

# State aid

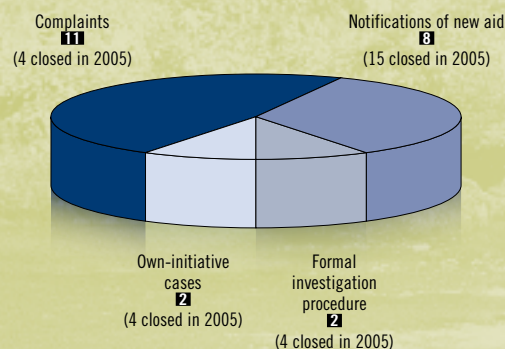
*One of the roles of the EFTA Surveillance Authority is to verify whether state aid measures envisaged or taken by the EFTA States are in compliance with the EEA Agreement. This role is similar to the role that the European Commission plays in relation to the EU Member States.*

## Continued high workload in 2005

In 2005, 23 new cases were opened and 31 cases were closed. However, of the 31 cases closed, eight were very old own-initiative cases which the Authority decided to close without further procedure. Of the 23 new cases opened, eight were notifications of new aid, 11 were complaints, two were own-initiative cases and two were opening of the formal investigation procedure. Of the 31 cases closed, 15 were notifications of new aid, four were complaints, nine were own-initiative cases and three were closures of the formal investigation procedure. These figures do not include the adoption of new State Aid Guidelines. 46 cases were pending at the end of the year. An increasing number of the pending cases are complaints (34 by the end of 2005). As the Authority is under an obligation to deal with notifications within two months of receipt of a complete notification, such cases are given priority. Hence, several old complaints remain pending. Copies of the College Decisions described below (as well as other decisions) can be found on the Authority's website.<sup>2</sup>

Figure

State aid new cases 2005 by type



2. EFTA Surveillance Authority State Aid Register:  
[www.eftasury.int/fieldsOfWork/fieldStateAid/stateAidRegistry](http://www.eftasury.int/fieldsOfWork/fieldStateAid/stateAidRegistry)

## State aid provisions

Article 61(1) EEA lays down the general principle that state aid is prohibited, save as otherwise provided in the EEA Agreement. Public support measures are caught by the general prohibition of state aid only if the conditions laid down in Article 61(1) EEA are fulfilled. The conditions are that:

- the support must be granted by the State or through State resources in any form whatsoever;
- it must favour certain undertakings or the production of certain goods (the so-called “selectivity” criterion);
- it must distort or threaten to distort competition; and
- it must affect trade between the Contracting Parties to the Agreement.

The EEA Agreement contains several possibilities for exemption from the general prohibition on state aid, in particular in Article 61(2) and (3). The provision which plays the greatest role in the Authority’s state aid practice is Article 61 (3) (c) of the EEA Agreement. This Article concerns “aid to facilitate the development of certain economic activities or of certain economic areas”. This Article covers not only sectoral and regional aid measures, but also measures which follow horizontal objectives (*i.e.*, research and development, environment, etc.). The EEA Agreement contains further exemption possibilities concerning compensation for the discharge of a public service obligation where these concern undertakings entrusted with operation of the services of general economic interest referred to in Article 59 (2) EEA and, specifically in the field of transport, pursuant to Article 49 EEA.

The rules on state aid procedures are laid down in Protocol 3 to the Surveillance and Court Agreement. EFTA States are under an obligation to notify any plans to grant new aid to the Authority. The EFTA State concerned must not put the aid into effect until the Authority has approved it. Incompatible aid that has been paid out in breach of the notification obligation shall be recovered from the aid beneficiary.

According to Article 62 EEA, the task of ensuring compliance with Article 61 EEA is divided between the Authority and the European Commission. The Authority is competent when aid is granted by an EFTA State. The Commission is competent if aid is granted by an

EU Member State. In fulfilling its tasks, the Authority is entrusted with powers and functions similar to those of the Commission.

The relevant provisions of the EEA Agreement and the Surveillance and Court Agreement governing state aid can be found in the state aid section of the Authority’s website.<sup>1</sup>

### State Aid Guidelines

In January 1994, the Authority adopted a consolidated document on Procedural and Substantive Rules in the field of state aid, also called the State Aid Guidelines.<sup>2</sup> The purpose of these Guidelines is to provide national administrations and enterprises with information on how the Authority interprets and applies the provisions of the EEA Agreement governing state aid. They also ensure uniform implementation, application and interpretation of Articles 61 and 62 EEA.

The Guidelines have since been amended or supplemented 54 times to accord with the framework and guidelines issued by the European Commission in the field of state aid. The Guidelines contain, *inter alia*, rules concerning horizontal aid (*e.g.* aid for research and development and aid for environmental protection), rules dealing with certain forms of aid (state guarantees), rules on aid to public enterprises, rules on sectoral aid and rules on regional aid.

In 2005, the Guidelines were amended five times. The Authority introduced a new Chapter 18C to its Guidelines, which deals with state aid in the form of public service compensation, following the adoption of the Commission’s framework. A new Chapter 30A regarding the financing of airports and start-up aid to airlines departing from regional airports was also introduced into the Guidelines. Following a prolongation of the Commission’s Communication on short-term export-credit insurance, the corresponding Chapter 17A of the Guidelines was first re-enacted and later prolonged until 30 June 2006 at the latest. The Authority further prolonged Chapter 14 of the State Aid Guidelines on aid for research and development, until 31 December 2006.

1. [www.eftasurv.int/fieldsOfWork/fieldStateAid](http://www.eftasurv.int/fieldsOfWork/fieldStateAid)  
2. The State Aid Guidelines are accessible on the Authority’s website: [www.eftasurv.int/fieldsOfWork/fieldStateAid/guidelines/](http://www.eftasurv.int/fieldsOfWork/fieldStateAid/guidelines/)

## Recovery of aid to Icelandic Trading Companies before the EFTA Court

**The EFTA Court declared that Iceland failed to abolish and recover aid from international trading companies.**

The Authority brought Iceland before the EFTA Court for not complying with a Decision by the Authority in relation to a tax scheme for International Trading Companies (ITCs) in Iceland. The Court concurred that Iceland was in breach of its obligations under the Authority's Decision.

In February 2004, the Authority adopted a negative Decision regarding a tax scheme in favour of International Trading Companies existing in Iceland since March 1999. The Authority requested the Icelandic authorities to terminate the tax scheme and to recover any aid granted under this scheme which constituted incompatible state aid.

One year after its adoption, the Icelandic authorities had not complied with the Decision. No legislative steps had

been taken to eliminate the tax scheme nor had any aid amount paid under the said scheme been recovered. For this reason, in February 2005, the Authority brought an action to the EFTA Court for a declaration that Iceland had failed to fulfil its obligations under the Authority's Decision.

In November 2005, the EFTA Court declared that Iceland had failed to fulfil its obligations under the state aid Decision.

Following this judgment, the Authority has requested the Icelandic authorities to immediately terminate the ITC scheme and to inform it of the legislative measures adopted to this effect. Furthermore, the Icelandic authorities have been requested to effectively recover any outstanding amounts of unlawfully paid state aid and inform the Authority accordingly.

### LEGAL & EXECUTIVE AFFAIRS DIRECTORATE

*From left to right*

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## Sale of rental apartments in Oslo did not involve state aid

**In March 2005, the Authority decided that the conditions of the sale of 1,744 rental apartments from the Municipality of Oslo to Fredensborg Boligutleie ANS did not involve state aid.**

The sale of the apartments was concluded in May 2001 and the sales price was NOK 715 million (approximately EUR 89 million). Chapter 18B of the Authority's State Aid Guidelines describes two alternative procedures for selling public land and buildings. The Guidelines presume that if one of these two methods is followed, a sale does not contain state aid. After a preliminary examination, the Authority had doubts whether the Municipality of Oslo followed a sales procedure that would have automatically excluded the existence of state aid. In addition, several largely diverging value assessments were prepared by Norwegian authorities as well as private interests. These factors led the Authority to open the formal investigation procedure in 2003.

Having assessed in detail how the sales process evolved, having looked into the various appraisals made and also having commissioned a new separate study, the Authority concluded that the sales procedure did not exclude involvement of



state aid. However, the Authority could not establish that the sales price was below market value and thus involved state aid within the meaning of Article 61(1) EEA.

## Norwegian seed capital schemes approved

**In July 2005, the Authority approved two new Norwegian seed capital schemes, one nationwide and one targeted at specific regional areas.**

The primary objectives of the nationwide scheme are to increase the supply of seed capital and to stimulate commercialisation of research-based projects from universities. The State will finance up to 50% of the total capital of the four funds in the form of subordinated loans carrying an interest of 12 month NIBOR plus 2 percentage points. NOK 667 million (some EUR 81 million) has been granted for this purpose. In addition, the State has granted NOK 167 million (some EUR 20 million) to cover potential losses. Equity (minimum 50%) is to be provided by private investors.

The primary objective of the regional scheme is to increase the supply of seed capital and to promote the development

of specific regions. At the outset, the regional scheme will consist of one fund, but three more may be added at a later stage. The State will finance up to 70% of the funds' total capital in the form of subordinated loans carrying an interest of 12 month NIBOR plus 0.5 percentage points and partly cover administrative costs. NOK 700 million (some EUR 85 million) has been granted for the loans and NOK 50 million (some EUR 6.1 million) for administrative costs. In addition, the State has granted NOK 175 million (some EUR 21 million) to cover potential losses on the subordinated loans. Equity (minimum 30%) is to be provided by private investors.

In November 2005, the Norwegian authorities notified an amendment to the two schemes. The amendments concern the conditions for follow-up investments. The Authority has requested additional information, and a decision will be taken in 2006.

## Entra's exemption from excise duties unlawful state aid

**In December 2005, the Authority decided that the exemption from excise duties provided for in the establishment of the Norwegian real estate company Entra Eiendom AS constitutes unlawful state aid.**

During the period 1999-2000, the Norwegian authorities re-organised the Directorate of Public Construction and Property (*Statsbygg*). Part of the property stock administered by Statsbygg was transferred to the newly established company Entra. While Statsbygg continued to own and manage various special purpose buildings, Entra took over properties and buildings which corresponded more to premises operated in the commercial market. Entra was set up as a limited liability company, 100% owned by the Norwegian State.

According to Norwegian law, the registration of transfer of ownership of real estate creates an obligation to pay document duties and registration fees. The document duty is 2.5% of the sales value of the property. In addition, registration of transfer of title in the real estate registry was, at the time, subject to a registration fee of NOK 1,480 per document registered.

When Entra was established, the Norwegian Parliament passed a special Act whereby Entra was relieved of paying the charges. Technically this was done by a provision in the

said Act stating that re-registration in the real estate registry was to be done as a change of name of the property holder. A change of name does not trigger an obligation to pay excise duties. According to information submitted by the Norwegian authorities, payable excise duties for the transfer of titles to the real estate received by Entra would have amounted to NOK 80.6 million (some EUR 10 million).

In June 2004, the Authority decided to open the formal investigation procedure, as the Authority had doubts as to the compatibility of the exemptions with the functioning of the EEA Agreement.

In its final decision, the Authority concluded that the exemption for Entra from paying the excise duties amounted to unlawful state aid which was incompatible with the functioning of the EEA Agreement, and that the aid, with accrued interest, must be recovered from Entra.



## The EFTA Court rules on exemptions from environmental taxes in Norway

### Exemptions from Norwegian environmental taxes was unlawful state aid

In July 2005, the EFTA Court upheld the Authority's decision, taken in 2004, concerning certain environmental taxes in Norway.<sup>1</sup> This Decision concerned, in particular, the Norwegian electricity tax legislation for the budget years 2001, 2002 and 2003. The legislation provided for an exemption for the mining and manufacturing sectors from the general electricity tax. In its Decision, the Authority took the view that this tax relief constituted state aid incompatible with the EEA Agreement, and ordered Norway to recover a "significant proportion" of the tax benefit received by the companies concerned. Norway, the Association of the Norwegian Manufacturing Industry and a number of private operators appealed the Decision before the EFTA Court.

The EFTA Court confirmed that relief of expenses in the form of tax exemptions constituted State aid, which, in the case at hand, fulfilled the condition of selectivity in Article 61(1) EEA by benefiting only certain economic sectors. It concurred with the view of the Authority that this selective advantage was not justified by the inherent logic of the Norwegian tax scheme whose overall objective of environment protection was not fulfilled by exempting two significant energy consuming sectors. Moreover, other sectors such as services or construction did not get the same advantages. The EFTA Court further held that the aid granted was liable to distort competition and affected trade between the Contracting Parties to the EEA Agreement in the meaning of Article 61(1) EEA.

As to the recovery, the essential question was whether there was a legal basis for such an order. In its Decision, the Authority had referred to its Guidelines "on the application of the EEA State aid provisions to aid for environmental protection" issued in May 2001. Based on these Guidelines, it had proposed to Norway appropriate measures to bring its existing environmental aid schemes into line with these new Guidelines before 1 January 2002. The Norwegian Government signified its unconditional agreement to this proposal. Norway did however not bring its electricity tax legislation in line with the new Guidelines within the agreed time-limit. The Authority was therefore of the opinion that, in such a situation, a recovery order should be based on this agreement. The recovery order was disputed by the applicants who pointed out, *inter alia*, that the agreement did not specify which legislation was affected, and maintained that the Guidelines were too general and vague. Therefore, the agreement could not entail such severe consequences as recovery.



The EFTA Court held that the issuance of general Guidelines constitutes one element of the obligation of regular, periodic co-operation between the Authority and the EFTA States in the field of State aid. While the Authority does not necessarily have to carry out an individual assessment of specific aid schemes, it is under an obligation to co-operate sincerely with the national administration. In the case at hand there existed only two other relevant aid schemes in Norway, and there had been extensive exchanges of view between the Authority and Norwegian authorities before and after drafting the Guidelines. In these circumstances, the agreement entered into between Norway and the Authority was held to constitute a legal basis for a recovery order in case of non-compliance.

1. See [Annual Report 2004, page 56](#) (PDF)

## Electricity tax exemptions for energy-intensive companies in Norway authorised

**In June 2005, the Authority authorised a Norwegian aid scheme, by which certain energy-intensive industries are exempted from electricity tax, provided that they participate in a programme for energy efficiency.**

In November 2004, the Norwegian authorities notified the above tax exemption to the Authority. According to Norwegian taxation rules, companies in the Norwegian manufacturing and mining industry as a rule have to pay a reduced electricity tax of NOK 0.0045/kWh, which corresponds to the minimum tax level provided for by the *Energy Taxation Directive 2003/96/EC* in the European Community. In turn, for their participation in an energy efficiency programme which should bring about the same positive environmental effects as paying a tax, the notified scheme now provides for a total exemption (zero rate) from this tax for certain energy-intensive undertakings. The companies must, in order to profit from the scheme, enter into agreements with the Norwegian Water Resources and Energy Directorate (*NVE*). The tax exemption constitutes state aid within the meaning of the EEA state aid provisions.

In June 2005, the Authority declared the aid scheme compatible with state aid rules, based on the Authority's

State Aid Guidelines on environmental aid. The Authority was satisfied that the scheme and the agreements thereunder contain several conditions which should ensure that certain energy-efficiency goals, equal to what the payment of the tax would have achieved, are met. The companies concerned must, for instance, implement an energy management system, which is certified by an accredited certification body and which establishes individual energy targets and concrete action plans for each company. The companies are further called upon to assess and describe their energy use and identify more energy-efficient measures which can be implemented in the manufacturing process. The companies must report to the *NVE* after two years and at the end of a five year period. If a company does not fulfil its obligations under the agreement, the company has to pay the energy tax retroactively, however, with default interest. The Norwegian authorities estimate that the energy-efficiency programme leads to a reduction in energy consumption of 2%, which is higher than what would have been obtained by paying the tax.

On this background and given the strict supervision and sanctioning system in case a company does not fulfil its commitments, the Authority authorised the scheme, which has a duration of 10 years.

## Gassnova aid scheme compatible with EEA rules

**The Authority accepted a Norwegian aid scheme aimed at strengthening research and development concerning gas-fired power stations.**

In November 2005, the Authority concluded that an aid scheme, notified in June the same year by the Norwegian authorities and managed by a newly created administrative body, Gassnova, complied with the Authority's Guidelines on state aid for research and development. The Authority therefore decided not to raise objections to the aid scheme.

The principal objective of the aid scheme was to strengthen the intensity of research and development concerning gas-fired power stations with carbon dioxide capture and storage, in order to reduce CO<sub>2</sub> emissions from such power-stations. Carbon free gas-fired power stations are facilities in which carbon dioxide is separated and captured before, during or after the electricity generating process. The scheme should promote the development of more cost-efficient solutions for carbon dioxide separation.

## The Norwegian Energy Fund under scrutiny



**The Authority opened the formal investigation of the Norwegian funding of renewable energy and energy-saving projects via the Norwegian Energy Fund.**

In January 2002, Norway established the Norwegian Energy Fund, a finance mechanism for the support of, *inter alia*, renewable energy projects, energy saving measures and information and education in the field of energy efficiency. The Fund is managed by Enova, an administrative body owned by the Norwegian State and funded by state budgetary allocations and a levy on the electricity distribution tariffs paid by the end user. The aim of the Energy Fund is to achieve more energy efficiency, reduce energy consumption and reach Norway's goal to achieve, by 2010, a minimum of 12 TWh of energy saved or produced in a more environmentally friendly manner. To this end, Enova grants lump sum payments to project owners, after having established that state support is necessary to realise the project.

The Energy Fund scheme was notified to the Authority in June 2003. In May 2005, the Authority opened the formal investigation procedure. The Authority considers

that the support granted by the Fund gives the recipients an advantage over their competitors with the EEA, thereby constituting state aid within the meaning of the state aid provisions. The Authority has doubts whether the system as notified can be declared to be compatible with the state aid provisions and, in particular, with the Authority's State Aid Guidelines on aid for environmental protection. The Authority in particular questions whether the conditions of the scheme are such that the support for renewable energy production and energy saving measures result in any overcompensation. According to the Authority's State Aid Guidelines, the support must be limited to investment costs, with the exception of biomass for which operating costs might also be financed.

The Norwegian authorities offered to amend the system to bring the scheme in line with the State Aid Guidelines. In the formal investigation procedure the Authority will have to investigate further whether these changes are sufficient to dispel the Authority's doubts.

## Aid to the Norðurál hf. aluminium smelter in Iceland accepted

**The Authority adopted two Decisions in 2005 concerning state aid in favour of the aluminium smelter Norðurál hf.**

The first Decision was adopted in June 2005. In this Decision, the Authority proposed appropriate measures to the Icelandic authorities in respect of state aid granted to Norðurál hf. on the basis of a number of tax and fee concessions which had previously been approved by the Authority in 1998. The Authority proposed that the aid resulting from recurrent tax and fee provisions should be subject to a ceiling expressed as a percentage of total investment costs. The ceiling was fixed according to the Authority's guidelines on regional aid as the smelter is located in an eligible region. In setting the ceiling, the Authority took into account the amount of investment costs incurred in 1998 and 2000–2001 as well as those relating to an expansion which is still under construction and to be terminated in 2008.

The Authority also requested the abolishment of a provision for the granting of aid to Norðurál hf. and its shareholders by means of an exemption from dividends withholding tax. The Authority found that the provision involved operating

aid in favour of the shareholders, and could therefore not qualify as investment aid.

The appropriate measures were accepted by the Icelandic authorities on 15 July 2005.

The second Decision was adopted by the Authority on 20 July. It addresses a number of amendments to the aid scheme, which had been notified by the Icelandic authorities, as well as a number of non-notified aid measures, all forming part of the same scheme. The Decision provides that the grant of aid resulting from the amendments to the scheme and the non-notified aid measures must be subject to the ceiling fixed in the appropriate measures Decision of June 2005. The Authority moreover decided that the fact that the state owned power utilities built new facilities for purposes of supplying the expanded Norðurál hf. smelter with power does not result in the grant of state aid to the smelter. This finding followed an examination involving the application of the private market investor principle in the context of assessing the profitability of the new projects.

On this basis the Authority took a favourable view and adopted a Decision raising no objections.

## The FARICE submarine cable project

**The Authority will look more closely into the support measures granted by the Icelandic State in favour of the Farice submarine cable project. While the measures may be classified as state aid, the ongoing investigation will establish whether the measures may be considered compatible with the EEA Agreement.**

On 26 May 2005 the Authority opened the formal investigation procedure regarding support measures which the Icelandic State granted in favour of the Farice project. The Farice project concerns the construction and management of a submarine cable which connects Iceland and the Faeroe Islands with Scotland. Since 1994, Iceland has been internationally connected through the undersea cable CANTAT-3. However, given the technical limitations of that system and the fact that Iceland has no other international fibre network link, there was a perceived need to find alternative solutions to ensure a reliable connectivity for Iceland.

The Farice project, which results from an initiative by the former state owned Icelandic telecom operator Landsími Íslands hf. (Síminn) and the incumbent telecom operator in the Faeroe Islands, Føroya Tele, should provide such an alternative. However, it already became visible at an early stage that without the financial participation of the Icelandic State, the project might not succeed. The Icelandic State, which became a shareholder in Farice hf., raised its share capital in the company at a later stage and also assumed a state guarantee for a loan given to Farice hf.

These two measures are the subject of the Authority's formal investigation procedure. The measures may constitute state aid, as they seem to grant an advantage to Farice hf. over its competitors within the EEA. Regarding the share capital increase, the Authority has taken the preliminary view that this increase would not have been undertaken in similar conditions by a private market investor. A state guarantee may constitute state aid unless a premium is paid to offset

## Norwegian system for differentiated social security taxes

**On 22 November, the EFTA Surveillance Authority adopted a negative Decision declaring the Norwegian proposal for regionally differentiated rates of social security contributions incompatible with the state aid rules in the EEA Agreement.**

In April 2004, the Norwegian authorities notified the Authority of their intention to apply reduced rates of contributions to the national social insurance scheme paid by undertakings active in certain sectors and located in certain geographical areas (*"differensiert arbeidsgiveravgift"*). With the Decision adopted in November, the Authority closed the formal investigation started in October 2004 and concluded that the proposal could not be considered compatible with the state aid rules of the EEA Agreement.

For a measure to be state aid in the meaning of the EEA Agreement, one condition is that trade between EEA States is affected. The Norwegian authorities argued that the sectors covered by the notification were not exposed to intra-EEA trade and that therefore the notified scheme would not involve state

aid within the meaning of Article 61(1) EEA. The Authority did not agree with this approach. The notified proposal covered around 200 specified economic sectors like banking, telecommunications and construction. Many of the notified sectors were clearly open to trade and competition within the EEA. Therefore, the Authority considered that the notified scheme was liable to affect trade between EEA States.

On the basis of a ruling by the EFTA Court and on the current Guidelines for Regional Aid, and in line with previous decisions, the Authority found the scheme to be incompatible with the EEA Agreement.

This Decision affected neither the Authority's Decision from 2003, which approved a gradual phasing out of the geographical differentiation until 1 January 2007, nor the EFTA State's Decision that continuation of a zero rate contribution in the very northernmost part of Norway (Northern Troms and Finnmark) was compatible with the EEA Agreement due to the exceptional circumstances in that area.



the advantage of the guarantee. The Authority is currently not convinced that an adequate premium has been paid for Farice's guarantee to be excluded.

If the Authority concludes that state aid is involved, it will have to assess whether the aid is compatible with the EEA Agreement. In that context, the Authority will take

into consideration that the support might be necessary for guaranteeing a reliable connection for Iceland. It will, however, also be necessary to ascertain that the competition rules of the EEA Agreement are not infringed. Here the Authority will have to assess whether the project ensures that the access to all connectivity to Iceland is given on an open, transparent and non-discriminatory basis.

## State guarantee in favour of Liechtensteinische Landesbank altered to comply with EEA state aid provisions



**Due to an intervention of the Authority, the Principality of Liechtenstein altered a state guarantee which it grants to Liechtensteinische Landesbank (“LLB”) and now requires LLB to pay an adequate premium to the State.**

On 29 July 2005 the Authority closed its investigation of the state guarantee in favour of LLB. LLB has enjoyed a State guarantee on savings deposits and medium term notes since 1993. The guarantee was unlimited in time and in amount and LLB did not pay any premium for it. While LLB was not in financial difficulties and would, in principle, be able to get a loan on market conditions from the financial market, the Authority considered the fact that the guarantee was unlimited and not being remunerated to give LLB an advantage over its competitors, which do not profit from a State guarantee. The State guarantee could not be justified under the EEA state aid provisions, in particular not according to the criteria established by the Authority’s State aid Guidelines for state aid in the form of State guarantees.

The Liechtenstein authorities suggested altering the State guarantee and limiting it to a period of 15 years. The guarantee will further be subject to a premium for the guaranteed savings deposits and medium term notes. The Authority needed to ascertain that this premium would be paid on market terms. An expert study in financial mathematics assessed – for a guarantee similar to the state guarantee under consideration – how much an insurer would charge in annual premiums. This rate so established will be paid by LLB, as a percentage of the annually established guaranteed amount of saving deposits and medium term notes, each year for the previous year. Each year, the Liechtenstein authorities will report on the calculation of the premium and its payment to the Authority.

Given these alterations, the Authority was satisfied that the guarantee would no longer result in an advantage for LLB.

## State aid in the fisheries sector

**In a Decision adopted in July 2005, the Authority considers that it is not within its competence to assess state aid to the fisheries sector on the basis of the EEA Agreement.**

In September 2003, the Authority received a complaint from various Norwegian companies which requested it to investigate the use of public funds by local authorities to companies within the fisheries sector. The complainants alleged that aid was granted by municipalities and counties, in particular, by buying bankrupt undertakings and leasing them to interested companies on terms more favourable than those available in the market. According to the complainants, the municipalities granted operating aid to these companies contrary to the state aid rules of the EEA Agreement.

The Authority closed the case without further action. The provisions of the EEA Agreement and of the Surveillance and Court Agreement, which define the scope of the Authority's competences in the field of state aid, do not confer upon it the powers to assess state aid to the fisheries sector. Protocol 9 and the appertaining Joint Declaration of the EEA Agreement have introduced a separate surveillance and dispute settlement system regarding state aid to the fisheries sector. Under these provisions, it is up to the Contracting Parties to the EEA Agreement to deal with any possible state aid measures to this sector. The Authority has no role to play in this context, and therefore decided to close the case.

