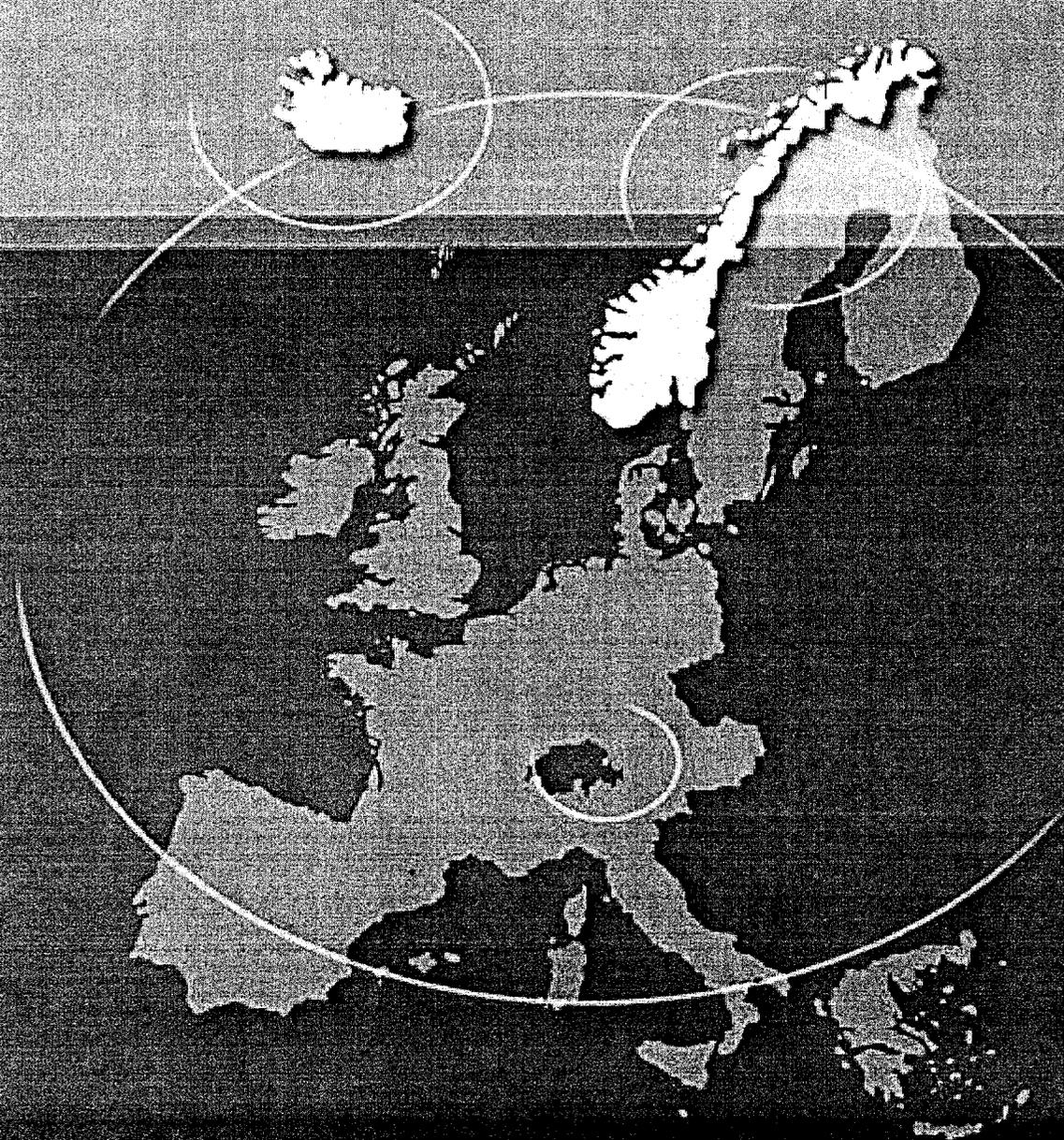


Annual Report 2003

EFTA SURVEILLANCE
AUTHORITY



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Annual Report
2003



Hannes Hafstein, President Einar M. Bull, Bernd Hammermann

> Foreword

When 2003 drew to a close the EEA Agreement had been in force for ten years. This anniversary marks ten years of existence for the world's largest Internal Market. The EEA Agreement is based upon common rules that are binding on all its contracting parties. Compliance with these rules is ensured in common by the European Commission and the EFTA Surveillance Authority. Without a vigilant EFTA Surveillance Authority, the body of common law on which the EEA is built would erode and, indeed, the Agreement would not exist.

The Authority's workload has increased in 2003, although the statistics show that the total number of cases has declined. The trend over the last years has been towards an increasing focus on complaints received from the beneficiaries of the EEA Agreement – citizens, organisations and economic operators. The bulk of these complaints concerns Norway. In 2003, the Authority, for the first time, opened more cases on the basis of complaints than it did on its own initiative. This trend does not imply that the Authority has let down its guard when it comes to timely and correct implementation of new EEA law. Transposition control, ensuring incorporation of EEA provisions into national law, will remain a top priority. Changes in the Authority's workload illustrate, however, that Iceland, Liechtenstein and Norway, the three EFTA States that are party to the Agreement, have succeeded in their efforts to ensure timely implementation of new EEA law. The latest Internal Market Scoreboards bear further witness to this success. The three EFTA States are all within the implementation target set by the Authority and the European Commission, with an average transposition deficit lower than that of the EU States.

The Authority's work and the way in which this affects business and citizens in a wide range of fields are described throughout this Report. A few areas deserve particular attention here, however.

The Authority has paid special attention to the financial services sector in 2003, reviewing legislation in all three EFTA States. Safety issues have also become increasing areas of focus. For example, assessment of national derogations from EEA transport safety standards is an important and resource-intensive task undertaken by the Authority. The differentiated social security tax scheme in Norway has been a particularly contentious and time-consuming issue in 2003. The Authority has invested considerable resources in ensuring prompt handling of this matter. Modernisation of the EU and EEA competition rules will introduce a competition law regime more capable of dealing with the most important issues in this sector. The Authority takes part in this modernisation process, and aims to ensure that the EEA dimension therein is maintained.

The Authority referred two cases to the EFTA Court in 2003. The EFTA Court ruled in the first one, a case concerning Icelandic air passenger taxes, in December 2003. The Court concluded that a differentiation of taxes between national and international routes was contrary to Internal Market principles. This was in line with the Authority's submissions. The second case, concerning Norway's failure to notify draft technical regulations, is still pending. Two of the Authority's state aid decisions were challenged before the Court in 2003. In the *Snøhvit* case, the Court agreed with the Authority that the plaintiffs did not have *locus standi* and thus dismissed the case. The other case, concerning express buses, was subsequently withdrawn by the plaintiffs.

In the year ahead, the Authority will continue to participate in the process of modernisation of the EEA competition law regime, as well as the new guidelines for state aid. Both are important in ensuring the good function of the EEA Agreement after the enlargement of the EEA takes place. A regulatory package for electronic communications will also require increased resources from the Authority once it is implemented.

1 January 2004, Hannes Hafstein took over as President of the EFTA Surveillance Authority. Under his leadership, the Authority and its staff will continue its work dedicated to ensuring that the EEA Agreement fulfils its objective of creating a true Internal Market.



Einar M. Bull, *President 2003*

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Rapid Alert System for Food and Feed (RASFF)

The *Food Law Regulation (178/2002/EC)* establishes a rapid alert system for the notification of direct or indirect risk to human health deriving from food or feed. However, since Regulation 178/2002/EC is not currently a part of the EEA Agreement, the EFTA States' food notification procedures are governed by the emergency procedure in the *General Product Safety Directive (92/59/EEC)*. That legal basis will continue to apply to the EFTA States until Regulation 178/2002/EC has been incorporated into the EEA agreement.

All notifications were uploaded at CIRCA (Communication and Information Resource Centre Administrator), a restricted website-based Exchange of Information System open to the Authority and the EFTA States. A new, more specific system for the transmission of notifications within RASFF is expected to be in place in the course of 2004. The Authority has contributed to a pilot phase launched in October 2003.

The RASFF notifications are either alert or non-alert, depending on the risk related to the case notified.

The notification procedure

	1999	2000	2001	2002	2003
EFTA notifications					
Alert	6	18	35	21	12
Non-alert	0	29	21	35	68
Total	6	47	56	56	80
EC notifications					
Alert	97	133	302	434	454
Non-alert	263	340	406	1,092	1,856
Total	360	473	708	1,526	2,310

Use of unauthorised food additive

The Authority sent a letter of formal notice to Norway at the end of 2003 regarding non-compliance with two Acts, the *Directive on food additives (89/107/EEC)* and the *Directive on the use of food additives, other than colours and sweeteners (95/2/EC)*. The case concerns the use of carbon monoxide (CO) as a packaging gas for meat products. That food additive was approved in Norway until a provisional authorisation on the use of the additive came to an end in October 2000.

Norway applied to the European Commission for approval of CO and inclusion of the additive in the list of approved food additives. In a reply to Norway in August 2000, the Commission informed that State that the provisional authorisation could not be prolonged. Furthermore, in April 2002, the Commission informed Norway that it would not propose acceptance of the use of CO since the Commission services were of the opinion that the additive could mislead the consumer, as regards the freshness of meat, by maintaining the red colour of the product. Consequently, the general criteria on the use of food additives were not fulfilled.

It has been established that, since October 2000, CO has been used as a food additive in Norway without approval. Furthermore, as from October 2001, when the *Directive on the use of food additives, other than colours and sweeteners (95/2/EC)* became applicable to Norway, the use of the additives has not been in compliance with that Act. In 2003, Norway informed the Authority that the Norwegian meat industry should comply and discontinue the use of CO at the end of June 2004.

