



# How EEA law is interpreted

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Brussels, 7 February 2017



# General points on the EFTA Court

- Established as a part of the EEA cooperation
  - the judicial function
- Independent international Court with clearly defined competences
- Seated in Luxembourg



# Two pillars – one agreement

- The EFTA Court interprets the EEA agreement in the EFTA states
- The EU Courts interpret the EEA agreement in the EU states

# THE TWO PILLAR STRUCTURE UNDER THE EEA AGREEMENT



**ICELAND  
LIECHTENSTEIN  
NORWAY**

**EFTA STANDING  
COMMITTEE\***  
EFTA Secretariat

**EFTA  
SURVEILLANCE  
AUTHORITY**

**EFTA COURT**

**COMMITTEE OF  
MPs OF THE EFTA  
STATES**  
EFTA Secretariat

**EFTA  
CONSULTATIVE  
COMMITTEE**  
EFTA Secretariat

**EEA COUNCIL**  
Ministers of EU and  
EFTA EEA states

**EEA JOINT  
COMMITTEE**  
EEAS, Commission and  
EU and EFTA  
government  
representatives

**EEA JOINT  
PARLIAMENTARY  
COMMITTEE \***  
MPs from the EFTA  
parliaments and MEPs

**EEA  
CONSULTATIVE  
COMMITTEE\***



**EU COUNCIL**

**EEAS+EUROPEAN  
COMMISSION**  
  
Commission  
Services

**EU COURTS**

**EUROPEAN  
PARLIAMENT**  
  
EP Secretariat

**EUROPEAN ECONOMIC  
AND SOCIAL  
COMMITTEE (EESC)**  
  
EESC Secretariat

\* Switzerland has observer status

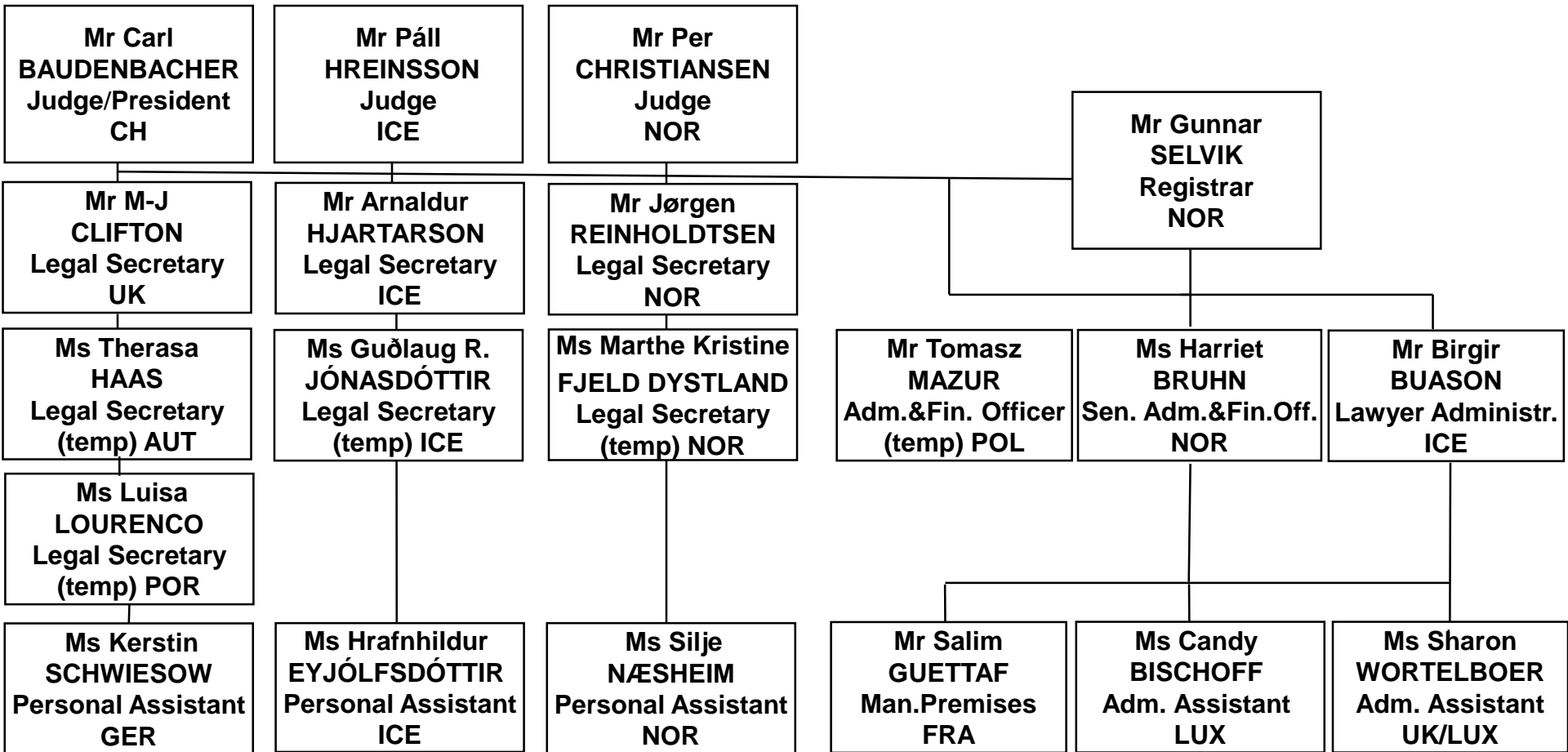


# Legal basis

- EEA agreement article 108(2): provides that the EFTA States shall establish the EFTA Court
- Surveillance and Court Agreement (SCA) article 27: the legal basis for the establishment of the EFTA Court
- Protocol 5 SCA: Statutes
- Rules of Procedure
- Instructions to the Registrar



# Organigram





# Types of cases - I

## DIRECT ACTIONS (DA)

### • Infringement actions vs. EFTA States:

- Initiated by ESA (art 31 SCA)
- Initiated by another EFTA State (art 32 SCA)

### • Infringement actions vs. ESA:

- Validity of ESA's decisions (art 36 SCA)
- ESA's failure to act (art 37 SCA)
- Liability of ESA (art 39 SCA)

- Parties: ESA, EFTA States and in some cases private entities



# Types of cases - II

## ADVISORY OPINIONS (AO)

- Who can request?

- "...any court or tribunal in an EFTA-State.." (Art 34(2) SCA)

- When request?

- "Where... that court or tribunal considers it necessary to enable it to give judgment.." (Art 34(2) SCA)

- Effect?

- Always followed, but formally speaking not binding ( $\neq$  ECJ's preliminary rulings)
- National courts' incorrect interpretation of the EEA agreement is in principle a breach of treaty obligations

- Parties: Those in the referred case





# Procedure

- Main focus on written procedure
- Usually followed by an oral hearing
- Right to make written observations and to participate in the oral hearing:
  - EFTA states, EU states, ESA, Commission and also private parties (if legal standing)



# Relationship EU Courts - EFTA Court

- Article 105(2,3) EEA – formal equality
- Art. 6 EEA and Art. 3 SCA: EEA to be interpreted in conformity with the relevant case law of the ECJ
- EFTA Court following the ECJ
- EFTA Court goes first
- EFTA Court rulings on EEA specific problems



# Statistics (case load) - I

Sharp increase in new cases in recent years:

- Total 1994–2017: 283 cases (58% DA/42% AO)
  - Annual average:  $\approx$  12 cases
  - First 16 years: 115 cases (7/year)
  - Last 7 years: 168 cases (24/year)
  - ”Low point”: 2 cases (1999)
  - ”High point”: 36 cases (2015)



# Statistics (case load) - II

## Trends:

- Direct Actions:
  - Non-implementations (mostly vs. Iceland), breach obligations, state aid, costs...
  
- Advisory Opinions:
  - Norway recently more active, increased complexity...
  
- Maintain effective case handling time:
  - 6-8 months (CJEU: 22-24 months)



# Statistics (case load) - III

Pending cases: 20

- 13 Direct Actions (Breach obligations/Non-implementations/Costs/Annulments ESA-decision).
- 7 Advisory Opinions (Trademarks-public policy/Shares-right of establishment, services, capital/Motor insurance/Tax-law/Public contracts-damages/Working time/Insurance and Reinsurance).



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The EFTA Court fulfils the judicial function within the EFTA system, interpreting the Agreement on the European Economic Area with regard to the EFTA States party to the Agreement. At present those EFTA States are Iceland, Liechtenstein and Norway ...

Read more in: • [English](#)

## Latest news



### Judge Per Christiansen re-appointed for a second six-year term of office

16.01.2017 2017

By decision of 13 January 2017, the Governments of the EFTA States party to the EEA Agreement – Iceland, Liechtenstein and Norway – have re-appointed the Norwegian Judge of the Court, Per Christiansen, for a period of six years.

## Annual Report 2015



The Report covers the period from 1 January



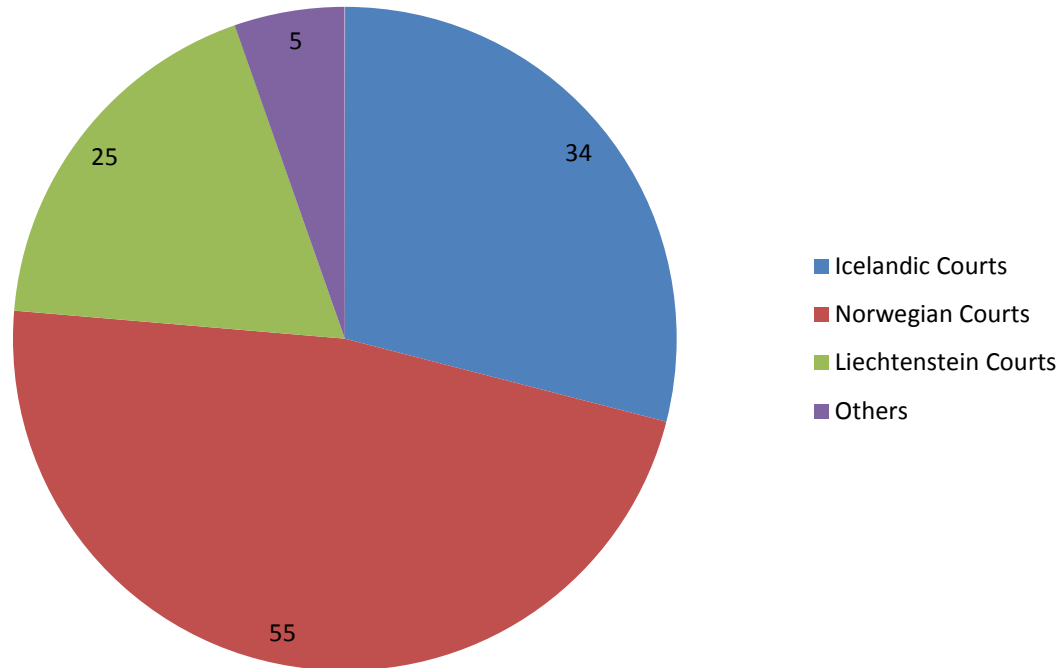
# WWW.EFTACOURT.INT

- Court Diary
- Composition of the Court
- Legal Sources regarding the Court
- Decided and Pending Cases (including search engine)
- Annual Reports of the Court
- Contact Info: [eftacourt@eftacourt.int](mailto:eftacourt@eftacourt.int)



# Advisory Opinions – 1994 - 2017

119 Advisory Opinions - per country

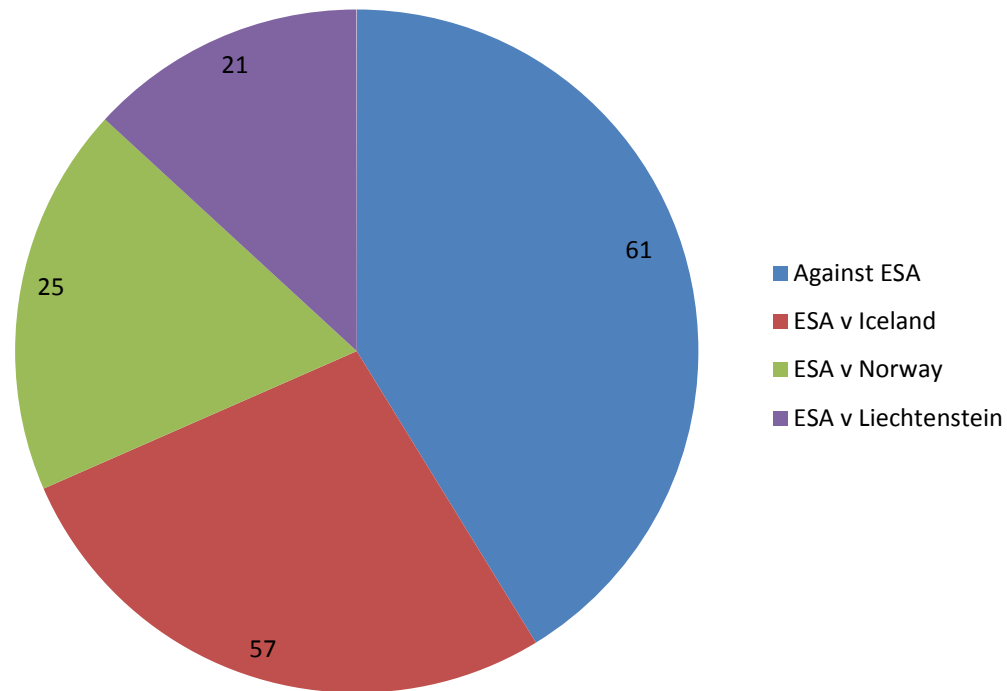






# Direct Actions – 1994 - 2017

164 Direct Actions - divided by applicant





# All cases 1994-2017

Year	Tot	Adv. Opin.	IC	NO	FL	OTH	Dir. Act.	Annulm. ESA dec.	Failure to act ESA	Costs	Legal aid	Rev.	Int.	Failure obl vs IC	Failure obl vs NO	Failure obl vs FL
2017	3	0					3	1						2		
2016	21	9	1	7	1		12	3		2				5	2	
2015	36	14	4	3	7		22	1				1		12	3	5
2014	25	4	1	2	1		21	2		2				14	2	1
2013	30	12	7	2	3		18	7		1				8	2	
2012	16	5	3	1	1		11	5	1	1				2	1	1
2011	19	10	5	3	2		9	5						2	2	
2010	18	4	1	2	1		14	7						3	2	2
2009	8	1			1		7		1					3		3
2008	6	2		1	1		4		1					2	1	
2007	13	8	2	5	1		5	1		2				1	1	
2006	6	2		2			4								2	2
2005	9	1	1				8							1	2	5
2004	10	5		4	1		5	4								1
2003	4	1	1				3	1						1	1	
2002	3	1		1			2	1							1	
2001	8	7	3	3	1		1									1
2000	9	7	2	2	3		2	2								
1999	2	1		1			1								1	
1998	7	5	2	2	1		2	2								
1997	10	6	1	5			4	1			1				2	
1996	7	5		5			2		1					1		
1995	3	3		2		1	0									
1994	10	6		2		4	4	1	1		1	1				
	<b>283</b>	<b>119</b>	<b>34</b>	<b>55</b>	<b>25</b>	<b>5</b>	<b>164</b>	<b>44</b>	<b>5</b>	<b>8</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>57</b>	<b>25</b>	<b>21</b>