

The EFTA Surveillance Authority: How EEA law is enforced

EFTA Secretariat, Geneva
17 April 2018

Cath Howdle
Deputy Director of Legal and Executive affairs

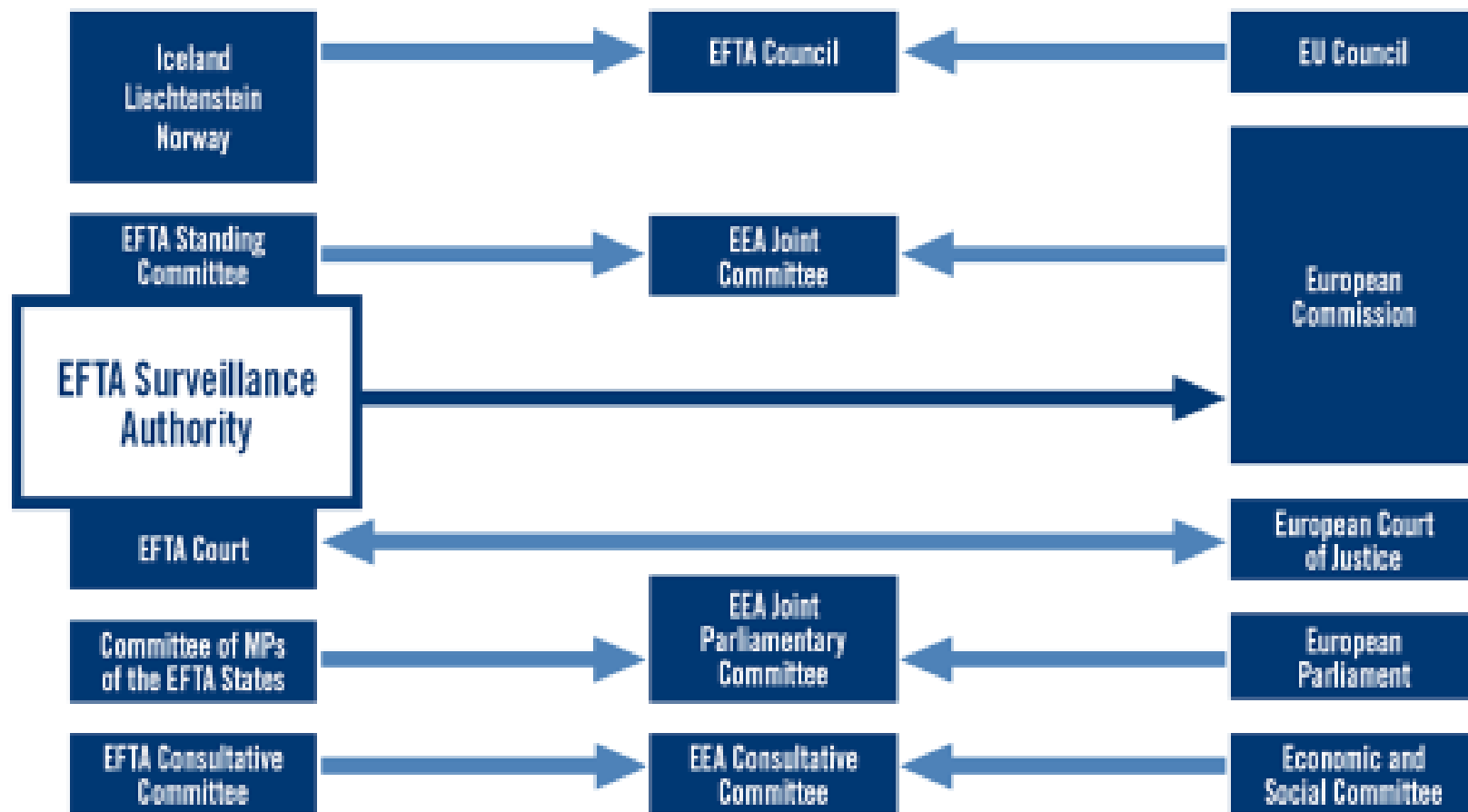
European Economic Area (EEA)

- 31 countries
- 500 million inhabitants
- One internal market





THE TWO-PILLAR STRUCTURE UNDER THE EEA AGREEMENT



ESA's staff





Högni S. Kristjansson



Bente Angell-Hansen



Frank Büchel

Internal Market
Affairs

Competition
and State Aid

Legal and
Executive Affairs

Administration

ESA's main tasks

- **Monitor implementation of new EEA legislation**
- **Investigate national legislation and practices**
- **Enforce Competition and State Aid rules**

None of our business (*)

Outside the scope of the EEA Agreement:

- Agriculture, fisheries, forestry
- Customs, external trade
- Tax, monetary policies
- Justice (e.g. Schengen)
- Defence and security

How does ESA start work on a case?

- **Complaints**
- **Notifications**
- **Own initiative**

EFTA SURVEILLANCE AUTHORITY



```
graph TD; ESA[EFTA SURVEILLANCE AUTHORITY] --> IMA[Internal Market Affairs]; ESA --> CSA[Competition and State Aid]; ESA --> LEA[Legal and Executive Affairs]; ESA --> Admin[Administration];
```

Internal Market
Affairs

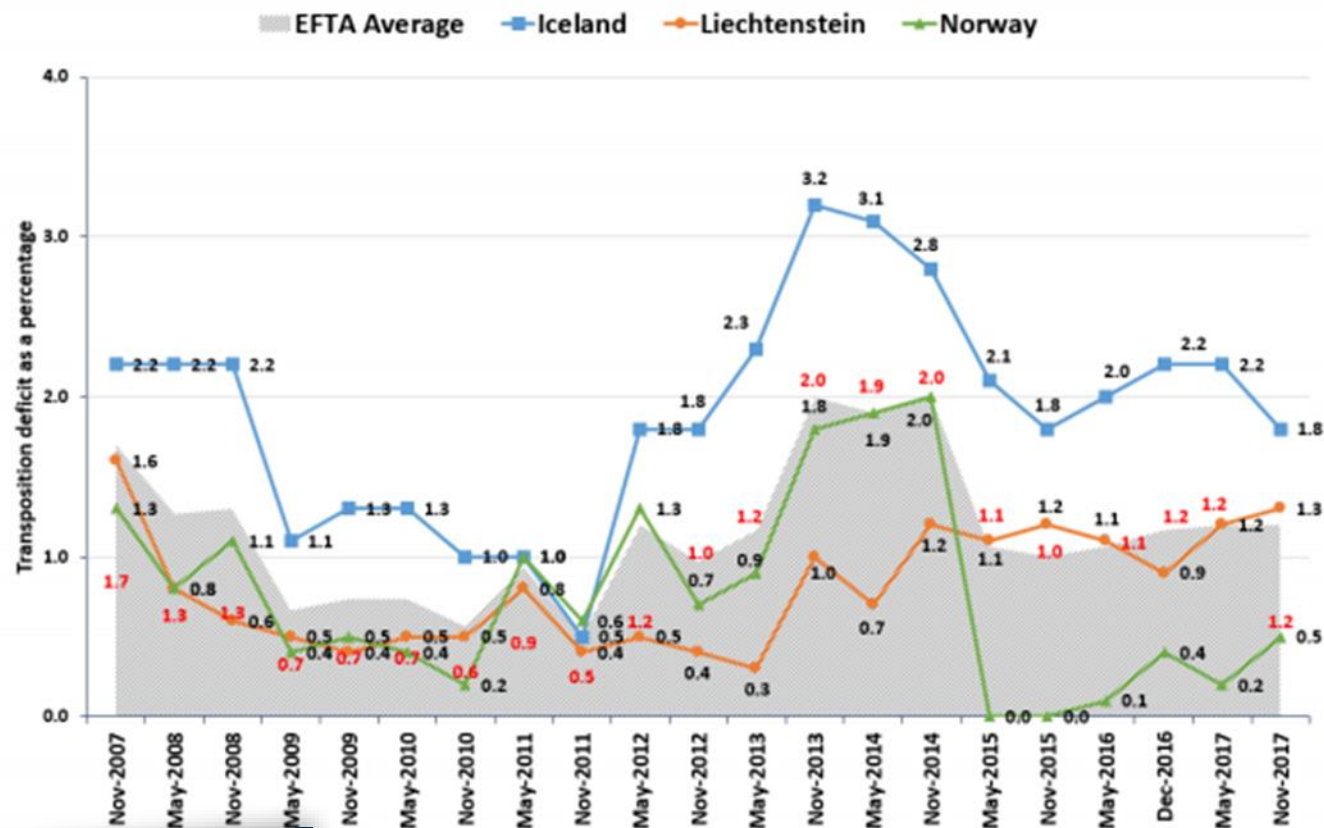
Competition
and State Aid

Legal and
Executive Affairs

Administration

Internal Market

- **Monitor implementation of new EEA legislation**
- **Investigate national legislation and practices**
- **Inspections:**
 - **Food Safety and Animal Welfare**
 - **Transport Security**



Regjeringen.no

Tema ▼ Dokument ▼ Aktuelt ▼ Departement ▼

Du er her: Forsiden • Aktuelt • Nyheter • Ny resultattavle for gjennomføring av EU

Ny resultattavle for gjennomføring av EU-direktiver

Nyhet | Dato: 01.02.2017

Nye tall fra Eftas overvåkingsorgan Esa viser at Norge gjennomfører EU-direktiver i norsk rett på en god måte.

[Oversikten viser](#) at det ved utgangen av november 2016 var tre direktiver som er innlemmet i EØS-avtalen men som ikke gjennomført i norsk rett innen fristen. Dette tilsvarer et gjennomførings-underskudd på 0,4 prosent. Esas målsetting er maksimalt en halv prosent.

Fréttaskýringar

Ísland skarar framúr í tossaskap við innleiðingu EES-gerða

Þórður Snær Júlíusson 14. apríl 2015 kl. 0:00

Internal Market

- Monitor implementation of new EEA legislation
- Investigate national legislation and practices
- Inspections:
 - Food Safety and Animal Welfare
 - Transport Security

Internal Market

- Monitor implementation of new EEA legislation
- Investigate national legislation and practices
- Inspections:
 - Food Safety and Animal Welfare
 - Transport Security

Infringement procedure

- Investigations may arise as a result of
 - Complaints or enquiries
 - ESA's own monitoring activities
- Investigations may lead to formal investigation proceedings:

1

ESA sends a letter of formal notice, setting out ESA's view and giving the State a chance to respond

2

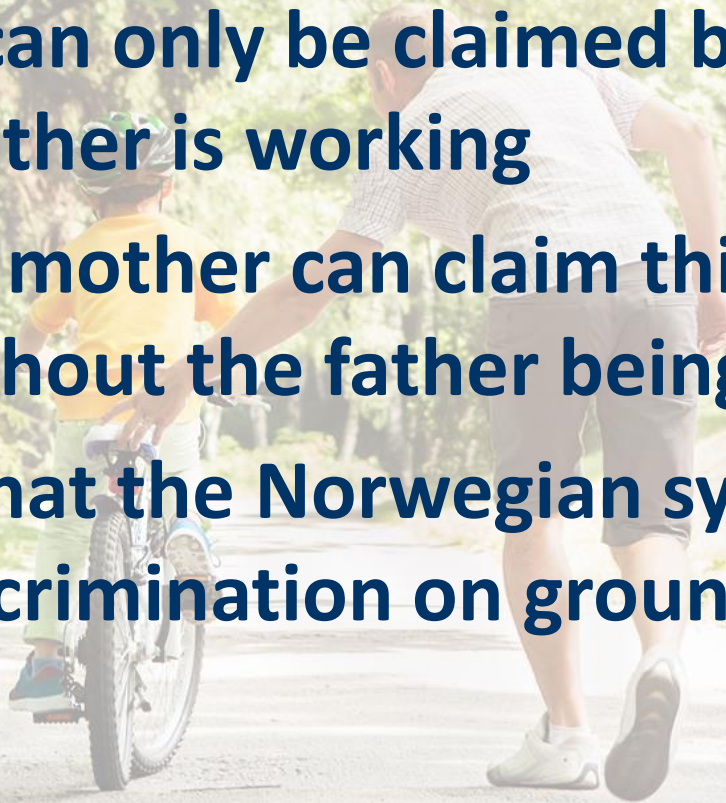
If the issue is not resolved, ESA may deliver a reasoned opinion requesting that the State comply with EEA rules

3

Finally, ESA may bring the case to the EFTA Court, which will have the final say

Parental leave in Norway

- In Norway, a particular portion of paid parental leave can only be claimed by the father if the mother is working
- Conversely, the mother can claim this entitlement without the father being at work
- ESA considers that the Norwegian system gives rise to discrimination on grounds of sex



Basketball players in Iceland

- Iceland's national basketball association only allows one foreign player at a time on court during matches
- When a sport takes on the form of gainful employment, it falls within the scope of the free movement of workers and is consequently subject to EEA law
- ESA considers this situation to amount to discrimination against foreign workers

Insurance in Liechtenstein

- Liechtenstein's insurance companies use the sex of the insured person when calculating premiums and benefits, and so offer different rates to men and women
- ESA considers that this is discriminatory

Internal Market

- Monitor implementation of new EEA legislation
- Investigate national legislation and practices
- **Inspections:**
 - Food Safety and Animal Welfare
 - Transport Security

Food Safety and Animal Welfare

AUDITS IN 2017

NORWAY



Animal by-products



Antimicrobial resistance
(fact-finding)



National audit systems



Import controls and use
of TRACES

ICELAND



Feed safety



Import controls and use
of TRACES

Food imports to Iceland

- Iceland's import restrictions on fresh meat, egg and dairy products are a barrier to trade
- National authorities carry out controls based on harmonised standards
- ESA took the view that Iceland created unjustified trade barriers, limiting product choice for Icelandic consumers
- The EFTA Court ruled in favour of ESA



Transport

- **Inspections:**

- **Maritime safety and security**
- **Aviation security**
- **Working with national authorities**



EFTA SURVEILLANCE AUTHORITY

Internal Market
Affairs

Competition
and State Aid

Legal and
Executive Affairs

Administration

State Aid

- **General prohibition, with exceptions**
 - **Articles 61 & 62 EEA**
- **ESA process under Protocol 3 SCA**
 - **Notifications for approval (and exemptions)**
 - **Complaints**
 - **Investigations and decisions**
 - **Recovery of unlawful aid**

Zero-emission cars



- The EEA Agreement permits Norway to subsidise electric cars in order to benefit the environment
- ESA greenlighted three years of zero VAT rating for electric cars
- Impact: NOK 3.2 billion in VAT each year

Competition

- **Enforcement of EEA rules on competition**
 - Article 53 EEA: Prohibition of restrictive and distortive conduct
 - Article 54 EEA: Prohibition on abuse of market power
- **ESA process under Protocol 4 SCA**
 - Wide powers of investigation
 - Decisions
 - Fining powers

E-payments in Norway

- Formal investigation started in 2016 into whether banking companies prevented a Swedish company from entering market
- ESA is looking into why Norwegian consumers were unable to benefit from a new type of e-payment service available in most other EEA countries

EFTA SURVEILLANCE AUTHORITY



```
graph TD; EFTA[EFTA SURVEILLANCE AUTHORITY] --> Internal[Internal Market Affairs]; EFTA --> Competition[Competition and State Aid]; EFTA --> Legal[Legal and Executive Affairs]; EFTA --> Admin[Administration];
```

The image shows an organizational chart for the EFTA Surveillance Authority. At the top is a dark blue box with the text 'EFTA SURVEILLANCE AUTHORITY'. Below this box, a horizontal line connects to four vertical lines, each leading down to a separate box. From left to right, these boxes are: 'Internal Market Affairs' (light blue), 'Competition and State Aid' (light blue), 'Legal and Executive Affairs' (dark blue), and 'Administration' (light blue). The background of the slide is a blurred image of a modern building with a glass facade and a crowd of people walking on a sidewalk.

Internal Market
Affairs

Competition
and State Aid

Legal and
Executive Affairs

Administration

Legal and Executive Affairs

- Reviews decisions for adoption by College
- Advises College and the Directorates on legal matters
- Registry
- Communications
- Litigation

Work before the EFTA Court

- Direct actions against EEA-EFTA States
- Actions for annulment of ESA decisions
- Advisory opinions

Work before other courts

- Court of Justice interventions
- *Amicus curiae* in national proceedings


Find us....

www.eftasurv.int

- **Information about ESA**
- **Document Register**
- **College Decisions**
- **Press Releases**

@EFTASURV





Thank you
and
Any questions?

cho@eftasurv.int