



EFTA SURVEILLANCE AUTHORITY

ANNUAL REPORT 2017

ESA – Making the EEA Agreement work

2017

was a milestone year for European cooperation – 25 years since the signing of the EEA Agreement.

Today, the Agreement still secures a place for the approximately 5.5 million people of the EFTA States of Iceland, Liechtenstein and Norway in the European market of 500 million people. It removes red tape and barriers to trade. It opens up new opportunities and creates jobs and growth. It ensures environmental protection and gives a platform for social progress, be it to increase worker welfare or secure equal treatment and consumer protection.

At the EFTA Surveillance Authority (ESA) we do our part to enable Iceland, Liechtenstein and Norway's continued participation in the Internal Market by monitoring compliance with the EEA Agreement. In a successful and fair shared market everyone plays by the same rules.

ESA is independent of the EFTA States and safeguards the rights of individuals and undertakings under the [EEA Agreement](#), ensuring free movement, fair competition and control of state aid. We work to make sure that every EEA citizen can reap the full benefits of the Agreement.

In this Annual Report, you can read about some of the cases ESA worked on in 2017 and learn more about what rights the EEA gives you. Throughout the year, we have worked to ensure that you can enjoy non-discrimination and equal treatment, that you are safe and secure when you travel, that you are protected at work, that the air you breathe is clean, and that the food you eat is safe.

To get the job done, ESA employs around 75 experts in law, economics and other related fields. We are always on the lookout for highly skilled professionals from Iceland, Liechtenstein and Norway and offer a great opportunity to work on interesting legal issues in EEA law.

For ESA, sharing information and facts about the significant benefits of the EEA Agreement is a priority. Check our website www.eftasurv.int to find out more about the EEA Agreement, to sign up to our newsletter and press releases or to get access to ESA documents. You can also attend one of the many seminars we give in the EFTA States, or come and visit us in Brussels. We hope to see you in 2018.

Bente Angell-Hansen
President

Frank J. Büchel
College Member

Högni S. Kristjánsson
College Member

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This is ESA

The EFTA Surveillance Authority (ESA) monitors compliance with the rules of the European Economic Area (EEA) in Iceland, Liechtenstein and Norway, enabling these three States to participate in the European Internal Market.

The EEA was established by the Agreement on the European Economic Area in 1994 and joins the three states with the 28 Member States of the European Union (EU) in a common market.

The purpose of the EEA Agreement is to guarantee, in all 31 EEA States, the free movement of goods, persons, services and capital – “the four freedoms”.

Because of the Agreement, EU law on the four freedoms, state aid, and competition rules for undertakings is incorporated into the domestic law of the participating EFTA States.

All new relevant EU legislation is also introduced through the EEA Agreement so that it applies throughout the EEA, ensuring a common market with common rules.

This removes barriers to trade and opens up new opportunities for over 500 million Europeans. The Internal Market of the EEA creates jobs and growth and adds to the international competitiveness of the EEA States.

The EEA Agreement ensures equal rights to participate in the Internal Market for citizens and undertakings, and equal conditions of competition.

It also provides for cooperation across the EEA in important areas, such as research and development, education, social policy, the environment, consumer protection, tourism and culture.

The success of the EEA Agreement depends upon uniform implementation and application of the common rules. Therefore, the Agreement provides for a system where the European Commission works with the EU states while ESA works with the EFTA States to ensure compliance with EEA law.



The role of ESA

ESA ensures that the three participating EFTA States, Iceland, Liechtenstein and Norway, respect their obligations under the EEA Agreement. At the heart of the Agreement is the principle of loyal cooperation.

ESA operates independently of the EFTA States and is based in Brussels. The role of ESA in ensuring compliance with EEA law is to protect the rights of individuals and market participants and make sure that their rights are not violated by rules or practices of the EFTA States or companies within those States.

ESA enforces restrictions on state aid, assessing its compatibility with the functioning of the Internal Market. ESA has the power to order repayment of unlawful state aid.

ESA also ensures that companies operating in the EFTA States abide by the rules relating to competition. ESA can investigate possible infringements of EEA provisions, either on its own initiative, or on the basis of complaints. It can impose fines on individual undertakings and assess mergers between undertakings where certain thresholds are met.

ESA can request a change in national rules or practices that are in breach of EEA law. Unless the State concerned decides to take appropriate action in response to ESA's request, ESA may initiate proceedings against the relevant EFTA State at the EFTA Court.

In monitoring and enforcing the EEA Agreement, ESA has powers that correspond to those of the European Commission and there is close contact and cooperation between the Commission and ESA. The two institutions oversee the application of the same laws in different parts of the EEA.

ESA's organisation

ESA is led by a College, which consists of three members. Although appointed by the EFTA States, the College Members undertake their functions independently and free of political direction.

In 2017 the College consisted of the following members:

- Sven Erik Svedman (Norway), President
- Helga Jónsdóttir (Iceland)
- Frank J. Büchel (Liechtenstein)

On 1 January 2018 a new College took office. The three College Members are appointed until 31 December 2021. Ms. Bente Angell-Hansen is appointed president until 31 December 2019.

- Bente Angell-Hansen (Norway), President
- Högni S. Kristjánsson (Iceland)
- Frank J. Büchel (Liechtenstein)

Under the leadership of the College, ESA employs experts in law, economics and other fields from all over Europe. To carry out its role ESA is divided into the following departments:

- Administration Department, led by Director Anders Ihr
- Internal Market Directorate, led by Director Ólafur Einarsson (until 30 April 2017) and Gunnar Thor Pétursson (as of 1 May 2017)
- Competition and State Aid Directorate, led by Director Gjermund Mathisen
- Legal and Executive Affairs Department, led by Director Carsten Zatschler

Human resources

At the end of 2017, ESA had a total of 79 staff members, including the three College Members, staff employed on fixed-term and temporary contracts and trainees. A total of 16 nationalities were represented and over half (41) of the staff members were nationals of EFTA States.

In 2017, 56% of staff were female and 44% of staff were male; 38% of management (College Members, Directors and Deputy Directors) were female.

In accordance with ESA's staff regulations established by the EFTA States, all fixed-term staff are employed for a three-year period, normally renewable only once. As a consequence, the turnover of staff is high, and the average length of time that fixed-term staff members work at ESA is just under 4.5 years. This results in [employment opportunities](#) for highly qualified candidates within ESA's fields of activity arising frequently.

ESA considers it important to maintain competitive employment conditions, and to ensure a high level of public awareness of ESA as an attractive workplace. To reach this goal, various measures continued during 2017 leading to stronger employer branding. Among other things, ESA was present at careers fairs for law students, with good results.

Following on from the second EEA Moot Court competition held in Iceland the previous year, the winners of that competition were invited to ESA for Winners' Week in September 2017. ESA will collaborate with universities in Norway for the next competition in March of 2018.



Core values

ESA's core values – *Integrity, Openness and Competence* – are key elements of our ongoing operations. In 2017, we continued to ensure that they are embedded in all of our internal and external activities.

Integrity

ESA operates in a fair, objective and independent manner. ESA's staff take ownership of their tasks and carry out these tasks in an environment of open discussion and high ethical standards.

Openness

ESA's communication and outreach activities are aimed at increasing knowledge about our work and tasks as well as strengthening compliance with the EEA Agreement. ESA and its staff carry out their functions in a manner which is visible, approachable and transparent, while still showing due concern for information that needs to be protected.

Competence

ESA employs highly qualified staff, who have the skills and knowledge required for ESA to fulfil its role and to deal with tasks in an effective and efficient manner. We develop our competence and continuously improve our skills

and knowledge and aim for excellence. We are open to continuous improvement at an organisational and individual level.

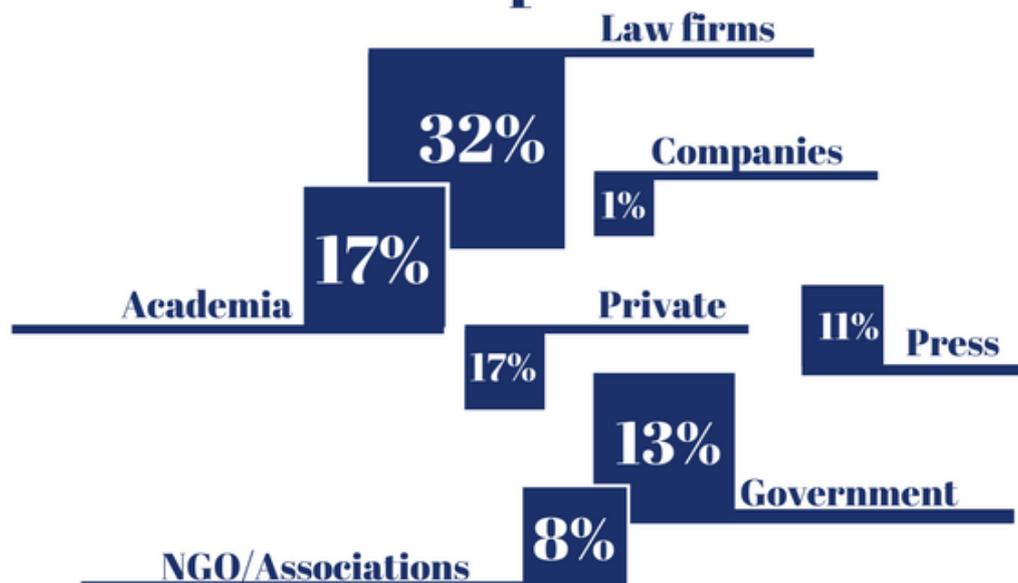
Public access to documents

Documents handled by ESA are, as a general rule, publicly available upon simple request. ESA can, however, refuse disclosure of certain documents. ESA received a total of 72 access requests in 2017.



Once a document has been disclosed, it is uploaded to ESA's searchable online [Public Document Database](#) on ESA's website.

Who asks for public access?



Media relations

In 2017, ESA issued a total of 47 press releases on its [website](#).

The site is a key channel for communication with stakeholders and the general public. In addition to press releases, it provides general information about the EEA Agreement, extensive information about ESA's fields of work and decisions taken by the College. It also houses ESA's [Public Document Database](#), information on the status of implementation of directives in the EFTA States, and numerous reports.

ESA has also continued to increase its presence on social media. ESA is currently engaging on [Twitter](#), [Facebook](#), [LinkedIn](#) and [Instagram](#).

Visitor groups and seminars

ESA staff members frequently give public presentations to interested parties visiting Brussels. Such direct communication is well suited to giving more in-depth information about ESA and to set a framework for further contact.

ESA received several visits in 2017, ranging from upper secondary school classes and student groups to trade unions, public servants and politicians. ESA's College, its Directors and its staff members also participate in and deliver a range of seminars and meetings in EFTA and EU Member States.

Package meetings

ESA values close cooperation and dialogue with the EFTA States. Every year, members of ESA's management and staff therefore meet up with representatives from relevant ministries in Iceland, Liechtenstein and Norway to discuss ongoing cases.

In 2017, these "package meetings" took place in Liechtenstein's capital of Vaduz on 11 and 12 May and the Icelandic capital of Reykjavík on 7 and 8 June. ESA also arranged for an ESA Day at the National Museum in Reykjavík and the University of Liechtenstein to introduce its work and answer questions. In Norway, ESA conducted two package meetings in 2017. First, the Competition and State Aid Directorate visited Oslo on 28 and 29 September to discuss state aid before the Internal Market Directorate met with ministry counterparts on 26 and 27 October.

Budget and financial performance

ESA's activities and operating budget are financed by contributions from Norway (89%), Iceland (9%) and Liechtenstein (2%). ESA's total budget for 2017 was EUR 14.5 million, an increase of 3.7% compared with 2016, among other things reflecting new responsibilities for ESA in areas such as financial supervision. Nearly 77% of ESA's budget represents personnel costs, i.e. costs for salaries, allowances and benefits.

On 21 June 2017, ESA submitted to the EFTA States its Financial Statement for the financial year 2016 and the accompanying Audit Report by the EFTA Board of Auditors (EBOA). The Financial Statement was approved on 13 December 2017 and ESA was discharged of its accounting responsibilities for that period by the EFTA States.

Financial performance (amounts in EUR rounded to 000s)	Outcome 2017*	Budget 2017	Outcome 2016	Budget 2016
Financial income	3	0.5	1	2
Contributions and Other income	14,767	14,538	14,084	14,014
<i>Other income</i>	275	46	110	40
<i>Contributions from the EEA/EFTA States</i>	14,492	14,492	13,974	13,974
Total income	14,770	14,539	14,085	14,016
Salaries, Benefits, Allowances	10,733	11,328	10,277	10,943
Travel, Training, Representation	637	897	752	882
Office Accommodation	1,210	1,210	1,193	1,184
Supplies and Services	1,016	1,098	1,095	1,001
Financial Costs	8	6	8	6
Other Costs	0	0	0	0
Total expenditure	13,604	14,539	13,325	14,016
Financial performance	1,166	0	760	0

* Preliminary and unaudited

2017

25 January ESA closed an investigation after Iceland committed to amend a scheme that allows electricity producers to use public natural resources.

15 March ESA decided to bring Norway to the EFTA Court for a faulty public procurement procedure in the Municipality of Kristiansand.

29 March ESA closed a complaint case against an exemption from Norway's air passenger tax.

26 April ESA sent a reasoned opinion to Liechtenstein for failing to fulfil a fundamental EEA principle of equal treatment in the insurance sector.

31 May ESA re-approved an exemption rule in the Norwegian scheme on differentiated social security contributions.

23 June ESA approved a six-month prolongation of the Norwegian special tax system for shipping.

13 July ESA approved a three-year extension of a charter fund scheme for increasing tourism in Northern Norway.

24 July ESA approved a total of NOK 25 million in state aid to support the development of hydrogen refueling stations in the Norwegian county of Akershus.

14 September ESA approved an annual increase of NOK 80 million in the Norwegian aid scheme granting tax and social security contributions refunds to shipping companies.

4 October ESA rejected a complaint against Norway concerning fishing rights for snow crab in Norwegian territorial waters.

15 November ESA sent a reasoned opinion to Iceland for allowing the national basketball association to practise a "4+1 rule".

14 December ESA approved a new ten-year special tax regime for shipping in Norway with an approximate yearly value of NOK 200 million.

19 December ESA approved a new, limited period of state aid for zero-emission vehicles in Norway through several tax exemptions.

18 January ESA closed three complaint cases concerning Norway's permit to dispose of tailings in the Førde Fjord.

22 February ESA sent a reasoned opinion to Norway for breaching EEA rules through restrictions on the taxi services market.

16 March ESA approved public financing of studies for full-scale CCS demonstration projects in Norway.

29 March ESA approved the compensation of NOK 5 120 million granted by Norway to Hurtigruten for operating a coastal ferry route from 2012 to 2019.

26 April ESA closed an investigation, concluding that the rental agreement for the Gufunes area in Reykjavík was done on market terms.

3 May ESA opened an investigation to determine if the Icelandic government has granted unlawful state aid to Landsvirkjun.

20 June ESA approved a budget increase for a Norwegian aid scheme for short sea shipping.

27 June ESA approved a grant of NOK 172 million to support renewable energy production in the Norwegian municipality of Trondheim.

19 July ESA published a report setting out how Norway has implemented a broad range of measures to avoid antimicrobial resistance.

8 August ESA approved a three-year extension of Norway's aid scheme for the carbon capture testing centre at Mongstad.

20 September ESA sent a reasoned opinion to Norway for making it too difficult for citizens to seek hospital treatment in other EEA States.

4 November ESA sent a reasoned opinion to Norway for discriminating against fathers when it comes to the right to paid parental leave.

29 November ESA closed an assessment of Norway's International Ship Register (NIS), finding it in line with the EEA rules.

15 December ESA approved a new aid scheme for deferred taxation of employee share options in Norway worth NOK 350 million a year.

19 December ESA sent a reasoned opinion to Norway for not giving non-resident, low-income pensioners the same tax deductions available to Norwegian residents.

2017

14 September ESA approved an annual increase of NOK 80 million in the Norwegian aid scheme granting tax and social security contributions refunds to shipping companies.

29 September ESA published a report on weaknesses in Iceland's controls concerning imports and transit of products of animal origin and live aquatic animals.

25 October The EEA EFTA States appointed a new ESA College to start work on 1 January 2018

15 November ESA sent a reasoned opinion to Iceland for allowing the national basketball association to practise a "4+1 rule".

13 December ESA decided to refer Iceland to the EFTA Court for failure to implement EEA legislation concerning alternative investment fund managers.

14 December ESA approved a six-year prolongation of the Liechtenstein Media Support Act with an estimated yearly budgetary allocation of CHF 1.84 million.

18 December ESA published a report on mitigating measures against *Campylobacter* in Iceland and Norway following a project with the European Commission.

19 December ESA sent a reasoned opinion to Norway for not giving non-resident, low-income pensioners the same tax deductions available to Norwegian residents.

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19 December ESA decided to take Iceland to the EFTA Court for failure to implement an EEA directive on worker rights.

20 December ESA published a report concluding that the national audit system of the Norwegian Food Safety Authority fulfils the EEA requirements.

The Internal Market

The European Internal Market refers to a common area where persons, goods, services and capital can move freely – “the four freedoms”. These provisions are supplemented by other horizontal provisions, concerning areas such as health and safety at work, labour law, equal treatment of men and women, consumer protection, environmental and company law. Such provisions are essential for prosperity, growth and competition and trade. They improve efficiency, raise quality and help cut prices.

In order to ensure that every citizen and undertaking can reap the full benefits of the Internal Market, ESA continually monitors the application of EEA law in the EFTA States. ESA can pursue legal action against States to ensure the proper application and implementation of the Internal Market rules.

Main activities in 2017

150 ONGOING COMPLAINT CASES

For the Internal Market to function, the EFTA States must ensure the effective and timely implementation of the Internal

Market rules into their national legal orders. One of ESA’s main priorities is to investigate cases where the EFTA States have failed to implement legislation incorporated into the EEA Agreement in their national legal orders. In 2017, ESA opened 173 cases when an EFTA State had failed to adopt national measures by the relevant compliance date.

Investigation of national legislation and practice

Where ESA has information about any domestic legislation or practices that may not comply with EEA law, it can decide to initiate an investigation. This may be based on the incorrect implementation of EEA law or where national rules and practices are incompatible with the EEA Agreement. Such investigations can be initiated on the basis of ESA’s own monitoring of the EFTA States, or on the basis of a complaint, which anyone may submit to ESA.

The formal steps of an investigation

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 ESA may ultimately bring the case before the EFTA Court, which will have the final say

There are three formal steps of an ESA investigation.

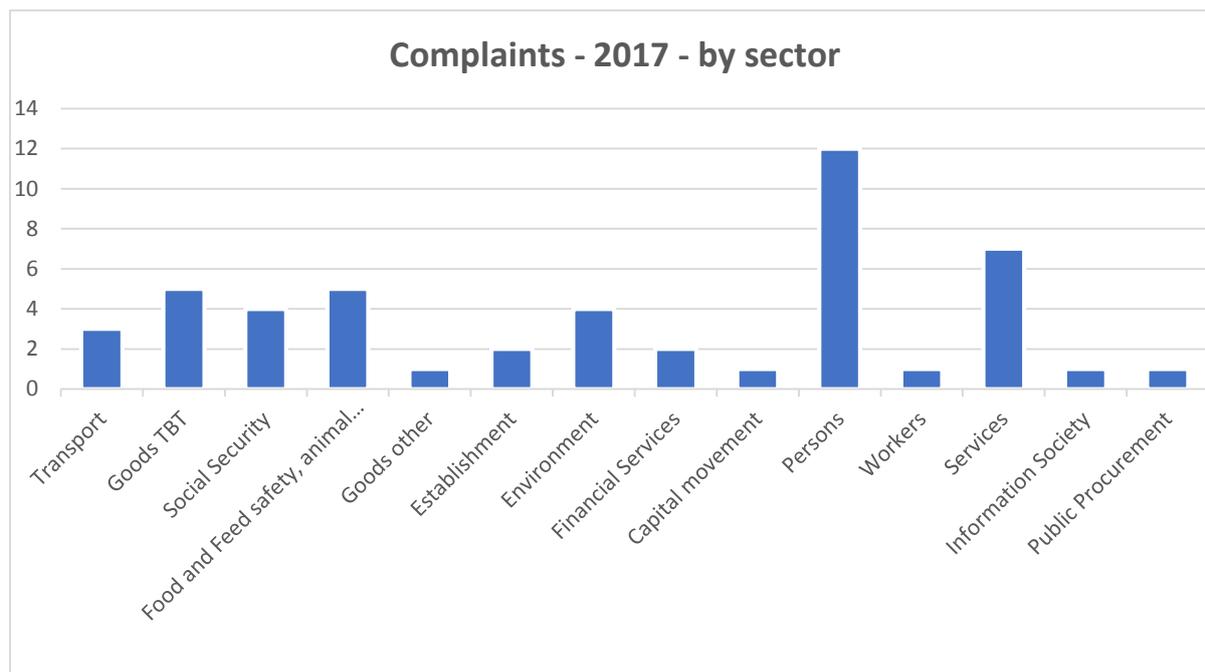
ESA closely monitors how the three EFTA States are performing and will open an investigation when becoming aware of potential problems concerning the

rules governing the Internal Market.

Complaints

ESA receives an average of 50 complaints each year connected to the Internal Market rules, many raising important issues related to the functioning of the market. In 2017, ESA dealt with some 150 ongoing complaint cases.

The largest number of complaints were received regarding the sector of free movement of persons, mostly in connection with an alleged breach of the Residence Directive by Norway. ESA also received a large number of complaints in the services sector in both Norway and Iceland, and in relation to goods and the food and feed sector.



Own initiative cases

ESA also has powers to pro-actively investigate breaches of EEA law. It does this by continuously monitoring events in the three EFTA States, tracking legislative developments and national court rulings, as well as incidents reported in the national press.

ESA engages in a continuous dialogue with business organisations, trade unions, NGOs and other stakeholders at the national level in order to be informed about how the Internal Market is working in the three EFTA States.

In 2017, ESA opened 21 cases on its own initiative in order to assess compliance of national legislation or practice with Internal Market rules. The largest number of these cases were to be found in the transport sector, in some instances following on-site inspections. Important cases were also opened in the core areas of the four freedoms, in particular goods, persons and services.

Norwegian cross-border health care cases – patients’ rights

On 20 September 2017, ESA sent a [reasoned opinion](#) to Norway concerning rules there that make it more difficult for its citizens to seek hospital treatment in other EEA States.

ESA has received several complaints concerning the issue and has found that a number of provisions in the Norwegian legislation are not in line with EEA law. Overall, the Norwegian system lacks the clarity, precision and transparency required by the EEA rules on patients’ rights. This makes it very difficult for patients to navigate the system and fully understand their rights.

Further, Norwegian rules prohibit patients from directly accessing medical service providers in other EEA States, in cases where the Norwegian health care system has failed to provide necessary medical treatment within the prescribed deadlines.

Other Norwegian rules fail to ensure, as required under EEA law, that an assessment is made as to whether patients can actually receive equally efficient treatment in Norway in due time. In addition, Norway does not ensure an adequate, case-by-case assessment of individual patients.

Finally, the Norwegian rules do not explicitly ensure that what is recognised by international medical science is fully taken into account when evaluating the expected benefit of medical treatment available elsewhere Europe.



Norwegian rules on paid parental leave

A father’s entitlement to paid parental leave in Norway is dependent on the economic status of the child’s mother. Norway limits paid parental leave to situations where the mother is studying or working full time or otherwise fulfilling activity requirements set out in national legislation.

In effect, where a mother is not working or in full time education following the birth of her child, the father will not be able to take paid parental leave. The result is that mothers are explicitly granted more comprehensive rights to paid leave.

Following an examination in an own initiative case in November 2017, ESA sent a [reasoned opinion](#) to Norway on the basis that the Norwegian rules constitute direct discrimination on grounds of sex, contrary to the Sex Discrimination Directive ([2006/54/EC](#)).

ESA has also received complaints from fathers, claiming that they were not granted parental leave because their partners were not working or studying full time. In its response to the reasoned opinion, Norway maintains that its rules on parental leave are in line with EEA law.

Liechtenstein breaches equal treatment rules for men and women

In April 2017, ESA sent a [reasoned opinion](#) to Liechtenstein. In ESA's view, Liechtenstein's provisions permitting insurers to use gender as a risk factor infringe the principle of non-discrimination between men and women, both as implemented in the Sex Discrimination in Access to Goods and Services Directive ([2004/113/EC](#)) and as a general principle of EEA law.



In addition, ESA takes the view that Liechtenstein has failed to respect the duty of loyalty and duty of sincere cooperation for the EEA States under Article 3 of the EEA Agreement.

Liechtenstein has national provisions allowing insurers and related financial service providers to use gender when they calculate premiums and benefits, which leads to different rates for men and women. ESA considers this to be in breach of the principle of equal treatment in the Access to Goods and Services Directive ([2004/113/EC](#)).

As of December 2012, the Court of Justice of the European Union invalidated any provision allowing the use of gender in calculating premiums and benefits. The EFTA States have to take due account of the principles laid down by the Court, however, Liechtenstein still adopted derogations after the ruling of the Court of Justice.

Iceland's 4+1 rule in basketball is a violation of the EEA Agreement



The Icelandic "4+1 rule" introduced by the Icelandic Basketball Association means that clubs are prevented from having more than one foreign player on court during a match.

Following an examination of a complaint in November 2017, ESA sent a [reasoned opinion](#) to Iceland, concluding that this is a violation of the EEA Agreement.

The principle of free movement allows workers to move to another EEA state and have access to employment without discrimination. When a sport constitutes an economic activity and takes on the form of gainful employment, it falls within the scope of the free movement of workers and is subject to EEA law. Foreign basketball players should therefore have the same rights to employment as Icelandic players. In ESA's opinion, the non-discrimination principle in EEA law also extends to amateur basketball players from other EEA states residing in Iceland.

Recognition of psychology degrees in Norway

ESA has received numerous complaints questioning whether Norway's handling of applications for recognition of Hungarian and Polish qualifications of psychologists complies with the Professional Qualifications Directive ([2005/36/EC](#)).

Until 2016, it was a consistent practice of the Norwegian authorities to grant licences to individuals with degrees in psychology from universities in these two countries. The licences gave the graduates the right to pursue the profession of psychologist under supervision for one year. After successful completion, they became fully authorised psychologists in Norway.

With no prior warning, Norway changed that practice in 2016. According to Norway, the change was due to new information about the Hungarian and Polish qualifications.

This change primarily affected graduates of the Hungarian ELTE-University. Fifty graduates had their licence applications rejected. Those who had already been granted a licence were informed that they should not expect to be granted an authorisation after completing their licence period.

Around 200 Norwegian students had already been accepted to, or were studying at, the university at the moment Norway decided to change its practice. Similar changes have been seen regarding individuals with degrees in psychology from Poland.

In 2017, ESA worked to assess the complaints, which concern the content of Norway's decisions, the timeframe and the failure to provide an appeals system.

Norwegian support for studies abroad



For a number of years, ESA has brought infringement proceedings against Norway challenging its rules on financial assistance for studies, on the basis that these discriminate against workers and their families from other EEA states.

In 2015, Norway adopted new rules providing for more possibilities for EEA workers and their family members to receive support for studies abroad, compared with the old rules.

However, ESA finds that these new rules are still more likely to be fulfilled by Norwegian nationals than EEA workers. The criteria applied by Norway are therefore contrary to EEA law on free movement, which says that workers from other EEA states should enjoy the same

social advantages as nationals. Financing awarded to students is a social advantage which should be granted without discrimination.

In October 2017, ESA sent a [letter of formal notice](#) to Norway inviting the Government to fulfil its obligations under EEA law.

Norwegian ban on gambling related payment transactions

In April 2017, ESA received a complaint against Norway concerning the Norwegian Gaming Authority's request to Norwegian financial institutions to block all payments to and from certain EEA licensed payments service providers.

According to the information received, the reasoning behind the blocking request is that the payments service providers accept payments to and from gambling companies which are barred from operating in Norway. In the view of the complainants, the request from the Norwegian

Gaming Authority would imply an infringement of Directive 2007/64/EC, the Payment Services Directive, as well as Articles 36 and 40 EEA.

In September 2017, the Norwegian Government submitted its initial observations on the complaint. The Norwegian Government stated that the Norwegian Gaming Authority's request to Norwegian financial institutions did not imply a requirement to stop transactions.

The intention of the request was to supply financial institutions with information about the payment ban in relation to procurement of stakes and prizes from Norway via payment service providers to gambling companies without a Norwegian licence. In the view of the Norwegian Government, the measure did not imply an infringement of either Directive 2007/64/EC or Articles 36 and 40 EEA.

Norway referred to the EFTA Court over public procurement

On 15 March 2017, ESA decided to take Norway to the EFTA Court for failing to adhere to the EEA public procurement rules in connection with the awarding of a contract for the construction and operation of an underground parking facility in the Municipality of Kristiansand.

ESA initiated a review of the tender process for the award of the contract in question following a complaint received in August 2015. ESA issued a [letter of formal notice](#) on the matter in February 2016. The second step in the procedure was a [reasoned opinion](#) that was sent to Norway in July 2016.

In its Court referral decision, ESA argued that the Municipality had breached EEA rules on public procurement when awarding a contract for the construction and operation of an underground parking facility. More specifically, ESA found that the Municipality had failed to publish the public contract notice EEA-wide and had not respected the minimum time limit for the submission of tenders.

Furthermore, ESA contended that the project should have been tendered out as a public works concession and not, as the Municipality had done, as a service concession, given the predominant construction element of the contract. As a result of these breaches, the Municipality may have prevented competition and precluded companies from other parts of Norway and the EEA from participating in the tender procedure and, potentially, submitting more advantageous offers both on price and quality.

Norway contested ESA's conclusion and argued that the contracts did not constitute a public works concession.

Norwegian Seafood Council's marketing activities

In May 2016, ESA received a complaint against Norway arguing that domestic marketing activities of the Norwegian Seafood Council (NSC) include advising consumers to purchase domestic fish solely by reason of its national origin and that this constitutes a measure having equivalent effect to quantitative restrictions contrary to Article 1(2) of Protocol 9 to the EEA Agreement. The NSC is a body set up by the Norwegian government and financed by a levy on fish exporters.

In a letter received by ESA in December 2017, Norway maintains that the relevant "NORGE Seafood from Norway" branding is now used only (i) in promotions by the NSC targeted at non-

domestic consumers; and (ii) on the packaging of certain fish products according to the choice of relevant food business operators but without being incentivised by the NSC.

Data protection - independence of supervisory authorities

ESA has screened the legislation and the set-up of the data protection supervisory authorities (DPAs) in the EEA EFTA States pursuant to the Data Protection Directive ([Directive 95/46](#)). Case law under the Data Protection Directive sets out particularly strict criteria to the independence of DPAs, who must enjoy an independence which allows them to perform their duties free from external influence, direct or indirect, which is liable to have an effect on their decisions.



Shortcomings were found in [Norway](#) and [Iceland](#), and ESA sent letters of formal notice to the two States in 2016. In Norway, these shortcomings related to the ties between the DPA and the responsible Ministry due to its subordination to the Ministry in certain administrative matters. In Iceland, the shortcomings primarily related to the budgetary situation of the DPA.

Throughout 2017, both Norway and Iceland have subsequently taken steps to address ESA's concerns and to improve the independence enjoyed by their respective DPAs.

PFOA case decided by the EFTA Court

In February 2016, ESA referred Norway to the EFTA Court over its unilateral ban on the synthetic chemical perfluorooctanoic acid (PFOA). PFOA is often used in textiles and is known to be harmful to both human health and the environment.

Norway introduced a national ban on PFOA in 2014 and in so doing, challenged ESA's interpretation of the procedures in the REACH Regulation (1907/2006) on dangerous substances. To ensure that all consumers across Europe are protected, the EEA States must apply the REACH provisions the same way. Consequently, ESA decided to bring Norway to the EFTA Court to establish which procedures the EEA States are to follow when banning substances such as PFOA. ESA did not contest the fact that PFOA is a harmful substance and referred the case to the EFTA Court on procedural grounds.

[The EFTA Court](#) ruled on the legality of Norway's ban on PFOA in July 2017 and found that Norway did not breach EEA law by maintaining in force a national restriction.

Mining Waste Directive

In March 2017, ESA received a complaint from 11 environmental organisations in Norway regarding permits which had been granted to allow the disposal of mining waste in the Førde fjord, the Ran fjord and the Reppar fjord.

The complainants allege that the Norwegian Government has infringed the Mining Waste Directive ([2006/21/EC](#)) in particular because there were no waste management plans presented when the applications for permits were made.

ESA investigates alleged breaches of the Water Framework Directive ([2000/60/EC](#)) in respect of both Ran fjord and Reppar fjord. ESA has expanded the scope of these ongoing cases to include an examination of the allegations concerning the Mining Waste Directive. A new case has been opened to examine the situation with the Førde fjord.

Iceland's obligations under Protocol 35 EEA

On 13 December 2017, ESA sent a [letter of formal notice](#) in an own initiative case to Iceland, maintaining that Iceland had failed to adequately implement Protocol 35 to the EEA Agreement. Protocol 35 requires the EFTA States to ensure that implemented EEA rules take precedence over other domestic legislation.



Article 3 of Act No. 2/1993 on the European Economic Area was intended to implement Protocol 35 EEA in Iceland. Article 3 of the EEA Act is however merely a rule of interpretation, which provides that domestic law shall be interpreted in conformity with EEA law.

The Icelandic Supreme Court has handed down several judgments which confirm the view that an interpretation on the basis of Article 3 of Act No. 2/1993 cannot secure the priority of implemented EEA legislation in cases of conflict with other domestic legislation.

One of the effects of this is that the main provisions of the EEA Agreement on the freedom of movement are deprived of its core purpose, which is to prevent unjustified restrictions on free movement.

As a consequence, ESA found that Article 3 of the EEA Act, as interpreted and applied by the Icelandic Supreme Court, does not adequately implement Protocol 35 EEA. This is because it does not ensure that unconditional and sufficiently precise implemented EEA law prevails over conflicting domestic provisions. ESA therefore concluded that Iceland had failed to ensure fulfilment of the obligations arising out of the EEA Agreement.

Transport

Efficient, safe, secure and environmentally friendly transport of goods, services and persons complements the development of the Internal Market and is fundamental to a more competitive EEA economy. All modes of transport are covered by the EEA Agreement. However, due to geographical location or lack of infrastructure, certain legislation applies to a limited degree in some of the EFTA States. ESA monitors all EEA legislation on transport, be it on land, in the air or at sea.

In the field of aviation, maritime and rail, ESA cooperates with the EU transport agencies. The agencies provide ESA with expert advice and assist with visits and inspections in the EFTA States, either in accordance with their own work programme or at ESA's request. Moreover, and in order

to ensure compliance with aviation and maritime security rules, one of ESA's tasks within the field of transport is to carry out on-site inspections.

The taxi services market in Norway

In 2014, ESA received a complaint against Norway concerning the rules limiting access to the taxi services market. The complainant argued that Norwegian rules regarding access for new entrants to the taxi services market are in conflict with EEA law, and constitute a restriction on the freedom of establishment.

Norwegian legislation foresees a limited number of taxi licences available in a licence district. The award of new licences is subject to a needs test. This means that the competent authority in a licence district can restrict the number of available licences, in accordance with demand in the district.

Having assessed the complaint, ESA has concluded that the applicable Norwegian national legislation on access to the market for the provision of taxi services constitutes an unjustified restriction on the freedom of establishment under Article 31(1) EEA.

ESA does not take issue with the licensing requirement in itself, but is concerned about the restriction that follows from the numerical limitation of taxi licences. Furthermore, the conditions for granting a new licence do not satisfy the requirements under EEA law for prior authorisation schemes.

ESA acknowledges that a limitation of licences can be necessary to guarantee a satisfactory, round-the-clock supply of taxi services in rural areas where taxis are often an indispensable means of transport and thereby serve a public interest.

However, the situation is different in densely populated areas, such as Oslo. There, it is rather likely that limiting the number of licences on the basis of a needs-based test will have the result of limiting the supply by precluding new operators from entering the market. Creating such high barriers will lead to an inefficient exploitation of resources and limit labour productivity, thereby increasing prices.

ESA issued a [letter of formal notice](#) to Norway in May 2016 and a [reasoned opinion](#) in February 2017. Norway replied to the reasoned opinion in December 2017, announcing amendments to the existing legislation. The new legislative framework is said to entail a removal of the numerical limitation of licences and new rules with regards to their allocation.

The Norwegian International Ship Register

Following the 2014 [Sava Star](#) ruling from the Court of Justice of the European Union, ESA opened an own initiative case related to two trade limitations imposed on Norwegian International Ship Register (NIS) registered vessels.

Under Norwegian law, vessels on the NIS Register are not allowed to transport passengers on scheduled transport services between Norway and foreign ports. Moreover, the Regulation on



trade areas for passenger services registered in NIS establishes that vessels registered in NIS cannot transport passengers on scheduled services between the Nordic countries.

On 9 February 2016, ESA delivered a [letter of formal notice](#) to Norway for failure to ensure the freedom to provide maritime transport services. ESA took the view that Regulation (EC) No 4055/86 lays down the freedom to provide intracommunity and third country maritime transport services for the subjects falling within the scope of the Regulation (that is, nationals established in the EEA and EEA-nationals established outside the EEA whenever their vessels are registered in an EFTA State in accordance with its legislation). Thus, the imposition of any restrictions on the freedom to provide services falling within the scope of Regulation 4055/86 should be deemed, in principle, contrary to EEA law.

Based on the information made available to ESA by the Norwegian Government in the aftermath of the letter of formal notice, taking note of the submissions received in the context of a public hearing on the proposal of changes to the Norwegian Regulation on the trade limitations area for NIS vessels, and also giving consideration to the principle of homogeneity, ESA concluded that the questioned trade limitations amounted to a restriction justifiable under EEA law on the grounds of overriding reasons of public interest.

Therefore, the own initiative case was [closed](#) in November 2017.

Transport security inspections – aviation and maritime



The main objective of the EU's regulatory framework on aviation security is to establish and implement appropriate measures in order to safeguard passengers, crew, ground personnel and the general public against danger on board aircraft or within the confines of an airport.

Regulation (EC) [No 300/2008](#) on common rules in the field of aviation security forms the basis for the regulatory framework. Multiple regulations supplementing and implementing the common rules have since been adopted. By the incorporation of this regulatory framework into the EEA Agreement, the legislation is also applicable in the EFTA States.

One of the key components of the framework on aviation security is the organisation of inspections by the European Commission to verify implementation. For the EFTA States, these inspections are carried out by ESA.

The Commission and ESA's inspections complement the national monitoring by the States of airports, operators and entities. ESA cooperates with the appropriate authorities in the EFTA States as well as the Commission to work towards the common goal of increasing aviation security within the EEA.

In the field of maritime security, the main objective of the EU maritime security legislation is to introduce and implement measures aimed at enhancing the security of ships used in international trade and domestic shipping and associated port facilities in the face of intentional threats.

By the incorporation of this maritime legislation into the EEA Agreement, the legislation is also applicable in the EFTA States. As in the field of aviation security, ESA is tasked with inspecting the

EFTA States in the field of maritime security and is assisted by the experts of [the European Maritime Safety Agency \(EMSA\)](#).

The cooperation between ESA and the Commission in the field of maritime security is further strengthened by means of participation in both common workshops and inspections and is key to the well-functioning and a harmonised Internal Market.

In 2018, ESA will celebrate an important milestone: ten years will have passed since the first maritime security inspection was conducted in the EFTA States. Throughout this decade, maritime security has evolved and matured as a harmonised field of the Internal Market, and the security awareness at port facilities and ships has considerably improved.

Passenger rights awareness campaign

With the booming mobility levels experienced within the EEA, there is a stronger emphasis on the adoption and enforcement of passenger rights legislation.

A comprehensive set of passenger rights in all modes of transport, be it by air, water, rail or road, is now in place to protect EEA citizens.

In 2018, ESA will launch a campaign to make Icelandic, Norwegian and Liechtenstein citizens aware of the rights conferred by EEA legislation when they are travelling.

The campaign will include an updated version of ESA's transport website, online information with extracts of EEA legislation for each of the different modes of transport and an app. The campaign will be launched in spring 2018.



Food safety, animal health and welfare

ESA is responsible for monitoring the implementation by Iceland and Norway of EEA legislation on food and feed safety and other veterinary related sectors, including animal health and welfare.

The legislation in the sector is characterised by its dynamic nature, both in terms of the substantial number of legislative texts continually being adopted and the specific procedures for rapid implementation in EFTA States of legislation which must apply without delay across the entirety of the EEA in order to be effective. This includes protective measures taken in light of serious food safety risks.

In addition to monitoring the implementation of, and compliance with, relevant legislation and dealing with related complaints and infringement cases, ESA's tasks include conducting on-the-spot audits to verify that Iceland and Norway apply the respective legislation appropriately.

Auditing activities in 2017

In 2017, four audits were carried out in Norway and two in Iceland.



Where ESA identifies shortcomings in the official control system of the national authority, it issues recommendations aimed at rectifying the situation, which will be included in the draft mission report sent to the relevant EFTA State. The EFTA State is then invited to comment on the draft report and to propose corrective actions addressing the recommendations, which will be included in the [final reports published on ESA's website](#).

In 2017, ESA published updated [Country Profiles](#) explaining the systems of official controls established in Norway and Iceland to monitor compliance with relevant legislation and assessing progress in implementation of corrective actions proposed by each country.

Official controls in the feed sector in Iceland

ESA identified shortcomings in Iceland's official controls in the animal feed sector following an audit carried out in May 2017.

Findings were related in particular to controls regarding the monitoring of levels of dioxins and controls regarding establishments that produced both fish oil for human consumption and fish oil and fish meal intended for animal feed.

Import controls and use of TRACES in Iceland and Norway

Weaknesses were identified by ESA in the Icelandic import control system and use of Trade Control and Expert System (TRACES) during an audit carried out in June 2017. In particular, [ESA detected](#) shortcomings in the identification of consignments requiring veterinary checks, in the performance of documentary checks and in the controls, monitoring and follow-up of consignments in transit and transshipment.

In its audit of October 2017, [ESA found](#) that Norway needs to improve its official controls concerning transit and transshipment of consignments of both products of animal origin and live animals, and its monitoring plan for sampling imported consignments. Shortcomings were also identified in the performance of physical checks, including sampling and related use of TRACES, and in channelling of consignments, which was not implemented.

Furthermore, ESA noted that there was still no system to detect consignments under customs procedure arriving at the border and transported directly to customs warehouses.

Reducing campylobacter in poultry in the EEA



Campylobacteriosis is the most frequently reported food-borne illness in the EEA and its incidence is steadily increasing.

Tackling campylobacter has been a priority for the authorities in Iceland and Norway over recent years.

After a [series of fact-finding missions](#) conducted in the EEA by ESA and the European Commission in 2016, an [overview report](#) was published in 2017 describing measures implemented along the poultry food chain in the countries visited in order to reduce campylobacter in poultry.

Restrictions on imports of raw meat, egg and dairy products in Iceland

In October 2014, ESA delivered a [reasoned opinion](#) to Iceland concerning restrictions on imports of raw meat products from other EEA states. In 2015, ESA opened a case concerning similar restrictions imposed on imports of egg and dairy products.

Following a request by the Reykjavík District Court, the EFTA Court delivered in February 2016 an [advisory opinion](#) concerning the Icelandic import system for raw meat products, concluding that it was not in line with Directive 89/662 on veterinary checks in intra-Community trade for an EFTA State to require a special permit before raw meat products are imported and a certificate confirming that the meat has been stored frozen for a certain period.

Following that judgment, ESA issued a [letter of formal notice](#) and then a [reasoned opinion](#) to Iceland, in which it concluded that the authorisation system for the import of egg and dairy products was not in line with Directive 89/662.

ESA decided in December 2016 to bring both cases [before the EFTA Court](#). In its [judgment](#) delivered in November 2017, the EFTA Court upheld ESA's main conclusions, considering that the import authorisation systems and related requirements for raw meat products, raw egg products and unpasteurised dairy products were not in line with Directive 89/662.



Non-commercial movement of pet animals into Norway

During 2017, ESA continued to receive complaints concerning administrative practices relating to the movement of pet animals into Norway for non-commercial purposes.

The complaints maintain that the conditions stipulated by the competent authority for the movement of such pet animals are stricter than those which may be imposed under the relevant EEA legislation. Further the complainants are of the opinion that pet owners are not being

informed of all the options afforded to them under such legislation where requirements for non-commercial movement into Norway are not met.

Norway formally addressed these points in a response to ESA's Request for Information in late 2017.

Simplified procedure in Iceland

In order to be effective, it is essential that certain measures in the food and veterinary field (for example, protective measures taken in the light of serious food safety risks) apply in EEA EFTA States quickly after their adoption in the EU and therefore without delay across the entirety of the EEA.

This is of particular importance in areas where it is urgent to put protective measures in place. Such acts are subject to what is known as the "simplified procedure", meaning that they are fast-tracked into the EEA Agreement, without having to undergo the usual incorporation process.

In 2014, ESA opened an own initiative infringement case against Iceland for failure to implement measures to ensure that acts subject to the simplified procedure are made part of the Icelandic legal order within the short deadlines required.

In June 2017, Iceland informed ESA of steps taken to permit publication of such Acts in English in the Icelandic Official Gazette in order to reduce the delay in their incorporation.

Internal Market Scoreboard

Twice a year, ESA publishes the Internal Market Scoreboard. The Scoreboard tracks the implementation by Iceland, Liechtenstein and Norway of Internal Market legislation.

Once a year, ESA publishes a Scoreboard comparing the performance of the EFTA States with that of the EU Member States. In September 2017, ESA published its fortieth [Internal Market Scoreboard](#), reflecting the state of play as at the end of May 2017.

The figures showed that Norway saw further progress regarding the timely implementation of legislation, with a deficit of just 0.2%, reflecting two directives which had not been fully transposed into national law on time. The same positive trend can be seen for regulations, where Norway had only three overdue, resulting in a transposition deficit for regulations of 0.1%.

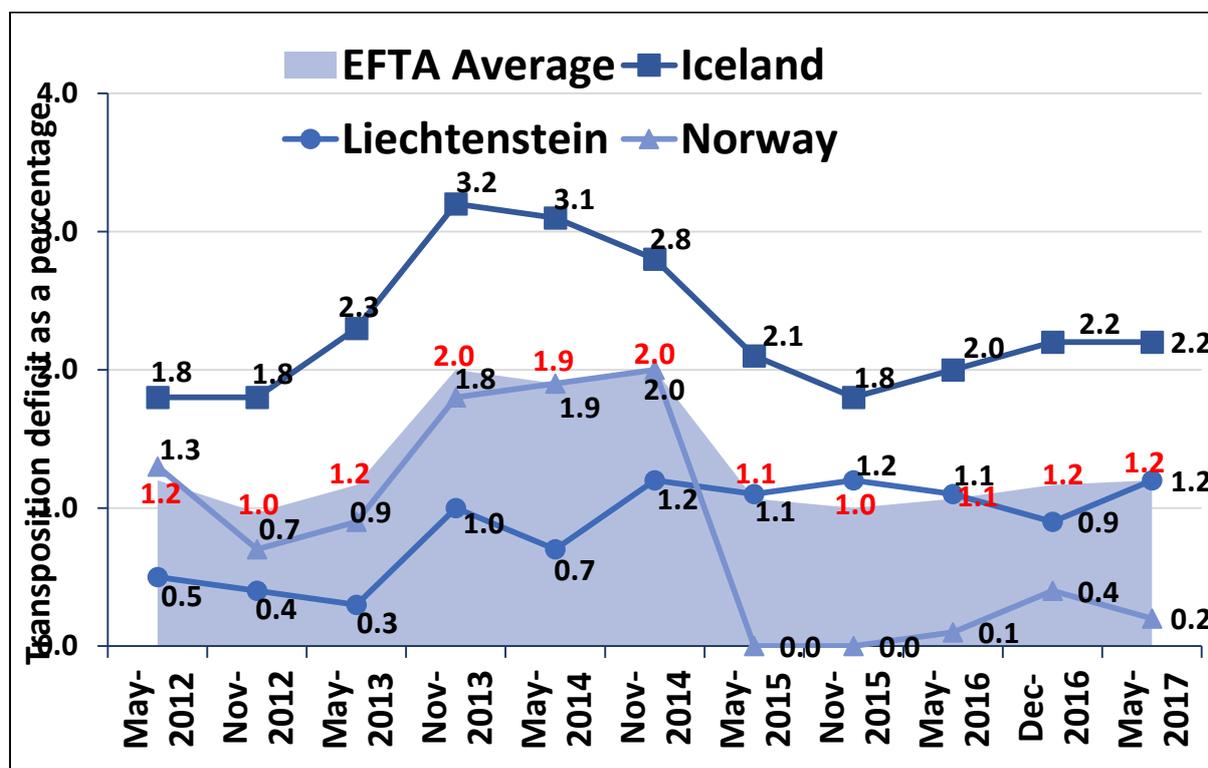
In contrast, Iceland failed to improve upon its unsatisfactory performance from the previous scoreboard. With 18 directives overdue, Iceland's transposition deficit remained at 2.2%. Iceland has had five directives outstanding for two years or more. The number of overdue regulations had risen by five since the last Scoreboard, and stood at 70, translating into a transposition deficit for regulations of 2.6%.

Liechtenstein's deficit increased from 0.9% to 1.2%, with ten directives which had not been fully transposed.

The deficit indicates how many directives and regulations containing Internal Market rules the EFTA States have failed to transpose and communicate on time. Transposition is important, not

only to achieve the policy objectives set out in the legislation, but also to protect the homogeneity of the Internal Market.

This is why it is essential for all the EFTA States to display good transposition records. These covered almost every area of the Internal Market. For directives, most outstanding directives were in the areas of goods and transport whilst for regulations, most outstanding regulations could be found in the areas of transport, financial services and food and feed, animal health and welfare.



EFTA States' transposition deficit over the past five years Transposition deficit as at 31 May 2017 for directives which should have been transposed on or before 31 May 2017.

State aid

State aid is public support provided to commercial activities. The EEA Agreement prohibits state aid in order to ensure equal opportunities for companies across Europe, and to prevent government assistance from being used as a form of protectionism in the absence of trade barriers. Examples of state aid are cash grants, tax breaks, favourable loans, guarantees or investments not based on market terms.

The prohibition is subject to numerous exemptions, recognising that government intervention can be necessary to correct market failures and for other purposes.

The state aid regime has been set in place to allow for aid that contributes to common European goals such as environmental protection, research and development and innovation (R&D&I) and addressing regional and social disparities. The EFTA States must notify state aid measures to ESA, which is the only authority that can grant exemptions from the general prohibition for Iceland, Liechtenstein and Norway. State aid received in breach of the rules may have to be paid back.

A current trend is that tax measures play a greater role in state aid control. In 2017, various forms of tax measures featured in over a third of the state aid decisions taken by ESA.

Main activities in 2017

53 NEW STATE AID CASES

In 2017, ESA opened 53 new state aid cases and 65 cases were closed. At the end of the year, 32 state aid cases were pending.

These statistics include pre-notification discussions, notifications, formal investigations, existing aid reviews, reviews of unlawful aid (mostly complaints), recovery and evaluation cases. Cases of aid under the General Block Exemption Regulation (GBER) are excluded.

The number of pending cases is at a historical low, following the state aid modernisation reform that was initiated by the European Commission in 2012. The modernisation has to a great extent decentralised state aid control, leaving a greater responsibility with the EEA States to ensure compliance by applying GBER.

Using the GBER – opportunities and responsibilities

The GBER exempts wide categories of aid measures from the notification obligation, provided that the conditions set out in the GBER are fulfilled. The idea is that only the larger, more distortive and complex cases will remain subject to prior notification and detailed scrutiny by ESA before aid can be granted.

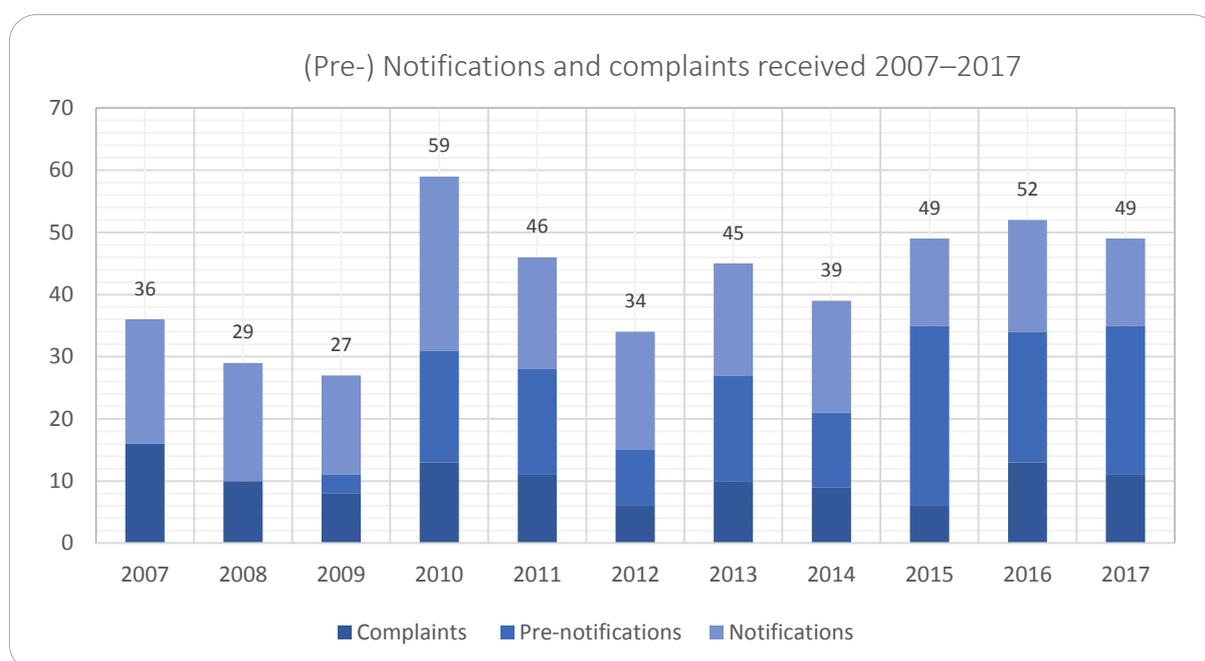
The GBER thus shifts more responsibility to national authorities – in exchange for higher standards on transparency and accountability. In particular, larger aid awards are published on a publicly available website, certain schemes require an evaluation plan and ESA conducts monitoring exercises to ensure that aid measures fulfil the requirements under the GBER.

In 2017, Norway made active use of the GBER with 39 block-exempted aid measures, whilst Iceland and Liechtenstein block-exempted one aid scheme each. The [GBER information sheets](#) are available on ESA’s website.

State aid decisions

In 2017, ESA adopted 18 state aid decisions, 14 involving state aid in Norway, three in Iceland and one in Liechtenstein. The decisions are available in the [state aid register](#) on ESA’s website.

ESA’s decisions are mostly based on complaints or notifications. Notifications and complaints are important indicators of activity, as ESA enjoys very limited discretion in whether to handle these cases or not.



Preliminary views

Openness is one of ESA’s [three core values](#). In keeping with this, ESA in 2017 for the first time started making publicly available, in a systematic way, its preliminary assessments of potential aid measures.

These are cases where the EFTA States have pre-notified measures for legal certainty because they want to discuss with ESA whether the measures must be notified because it is unclear whether the initiatives constitute state aid, or because they could be exempted from the notification obligation.

Similarly, ESA also started making available its [letters rejecting complaints](#) after a preliminary assessment. These letters represent ESA’s informal preliminary assessment of a case. They are not binding on ESA.

Aid for environmental protection and energy

Environmental support is a priority in the EEA, and one of the most important exceptions to the general ban on state aid. ESA approved several green projects in 2017.

Zero-emission cars



In 2017, the trend of a high share of environmental protection and energy cases in the case load continued.

At the tail end of the year, ESA approved an extension of the Norwegian regime with a zero VAT rate for [zero emission vehicles](#) until the end of 2020. At the same time, ESA approved a number of other less costly aid measures for zero emission cars for a period of six years. The zero VAT rating amounts to NOK 3.2 billion

(approximately EUR 325 million) a year in aid expenditure.

Simultaneously, the market for electric cars is experiencing rapid technological advances, creating both better and cheaper cars. To avoid an over-compensation that benefits neither the market nor consumers, ESA asks Norway to evaluate the zero VAT rating after two years.

Hydrogen fuelling stations

In 2017, ESA also approved operating aid to [hydrogen fuelling stations](#) in the Norwegian county of Akershus. The five-year scheme aims to encourage the use of hydrogen as an alternative fuel. Over time, Norwegian authorities hope to see an increase in the number of hydrogen cars and a reduction in the use of fossil fuels in the transport sector.

Carbon capture

In the course of 2017, ESA approved two Norwegian aid measures in support of carbon capture and storage (CCS).

In March ESA first approved the financing of studies for full-scale [CCS](#) demonstration projects. The Norwegian authorities aim to realise at least one full-scale CCS demonstration project by 2020 and have allocated up to NOK 360 million (approximately EUR 40 million) to CCS studies in 2017.

ESA also approved a three year extension of Norway's aid scheme for the carbon capture testing centre at [Mongstad](#). The total operating budget of the centre is estimated to be NOK 805 million (approximately EUR 85 million).

Aid to thermal energy production

In 2017, ESA approved aid to an incineration plant in the Norwegian municipality of Trondheim.

The project will provide 200 GWh of thermal energy annually to be used as [district heating](#) in Trondheim as well as in the industrial processes of the paper mill Ranheim Paper & Board. The approved aid amounts to NOK 172 million (approximately EUR 18 million).

Pricing of natural resources

Finally, 2017 marked the year when ESA closed its long-running investigation into the Icelandic authorities sale of [natural resources](#) below market price to electricity producers.

The Icelandic authorities committed to introducing a legal obligation establishing that any transfer of rights to utilise public natural resources for electricity generation takes place on market terms.



Moreover, the Icelandic authorities committed to establish a clear methodology to fix the price of the natural resources and review all existing contracts in light of this methodology to ensure that all companies pay a correct market remuneration for the remainder of those contracts.

In light of the commitments made by the Icelandic authorities, ESA closed its investigation into the matter.

Aid for transport

In addition to the environmental road transport cases, ESA examined a number of state aid measures related to transport by sea and air in 2017.

Norwegian tonnage tax

In the maritime field, [ESA approved](#) the Norwegian tonnage tax system in 2017.

In order to ensure that maritime know-how is kept within the EEA and not moved to third countries, this scheme exempts maritime transport from the usual corporate tax rate. Ship owners instead pay taxes based on ship weight (tonnage), resulting in a significantly reduced rate.

The scheme is a continuation of an existing scheme that has been in place since 1996. ESA approved it for another ten years until the end of 2027. The scheme will result in an annual tax loss of NOK 200 million (approximately EUR 20.5 million).

Hurtigruten investigation closed

In 2017, [ESA concluded](#) its investigation into the compensation granted by Norway to the company Hurtigruten for operating a coastal ferry route between Bergen and Kirkenes from 2012 to 2019.

After receiving two complaints, ESA opened a formal investigation of the coastal agreement in December 2015. ESA investigated whether or not the agreement provides over-compensation in breach of the state aid rules.

Hurtigruten receives the compensation from Norway in order to perform daily sailings throughout the year with calls at 34 ports. The state aid rules permit public service compensation for services of general economic interest not provided by the market, such as the Bergen–Kirkenes coastal route. ESA did not find clear evidence of over-compensation.

Two maritime transport schemes

In the course of 2017, ESA also approved modifications of two previously approved Norwegian maritime transport schemes.

Firstly, [ESA approved](#) a budget increase for a short sea shipping scheme aimed at promoting a modal shift of freight from road to sea.

Secondly, [ESA approved](#) an amendment of an aid scheme granting tax and social security contributions refunds to shipping companies. ESA approved the inclusion of vessels engaged in deep sea activity registered in the Norwegian International Ship Register (NIS) under the scheme.

Under the scheme, shipping companies are granted refunds of taxes and social security contributions paid for EEA seafarers on ships registered in Norway. This way, Norwegian authorities aim to encourage shipping companies to recruit seafarers from Norway or other EEA States.

Norwegian passenger tax

In the field of air transport, ESA investigated an exemption for transit and transfer passengers under the Norwegian air passenger tax, and [concluded](#) in 2017 that it does not involve state aid.

The passenger tax was levied on all commercial flights departing from Norwegian airports from June 2016. An exemption was made for transit and transfer passengers.

ESA received a complaint against Norway in June 2016 from the Federation of Norwegian Aviation Industries (NHO Luftfart), arguing that the exemption constituted unlawful state aid.

The complainant held that the exemption favours airlines which operate various networks and serve multiple destinations, which often have in place cooperation agreements with other airlines, to the detriment of airlines relying on passengers' ability to self-connect.

Prior to receiving the complaint, ESA had in May 2016 informed Norwegian authorities that it did not consider the exemption in the new tax to involve state aid. After assessing the complaint, ESA upheld its first conclusion.

Tourism in northern Norway



In 2017, ESA also approved a three-year extension of a charter fund scheme aimed at increasing tourism in northern Norway.

The charter fund is aimed at increasing the use of airports in the three northern regions of Nordland, Troms and Finnmark in the low season, and stimulating tourism and economic development in the region.

The fund covers part of the costs of flying charter flights to northern Norway if there are not enough passengers for the tour operators to break even.

This reduces the economic risk involved in operating these air charters.

The limits of ESA’s state aid competence

In 2017, the EFTA Court delivered a judgment confirming the limits of ESA’s sphere of competence when it comes to assessing state aid.

After ESA declined to take on a state aid complaint against Norway from Marine Harvest, the Norwegian seafood company asked the EFTA Court to declare that ESA has the competence - and indeed is obliged - to oversee compliance with state aid rules in the fisheries sector.

ESA argued, as it has done previously, that the EEA Agreement does not empower ESA to carry out such surveillance. In a judgment delivered on 27 November 2017 the Court confirmed ESA’s view and [dismissed the application](#).

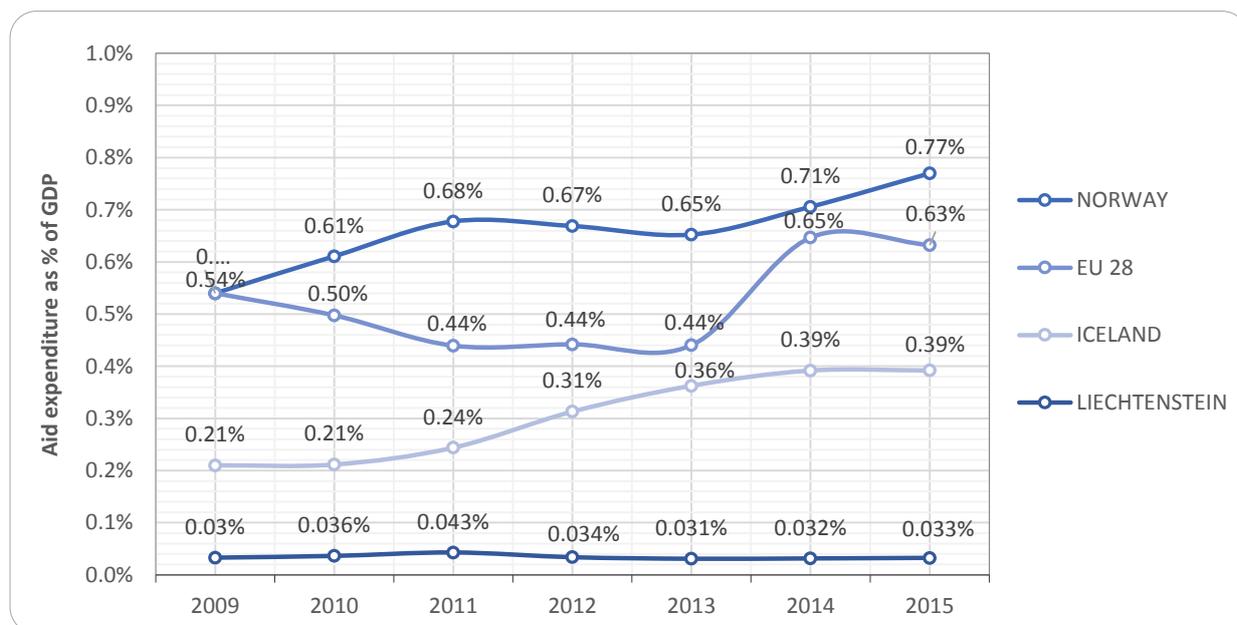
State Aid Scoreboard

In March 2017, ESA published its [2016 State Aid Scoreboard](#) for the EFTA states. The scoreboard examines trends in state aid expenditure by the EFTA States as well as across the EEA more generally.

The scoreboard comprises aid expenditure made by the EFTA States before 1 January 2016. The data is based on annual reports submitted to ESA by the EFTA States.

The 2016 scoreboard showed that state aid expenditure increased in all three EFTA States both in absolute amounts and relative to GDP.

The majority of the spending went to three policy objectives: regional development (34% of the total spending), environmental aid (34%) and R&D&I (22%). 10% of the aid was granted for other objectives such as culture and heritage conservation, training and employment.



Competition

Competition law enables markets to work effectively for the benefit of consumers. The EEA competition rules prohibit anti-competitive coordination between companies, such as agreeing to fix prices or to refrain from competing head on. The rules also prohibit dominant companies from abusing their market power, for example by obstructing their rivals' ability to compete.

Healthy competition benefits consumers. Competition not only pushes prices downward, but also provides consumers with greater choice. Competition further encourages companies to be innovative, and to deliver high-quality products and services.

ESA's role is to ensure that companies operating in the EFTA States abide by the EEA competition rules. ESA enjoys wide powers of investigation in the competition field and may impose fines of up to 10% of global turnover on undertakings that breach the competition rules.

Main activities in 2017

ONGOING COMPETITION CASES

In 2017, ESA continued its careful scrutiny of alleged breaches of the EEA competition rules as part of its active investigations in the e-commerce, mobile communications and transport sectors.

ESA's focus in 2017 was on progressing and building upon the substantial investigative activity it had initiated in 2016.

Online-payments services

After placing its investigation of DNB, Nordea, Finance Norway, Bits, and BankID Norway on a more formal footing in 2016, ESA continued to look into whether these parties colluded, contrary to Article 53 EEA, to prevent a new market entrant from providing its e-payments service in Norway.

The case concerns a payment initiation service offered by the Swedish payments provider, Trustly, in the EEA which enables customers to make online payments directly from their bank accounts.

ESA is looking deeper into the history and circumstances of Trustly's endeavours to offer this new type of online payment service in Norway. Related industry rules are also being assessed.



Mobile communications services

In 2017, ESA continued its examination of Telenor's reply to ESA's concerns that it may have abused a dominant position, contrary to Article 54 EEA, by obstructing competitors in the provision of mobile communications services to Norwegian users.

Following the statement of objections which ESA sent to Telenor in early 2016 and the oral hearing that took place later that year, ESA analysed Telenor's response throughout 2017.

As part of this analysis, ESA sought further evidence from some market participants on the part of the case relating to whether Telenor squeezed competitors by applying an insufficient spread between the wholesale prices charged to its wholesale customers and the retail prices Telenor offered to its own mobile broadband customers.

Regional air transport services



In 2017, ESA continued to investigate whether the Norwegian airline operator Widerøe abused a dominant position, contrary to Article 54 EEA, by refusing to supply a component of a satellite-based approach and landing system installed at several regional airports in Norway.

The Norwegian State purchases scheduled air transport services to and from many regional airports in Norway. In order to be awarded the public service obligation contract for operating scheduled air transport routes to and from those airports, the Norwegian State has required that, due to challenging approach and landing conditions, the airline operator must have installed a particular satellite-based approach and landing system on board the aircraft.

ESA is investigating whether Widerøe refused to supply a component of this system to other airline operators.

Ongoing handling of market information and complaints

More generally, ESA continued throughout 2017 to assess market information/complaints concerning other suspected infringements of the EEA competition rules.

Businesses or consumers that suspect restrictive business practices or abuses of market power can submit market information or lodge a formal complaint to ESA. Further information on ESA's complaints procedure is available on [ESA's website](#).

Submissions are assessed in line with ESA's publicly available guidance on handling complaints in competition cases. For further information concerning this see [ESA's Notice on the handling of complaints](#) under Articles 53 and 54 of the EEA Agreement and ESA's Notice on [best practices](#) for the conduct of proceedings concerning Articles 53 and 54 of the EEA Agreement.

ESA is entitled to give differing degrees of priority to the competition complaints brought before it and to have regard to the interest under the EEA Agreement in order to determine the degree of priority to apply to a given complaint.

The assessment of interest under the EEA Agreement depends on the circumstances of each individual case. For example, in 2017 ESA rejected a formal complaint concerning an award procedure for local bus transport services in a particular region of Norway, amongst other things, on the basis that the alleged infringement appeared to have limited impact on the functioning of the broader EEA market.

Relationship with other competition law enforcers

ESA works side-by-side with the competition authorities of the EFTA States and with the European Commission to ensure that the EEA competition rules are applied in a consistent manner. Effective communication and close cooperation with our European colleagues continue to be key priorities for ESA to ensure legal certainty for businesses operating across national borders in the EEA.

Cooperation with the European Commission

ESA's close relationship with the Directorate-General for Competition provides an important anchor for the EEA competition law framework. ESA shares jurisdiction with the European Commission when applying the EEA competition rules and has forged a solid partnership through years of shared policy and case experience.

While the competition rules in the EEA Agreement are founded on the “one-stop-shop” principle, so that either the European Commission or ESA, but not both, will be competent to handle a given case, there are robust mechanisms rooted within the framework to ensure that both authorities communicate regularly in their respective cases.

ESA and the EFTA States are therefore kept closely informed and have the opportunity to make their voices heard in European Commission cases, for both mergers and antitrust, that concern the territory of the EFTA States.

This information-sharing mechanism is important as cases handled by the European Commission can have a considerable impact on markets and market players in the EFTA States.

For example, mergers are examined at European level if the annual turnover of the companies concerned exceeds specified thresholds in terms of global and European sales. The rules on jurisdiction are such that, in practice, the European Commission is the competent authority to assess mergers under the EEA Agreement. However, ESA and the EFTA States remain involved in such merger cases by virtue of the EEA cooperation rules.

Consistent Enforcement Across Europe

The competition rules in the EEA Agreement are equivalent in substance to the competition rules in the EU (as set out in the Treaty on the Functioning of the EU or TFEU) and so there is much to be gained from sharing experiences and insights with other competition enforcers across Europe. ESA regularly meets to discuss competition policy and experiences with its European colleagues as part of the European Competition Network (ECN).

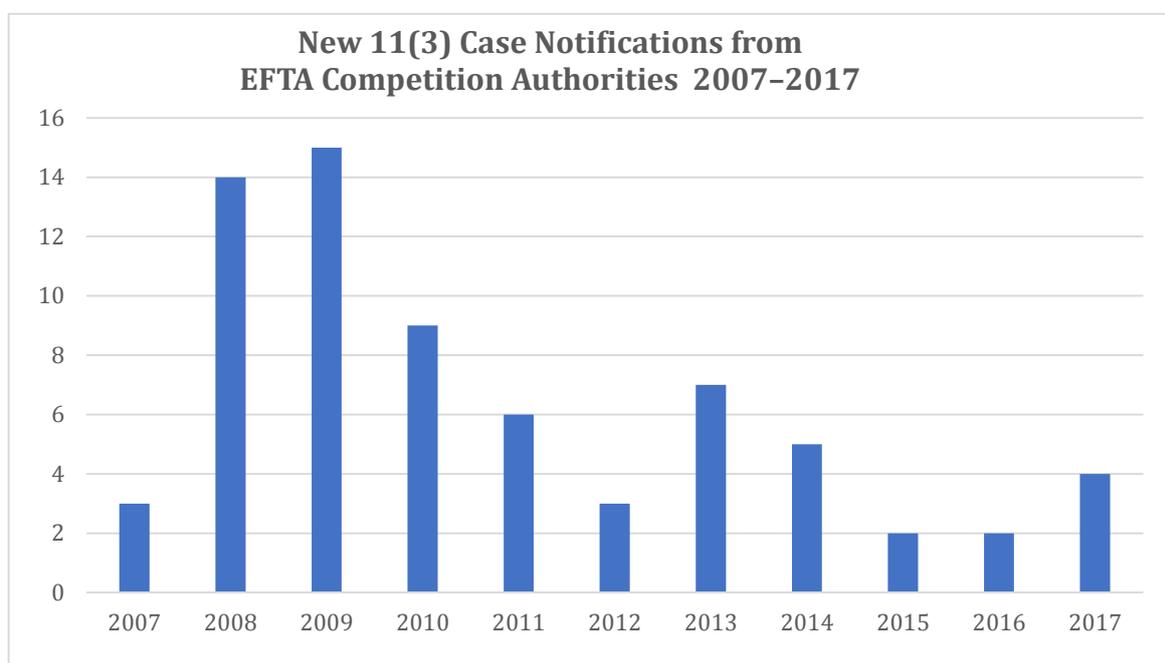
EEA Competition Rules	EU Competition Rules
Article 53 EEA	Article 101 TFEU
Prohibits anti-competitive coordination between market participants	
Article 54 EEA	Article 102 TFEU
Prohibits the abuse of a dominant position by large market participants	
Article 59 EEA	Article 106 TFEU
Prohibits the imposition of state measures which are contrary to the competition	

Information exchange with the EFTA competition authorities

National competition authorities and courts in the EFTA States apply Articles 53 and 54 EEA in parallel to the equivalent national competition rules. To ensure a coherent and efficient application of those provisions, ESA's activities in the field of competition are co-ordinated with those of the national competition authorities. This is done via the EFTA network of competition authorities.

When acting under Articles 53 or 54 EEA, the national competition authorities in the EFTA States inform ESA about new investigations. Sharing background information early on helps to identify the most appropriate authority to deal with a given case.

As can be seen from the below chart, the national authorities have reported a number of new investigations/enquiries concerning cases involving potential breaches of the EEA competition rules throughout the period 2007–2017.



Before adopting decisions applying Articles 53 or 54 EEA, the competition authorities in the EFTA States must also submit a draft decision to ESA. With a view to ensuring that the competition rules are applied in a consistent manner throughout the EEA, a final decision may only be adopted once ESA has been given the opportunity to comment.

Supporting the courts in competition cases

National courts in the EFTA States may request guidance from ESA on the interpretation and application of the EEA competition rules.

ESA, acting on its own initiative, may also submit written observations (*amicus curiae* observations) to the courts of the EFTA States where the coherent application of Articles 53 or 54 EEA so requires.

With the permission of the court in question, ESA may also make oral observations. Similarly, ESA can provide observations to the EFTA Court and to the Court of Justice of the European Union/General Court on competition cases of EEA interest.

In 2017, ESA continued its practice of assisting the courts in cases involving the EEA competition rules and equivalent national provisions.

Further to a request for an advisory opinion from the Reykjavík District Court concerning [Case E-6/17 Fjarskipti v Síminn](#), ESA submitted written observations to the EFTA Court in October 2017 on, amongst other things, the importance of market participants being able to effectively pursue actions for damages before the national courts for breaches of the EEA competition rules.

ESA noted that the full effect of the EEA competition rules would be put at risk if there was no possibility to claim damages before a domestic court for a loss caused by a breach of those rules.

Tackling barriers to competition in EEA markets

In 2017, a common theme in ESA's ongoing competition cases was the focus on whether companies imposed artificial barriers to entry and expansion in EEA markets.

ESA takes possible obstructions to competition very seriously. Markets work best where businesses compete vigorously and independently for customers. Effective competition law enforcement helps to keep access to markets open so that new and existing companies can develop and innovate.

Through careful analysis and engaging in a constructive dialogue with the parties involved in its active investigations, ESA continues to seek to establish all relevant facts and context. This is important in ensuring that any intervention is appropriate.

ESA is mindful of safeguarding the procedural rights of the companies under investigation, as well as ensuring that consumers can reap the benefits of open EEA markets characterised by strong and durable competitive forces.

Any further complaints or market information that ESA may receive in 2018 regarding potential competition law infringements in the EFTA States will also be scrutinised to check the compatibility of such business practices with the EEA competition rules.

Promoting a greater awareness and understanding

To maximise the impact of its work, ESA plans to continue to raise awareness of the EEA competition rules and to communicate pro-actively with the wider business and legal community.

To this end, ESA will continue to participate in important public events in the competition enforcement calendar.

In addition, ESA will continue to avail itself of the option to submit observations in court proceedings in cases of particular EEA interest. This is an effective instrument in communicating important messages regarding the interpretation of key aspects of the EEA competition rules.

Providing guidance on matters of legal interpretation is an important tool in contributing to a cohesive EEA in which the business community can have confidence in a common set of rules.

ESA's Legal Service

The Legal and Executive Affairs Department (LEA) is ESA's legal service.

In that capacity, LEA provides legal advice, reviews all ESA decisions and represents ESA in court. LEA is also responsible for supporting the College in communicating, formulating and coordinating ESA policy.

LEA is also responsible for bringing cases against EFTA States in the [EFTA Court](#) for failure to live up to their obligations under EEA law following ESA's [formal infringement procedure](#).

Upon request, the EFTA Court also advises national courts in the EFTA States on the interpretation of EEA law by delivering advisory opinions. Finally, the Court hears applications brought by companies and persons to review the lawfulness of decisions taken by ESA which affect them directly.

ESA participates in all cases before the EFTA Court. ESA also participates in cases before the EU courts which are likely to have a particular impact on EEA law.

Main activities in 2017

II INFRINGEMENT CASES

ESA ensures the proper implementation and application of EEA law in Iceland, Liechtenstein and Norway, just as the

European Commission does for the EU Member States.

A direct action is the final step of the formal infringement procedure against an EFTA State. Before taking the EFTA State to court, ESA [informs](#) the State of its views in a series of informal and formal steps. The State is then able to put forward its arguments, or resolve the situation by complying with EEA law within the applicable deadline or shortly thereafter.

However, in 2017 ESA brought 11 direct actions before the EFTA Court in which it sought a declaration from the Court that an EFTA State had infringed EEA law.

Direct actions for non-incorporation

Eight direct action cases were brought before the EFTA Court in 2017 for non-incorporation, that is because the EFTA State concerned had breached its EEA law obligations by overrunning by at least one year the binding deadlines by which it should have incorporated into national law new or modified EEA provisions.

These eight cases ranged from a series of cases on legislation laying down rules on managers of alternative investment funds, to a case concerning legislation which obliged states to make simple pressure vessels available on the market and a case concerning facilitating workers' rights:

[E-7/17 - EFTA Surveillance Authority v Iceland \(Market Availability of Simple Pressure Vessels\)](#)

[E-11/17 - EFTA Surveillance Authority v Iceland \(Managers of Alternative Investment Funds Directive\)](#)

[E-12/17 - EFTA Surveillance Authority v Iceland \(Managers of Alternative Investment Funds Regulation\)](#)

[E-13/17 - EFTA Surveillance Authority v Iceland \(Managers of Alternative Investment Funds Regulation\)](#)

[E-14/17 - EFTA Surveillance Authority v Iceland \(Managers of Alternative Investment Funds Regulation\)](#)

[E-15/17 - EFTA Surveillance Authority v Iceland \(Managers of Alternative Investment Funds Regulation\)](#)

[E-16/17 - EFTA Surveillance Authority v Iceland \(Managers of Alternative Investment Funds Regulation\)](#)

[E-17/17 - EFTA Surveillance Authority v Iceland \(Facilitating Workers' Rights\)](#)

During 2017, the EFTA Court handed down three judgments in favour of ESA in non-incorporation cases, dealing with legislation on pressure equipment, pesticide application and explosive precursors:

[E-10/16 EFTA Surveillance Authority v Iceland \(pressure equipment\)](#)

[E-17/16 EFTA Surveillance Authority v Iceland \(pesticide application\)](#)

[E-18/16 EFTA Surveillance Authority v Iceland \(explosives precursors\)](#)

Substantive (non-conformity) direct actions

ESA can bring an action before the EFTA Court in substantive cases, such as if ESA identifies a situation where national rules deprive businesses and consumers of their EEA rights.

ESA and the EFTA States may disagree on whether the national rules are in line with EEA law with the EFTA Court having the final say. However, these matters are often resolved out of court.

In 2017, ESA brought three such substantive cases before the Court:

[E-2/17 EFTA Surveillance Authority v Iceland \(import of fresh meat and dairy products\)](#)

[E-3/17 EFTA Surveillance Authority v Iceland \(import of fresh meat and dairy products\)](#)

[E-4/17 EFTA Surveillance Authority v Norway \(public procurement\)](#)

The EFTA Court handed down four judgments on substantive non-conformity cases:

[E-9/16 EFTA Surveillance Authority v Norway \(chemicals\)](#)

[E-13/16 EFTA Surveillance Authority v Iceland \(roadside inspections of commercial vehicles\)](#)

[E-14/16 EFTA Surveillance Authority v Iceland \(uniform procedures for road checks of dangerous goods\)](#)

[Joined Cases E-2/17 and E-3/17 – EFTA Surveillance Authority v Iceland \(import of fresh meat and dairy products\)](#)

In three of these four cases, the EFTA Court ruled in ESA's favour. The action brought against Norway was dismissed.

Referrals from national courts

When a national court has a case before them that depends on the interpretation or application of EEA law, they have the option of referring a question to the EFTA Court. The EFTA Court then delivers an advisory opinion. ESA participates in the proceedings in such cases by submitting written and oral arguments to the Court.

The Court received five requests for advisory opinions in 2017:

[E-5/17 - Merck Sharp & Dome v The Icelandic Patent Office](#)

[E-6/17 - Fjarskipti hf. v Síminn hf.](#)

[E-8/17 - Henrik Kristoffersen v the Norwegian Ski Federation](#)

[E-9/17 - Edmund Falkenhahn AG v the Liechtenstein Financial Market Authority](#)

[E-10/17 - Nye Kystlink AS v Color Group AS and Color Line AS](#)

In 2017, the EFTA Court delivered seven advisory opinions on questions referred from national courts:

[E-5/16 - Norwegian Board of Appeal for Industrial Property Rights – appeal from the municipality of Oslo](#)

[E-8/16 - Netfonds Holding ASA m.fl. v Staten v/Finansdepartementet](#)

[E-11/16 - Mobil Betriebskrankenkasse v Tryg Forsikring](#)

[E-15/16 - Yara International ASA and the Norwegian Government, represented by the Ministry of Finance](#)

[E-16/16 - Fosen Linjen AS v AtB AS](#)

[E-19/16 - Torbjørn Selstad Thue and the Norwegian Police Federation v the Norwegian Government, represented by the Ministry of Justice and Public Security](#)

[E-21/16 - Pascal Nobile v DAS Rechtsschutz-Versicherungs AG](#)

Finally, the Court declared a case discontinued, after agreement by the parties:

[E-20/16 - Autonomy Capital \(Jersey\) LP and Eaton Vance Management v EFTA Surveillance Authority](#)

Review of ESA decisions

Parties concerned by a decision taken by ESA can seek an annulment of the decision before the EFTA Court. ESA and the applicant then submit written observations, and the Court rules on the validity of the decision.

There was one action against a decision of ESA in the EFTA Court in 2017:

[E-1/17 - Konkurrenten.no AS v EFTA Surveillance Authority](#)

In 2017, the Court dismissed a case brought in 2016 as unfounded:

[E-12/16 - Marine Harvest ASA v EFTA Surveillance Authority](#)

Costs cases

The EFTA Court is empowered to determine the level of costs to be awarded for cases in which it has delivered judgment and awarded costs. No new costs applications were brought before the Court in 2017. However, two cost applications were decided in 2017:

[E-7/12 - COSTS - DB Schenker v EFTA Surveillance Authority](#)

[E-4/11 - COSTS - DB Schenker v EFTA Surveillance Authority](#)

The Court of Justice of the European Union

The Court of Justice of the European Union (CJEU) has jurisdiction in the field of EU law to interpret EU legislation. As many EU law instruments are incorporated into EEA law, ESA therefore participates in cases before the EU courts which are likely to have a particular impact on EEA law and its future development.

ESA can participate in CJEU cases in the following ways. In a preliminary reference where a national court of an EU Member State's court asks the CJEU to interpret EU law, ESA may make written or oral submissions if the subject matter of the proceedings is in an area covered by the EEA Agreement. In other cases, ESA may seek leave to intervene in support of one of the parties under the conditions laid down in Article 40 (3) of the Statute of the Court of Justice.

During 2017, ESA submitted observations in the following two cases before the CJEU:

[C-320/16 - Uber France](#)

[T-892/16 - Apple Sales International and Apple Operations Europe v Commission](#)

In 2017, ESA also put in an application to intervene before the General Court of the European Union.

[C-15/16 - Baumeister](#)

Glossary of terms

Case – An assessment of the implementation, or application, of EEA law, or tasks executed for the purpose of fulfilling ESA’s obligations under EEA law, registered before and during the year. Such cases do not necessarily lead to the initiation of infringement proceedings against one or more EFTA States or undertakings, or the opening of formal investigations.

Complaints – Cases where ESA examines information received from economic operators or individuals regarding measures or practices in the EFTA States which are not considered to be in conformity with EEA rules.

EEA – European Economic Area. An area of economic cooperation that consists of the 28 EU Member States and three of the four EFTA States: Iceland, Liechtenstein and Norway. Switzerland is not part of the EEA. Inside the EEA, the rights and obligations established by the Internal Market of the European Union are expanded to include the participating EFTA States.

EEA Agreement – The Agreement which creates the European Economic Area.

EEA EFTA States – The three EFTA States that participate in the EEA: Iceland, Liechtenstein and Norway. Referred to as “the EFTA States” for the purposes of this report.

EEA Joint Committee – A committee of representatives of the EU and the EFTA States competent to incorporate legislation into the EEA Agreement.

EFTA – European Free Trade Association. An inter-governmental organisation set up for the promotion of free trade and economic integration to the benefit of its four members: Iceland, Liechtenstein, Norway and Switzerland.

EFTA Court – The judicial body with jurisdiction regarding the obligations of the EFTA States and ESA pursuant to the EEA Agreement. The main functions of the Court consist of judgments in direct actions, in particular infringement cases brought by ESA against the EFTA States, and advisory opinions in cases referred to it by the national courts of the EFTA States.

EFTA Surveillance Authority – The organisation which ensures that the three EFTA States fulfil their legal obligations as stated in the EEA Agreement. Referred to as “ESA” for the purposes of this report.

Management tasks – Cases which are opened on the basis of an obligation on ESA deriving from the EEA Agreement directly, or from secondary legislation, such as eCOM notifications and draft technical regulations.

Notifications – State aid measures, draft technical regulations, and telecommunications market notifications that are submitted to ESA by the EFTA States for examination or approval.

Own initiative cases – Those opened by ESA at its own instigation. Such cases include the non-implementation of directives, the non-incorporation of regulations for Iceland and Norway, and the examination of the implementation and application of EEA law. This also covers food safety and transport inspections.

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