



## A dynamic Agreement

Two separate legal systems are employed in parallel within the EEA. On one side, the EEA Agreement applies to relations both between the EFTA and European Community sides and between the EFTA States themselves. On the other side, European Community law applies to relations between the EU Member States. For the EEA to pursue its aim of homogeneity, the two legal systems must develop in parallel and be applied and enforced in a uniform manner. The EEA Agreement thus includes decision-making procedures for the integration into the EEA of new secondary European Community legislation.

The task of ensuring that relevant secondary European Community legislation is extended to the EEA in a timely manner rests, in the first instance, with the EEA Joint Committee. This Committee is composed of representatives of the Contracting Parties to the EEA Agreement. The EEA Agreement also provides a surveillance mechanism to ensure the fulfilment of obligations under the Agreement and uniform interpretation and application of its provisions.

The surveillance mechanism is arranged in the form of a two-pillar structure with two independent bodies. The implementation and application of the EEA Agreement within the EFTA pillar is monitored by the EFTA Surveillance Authority. The European Commission carries out the same task within the European Community pillar. In order to ensure uniform surveillance throughout the EEA, the EEA Agreement provides for co-operation, exchange of information and consultation between the two bodies on surveillance policy issues and individual cases.

## Judicial protection

The EEA Agreement also has a two-pillar structure for judicial control within the EEA. The EFTA Court exercises competences in several areas similar to those of the Court of Justice of the European Communities and the Court of First Instance. These include judicial review of the EFTA States' compliance with their obligations arising from the EEA Agreement and appeals against decisions taken by the Authority.

Both the EFTA Court in the *Icelandic passenger tax* case (E-1/03) and the Court of Justice in *Ospelt* (C-452/01) have underlined that one of the main objectives of the EEA Agreement is to create a homogeneous European Economic Area. The two Courts, moreover, emphasised the need to ensure uniform interpretation of those rules of the EEA Agreement and the EC Treaty that are identical in substance. The Court of Justice held in *Ospelt* that one of the principal aims of the EEA Agreement is to provide for the fullest possible realisation of the free movement of goods, persons, services and capital within the whole EEA, so that the Internal Market established within the European Union is extended to the EFTA States. The EFTA Court has also confirmed in *Ásgeirsson* (E-2/03) that the EEA Agreement is to be interpreted in the light of fundamental rights. The provisions of the European Convention of Human Rights and the judgments of the European Court of Human Rights are important sources for determining the scope of these rights.

# What is the EFTA Surveillance Authority?

## General surveillance

The origins of the Authority are found in Article 108 of the EEA Agreement. The detailed legislative provisions governing its role and obligations are found in the Agreement between the EFTA States commonly known as the "Surveillance and Court Agreement".<sup>1</sup>

A central role of the Authority is to ensure that the provisions of the EEA Agreement, including its Protocols and the acts referred to in the Annexes to the Agreement, are properly implemented into the national law of the EFTA States and correctly applied by their national authorities.<sup>2</sup> This task is commonly referred to as general surveillance. General surveillance cases are either initiated by the Authority itself or as a result of a complaint.<sup>3</sup>

If the Authority considers that an EFTA State has failed to fulfil an obligation under the EEA Agreement, it may, according to Article 31 of the Surveillance and Court Agreement, initiate formal infringement proceedings. However, before such proceedings are commenced, the Authority will use other means to try to ensure compliance by the EFTA State with the Agreement. In practice, the majority of problems identified by the Authority are solved as a result of informal exchanges of information and discussions between the Authority's staff and representatives of the EFTA States.

Where appropriate, before concluding the informal phase, and although the Authority itself has not taken a formal position on the subject, the Directorate concerned may make enquiries in the matter. These take the form of a letter to the EFTA State in question inviting it to provide the Authority with supplementary information on the matter under examination. Where necessary, the State may be invited to adopt the measures necessary to comply with EEA law. If formal infringement proceedings are initiated, the Authority will first send the EFTA State Government concerned a **letter of formal notice**. This letter identifies the provision of EEA law that, in the Authority's view, has been infringed. The Government is invited to submit its observations on the matter. If the Authority is not satisfied with the Government's answer to the letter, or if no answer is received, the Authority may deliver a **reasoned opinion**. This document defines the final position of the Authority on the matter, states the reasons on which that position has

1. The Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice may be found at <http://secretariat.efta.int/Web/legaldocuments/>
2. In addition, the EFTA States have entrusted the Authority with the power to monitor the application of the EEA Agreement by the other Contracting Parties to the Agreement. The Authority can, however, only take formal action against the three EFTA States.
3. Information explaining the proceedings for non-compliance with EEA law may be found on the Authority's website at [www.eftasurv.int/procedures/infringement](http://www.eftasurv.int/procedures/infringement)

been based, and requires that the State take the measures necessary to bring the infringement to an end. Should the State fail to comply with the reasoned opinion, the Authority may **bring the matter before the EFTA Court**, whose judgment is binding on the State concerned.

In 2005, the Authority brought eight cases before the EFTA Court, compared to one case in 2004.<sup>1</sup>

## Competition

The single market objectives of the EEA Agreement are also upheld through application of the EEA competition rules. The work of the Authority in the field of competition mainly concerns the direct application of the EEA Agreement to individual economic operators. The substantive competition rules of the EEA Agreement are virtually the same as those of the EC Treaty. The competition provisions prohibit, among other things, restrictive practices between businesses and abuses of dominant positions.

The Authority can initiate proceedings against market players. This may result in a decision imposing fines for anticompetitive behaviour. In practice, most cases are resolved informally, with competition concerns identified by the Authority often remedied without the need for formal proceedings, representing an efficient use of resources.

The EC merger control rules apply to the entire European Economic Area through the application of the EEA Agreement. The Authority provides comments and information on mergers handled by the European Commission in cases where EFTA markets are particularly affected.

The Authority may take action in cases of anticompetitive behaviour by public undertakings or undertakings with special or exclusive rights granted by the EFTA States. In such cases, action may be taken not only directly against the undertakings, but also against the State if it has taken measures leading to the anticompetitive behaviour.

## State aid

With regard to state aid, the EEA Agreement and the Surveillance and Court Agreement contain provisions, which are drafted to reflect as closely as possible the corresponding provisions in the European Community. As in the Community, the main state aid rule in the EEA Agreement is that aid which distorts or threatens to distort competition and affects trade between the Contracting Parties is prohibited. There are, however, several possibilities for exemption.

New state aid measures must be notified to the Authority prior to implementation. They must not be put into effect before the Authority has decided upon the case. The Authority assesses whether a measure constitutes state aid and, if it does, examines whether it is eligible for exemption. The Authority can, after a preliminary examination, decide that a measure does not contain aid, decide not to raise objections to the measure, or decide to open a formal investigation procedure.

A final decision on a state aid measure can be positive (approving the aid), negative (prohibiting the aid), or conditional (approving the aid subject to conditions). If the Authority concludes that aid has been granted without the Authority's approval, and that the aid is incompatible with the EEA Agreement, the Authority will, as a rule, order the EFTA State to reclaim the aid from the recipient.

Apart from deciding on all national plans to grant or alter aid, the Authority is also obliged to keep all systems of existing aid in the EFTA States under constant review. It can, thus, also open a case either on its own initiative or after having received a complaint.

1. Five of the cases concerned non-transposition by Liechtenstein of the electronic communications package (page 24). One case related to the Finnmark supplement (page 20) and another to the Norwegian gaming machines monopoly (page 22). The final case related to the failure by Iceland to recover unlawful state aid (page 50).



# Organisation

## College

The EFTA Surveillance Authority is headed by three College Members (the College). The Members are appointed by common accord of the Governments of the EFTA States for a renewable period of four years. A President is appointed from among the Members, also by common accord of the Governments. The Members are completely independent in the performance of their duties. They must not seek or take instructions from any Government or other body, and must refrain from any action incompatible with their duties. In the course of 2005, the entire College was replaced. The Authority's President, Mr Hannes Hafstein, sadly passed away in August 2005. Mr Bernd Hammermann ended his tenure in June 2005, after ten years with the Authority, while Mr Einar M. Bull finished his term at the end of the year.

During 2005, the composition of the College was:

- Hannes Hafstein, *President* ( + 07.08.05)
- Einar M. Bull, *College Member* (01.01.05 – 06.09.05) and *President* (07.09.05 – 31.12.05)
- Bernd Hammermann, *College Member* (left office on 30.06.05)
- Kurt Jaeger, *College Member* (took office on 01.07.05)
- Kristján Andri Stefánsson, *College Member* (took office on 01.11.05)

On 14 June 2005 Bjørn T. Grydeland was appointed President of the Authority with effect from 1 January 2006. Hence, from 2006 the composition of the College is:

- Bjørn T. Grydeland, *President*
- Kurt Jaeger, *College Member*
- Kristján Andri Stefánsson, *College Member*

## Directorates

The Authority's work is organised through four departments: the Internal Market Affairs Directorate, the Competition & State Aid Directorate, the Legal & Executive Affairs Department and the Administration Department. The distribution of functions between the Departments during 2005 is outlined on the Authority's website.<sup>1</sup> The Authority's organisation chart is found at [page 13](#).

## Budget

The activities and operating expenses of the Authority are financed by contributions from Liechtenstein, Iceland and Norway. The three States contribute 2%, 9% and 89%, respectively, to the Authority's net budget. The Authority's budget for 2005 amounted to approximately EUR 10 million.

## Personnel

In 2005, the Authority had a staff of 55 people, representing 15 different nationalities. A majority (58%) of the staff members comes from the EFTA States of which staff of Norwegian nationality constitutes the major part (44%). The Authority finds it valuable to also recruit from non-EFTA States as the diversity of cultures, skills and competencies has proven beneficial to the Authority's work. In addition to its core staff, the Authority also recruits a number of temporary officers, national experts and trainees for short time periods. These constitute an important supplement

1. [www.eftasurv.int/about/dbaFile3778.html](http://www.eftasurv.int/about/dbaFile3778.html)



### ADMINISTRATION

*From left to right*  
 Claudia Candeago  
 Jurg Malm Jacobsen  
 Director Thomas Langeland  
 Kåre Antonsen  
 Torbjørn Strand Rødvik  
 Anne Valkvae

*Not present*  
 Anne Günther  
 Robin Parren  
 Battista Vailati

to the regular staff. In 2005, the Authority employed two temporary officers, eight national experts and four trainees.

The Authority follows an equal opportunity policy, the main purpose of which is to develop and maintain a balanced professional working environment. Gender equality is recognised as being a basic principle of democracy and respect for the individual. To encourage gender equality among Authority staff, it is the Authority's policy to increase awareness of the importance of an equal opportunity policy within the Authority, in particular, when recruiting new staff members and addressing challenges arising from the need to reconcile family and professional lives. Of the total number of core staff, the gender distribution is 45% women and 55% men.

The Authority enjoys a low rate of sick leave. In 2005, the rate was 1.88%.

The general personnel situation of the Authority remains difficult in terms of number of positions. The primary workload remains high and new tasks are regularly added

to the Authority's field of responsibilities, often without an adequate increase of necessary resources. Consequently, the challenges faced by the organisation steadily increase.

Staff turnover in 2005 was moderate with three staff members leaving the organisation and four new staff members being recruited. However, staff turnover remains a challenge due to the Authority's employment practice of awarding employment contracts of three years, renewable once. Historically, the average time of staff employment is less than four years. Despite this turnover rate, the Authority enjoys a high level of staff competence and efficiency.

In order to compensate for limited human resources, the Authority endeavours to give its staff the possibility to develop via training, run an efficient organisation, and utilise modern information management systems. During 2005, the Authority continued the development of its information management system with particular focus and priority on electronic exchange of information with the EFTA States, including eCOM notifications, state aid notifications and general notifications.

## Information policy – openness and transparency

**The Authority's information policy is based on the principles of openness and transparency. Within the limits imposed by provisions on professional secrecy and the protection of legitimate public and private interests, the Authority aims to inform the public and interested parties as widely as possible about its activities.**

In 2005, the EFTA Surveillance Authority maintained a high focus on informing the public of its activities and on the implementation and application of the EEA Agreement. The objective is to stimulate public interest in the EEA Agreement, to improve the awareness and understanding of the function and the work of the Authority and, thus, promote the proper functioning of the Agreement.

As part of its information activities, the Authority:

- publishes press releases, providing news mainly on the decisions taken by the Authority (in 2005, 46 press releases were issued);
- publishes its Annual Report;
- issues twice yearly Internal Market Scoreboards in parallel with the Commission's Scoreboards, providing information

on the performance of the EFTA States with regard to the transposition of EEA directives into national legislation;

- maintains a website – [www.eftasurv.int](http://www.eftasurv.int) – with, *inter alia*:
  - press releases and other news items;
  - general information about the Authority;
  - notifications, decisions, reports; and
  - information about the various fields of application of the EEA Agreement; and
- informs visitors' groups on its activities and the EEA Agreement (in 2005, on average 4 to 5 groups per month).

However, in order to safeguard public and private interests, which impose limits as to what information or documents may be disclosed, the Authority is bound to keep confidential all information covered by rules on professional secrecy contained in the EEA Agreement or the Surveillance and Court Agreement. Furthermore, restrictions apply, *inter alia*, to documents originating outside the Authority and documents and information relating to the Authority's internal deliberations. The Authority's Information Guidelines are available on the website.<sup>1</sup>

1. [www.eftasurv.int/information/dbaFile449.html](http://www.eftasurv.int/information/dbaFile449.html)

# Organisation chart

1 January 2006

