

How EEA law is enforced

Melpo Joséphidès

Director – Legal and Executive Affairs

15 September 2022



The European Economic Area (EEA) in a nutshell

The EEA Agreement removes barriers to trade and red tape so that individuals and businesses can make the most of the opportunities offered to them by having direct access to 30 countries and 450 million people.

The cornerstones of the European Internal Market are the **four freedoms**: freedom of movement of **persons**, **goods**, **services** and **capital**.

- **30 COUNTRIES**

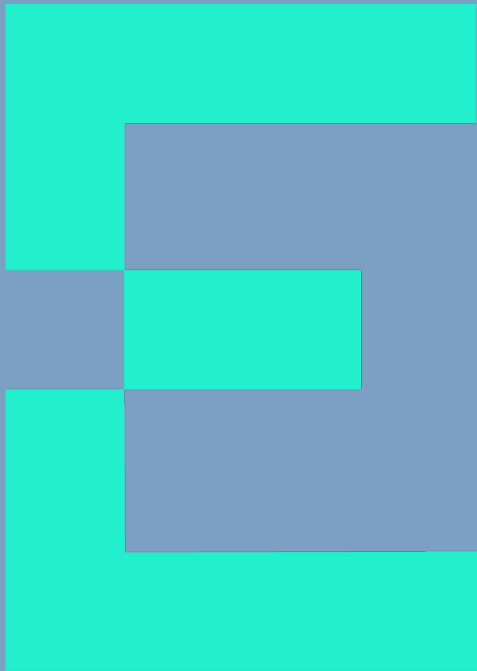
The EEA Agreement unites Iceland, Liechtenstein and Norway and the 27 EU Member States in an Internal Market governed by the same rules.

- **450 MILLION PEOPLE**

The EEA Agreement adds the approximately 5.5 million people of Iceland, Liechtenstein and Norway to the EU market of roughly 450 million people.

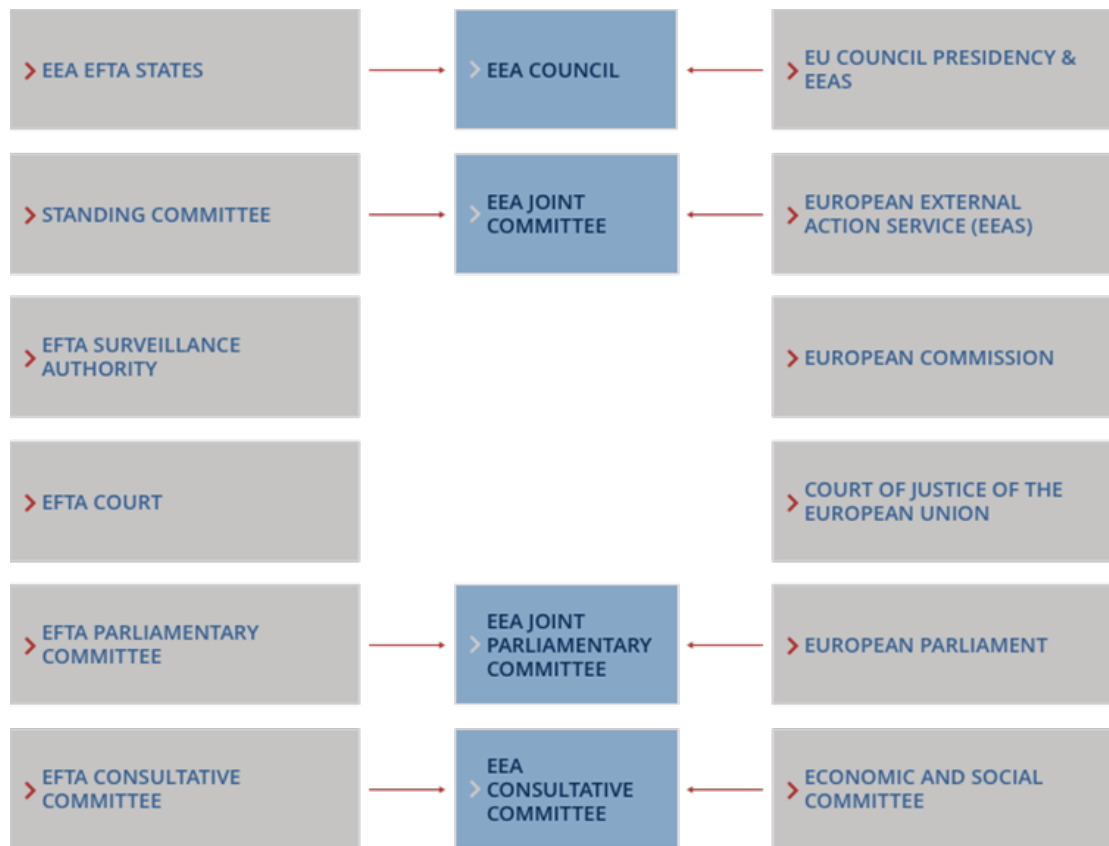
● EEA-EFTA States
● EU Member States





ESA's role

- ESA **monitors compliance** with EEA law in **Iceland, Liechtenstein** and **Norway**.
- The **EEA Agreement** between the European Union, its Member States and the three EEA EFTA States.
- The **Surveillance and Court Agreement** between the EEA EFTA States.



This diagram illustrates the management of the EEA Agreement. The left pillar shows the EFTA States and their institutions, while the right pillar shows the EU side. The joint EEA bodies are in the middle.

ESA and the EU Commission

- 'Guardian of the Treaties'
 - ESA has a corresponding role, but does not initiate legislation.
- Commission / ESA
 - investigate breaches of EU/EEA law
 - apply State aid and competition rules in the EU Member States/EEA EFTA States
- Mirroring internal structures
- Cooperation
 - *"In order to ensure a uniform surveillance throughout the EEA, the EFTA Surveillance Authority and the EC Commission shall **cooperate, exchange information and consult** each other on surveillance **policy** issues and individual **cases**." Article 109 EEA*



ESA's cooperation with EU agencies

- European Union Aviation Safety Agency (EASA)
- European Maritime Safety Agency (EMSA)
- European Union Agency for the Cooperation of Energy Regulators (ACER)
- European Banking Authority (EBA)
- European Insurance and Occupational Pensions Authority (EIOPA)
- European Securities and Markets Authority (ESMA)



ESA's College

Árni Páll Árnason, Arne Røksund, Stefan Barriga

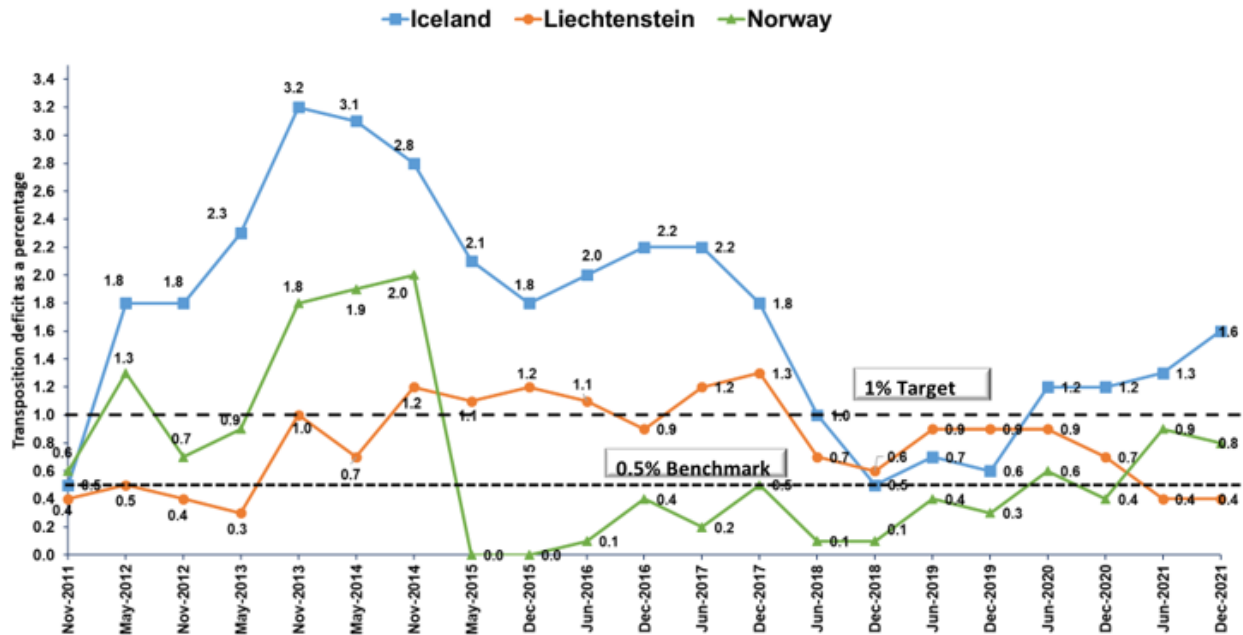
EEA EFTA States' obligations



Correct implementation of EEA legislation

On paper **and** in practice

On paper – Transposition deficit



Source: Internal Market Scoreboard 49, March 2022

Occurs as a result of an EEA-EFTA State failing to transpose certain Directives into national law.

ESA's tools to bring compliance

- Monitoring
- Investigating
- Infringements – EFTA Court
- Inspections – State authorities, private undertakings
- Fines to undertakings (competition rules)

Infringements

- Anyone can file a **complaint** if they believe their EEA rights have been infringed upon.
- ESA can also take action based on **own initiative** cases where it has spotted potential issues in the EFTA countries' national legislation.

Three formal steps of an infringement procedure



Step 1

ESA sends a **letter of formal notice**, setting out ESA's view on why the State's conduct breaches EEA law, giving the State a chance to respond.



Step 2

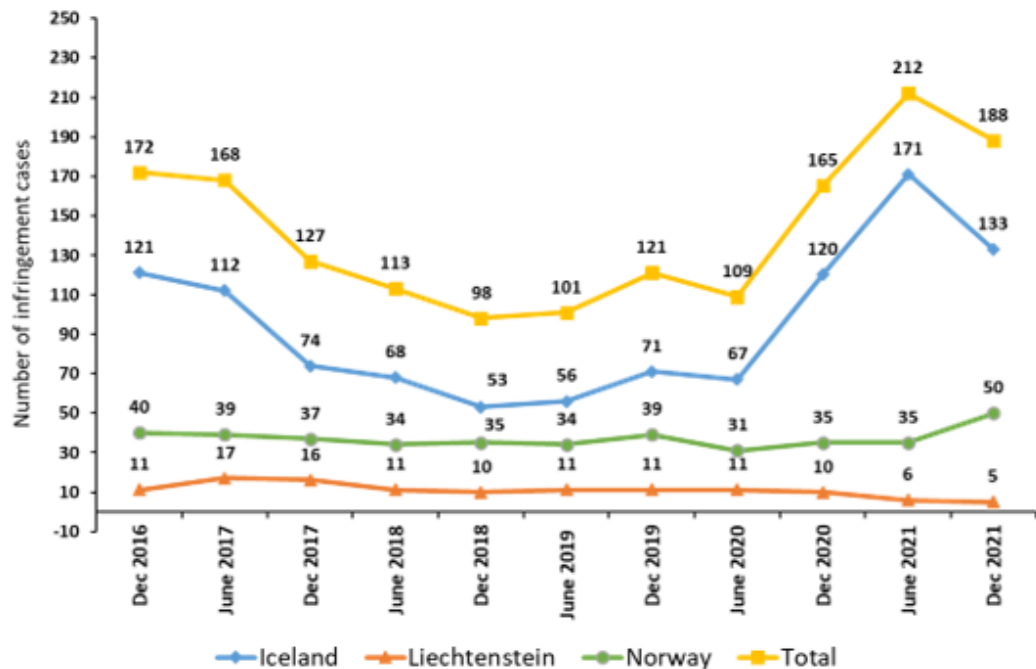
If the issue is not resolved, ESA may deliver a **reasoned opinion** requiring the State to comply with EEA rules.



Step 3

ESA may ultimately bring the case to the EFTA Court to seek a **declaration of non-compliance**. The EFTA Court has the **final say**.

In practice: Current infringements



When infringement proceedings are ongoing, certain practices in an EEA-EFTA State are not meeting EEA standards. This graph represents the volume of such cases.

Source: Internal Market Scoreboard 49, March 2022

State aid

- ESA monitors State aid in the EEA
- ESA's powers
- 48 decisions in 2021
 - 32 were support schemes seeking to deal with the consequences of the COVID-19 pandemic.



Officers of the Competition and State Aid (CSA) Directorate

Competition

- ESA enforces EEA competition rules
- Articles 53-60 of the EEA Agreement, Protocol 4 SCA
 - Agreements between undertakings
 - Abuse of dominant market position
- ESA's process
- ESA's powers

The EFTA Court

- Jurisdiction over Iceland, Norway and Liechtenstein on **EEA law**
 - Largely corresponds to the role of the Court of Justice of the European Union (CJEU) on **EU law**.
- Three judges, each appointed by one of the EEA-EFTA States
 - Six-year term.
- *Ad hoc* judges



Páll Hreinsson (Iceland)
President



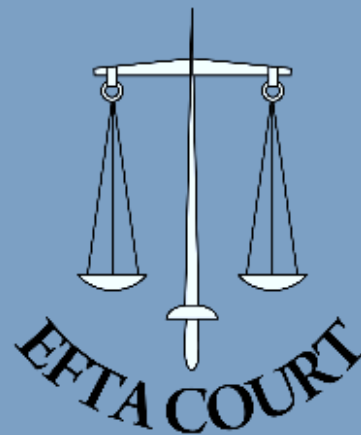
Per Christiansen (Norway)



Bernd Hammermann
(Liechtenstein)

ESA at Court

- The EFTA Court
 - **Direct actions**, against an EEA EFTA State or against ESA
 - Advisory opinions
- ESA's other court work
 - EU's Court of Justice and General Court
 - National courts – *amicus curiae*
 - European Court of Human Rights





Thank you!

ESA

EFTA
Surveillance
Authority

