

## State Aid Scoreboard – EEA/EFTA States

Spring 2008

Presented by the EFTA Surveillance Authority

## INTRODUCTION

This is the second time that the EFTA Surveillance Authority (the “Authority”) publishes a scoreboard on the volume of state aid granted in Iceland, Liechtenstein and Norway which are Contracting Parties to the EEA Agreement (hereinafter referred to as the “EFTA States”). The first edition was published in the spring of 2007 and reflected data for the years 2004 and 2005. The present scoreboard covers state aid granted in 2006.

The scoreboard is based on data submitted by the EFTA States according to their obligations under the EEA Agreement and the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. The methods for gathering data from the EFTA States and the manner of processing them are relatively new. They were applied for the first time for purposes of preparing the scoreboard of 2007 in the context of which the entire reporting system was revamped. With some modifications, mainly of a technical nature, the new reporting and administration method will be continued to be used in the future.

As may be recalled, the scoreboard of spring 2007 referred to the policy objectives established by the launch by the European Commission of the “State Aid Action Plan” with the general aim of “less and better targeted State aid”. In a nutshell, the State Aid Action Plan advocates that while overall state aid is to be reduced, aid towards horizontal objectives (such as research and development, environment and risk capital) may be increased. While the State aid Action plan is, of course, principally a strategy set for the European Union it should be recalled that the Authority and the EEA Joint Committee adopt legislative measures for implementing the State aid rules which are identical to that of the European Commission. Carrying on the exercise initiated with the first scoreboard of 2007 the present scoreboard therefore also presents data on the volume of aid granted in the light of the objectives of the State Aid Action Plan.

The present scoreboard has – just like the scoreboard published in 2007 - been prepared and issued in close contact with the European Commission. This implies that figures have been calculated on the basis of premises similar to those applied for purposes of the state aid scoreboard issued by European Commission. This facilitates a comparison between the two scoreboards and enables readers to obtain an overview of aid granted EEA-wide. In addition, the cooperation with the European Commission has this year made it possible to include a comparison between the volumes of state aid granted by a selected EFTA State (Norway) with aid granted by certain EU Member States. The EU Member States selected for this comparison are relatively close to Norway with respect to GDP, population and geographic location.

The scoreboard prepared by the Authority differs, however, from that of the European Commission due to the more limited scope of the EEA Agreement compared to the EC Treaty. In this regard it is relevant to recall that the EEA Agreement provides for an extension of the internal market of the Community to the territories of the three EFTA States via the application of the rules on the four freedoms (on free movement of goods, persons, services and capital) and the common competition rules. However, rules on agricultural and fishing policies of the Community are not covered by the EEA Agreement. Therefore, aid to these sectors is not included in the scoreboard.

Aid for transport is covered by the scoreboard. According to the aid measures reported and reviewed for purposes of the scoreboard only Norway granted aid to the transport sector.<sup>1</sup>

Another important area concerns compensation for the provision of public service obligations. In its judgment in the *Altmark* case the European Court of Justice ruled that compensation to undertakings that perform public service obligations does not constitute state aid, provided certain conditions are fulfilled.<sup>2</sup> Hence, cases where compensation for public service obligations is given which fulfil the *Altmark* criteria are excluded from the scoreboard. However, other cases on aid for public service obligations are, in principle, covered by the scoreboard. For the years 2004, 2005, 2006 no aid was, however, reported as having been granted by the three EFTA States for purposes of public service obligations during the period subject to review.

The scoreboard covers existing aid granted under schemes or as ad hoc aid.<sup>3</sup> It does not cover funding granted in line with the rules for granting *de minimis* support as such funding does not constitute state aid in the meaning of Article 61(1) of the EEA Agreement. The scoreboard is divided into four main parts. Part One looks at the overall amount and type of state aid awarded by the EFTA States in 2006. Part Two provides an overview of legislative and policy developments within the area of state aid. Part Three provides an insight into the state of play of recovery of unlawful and incompatible state aid and an overview of pending cases in this regard. Finally, Part Four provides information on methodology and information sources.

The scoreboard provides an overview of state aid reported by the EFTA States for the year 2006. In the case of Norway previously reported figures for aid granted in 2004 and 2005 must be substantially revised. Therefore, comparisons which include data of Norway for those years are not made. Where relevant, comparisons have been made of the aid volumes granted by Iceland and Liechtenstein over 2004 and 2005. The Authority aims at incorporating revised figures for Norway in the next scoreboard and show comparisons reflecting developments in aid volumes granted over time for all three EFTA States.

The [scoreboard](#) is available online at the homepage of the Authority.

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<sup>1</sup> Although covered by the scope of the scoreboard, no aid was reported to be directed at the railways sector in 2006.

<sup>2</sup> Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747 was a reference for a preliminary ruling under Article 234 EC by a German national court (Bundesverwaltungsgericht) in the proceedings pending before that court. The case concerned the grant of licenses for scheduled bus transport services in the Landkreis of Stendal (Germany) and public support for operating those services.

<sup>3</sup> For a definition of “existing aid” see Section 4.3 of Part Four.

## 1 PART ONE: OVERALL STATE AID GRANTED IN 2006

This chapter provides an overview of all state aid granted in the EFTA States in 2006.<sup>4</sup> Comparisons have also been made between overall aid volumes granted in the EFTA States and overall aid awarded by the EU Member States for 2006. In the policy areas of research & development and environment more detailed comparisons have also been made on an individual basis between the aid volumes granted by Norway and those awarded by selected EU Member States.

### 1.1 State aid in absolute and relative terms

**Table 1(a): State aid awarded in the three EFTA States in 2006**

	<b>Million Euro</b>	<b>% of GDP</b>
<b>Iceland total</b>	24.10	<b>0.185</b>
Iceland, less transport	24.10	<b>0.185</b>
<b>Liechtenstein total</b>	0.84	<b>0.029</b>
Liechtenstein, less transport	0.84	<b>0.029</b>
<b>Norway total</b>	1145.68	<b>0.429</b>
Norway, less transport	984.66	<b>0.369</b>
<b>EFTA-3 total</b>	1170.62	<b>0.414</b>
EFTA-3, less transport	1009.60	<b>0.357</b>

Table 1(a) shows total state aid awarded by the three EFTA States in absolute figures and as a percentage of GDP for 2006.<sup>5</sup> The table shows that Norway grants substantially more aid in relation to GDP than the two other EFTA States. It also shows that in absolute terms an overwhelming part of the three EFTA States' aid is accounted for by Norway (98%). This means that overall EFTA figures are heavily influenced by Norway.

With respect to the situation in the two other EFTA States Table 1(a) shows that total aid in Iceland and Liechtenstein is rather modest relative to GDP. This is put further into perspective when comparing with aid granted by other EU Member States (Table 1(b)).

<sup>4</sup> The state aid volume for 2006 is based on data submitted by the EFTA States by November 2007.

<sup>5</sup> According to EUROSTAT and the EFTA Secretariat the GDP was in 2006 (in million Euro) for Norway: 266 923.4; Iceland: 13 009.9 and Liechtenstein: 2 886. In Iceland and Liechtenstein the total volume of state aid is the same irrespectively of whether transport is included since neither of them granted aid for this purpose.

**Table 1(b): State aid (less transport) in percent of GDP in the EFTA States and EU Member States in 2006<sup>6</sup>**

	<b>% of GDP</b>
Iceland	0.18
Liechtenstein	0.03
Norway	0.37
<b>EFTA-3</b>	<b>0.36</b>
Austria	0.60
Belgium	0.28
Cyprus	0.48
Czech Republic	0.51
Denmark	0.46
Estonia	0.08
Finland	0.35
France	0.41
Germany	0.69
Greece	0.15
Hungary	0.93
Ireland	0.28
Italy	0.26
Latvia	0.15
Lithuania	0.23
Luxembourg	0.13
Malta	1.77
Netherlands	0.24
Poland	0.45
Portugal	0.91
Slovakia	0.45
Slovenia	0.48
Spain	0.39
Sweden	0.94
United Kingdom	0.16
<b>EU-25</b>	<b>0.42</b>

Table 1(b) shows total aid (less transport) as a percentage of GDP in the EFTA states as well as in the EU Member States in 2006. While Table 1(b) shows that there are important differences when comparing EFTA States with individual EU Member States, Norway was approximately at the same level as the average of EU-25. Iceland and, in particular, Liechtenstein were among the countries granting the lowest level of aid in proportion to their GDP compared to individual EEA States.

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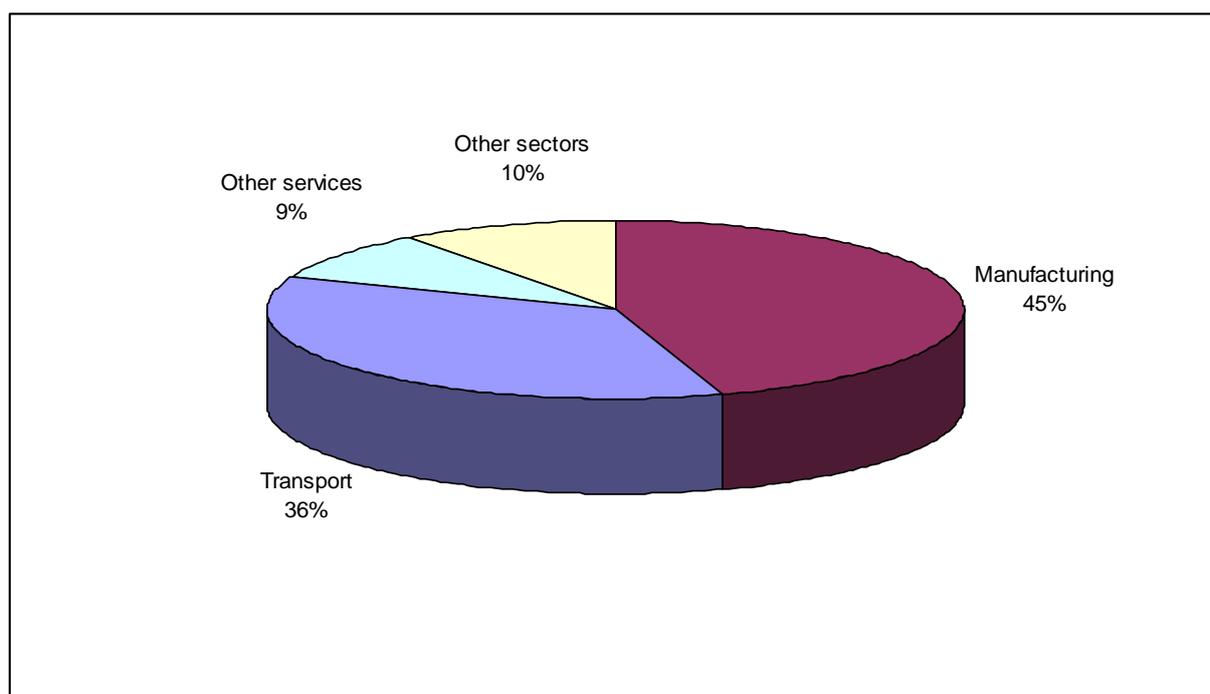
<sup>6</sup> Aid for agriculture and fisheries is not included in the data for the EU Member States, and as mentioned above not for the EFTA States.

## 1.2 Sectoral aid

State aid may be earmarked for one or several specific industrial sectors. If it is not also aimed at a so-called horizontal objective (such as research and development or small and medium-sized enterprises) it is referred to as pure sector-specific aid. Aid may also be “mixed” which means that the aid is aimed at specific sectors while at the same time being aimed at one or several horizontal objectives. Since in this section focus is on the sectoral aspect of mixed aid it is considered as sectoral aid. The following graph includes therefore both pure sector-specific aid and mixed aid.<sup>7</sup> The purpose is to provide an overview of the type of sectors which are favoured by the EFTA States.

Graph A shows aid earmarked for the manufacturing sector, transport sector, other services (than transport) and finally other sectors in the three EFTA States for 2006.<sup>8</sup> It shows that in 2006 aid for the manufacturing sector represented 45% of total sectoral aid while aid for transport represented 36%. Aid for other services represented 9% and the remaining group, other sectors, received 10% of overall sectoral aid in 2006.

**Graph A: Aid by sector as a percentage of total sectoral aid in EFTA-3 in 2006**



Graph A shows sectoral aid on an aggregate EFTA-3 basis. However, as referred to above, the aggregate level of aid in EFTA-3 is strongly influenced by the share of aid granted by Norway. Table 2 provides therefore an overview of sectoral aid on an individual EFTA State basis.

<sup>7</sup> This implies that aid for pure horizontal objectives (such as aid for small and medium-sized enterprises, environment, employment and training) for which a specific sector is not indicated is excluded. For the present purposes aid directed at the general economic development (e.g. regional aid) is considered as aid for a horizontal objective.

<sup>8</sup> Aid for “other sectors” includes aid for forestry, hunting, electricity, gas and water supplies as well as mining and natural gas extraction.

**Table 2: Sectoral aid granted by the individual EFTA States in 2006**

	Aid to the <b>manufacturing sector</b> as a percentage of total sectoral aid	Aid to <b>transport</b> as a percentage of total sectoral aid	Aid to <b>other services</b> as a percentage of total sectoral aid	Aid to <b>other sectors</b> as a percentage of total sectoral aid	<b>Total sectoral aid in million Euro</b>
<b>ICE</b>	3.10	0.00	96.90	0.00	<b>4.52</b>
<b>LIE</b>	0.00	0.00	100.00	0.00	<b>0.84</b>
<b>NOR</b>	45.85	36.29	7.47	10.39	<b>443.69</b>
<b>EFTA 3</b>	<b>45.33</b>	<b>35.86</b>	<b>8.55</b>	<b>10.26</b>	<b>449.06</b>

Table 2 shows that in 2006 Norway directed almost 50% of all sector aid to the manufacturing sector while aid to the transport sector represented about one third of total sectoral aid in Norway. By contrast, in the same year Iceland granted almost all its sectoral aid (i.e., about 97%) to the service sector (exclusive of transport). This represents a slight increase compared to the situation in Iceland for 2005 and 2004 when aid to the service sector represented between 81-86% of all sectoral aid. During all three years of 2004-2006 Liechtenstein granted all its sectoral aid to the service sector under the “Media Support Act”.

### 1.3 State aid to the transport sector

Norway is the only EFTA State having granted aid to the transport sector, most of which is aimed at maritime transport. In 2006 the amount granted in transport aid by Norway was about Euro 161 million. Based on the annual reports submitted by the EFTA States no aid has been directed to the railway or airline sector.

### 1.4 State aid for horizontal objectives

State aid granted under schemes for horizontal objectives, such as aid for the purposes of research and development, safeguarding the environment, small and medium-sized enterprises, employment and the promotion of training, is according to the Lisbon objectives, considered as being targeted to market failures and as being less distortive than sectoral aid or ad-hoc aid.

However, as mentioned above, horizontal aid schemes may nonetheless be aimed at a specific sector in which case their value in terms of being less distortive (than pure sector-specific aid schemes) may be discussed. For this reason the scoreboard includes two types of tables showing the extent to which aid is granted for horizontal purposes: The “mixed” schemes which are aimed at a horizontal purpose (e.g. research and development) but at the same time are earmarked for specific sectors could be counted either as “horizontal aid” or alternatively as “sectoral aid”. In Table 3 such schemes are counted as horizontal aid while in Table 4 such schemes are counted as sectoral aid.<sup>9</sup>

<sup>9</sup> In Table 3 the figure for “horizontal aid” includes pure horizontal schemes and sector-specific horizontal schemes while “sectoral aid” covers only pure sector-specific schemes. This is in line with the approach used for purposes of the European Commission scoreboard. In Table 4 the figure for “horizontal aid” covers only pure horizontal aid schemes while aid granted under sector-specific horizontal aid schemes has been included in the figure for “sectoral aid”.

**Table 3: Aid for horizontal objectives and pure sectoral aid as a percentage of total aid (less transport aid) in 2006<sup>10</sup>**

	Horizontal objectives	R & D	Environment and energy saving	SME	Employment	Regional development	Other horizontal objectives*	Sectoral aid	Other services (than transport)	Manufacturing	Other sectors	Total aid less transport in million Euro
<b>ICE</b>	<b>82.49</b>	58.26	0.00	0.00	13.57	10.67	0.00	<b>17.51</b>	17.51	0.00	0.00	<b>24.10</b>
<b>LIE</b>	<b>0.00</b>	0.00	0.00	0.00	0.00	0.00	0.00	<b>100.00</b>	100.00	0.00	0.00	<b>0.84</b>
<b>NOR</b>	<b>100.00</b>	24.08	4.72	6.03	0.15	61.16	3.86	<b>0.00</b>	0.00	0.00	0.00	<b>984.66</b>
<b>EFTA 3</b>	<b>99.50</b>	24.88	4.60	5.88	0.46	59.90	3.77	<b>0.50</b>	0.50	0.00	0.00	<b>1009.60</b>

\* Other horizontal aid covers cultural and heritage objectives and natural disasters.

It appears from Table 3 that for 2006 all aid in Norway had a horizontal objective (including aid for regional purposes).<sup>11</sup> Table 3 further shows that in Iceland 82% of the aid in 2006 was directed at horizontal objectives of which most aid was for research and development purposes. Hence in 2006 both Norway and Iceland awarded all, or most, aid for horizontal objectives compared to aid for sectoral purposes. Liechtenstein, on the other hand, has not granted any aid for horizontal objectives, only sectoral aid.

It is recalled that for purposes of Table 3 horizontal aid schemes directed at specific sectors have been classified and counted as “horizontal aid”. However, Table 4 shows that if the “mixed” schemes (horizontal aid schemes directed at specific sectors) are classified and counted as “sectoral aid” the situation is not entirely the same.

**Table 4: Aid for pure horizontal objectives and sectoral aid as a percentage of total aid (less transport aid) in 2006**

	Horizontal objectives	R & D	Environment and energy saving	SME	Employment	Regional development	Other horizontal objectives*	Sectoral aid	Other services (than transport)	Manufacturing	Other sectors	Total aid less transport in million Euro
<b>ICE</b>	<b>81.24</b>	58.26	0.00	0.00	13.57	9.42	0.00	<b>18.76</b>	18.22	0.58	0.00	<b>24.10</b>
<b>LIE</b>	<b>0.00</b>	0.00	0.00	0.00	0.00	0.00	0.00	<b>100.00</b>	100.00	0.00	0.00	<b>0.84</b>
<b>NOR</b>	<b>71.29</b>	23.97	0.29	6.03	0.03	40.46	0.49	<b>28.71</b>	3.37	20.67	4.70	<b>984.66</b>
<b>EFTA 3</b>	<b>71.47</b>	24.77	0.29	5.88	0.36	39.69	0.48	<b>28.53</b>	3.80	20.16	4.56	<b>1009.60</b>

\* Other horizontal aid covers cultural and heritage objectives and natural disasters.

Table 4 shows that if sector-specific horizontal schemes are counted as “sectoral aid” the percentage granted as “sectoral aid” increases, particularly, in the case of Norway. For the year 2006 sectoral aid measured in this way accounted for close to 30% of total aid in Norway and close to 20% in Iceland.

<sup>10</sup> For purposes of the data on horizontal aid, aid in Tables 3 and 4 have been classified according to its primary objective in order to avoid double counting.

<sup>11</sup> Strictly speaking regional aid is a category of its own. However, regional aid implies also a general (non-sector specific) aspect (i.e. it is directed at the “general economic development”) and it is therefore classified under horizontal objectives in Tables 3 and 4.

## 1.5 State aid for research and development (“R&D”)

**Table 5: State aid for research and development (R&D) in 2006\***

	<b>Aid for R&amp;D (in million Euro)</b>	<b>Aid for R&amp;D as a percentage of total aid (less transport)</b>	<b>Aid for R&amp;D relative to GDP (in percent)</b>
<b>ICE</b>	14.04	58.26	0.11
<b>LIE</b>	0.00	0.00	0.00
<b>NOR</b>	387.14	39.32	0.14
<b>EFTA 3</b>	<b>401.18</b>	<b>39.74</b>	<b>0.14</b>

\* The amount showing total aid to R&D in Table 5 reflects all aid directed at R&D irrespectively of whether R&D is the primary or secondary objective of an aid measure. This also means that the amount of aid to R&D in Table 5 is not identical to the amount of aid to R&D included for purposes of Tables 3 and 4.

Table 5 shows the volume of state aid aimed at R&D in each EFTA State and as a percentage of total aid (less transport) as well as a percentage of each EFTA State’s GDP.

While Iceland granted a large share of its overall aid to R&D the aid for this purpose did not make up more than 0.11% of its GDP in 2006. This is, however, an increase from 2005 and 2004 (where aid for R&D represented merely 0.07% and 0.06%, respectively). In 2006 Norway’s share of aid to R&D, when considered relative to GDP, was slightly higher than that of Iceland (about 0.14% of its GDP). Liechtenstein did not direct any aid to R&D in any of the years from 2004 to 2006.

**Table 6: Comparison with selected EU Member States of aid for R&D in percent of total aid (less transport) in 2006\***

	<b>Aid for R&amp;D as a percentage of total aid, less transport</b>	<b>Aid for R&amp;D relative to GDP (in percent)</b>
<b>Norway</b>	<b>24</b>	<b>0.09</b>
<b>Austria</b>	10	0.06
<b>Belgium</b>	20	0.06
<b>Denmark</b>	7	0.03
<b>Finland</b>	27	0.10
<b>Ireland</b>	14	0.04
<b>Sweden</b>	4	0.04
<b>EU-25</b>	<b>14</b>	<b>0.06</b>

\* The data for the EU Member States refer only to aid measures for R&D where (i) R&D constitutes the primary objective; and (ii) the aid covers both pure horizontal and mixed aid. The corresponding figures for Norway are therefore based on the figure from Table 3.

Table 6 shows that the share of aid for R&D in Norway (also compared to GDP) in 2006 was fairly high compared to the selected the EU Member States.

## 1.6 State aid for the protection of the environment and energy saving purposes

Like in 2004 and 2005, in 2006 Norway was the only EFTA State which granted aid for the protection of the environment and energy saving purposes. Norway awarded approximately Euro 264 million for purposes of the environment and energy saving in 2006.

**Table 7: State aid for environmental protection and energy saving purposes in 2006\***

	Aid for the environment and energy saving (in million Euro)	Aid for the environment and energy saving as a percentage of total aid, less transport	Aid for the environment and energy saving relative to GDP (in percent)
<b>ICE</b>	0.00	0.00	0.00
<b>LIE</b>	0.00	0.00	0.00
<b>NOR</b>	263.96	26.81	0.10
<b>EFTA 3</b>	<b>263.96</b>	<b>26.14</b>	<b>0.09</b>

\* The amount showing total aid for the environment reflects all aid directed at the environment irrespectively of whether the environment is the primary or secondary objective of an aid measure. This means that the amount of aid to the environment in Table 7 is not identical to the amount of aid for the environment included in Tables 3 and 4.

**Table 8: Comparison with selected EU Member States of aid for environmental protection and energy saving purposes in percent of total aid (less transport) in 2006\***

	Aid for the environment and energy saving purposes as a percentage of total aid, less transport	Aid for the environment and energy saving relative to GDP (in percent)
<b>Norway</b>	<b>5</b>	<b>0.02</b>
<b>Austria</b>	20	0.12
<b>Belgium</b>	20	0.06
<b>Denmark</b>	34	0.16
<b>Finland</b>	36	0.13
<b>Ireland</b>	1	0.00
<b>Sweden</b>	86	0.79
<b>EU-25</b>	<b>29</b>	<b>0.12</b>

\* The data for the EU Member States refer only to aid measures for the environment/energy where (i) the latter constitutes the primary objective; and (ii) the aid covers both pure horizontal and mixed aid. The corresponding figures for Norway are therefore based on the figure from Table 3.

Compared to selected EU Member States Norway is at the lower end in terms of the level of aid granted for environmental protection and energy purposes in 2006. Sweden awarded a significant share of total aid (also compared to GDP) for these purposes in 2006.

## 1.7 State aid supporting regional development and cohesion

Table 3 shows that in 2006 regional aid constituted a prominent feature of Norwegian state aid policy. In Norway approximately 60% of total aid (less transport) constituted regional aid whereas Iceland granted considerably less (about 11% of total aid, less transport). This

represents a slight decrease in Iceland compared to 2005 and 2004 when the share was around 15-16%. Liechtenstein granted no regional aid during the three-year period reviewed.

It is recalled that Table 3 counts “mixed aid” schemes (which are directed at both horizontal and sectoral objectives) as horizontal aid. However, if such mixed schemes are counted as sectoral aid – as in Table 4 – aid for regional purposes in Norway represented around 40% of total aid (less transport) in 2006 which is somewhat lower than still a relatively large share of total aid. Based on Table 4 aid for regional purposes constituted less than 10% in Iceland in 2006.

### **1.8 Aid awarded under the block exemption regulations**

With a view to reducing the administrative burden for putting specific types of aid into effect, block exemptions<sup>12</sup> for aid to small and medium-sized enterprises, training aid and employment aid have come into force over the past few years.<sup>13</sup> Only Norway has made use of the possibility to award aid under block exemptions. The number of aid measures applied under block exemptions have increased significantly from 2004 to 2006 with an emphasis on the areas of aid for small and medium-sized enterprises and training aid.

### **1.9 State aid instruments**

Graph B below shows the extent to which the EFTA States made use of different state aid instruments for purposes of aid awarded in 2006. The graph shows that the EFTA States have awarded more than half of total aid in the form of alleviations from the tax or social security system (51%). While this basically also reflects the picture in Norway, Iceland, on the other hand, granted less than 1% of total aid by means of tax concessions.

All three EFTA States have awarded aid in the form of grants. In 2006 about 48% of total aid awarded in EFTA-3 has been paid in the form of grants. Again, this figure also reflects the situation in Norway while in Iceland and Liechtenstein virtually all aid was paid in the form of grants (about 99-100%).

Only 1% of total aid awarded in 2006 by the EFTA States was in the form soft loans.<sup>14</sup>

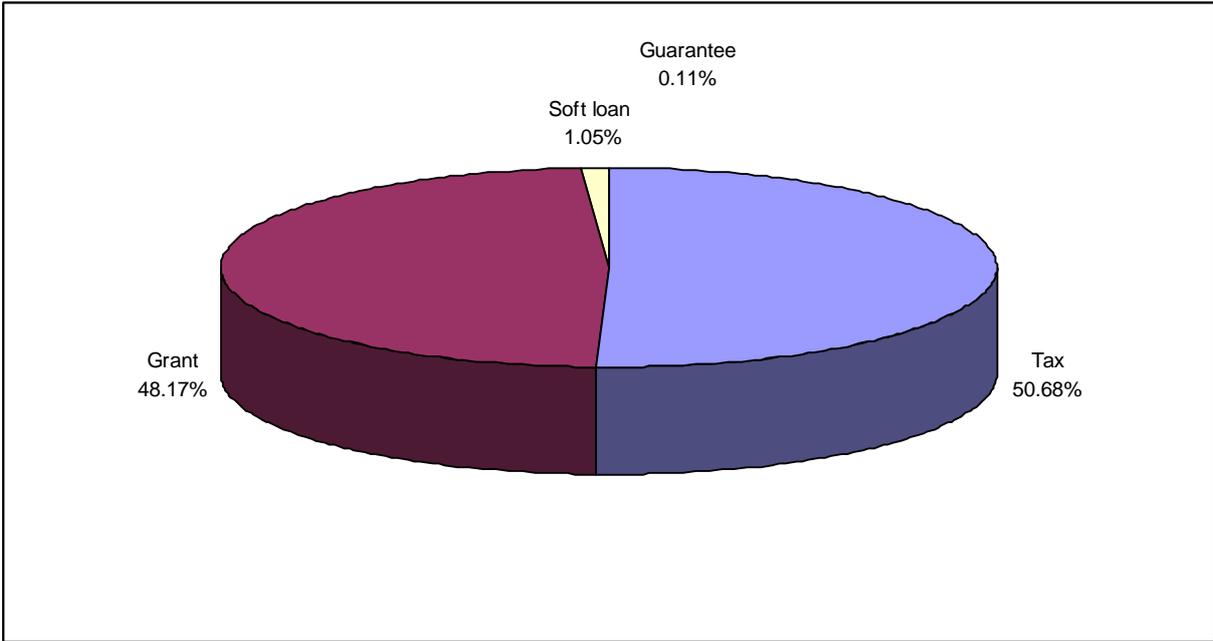
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<sup>12</sup> Block exempted aid implies that there is no obligation to notify the aid measures as they are deemed to be automatically exempted from the general prohibition of state aid subject to certain conditions being fulfilled.

<sup>13</sup> Commission Regulations (EC) No. 70/2001 of 12 January 2001 on State aid to small and medium-sized enterprises (OJ L 10, 13.01.2001, p. 33); No. 68/2001 of 12 January 2001 on training aid (OJ L 10, 13.01.2001, p. 20); No. 2204/2002 of 5 December 2002 on State aid for employment (OJ L 337, 13.12.2002, p. 3). The Regulations have been incorporated into Annex 15 (in Sections 1(d), (f) and (g)) to the EEA Agreement by means of Joint Committee Decision No. 88/2002 (OJ L 266, 3.10.2002, p. 56 and EEA Suppl. No. 49, 3.10.2002, p. 42) and Joint Committee Decision No. 131/2004 (OJ L 64, 10.3.2005, p. 67 and EEA Supplement No. 12, 10.3.2005, p. 49).

<sup>14</sup> It is re-called that in soft loans the aid element is not the loan itself but rather the favourable interest rate. With respect to guarantees the aid element is normally calculated as the difference between the premium paid (if any) and a premium at market rate.

**Graph B: Aid instruments as a percentage of total aid in EFTA-3 in 2006**



## 2 PART TWO: LEGISLATIVE AND POLICY DEVELOPMENTS

### 2.1 The State Aid Action Plan

In June 2005 the European Commission launched a State Aid Action Plan outlining the guiding principles for a comprehensive and consistent reform of State aid rules and procedures over the following five years.<sup>15</sup> Following studies and consultations in the individual areas of state aid policy the European Commission has adopted a number of measures to implement the objectives of the State Aid Action Plan and yet further are on the agenda. While the State aid Action plan is, of course, principally a strategy set for the European Union it should be recalled that the Authority and the EEA Joint Committee adopt legislative measures for implementing the State aid rules which are similar to those applied in the European Community.<sup>16</sup> Most of the measures derived from the State Aid Action Plan have therefore also been incorporated on the EFTA side while others are pending or are at the drafting stage.

### 2.2 New legislation

The Authority and the EEA Joint Committee have adopted various legislative measures which form part of the implementation of the State Aid Action Plan. The list covers so far

- (i) new guidelines on state aid to promote risk capital investments in small and medium-sized enterprises (adopted by the Authority in October 2006);<sup>17</sup>
- (ii) a new framework on state aid for research, development and innovation (adopted by the Authority in February 2007);<sup>18</sup>
- (iii) new guidelines for 2007-2013 on regional aid (adopted by the Authority in April 2006)<sup>19</sup> and a block exemption regulation on national regional investment aid (incorporated into the EEA Agreement by the EEA Joint Committee in December 2006);<sup>20</sup>
- (iv) a new block exemption regulation on de minimis aid (incorporated into the EEA Agreement by the EEA Joint Committee in April 2007);<sup>21</sup>

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<sup>15</sup> [http://ec.europa.eu/comm/competition/state\\_aid/reform/saap\\_en.pdf](http://ec.europa.eu/comm/competition/state_aid/reform/saap_en.pdf)

<sup>16</sup> The EEA Joint Committee shall ensure the effective implementation and operation of the EEA Agreement and is composed of representatives of the EEA States and the European Commission. The EEA Joint Committee is therefore responsible for the incorporation into the EEA legal framework of relevant EU legislation, such as block exemptions.

<sup>17</sup> Decision No. 313/06/COL of 25 October 2006 to adopt Community guidelines on state aid to promote risk capital investments in small and medium-sized enterprises; OJ C 126 of 07.06.2007, p. 19; EEA Supplement No. 27 of 07.06.2007, p. 1.

<sup>18</sup> Decision No. 14/07/COL of 7 February 2007 to adopt a framework for state aid for research, development and innovation. The Decision is not yet published in the Official Journal but is available online at <http://www.eftasurv.int/fieldsOfWork/fieldstateaid/guidelines/>.

<sup>19</sup> Decision No. 85/06/COL of 6 April 2006 to adopt Guidelines on national regional aid for 2007-2013; OJ L 54 of 28.02.2008, p.1; EEA Supplement No. 11 of 28.02.2008, p. 1. The regional aid map for Norway and Iceland was adopted by the Authority on 19 July and 6 December 2006 by Decision Nos. 226/06/COL and 378/06/COL, respectively; OJ L 54 of 28.02.2008, p. 21 and 28; EEA Supplement No. 11 of 28.02.2008, p. 19 and 28.

<sup>20</sup> Decision No. 157/2006 of 8 December 2007 on Commission Regulation (EC) No. 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid; OJ L 89 of 29.3.2007, p. 33; EEA Supplement No. 15, 29.3.2007, p. 26.

<sup>21</sup> Decision No. 29/2007 of 27 April 2007 on Commission Regulation (EC) No. 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid; OJ L 209 of 09.08.2007, p. 52; EEA Supplement No. 38 of 09.08.2007, p. 34.

## **2.3 Draft legislation and forthcoming measures**

### **Revision of environmental guidelines**

In February 2008 the European Commission adopted new guidelines on aid for environmental protection.<sup>22</sup> In order to allow sufficient time for the Authority to adopt a corresponding version of those guidelines (adapted to the specifics of the EFTA States and the EEA Agreement) the current State Aid Guidelines on aid for environmental protection were prolonged until the date of the adoption of the new guidelines.<sup>23</sup> The forthcoming environmental guidelines include new areas (such as carbon capture and emission trading), raise maximum aid intensities across the board and simplify the rules in a number of areas, notably in the area of tax exemptions.

### **Communication on reference rate setting**

The Commission launched an extensive consultation process in 2006 and 2007 which led to the adoption on 12 December 2007 by the European Commission of a Communication on a new method for setting reference and discount rates used in the analysis of state aid cases for calculating the grant equivalent of aid and the aid element resulting from interest subsidy schemes.<sup>24</sup> The Authority will adopt corresponding guidelines (adapted to the EEA Agreement and the EFTA States).

### **General block exemption regulation**

In April 2007 the European Commission presented for consultation new draft rules to exempt the grant of aid from the notification obligation laid down in EC Treaty state aid rules. The new so-called “General Block Exemption Regulation” will, on the one hand, simplify and consolidate, into one text, five existing block exemptions for aid to SMEs, research and development aid in favour of SMEs, aid for employment, training aid and regional aid. In addition, the new Regulation will allow new types of aid (environmental aid, risk capital aid and R&D aid for large enterprises) to be block exempted. The grant of aid which fulfil the conditions laid down in the new Regulation will be considered as compatible with state aid rules without requiring prior notification to the Commission. The Commission is currently reviewing the comments submitted on previous drafts of the Regulation. Following the adoption of the block exemption regulation, it is for the EEA Joint Committee to incorporate the Regulation into the EEA Agreement.

In April 2007 the EEA Joint Committee adopted a decision to prolong the validity of the current block exemption regulations on aid to employment, small and medium-sized enterprises and training until 30 June 2008 (which would otherwise have expired on 31 December 2006).<sup>25</sup>

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<sup>22</sup> OJ C 82 of 01.04.2008, p. 1.

<sup>23</sup> OJ L 81 of 20.03.2008, p. 1; EEA Supplement No. 15 of 20.03.2008, p. 1.

<sup>24</sup> OJ C 14 of 19.1.2008, p. 6.

<sup>25</sup> Decision No. 28/2007 of 27 April 2007 on Commission Regulation EC No. 1976/2006 of 20 December 2006 amending Regulations (EC) No. 2204/2002, (EC) No. 70/2001 and (EC) No. 68/2001 as regards the extension of the periods of application, OJ L 209 of 09.08.2007, p. 50; EEA Supplement No. 38 of 09.08.2007, p. 33.

## **Draft Commission notice on state aid in the form of guarantees**

The Commission has reviewed the current notice on state aid granted in the form of guarantees and issued a first draft revised text on 18 July 2007. The adoption of a new version is expected prior to the summer break 2008.

## **Broadcasting communication**

On 10 January 2008 the European Commission issued a questionnaire on the Communication on the application of state aid rules to public service broadcasting.<sup>26</sup> The European Commission is currently in the process of reviewing the comments submitted in response to the questionnaire.

## **Rescue and restructuring guidelines**

The current guidelines on aid for rescue and restructuring undertakings expire in October 2009. To prepare the revision of these guidelines, the European Commission invited all interested parties to share their experience with the current guidelines. For this purpose the Commission published a questionnaire in September 2007.<sup>27</sup> The Commission is currently reviewing the replies and input from interested parties.

## **State aid to shipbuilding**

In November 2006 the Authority decided to prolong the State Aid Guidelines on aid to shipbuilding until 31 December 2008.<sup>28</sup> In February 2008 the Commission issued a consultation paper proposing to prolong the guidelines on shipbuilding even further i.e., until 31 December 2011, amongst others based on the little use made of the guidelines.

## **Procedural rules, notification forms**

In January 2008 the Commission adopted an amendment to Regulation No. 794/2004 on procedural rules in the area of state aid.<sup>29</sup> The amendment involves the introduction of new notification forms for purposes of aid to promote risk capital investments in SMEs and aid for research and development as well as forms for simplified notifications. New provisions are also introduced on the interest rates applicable in respect of the recovery of unlawful and incompatible aid and on issues related to the electronic transmission of correspondence in state aid cases. The regulation will be implemented by the Authority.<sup>30</sup>

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<sup>26</sup> [http://ec.europa.eu/comm/competition/state\\_aid/reform/broadcasting\\_comm\\_questionnaire\\_en.pdf](http://ec.europa.eu/comm/competition/state_aid/reform/broadcasting_comm_questionnaire_en.pdf)

<sup>27</sup> [http://ec.europa.eu/comm/competition/state\\_aid/reform/rescue\\_questionnaire\\_en.pdf](http://ec.europa.eu/comm/competition/state_aid/reform/rescue_questionnaire_en.pdf)

<sup>28</sup> OJ L 166 of 28.06.2007, p. 28.

<sup>29</sup> OJ L 82 of 25.03.2008, p. 1.

<sup>30</sup> Commission Regulation No. 794/2004 has been implemented by virtue of the Authority's Decision No. 195/04/COL of 14 July 2004, OJ L 139, 25.05.2006, p. 37; EEA Supplement No. 26 of 25.05.2006, p. 1. The Decision has been amended by Decision 319/05/COL of 14 December 2005; OJ L 113 of 27.04.2006, p. 24; EEA Supplement No. 21 of 27.04.2006, p. 46. A Notice lays down the "Details of arrangement for the electronic transmission of State aid notifications"; OJ L 139, 2006.05.25, p. 37; EEA Supplement No. 26 of 25.05.2006, p. 1. The most recent amendment of Regulation No. 794/2004 will therefore be implemented by amending Decision No. 195/04/COL.

## **Recovery notice**

Towards the ends of 2007 the Commission issued a notice on the effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible state aid.<sup>31</sup> The notice contains a review of current case law and identifies the principles governing recovery of illegal and incompatible state aid. A corresponding Notice will be adopted by the Authority in due time.

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<sup>31</sup> OJ C 272, 15.11.2007, p. 4.

### 3 PART THREE: RECOVERY

#### 3.1 The rules on recovery of unlawful and incompatible state aid

Article 14 of Part II of Protocol 3 to the Surveillance and Court Agreement provides that “*where negative decisions are taken in cases of unlawful aid, the Authority shall decide that the EFTA State concerned shall take all necessary measures to recover the aid from the beneficiary.*”<sup>32</sup>

The State Aid Action Plan advocates an improvement in the efficiency of pursuing the recovery of unlawful and incompatible state aid which in many cases are significantly delayed. The European Commission has followed-up on the State Aid Action Plan by issuing a Notice in November 2007 on the state of play of recovery.<sup>33</sup> The Notice emphasises that to date there is practically not a single case in which recovery has been completed within the deadline set out in the recovery decision. As is evident from the following section this statement is also true with respect to the EFTA States. However, Article 14(3) of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice provides that “*recovery shall be effected without delay and in accordance with the procedures under the national law of the EFTA State concerned, provided that they allow the immediate and effective execution of the EFTA Surveillance Authority’s decision.*”<sup>34</sup>

The European Court of Justice has clarified the scope and interpretation of this provision and in this context stressed precisely the need for an immediate and effective execution of recovery decisions. In this regard the Court has emphasised that the measures taken by Member States to implement recovery must be effective and produce a concrete outcome, meaning that there must be actual recovery of the sums owed by the beneficiary.<sup>35</sup> The Court has even confirmed that national procedures which do not meet the conditions of immediate and effective execution of the recovery decision shall be left unapplied.<sup>36</sup> In this regard the Court has rejected arguments that everything possible has been done under the national system and emphasised that whatever actions are being taken, they must lead to a concrete outcome in terms of recovery – within the time limit set by the decision.<sup>37</sup>

Moreover, according to Article 3 of the EEA Agreement EFTA States must facilitate and cooperate in achieving the tasks of the EEA Agreement. It is within the spirit of such cooperation that EFTA States are to submit any problems related to unforeseeable difficulties in executing the recovery decision to the Authority. However, such cooperation does not relieve the EFTA States from the duty to take all necessary steps possible to recover the aid

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<sup>32</sup> Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

<sup>33</sup> The notice is entitled “Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid”, OJ C 272, 15.11.2007, p.4.

<sup>34</sup> Emphasis added. This rule corresponds to Article 14(3) of Council Regulation No. 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 (now Art. 88) of the EC Treaty, OJ L 83/1, 27.03.1999, p.1.

<sup>35</sup> Case C-415/03 *Commission v Greece* (“Olympics”) [2005] ECR I-03875.

<sup>36</sup> Case C-232/05 *Commission v France* (“Scott”) judgment of 5 October 2006.

<sup>37</sup> Case C-232/05, cited above.

from the undertakings in question and suggest suitable arrangements for implementing the decision.<sup>38</sup>

### 3.2 State of play of pending recovery cases

On 31 December 2007 four recovery cases were pending in the EFTA States. Three recovery cases are pending against Norway. The oldest is from 2004 and involves exemptions from electricity tax while the second is from 2006 and concerns the energy saving fund “Enova”.<sup>39</sup> The third is from 2007 and involves the “VAT Compensation scheme”. There is one case against Iceland which is from 2004 and concerns the International Trading Companies.<sup>40</sup> No recovery cases are pending against Liechtenstein. As is clear from Table 9 the number of pending recovery cases is increasing and certain cases are already 3-4 years old.

The Authority continues its efforts to obtain information from the EFTA States on outstanding aid amounts to be recovered. Where EFTA States do not take all measures available to implement such decisions the Authority will actively pursue non-compliance under the procedures provided for in the Surveillance and Court Agreement.

**Table 9: Pending recovery cases by EFTA State, until end of 2006**

	<b>Situation 31/12/2003</b>	<b>New cases in 2004</b>	<b>Cases closed in 2004</b>	<b>New cases in 2005</b>	<b>Cases closed in 2005</b>	<b>New cases in 2006</b>	<b>Cases closed in 2006</b>	<b>Situation 31/12/2006</b>
<b>ICE</b>	<b>0</b>	1	0	0	0	0	0	<b>1</b>
<b>LIE</b>	<b>0</b>	0	0	0	0	0	0	<b>0</b>
<b>NOR</b>	<b>0</b>	1	0	1	0	1	1	<b>2</b>
<b>EFTA-3</b>	<b>0</b>	2	0	1	0	1	1	<b>3</b>

	<b>New cases in 2007</b>	<b>Cases closed in 2007</b>	<b>Situation 31/12/2007</b>
<b>ICE</b>	0	0	<b>1</b>
<b>LIE</b>	0	0	<b>0</b>
<b>NOR</b>	1	0	<b>3</b>
<b>TOTAL</b>	1	0	<b>4</b>

<sup>38</sup> Case C-404/00 *Commission v Spain* [2003] ECR I-6695; Case C-94/87 *Commission v Germany* [1989] ECR 175, paragraph 9 and Case C-188/92 *TWD Textilwerke Deggendorf GmbH v Germany* (“Deggendorf”) ECR [1994] I-00833.

<sup>39</sup> The case on exemption from electricity tax for the manufacturing and mining industries in Norway was appealed to the EFTA Court and a judgment, which upheld the Authority’s decision, was issued on 21 July 2005 (Joined cases E-5/05, 6/04, 7/04).

<sup>40</sup> Upon submission of the case by the Authority to the EFTA Court, the Court ruled on 25 November 2005 in Case E-2/05 that the Icelandic authorities had to recover the aid.

## **4 PART FOUR: INFORMATION SOURCES AND METHODOLOGY**

### **4.1 State aid register – a second transparency tool**

The Authority's state aid register is an online service<sup>41</sup> which provides an overview of all state aid cases which have been the object of a final decision by the Authority since 1 January 1994. The register of the European Commission includes data on all reports made in respect of block exemptions in the Official Journal; see [http://europa.eu.int/comm/competition/state\\_aid/register/](http://europa.eu.int/comm/competition/state_aid/register/).

### **4.2 Annual report and state aid e-news**

The Authority publishes an Annual Report on its activities which summarises the most important legal developments and case-law during the relevant year. It is available at the general website of the Authority under "Information and Publications".

State aid e-news which commenced in 2006 is an online service via the general web-site of the Authority under "State aid". It contains a weekly update providing an overview of state aid decisions adopted by the Authority or the European Commission, their publication as well as the issuance of court judgments. It is also available via the web-site of the European Commission.<sup>42</sup>

### **4.3 Methodology**

The present scoreboard is published in response to the Authority's obligation set forth in Article 6 of Decision No. 195/04/COL of 14 July 2004 which provides that the Authority shall publish a scoreboard, containing a synthesis of the information in the annual reports submitted by the individual EFTA States in compliance with Article 21 of Part II of Protocol 3 to the Surveillance and Court Agreement.

Except for recovery cases, all data has been obtained from the annual reports provided by the EFTA States, as well as on the basis of the reports informing of the application of block exemptions by EFTA States. All state aid data refer to existing aid schemes (either dating from prior to the entry into force of the EEA Agreement or which have been subject to a decision by the Authority) and granted ad-hoc aid.<sup>43</sup> No pending cases which are still being examined have been included. Data on aid granted by EU Member States have been obtained from the scoreboard<sup>44</sup> of the European Commission published in December 2007.

State aid data collected for the scoreboard are grouped according to primary objectives which may be either horizontal (for example research and development, small and medium-sized enterprises etc.) or sector-specific (i.e., the maritime sector, the manufacturing sector etc). Unless otherwise indicated information has been included according to the objective for which the aid has been earmarked as opposed to whom the final aid recipients may be. For example, if the aid is earmarked for small and medium-sized enterprises it will be classified as having small and medium-sized enterprises as its primary objective irrespectively of the sectors which beneficiaries belong to. Also, aid granted under, say, a regional development scheme may

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<sup>41</sup> <http://www.eftasurv.int/fieldsofwork/fieldstateaid/stateaidregistry/>

<sup>42</sup> [http://ec.europa.eu/comm/competition/state\\_aid/newsletter/index.html](http://ec.europa.eu/comm/competition/state_aid/newsletter/index.html)

<sup>43</sup> Almost all aid granted by the EFTA-3 in 2004, 2005 and 2006 have been awarded under aid schemes.

<sup>44</sup> [http://ec.europa.eu/comm/competition/state\\_aid/studies\\_reports/2007\\_autumn\\_en.pdf](http://ec.europa.eu/comm/competition/state_aid/studies_reports/2007_autumn_en.pdf)

ultimately benefit small and medium-sized enterprises, but if, at the time the aid was approved, the scheme was open to all sizes of enterprises it will be classified as regional aid.

Any queries or requests for data should be marked “scoreboard” and be sent to the general state aid mailbox at [stateaid@eftasurv.int](mailto:stateaid@eftasurv.int)