria listed in the Emission Trading Directive. In February 2009, the Authority accepted the amendments to the Norwegian NAP for the 2008–12 period without objections.

Following the Authority's positive decision on the Norwegian NAP, Norway adopted its final allocation decision for the 2008–12 period at national level in March 2009 and notified it to the Authority by means of the NAP table. Having checked the allocations, the Authority instructed the Central Administrator of the Community Independent Transaction Log (CITL) to enter Norway's NAP table for the period 2008–12 into the CITL in March 2009. This allowed Norway to issue allowances and transfer their annual allocation to the Norwegian installations early in April 2009.

Norway's unilateral inclusion

The Emission Trading Directive provides States with the option to apply for the unilateral inclusion of additional activities and gases in the EU ETS, subject to certain conditions laid down in the Directive and the approval of the Commission, regarding EU Member States, or the Authority, regarding EFTA States.

To extend the EU ETS to other sectors and gases, Norway submitted to the Authority in June 2008 an application for the inclusion in the EU ETS for the 2008–12 period of emissions of nitrous oxide (N_2O) from the production of nitric acid. The Authority assessed Norway's application to ensure that it fulfilled all relevant criteria, in particular those relating to the effects on the internal market and the environmental integrity of the scheme. In February 2009, the Authority approved Norway's unilateral inclusion in the EU ETS of N_2O emissions associated with the production of nitric acid.

[8] The situation in Iceland and Liechtenstein has been developed in the Annual Report 2008 (p. 20) available at http://www.eftasurv.int/?1=1&showLinkID=16168&1=1

Energy

Internal Market rules and energy efficiency

The completion of the Internal Market in energy is key in providing Europe's citizens and companies with a secure supply of affordable energy. But it is as important to ensure a sustainable future, in particular through energy efficiency.

EEA law establishes common rules for the generation, transmission and distribution of electricity and gas, and lays down principles for the non-discriminatory access to petroleum and natural gas exploration and production.

Despite their particular energy situation, it is important that the EFTA States comply with this legislation in order to ensure legal certainty for operators and guarantee equal competitive conditions across the EEA. The Authority has thus stepped up its scrutiny of the implementation of energy legislation in the EFTA States.

Energy efficiency is also of great importance as it will contribute to secure a sustainable future for Europe. In light of this, the Authority brought a case against Norway before the EFTA Court for the incomplete implementation of the *Energy Performance of Buildings Directive* (2002/91). In May 2009, the EFTA Court confirmed that Norway was in breach of its obligations. Norway has indicated that the necessary rules will be in place as of 1 January 2010. The Authority will now follow-up on this implementation.

Labour law

Labour clauses in public procurement contracts

In July 2009, the Authority issued a letter of formal notice to Norway concerning Regulation No 112/2008 on pay and working conditions in public procurement contracts (lønns- og arbeidsvilkår i offentlige kontrakter).

The Norwegian regulation requires contracting authorities to include a clause in their contracts that obliges contractors and subcontractors to make sure that collective agreements or minimum pay and working conditions considered normal for the place and profession concerned are respected. This requirement has its origins in the ILO Convention No 94 concerning Labour Clauses in Public Contracts, which Norway ratified in 1996.

The Authority takes the view that this requirement does not comply with the *Posting of Workers* Directive (96/71) and the provisions in the EEA Agreement relating to the freedom to provide services as interpreted by the European Court of Justice in Case C-346/066 *Rüffert*.

The Rüffert case provides that, should a state decide to impose obligations concerning wages and other terms of employment on foreign service providers posting their workers to their territory, the rules adopted for this purpose must comply with one of the methods prescribed by the *Posting of Workers Directive*. In doing so, the right balance can be achieved between the aim of providing posted workers with social protection and the aim of facilitating the free provision of services within the EEA.

The Directive, as interpreted by the European Court of Justice, sets out the methods which EEA States may use should they chose to impose terms and conditions of employment within the meaning of the Directive on undertakings established in another EEA State, in the framework of transnational provision of services. This must either be done by fixing in law a general minimum wage or by making collective agreements generally applicable to all undertakings.

The Authority considers that the Norwegian regulation does not fix a rate of pay in accordance with any of the procedures laid down in the Directive.

The Authority notes that Norway could pursue its policy of preventing social dumping in the field of public procurement by other means, such as by making use of the system established under the General Application Act.

Labour law – Posting of workers

Icelandic Posting Act

In November 2009, the Authority decided to deliver a reasoned opinion to Iceland concerning its Act on the rights and obligations of foreign undertakings that post workers temporarily in Iceland and on their workers' terms and conditions of employment.

The Authority takes the view that the Act, which was adopted in 2007, imposes restrictions on foreign service providers which are not in compliance with free movement of services under the EEA Agreement and the *Posting of Workers Directive* (96/71).

First, the Authority concludes that provisions in the Act, which require foreign service providers to send the Icelandic authorities a declaration eight working days prior to operating in Iceland, together with the duty imposed on the domestic recipients of that service to make sure that these formalities have been complied with, constitute a *de facto* prior authorisation requirement. Such a requirement is a disproportionate restriction of the freedom to provide services, as the objective of protecting workers may be reached by a less restrictive procedure.

Second, the Authority maintains that provisions in the Act, which aim to guarantee posted workers a right to only two days of leave in the event of illness for every month worked and a right to be insured against accidents at work, go beyond what the *Posting of Workers Directive* allows. These issues are not among those that the Directive permits the host state to impose its own requirements on posted workers. The Directive presupposes that in this respect the workers are protected by the legislation in their home state.

Iceland has been given two months to take the measures necessary to comply with the reasoned opinion. The Authority will, in light of any forthcoming response from the Icelandic Government, decide whether to bring the matter before the EFTA Court.

Transfer of undertakings and employees' rights

The Authority has initiated formal infringement proceedings against Iceland concerning the national rules implementing Directive 2001/23/EC relating to employees' rights in the event of transfers of undertakings. The case concerns the question of where liability for unpaid wages rests when a company is transferred and continues to operate under the direction of a new employer.

The Directive lays down the principle that obligations arising from a contract of employment existing on the date of transfer must be transferred from the seller to the buyer of the company (the new employer). In 2005, the Icelandic Supreme Court handed down a judgment in which the Court stated that that claims for unpaid wages which fall due before a transfer takes place cannot be based on the rules implementing the Directive.

The Authority considers, based on the case law of the European Court of Justice and of the EFTA Court, that the Directive must be interpreted as meaning that after the date of transfer the new employer automatically becomes liable for all obligations arising under employment contracts, including claims for unpaid wages. Consequently, the Authority takes the view that the national measures, as interpreted by the Supreme Court of Iceland, do not fully guarantee the mandatory rights of workers as laid down in the Directive.

In December 2009, the Authority decided to issue a letter of formal notice to Iceland. Iceland has been given two months to submit comments on the letter before the Authority will consider taking the proceedings to the next step by issuing a reasoned opinion.

Social security

Full pension rights for migrant workers in Liechtenstein

Liechtenstein has eliminated discrimination against part-time workers residing outside of the country with regard to their retirement pension.

Between 2001 and 2009 Liechtenstein legislation did not fully recognise pension periods of part-time workers who resided outside the country. This resulted in a lower amount of retirement pension compared to part-time workers who resided in Liechtenstein as their insurance periods were fully taken into account.

The Authority issued a letter of formal notice in December 2008 concluding that this rule was unjustified discrimination under EEA law. In July 2009, Liechtenstein abolished the provision, retroactive to January 2001 which is the date on which the contested rule entered into force. As a consequence, all those affected will be able to request a reassessment of their pensions.

Iceland facilitates the access to healthcare for migrant workers

In 2007, one of the requirements for the registration of migrant workers with the Icelandic health insurance was to demonstrate that the Icelandic employer has paid social security contributions for him. This prevented immediate access to healthcare on the same terms as those for Icelandic nationals, as such information is only available for migrant workers after the first month of work.

In May 2009, the Authority issued a letter of formal notice to Iceland concluding that this practice was an unjustified restriction under EEA law. As a consequence, Iceland confirmed a change in the procedures in September 2009 stating that it is now sufficient to provide the health administration with an Icelandic ID-number ("*kennitala*"), a copy of the work contract and the relevant proof of insurance periods abroad to become registered with the Icelandic health insurance.

Equal treatment of men and women

Equal treatment – follow-up to the EFTA Court judgment in the survivors' pension case

In October 2009, the Authority issued a reasoned opinion to Norway for failing to comply with the judgment of the EFTA Court of 30 October 2007 in the so-called "Golden Widows Case". In the judgment, the Court found Norway to be in breach of its obligations under the EEA Agreement, which require the EFTA States to ensure that men and women receive equal pay for equal work. Pensions are considered as pay in this instance.

The judgment concerned a provision in the Norwegian Public Service Pension Act which provides that a survivors' pension of a widower whose spouse became a member of the Public Service Pension Fund prior to 1 October 1976 shall be reduced in relation to his other income. A widow, however, in the same circumstances receives her survivor's pension without curtailment. In its judgment, the EFTA Court declared that this difference in treatment between widowers and widows constituted a breach of the rules of the EEA Agreement in the field of equal treatment of men and women.

In January 2009, the Authority was informed of Norwegian proposals which are intended to amend the Pension Act. After having received no information from Norway indicating that these proposals had become law, the Authority concluded that measures to comply with the judgment had not been taken.

As a result, and in order to put further pressure on the Norwegian Government, the Authority decided in October 2009, two years after the Court rendered its judgment, to issue a reasoned opinion to Norway.

In November 2009, the Norwegian Government informed the Authority that rules amending the Pension Act were expected to enter into force in January 2010. Once the new rules have entered into force, the Authority aims to examine their content in order to decide whether they comply with the requirements set out in EEA law on gender equality.