

Annual report
2020



ESA | EFTA
Surveillance
Authority

2020 ANNUAL REPORT

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LETTER FROM THE COLLEGE

The year 2020 has been one of the most challenging for a generation. Individuals, companies and public institutions have all been significantly affected by COVID-19. Indeed, as we are writing this, people across the globe are continuing their struggle to confront and overcome this unparalleled threat to health, together with its ensuing social and economic consequences. Millions of people have died and many more have fallen ill, and public institutions – especially health services – have been and continue to be under immense pressure. People have lost their jobs as businesses have seen significant portions of their incomes evaporate, or have had to close down altogether.

While the year started in good spirits, at ESA we soon found ourselves taking early action to respond to the crisis looming on the horizon. On 12 March, ESA was able to switch over the entire organisation to remote working to ensure that we could continue to operate as close to normal as possible while protecting our staff. We did the switch on that Thursday through a series of meetings, and then all left with key office equipment – books and all. Indeed, the primary concern of ESA's management throughout 2020 and beyond has continued to be the well-being of staff. Despite working under immense pressure to cope with the increased demands of the pandemic, ESA's staff have been crucial in ensuring that

the organisation has been able to continue delivering critical and often time-sensitive services to the EEA EFTA States – Iceland, Liechtenstein and Norway – and to citizens, businesses and institutions in those three countries.

While the COVID-19 pandemic affected all of ESA's work in 2020, the effects were particularly notable in the field of state aid. The many support measures introduced by the EEA EFTA States, in order to address the negative economic effects of the pandemic, led ESA to deal with a record number of cases and adopt a record number of state aid decisions. Indeed, of 68 state aid decisions taken by ESA in 2020, 52 were related to COVID-19 measures. At the outset of the crisis, ESA decided urgent measures had to be taken internally for the organisation to handle the exceptionally high number of pressing cases that would need to be assessed. This included the establishment of a dedicated internal task-force, which worked closely with representatives from the EEA EFTA States and the European Commission throughout 2020.

COVID-19 also required ESA to adapt the way in which some of the organisation's critical work was conducted. For example, food and veterinary audits or transport inspections – that would normally be carried out in person and on site in the EEA EFTA States – had to be conducted digitally and remotely.

ESA's work in 2020 comprised much more than

the challenges presented by the pandemic. ESA took a landmark decision in June, handing Telenor, a Norwegian telecoms company, a fine of EUR 112 million for anticompetitive practices. The fine – the largest in ESA's history – followed an in-depth investigation concluding that Telenor had abused its market dominance by a pricing strategy that resulted in rivals suffering a loss when selling residential mobile broadband services on tablets and laptops at a crucial time for the development of that market.

Globally, Europe is in the lead when it comes to addressing climate change and transitioning to a green economy. In 2020, ESA made a conscious decision to prioritise this important topic. Together with the European Commission, ESA helped shape regulations on Carbon Capture and Storage (CCS) in the Internal Market. In July, ESA approved state aid for full-scale CCS projects to be established at three locations in Norway – the largest single state aid award ever approved by ESA. Additionally, ESA approved a prolongation of state financing for a flagship CCS testing facility at Mongstad. ESA, together with the Commission, also provided support to Iceland and Norway to help them fulfil their obligations under the Paris Accord, ensuring a common approach throughout the Internal Market.

ESA also approved Forest Reference Levels for Iceland and Norway that will apply between 2021 and 2025. These will help keep track of how forests will contribute to the two countries' climate efforts in the





ESA's COLLEGE MEMBERS
Frank J. Büchel (Liechtenstein),
President Bente Angell-Hansen
(Norway), and Högni S.
Kristjánsson (Iceland).

coming years. December marked an important milestone for ESA's climate-change work with the adoption of revised guidelines for assessing state aid for sectors exposed to the European carbon market, the Emissions Trading System (ETS). The guidelines will allow Iceland, Liechtenstein and Norway to compensate certain sectors to avoid carbon leakage. These decisions demonstrate the importance of cooperation in tackling climate challenges, and reflect the ambitious European Green Agenda that will shape EEA matters in the coming years and decades.

At ESA, we foresee a much-increased workload in the months and years ahead. ESA will work on adapting to the far-reaching and complex digital roadmap currently being developed by the European Union. Furthermore, ESA will need to focus its efforts on the implementation of the financial supervisory framework and anti-money laundering in particular.

Despite the challenges, ESA's work in 2020 is a reflection of what the EEA EFTA countries stand to gain when the EEA's two pillars are strong and resilient. ESA, as a trusted and respected institution in the EFTA pillar, provides greater visibility and adds value for the EFTA States when working in close coordination with the institutions in the EU pillar of the EEA. Indeed, last year ESA further increased its collaboration with these agencies, including signing a Memorandum of Understanding with the European Railway Agency. In a

similar vein, we continued to work with the European Supervisory Authorities (the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA)) and ACER, the European Union Agency for the Cooperation of Energy Regulators.

At the end of 2020, ESA was mandated with and began work on monitoring the UK-EEA Separation Agreement, which sets out provisions on the rights of UK nationals in the EEA EFTA States, and vice versa. This work has entailed coordination with the European Commission, the UK Independent Monitoring Authority and the EFTA States. While it remains to be seen exactly how broad a workstream this will generate, ESA has been building the foundations to handle this extended part of its mandate effectively.

We are proud of the way in which ESA has risen to meet the challenges of 2020. This would not have been possible without our dedicated and committed staff members, who have gone above and beyond to make sure that ESA has been able to deliver.

Indeed, 2020 was a challenging year and a steep learning curve. We are building on these lessons to place ESA on an even stronger footing in the future. And as 2021 comes around we are looking forward to working in our new environmentally friendly EFTA House and to using the EFTA House to showcase the EEA Agreement.

THIS IS ESA

The EFTA Surveillance Authority (ESA) monitors compliance with the rules of the European Economic Area (EEA) in Iceland, Liechtenstein and Norway, the EEA EFTA States, enabling the 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 EEA EFTA States with the 28 Member States* of the European Union (EU) in a common market, known as the European Internal Market.

The purpose of the EEA Agreement is to guarantee, in all EEA States, the free movement of goods, persons, services and capital. These are known as "the four freedoms".

Because of the EEA Agreement, EU law on the four freedoms, state aid and competition rules for undertakings is incorporated into the domestic law of the EEA EFTA States so that it applies throughout the entire EEA and ensures a common market with common rules. This removes barriers to trade and opens new opportunities for over 450 million Europeans, creating jobs and growth and adding to the international competitiveness of the EEA States.

As well as ensuring equal rights for all citizens and undertakings to participate in the Internal Market, and equal conditions of competition, the EEA Agreement 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 on uniform implementation and application of common rules. Therefore, it provides for a system where the European Commission works with the EU Member States,

while ESA works with the EEA EFTA States, to ensure compliance with EEA law.

The role of ESA

ESA ensures that Iceland, Liechtenstein and Norway respect their obligations under the EEA Agreement.

ESA operates independently of the EEA 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 to make sure that their rights are not violated by rules or practices of the EEA EFTA States or companies within those States.

ESA also enforces restrictions on state aid, assessing its compatibility with the functioning of the Internal Market, and can order repayment of unlawful state aid.

Likewise, ESA ensures that companies operating in the EEA EFTA States abide by EEA rules relating to competition. ESA can investigate possible infringements of EEA provisions, either by 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 EEA EFTA State concerned decides to take appropriate action in response to ESA's request, ESA may initiate proceedings against that State before 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

* The United Kingdom left the European Union on 31 January 2020, but remained part of the Internal Market during a transition period until 31 December 2020.

oversee the application of the same laws in different parts of the EEA.

How ESA is organised

ESA is led by a College, consisting of three members. Although appointed by the EEA EFTA States, the College members undertake their functions independently and free of political direction. The current College took office on 1 January 2018 and is appointed until 31 December 2021. Bente Angell-Hansen (Norway) is the current President. Frank J. Büchel (Liechtenstein) and Högni S. Kristjánsson (Iceland) are College members.

Under the leadership of the College, ESA employs experts in law, economics, veterinary science and other fields from all over Europe. In 2020, ESA was divided into the following departments:

- Administration Department, led by Director Anders Ihr
- Internal Market Directorate, led by Director Gunnar Thor Pétursson until May, and Jónína Sigrún Lárusdóttir thereafter
- Competition and State Aid Directorate, led by Director Gjermund Mathisen
- Legal and Executive Affairs Department, led by Director Carsten Zatschler



2020 marked the final year of ESA's residence at 35 Rue Belliard.

Core values

ESA's core values – **Integrity, Openness and Competence** – are key elements of our ongoing operations. ESA continued to ensure that they were embedded in all of its internal and external activities in 2020.

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 that 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. ESA's staff develop their competence, and continuously improve their skills and knowledge and aim for excellence. ESA is open to continuous improvement at organisational and individual level.

HUMAN RESOURCES

ESA's dedicated staff, with their specific expertise and knowledge, are our most valuable assets. We offer a professional, caring and flexible working environment, with excellent opportunities for collaboration and personal development. These important elements of working at ESA proved to be invaluable during 2020 when colleagues were not able to meet physically, and the positive results of the staff survey conducted during the pandemic are a testament to this.

At the end of 2020, ESA had a total of 70 established staff members in its employment, representing 17 nationalities and including 34 EEA EFTA nationals. Of these staff, 53% were female and 47% male. In management positions, 57% were female and 43% male. These figures reflect our commitment not only to being an equal opportunities employer, but also to hiring the most competent and suitable candidate for each position.

Each year, ESA engages several trainees from the EEA EFTA States on an 11-month programme to work in the fields of Internal Market, Competition and State Aid, Legal and Executive Affairs, and Communications. The EEA EFTA States have established staff regulations that provide for staff to be employed by ESA on a temporary or fixed-term basis. This means that employment opportunities arise frequently for highly qualified candidates within ESA's fields of activity.

STAFF AT ESA

53 %
FEMALE



47 %
MALE



70
STAFF



MANAGERS AT ESA

57 %
FEMALE



43 %
MALE



17
NATIONALITIES



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 2020 was EUR 17.3 million, an increase of 14.7% compared with 2019. This increase in budget was primarily due to inflation adjustments, an increase in staffing and one-off expenditure related to the relocation of ESA to new offices. Nearly 76% of ESA's budget represents personnel costs, such as salaries, allowances and benefits. Actual expenditure levels were significantly impacted by the COVID-19 pandemic, as less travel took place and the office relocation was postponed to 2021.

ESA's annual financial statements, prepared in accordance with the International Public Sector Accounting Standards (IPSAS), are made available on our

website once the relevant ESA Court Committee (ECC) procedures for the year in question have been finalised. ESA's financial statement for the financial year 2019 was approved by the ECC on 1 December 2020, and ESA was discharged of its accounting responsibilities for that period by the EEA EFTA States.

The EFTA Board of Auditors (EBOA) is the auditing authority of ESA. It is a permanent committee consisting of auditors representing the supreme national audit bodies of the EFTA States. EBOA, in cooperation with external auditors, performs annual audits of the financial statements of the EFTA institutions. When auditing the activities of either ESA or the EFTA Court, EBOA meets "at three" – with audit representatives from Iceland, Liechtenstein and Norway – and reports to the ECC.

Amounts in thousand EUR	Actuals 2020	Budget 2020	Actuals 2019	Budget 2019
EEA EFTA States' contributions				
- Current year	17,305	17,305	15,909	15,909
- Multi-year contributions for IT investments*	18	20	86	126
Total EEA EFTA States' contributions	17,323	17,325	15,995	16,035
Financial income	6	-	3	-
Other income	146	142	138	137
Total income	17,475	17,467	16,136	16,172
Salaries, benefits, allowances and turnover costs	13,439	13,234	12,310	12,418
Travel, training and representation expenses	253	967	853	993
Office accommodation expenses	1,275	1,681	1,249	1,253
Supplies and services expenditure	1,524	1,574	1,464	1,502
Other costs	-	-	9	-
Financial expenses	14	11	9	6
Total expenditure	16,505	17,467	15,928	16,172
Net surplus for the year	970	-	208	

* Multi-year contributions for IT investments represent income from a recorded deferral for contributions received from EEA EFTA States in 2018 for new IT projects.



THE INTERNAL MARKET IN 2020

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, and environmental and company law. Such provisions are essential for prosperity, growth, 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.

For the Internal Market to function, the EFTA States must ensure the effective and timely implementation of the Internal Market rules in their national legal orders. One of ESA's main priorities is to investigate cases where the EEA EFTA States have failed to implement legislation incorporated into the EEA Agreement in their national legal orders. In 2020, ESA opened 206 cases where an EEA EFTA State had failed to adopt national measures by the relevant compliance date.

UK-EEA EFTA Separation Agreement

In 2018, the EEA EFTA States and the United Kingdom concluded an agreement providing for the orderly withdrawal of the UK from the EEA. The [UK-EEA Separation Agreement](#) foresaw a withdrawal process



consisting of two phases: an initial transition phase, and a second phase providing for permanent arrangements with regard to relations between the UK and the EEA EFTA States. During the transition phase, UK nationals resident in the EEA EFTA States had the same rights as those applicable under the EEA Agreement. Little action from ESA was required as part of this phase.

From 1 January 2021, however, the UK-EFTA EEA relationship changed, and the rights guaranteed under the EEA Agreement no longer apply. Instead, the Separation Agreement will guarantee that UK nationals who have had residency in the EEA EFTA States before 1 January 2021, and their family members, retain many of the same rights that were previously protected by EEA law. These include the right to work, study and travel freely between the UK and the EEA and to live in the EEA EFTA States.

ESA has been [tasked with overseeing the implementation and application](#) in the EEA EFTA States of Part Two of the Separation Agreement, which covers citizens' rights. This means that ESA will be responsible for making sure that UK nationals' rights are respected. The European Commission will fulfil a similar role in the EU Member States, while an Independent Monitoring Authority (UK IMA) will oversee citizens' rights for EEA nationals residing in the UK.

As part of the preparation for its new responsibilities under the Separation Agreement, in 2020 ESA liaised with both the UK IMA and the Commission concerning case

handling procedures, to ensure a smooth start in the taking up of its new functions, and reciprocal levels of supervision. ESA's Rules of Procedure have been amended to reflect this new mandate. A guidance note is being prepared for the EEA EFTA States on how the Separation Agreement will be applied, while new case handling procedures are being finalised.

Freedom of movement

In November 2020, ESA launched infringement proceedings against Norway for not respecting EEA rules on the coordination of social security systems and on the free movement of persons by barring sickness benefits from being paid when recipients go to other EEA States.

Norway currently requires individuals to stay in Norway to be eligible for certain sickness benefits. While recipients of these benefits may be allowed to travel abroad occasionally – thus allowing for the export of benefits – this requires a prior authorisation from the [Norwegian Labour and Welfare Administration \(NAV\)](#). Approval is subject to several stringent conditions, including a maximum limit on the amount of time recipients can spend in other EEA States. Such conditions are contrary to EEA law, specifically rules [covering the coordination of social security systems](#) and free movement.

The move followed ESA's decision in October 2019 to launch an investigation looking into relevant Norwegian law after Norway acknowledged that it had wrongfully applied EEA rules by restricting the free movement of recipients of three types of sickness benefits.

Climate change

In 2020, ESA completed several tasks in connection with the Effort Sharing Regulation ([Regulation \(EU\) No 2018/842](#)) and the Land Use, Land Use Change and Forestry Regulation ([Regulation \(EU\) No 2018/841](#)). These acts were incorporated into the EEA Agreement following an agreement in 2019 between Iceland, Norway and the EU to deepen their cooperation on climate change ([EEA Joint Committee Decision No 269/2019](#)). The acts concern the reduction of greenhouse gas (GHG) emissions from a range of sectors in the period up to 2030, including transport, buildings, waste management,

agriculture, and emissions and removals from the land and forestry sectors.

ESA finalised its technical assessment of the national forestry accounting plans of Iceland and Norway, where it was supported by an independent expert group. In December 2020, ESA adopted its decision on the forest reference levels (FRLs) to be applied by Iceland and Norway for the 2021-2025 period ([Decision No 157/20/COL](#)). The FRLs are important benchmarks to track progress and calculate the sum of GHG emissions and removals from managed forestland in Iceland and Norway, and in the EU Member States.

Under the Effort Sharing Regulation, ESA, assisted by the [European Environment Agency](#), finalised a comprehensive review of the GHG inventory data of Iceland and Norway. This data will be used to determine the permitted annual emission levels for the sectors covered by the Regulation for the period 2021-2030.

In the context of [Directive 2003/87/EC](#) on the EU Emissions Trading System (EU ETS), which sets a limit on the permitted GHG emissions from industry and aviation, ESA initiated the preparations for the upcoming trading period covering the period 2021-2030 ("phase 4"), including the assessment of the EEA EFTA States' national implementation measures.

Financial services – cooperation with European Supervisory Authorities

In 2020, ESA continued to participate in the meetings of the boards of supervisors of the European Financial Supervisory Authorities. ESA also began to attend meetings of the Standing Committee on Anti-Money Laundering, recently established by the European Banking Authority (EBA). Due to the COVID-19 pandemic, participation in these meetings was done remotely.

In addition to high-level representation, ESA further strengthened its cooperation with the supervisory authorities by exchanging information and know-how at the case-handling level. This was done in particular with the European Securities and Markets Authority (ESMA) through the preparation of several decisions affecting EEA EFTA-based financial markets operators.

In addition to the Multilateral Memorandum of Understanding concluded with the supervisory authorities



in 2018, further ad hoc operational arrangements were established to enhance cooperation between the institutions.

ESA approves Nasdaq's temporary exemption from open access under MiFIR

In March 2020, ESA adopted a [decision](#) to approve a temporary opt-out of the access provisions for exchange-traded derivatives (ETDs) under [Article 36 of Regulation \(EU\) No 600/2014](#) on Markets in Financial Instruments (MiFIR), which had been requested by the Norwegian trading venue Nasdaq Oslo ASA (Nasdaq).

MiFIR, which was incorporated into the EEA Agreement on 3 December 2019, allows firms to choose freely where to trade and clear their products, which central clearing counterparties (CCPs) and trading venues need to facilitate. However, trading venues and CCPs may elect to temporarily opt out of the access provisions, provided that certain conditions are met.

ESA assessed the information provided by Nasdaq, as well as publicly available post-trade data and statistics, and concluded that the temporary opt-out could be granted.

In line with the division of tasks of the [two-pillar structure](#) in financial supervision, ESA's assessment of Nasdaq's application was based on technical advice provided by ESMA, which is the authority competent for

granting [opt-outs of trading venues in the EU](#).

The opt-out is valid for 30 months from the date of application of MiFIR in the EEA EFTA States, namely from 3 December 2019 to 3 June 2022.

COVID-19 and transparency of net short positions

In March 2020, ESA adopted a [decision](#) requiring natural or legal persons to report to competent authorities if they hold net short positions reaching or exceeding 0.1% of the total amount of shares issued by companies whose shares are traded on regulated markets in the EEA EFTA States.

The decision to lower the reporting threshold, previously set at 0.2% under Article 5 of the Short Selling Regulation ([Regulation \(EU\) No 236/2012](#)), aimed to improve the capacity of the competent authorities to monitor short selling activities and react adequately with more stringent actions to preserve the integrity and stability of the market.

ESA considered that a potential surge in short selling activities could have further exacerbated the fragile state of the markets, adversely affected by the unusual volatility and selling pressure caused by the COVID-19 pandemic. These conditions prompted ESA to extend the validity of the decision on [11 June](#), [17 September](#) and [17 December 2020](#).



Psychologists: mutual recognition of professional qualifications in Norway

In April 2020, ESA sent a [reasoned opinion](#) to Norway concerning its practice of refusing to recognise the qualifications of students who had studied psychology in Hungary. According to ESA, Norway's handling of the applications for recognition did not comply with the [Professional Qualifications Directive \(2005/36/EC\)](#).

Norway previously recognised the qualifications of Eötvös Loránd University (ELTE) graduates to practise as psychologists after they had successfully completed a year of supervised work in Norway. In 2016, without prior notice, Norwegian authorities discontinued this system, directly affecting over 60 ELTE graduates and around 200 students who were pursuing their studies in Hungary. The vast majority of these students were Norwegians.

Norway argued that the profession of psychology in Norway was more comprehensive than that training practised in Hungary, and that for this reason, the

Hungarian qualification could not be recognised. After a thorough investigation, ESA concluded that the differences between the two qualifications were not substantial enough to allow Norway to refuse recognition.

Moreover, ESA argued that the Norwegian authorities had not provided adequate justification for abruptly discontinuing the recognition system previously in place.

In May 2020, Norway's Borgarting Court of Appeal requested an Advisory Opinion from the EFTA Court on several issues relating to the recognition of the Hungarian qualification of psychology ([Case E-4/20](#)). ESA submitted written observations in which it maintained the position set out in its reasoned opinion. Judgment was delivered in March 2021, with ongoing discussions between ESA and Norway now taking the judgment into account.

ESA adopted the measures following consultation with the competent authorities of the EEA EFTA States and in close cooperation with ESMA, which adopted parallel decisions with effect in the EU Member States.

Supervision of credit rating agencies

As a direct supervisor of [credit rating agencies \(CRAs\)](#) established in the EEA EFTA States, ESA must ensure that credit rating activities are performed in compliance with EEA rules. Notably, only companies registered as CRAs may lawfully issue credit ratings, and these must comply with minimum standards of quality, transparency and independence.

Following the [registration of the first Norwegian CRA](#) in August 2018, ESA conducted supervisory tasks in 2020 in cooperation with ESMA (the direct supervisor of CRAs based in the EU), to make sure that the supervised entity continued to comply with the conditions of the initial registration.

ESA and ESMA proactively engaged with the supervised entity and assessed potential risks arising from rating processes, IT processes, governance, internal controls and information security. Direct dialogue with the supervised entity is necessary to understand the company's operations, identify key potential risks and challenges, and also to discuss and shed light on the core objectives of the applicable legal framework.

ENSURING SAFE, SECURE AND SUSTAINABLE **TRANSPORT**

Safe, secure and sustainable transport of goods, services and people is fundamental in ensuring a functional and competitive Internal Market.

The EEA Agreement covers all modes of transport, and ESA monitors the implementation of legislation on aviation, maritime, rail and road transport. ESA ensures compliance with aviation and maritime security rules by conducting on-site inspections in the EEA EFTA States.

Exceptional transport measures

The extraordinary circumstances brought by COVID-19 have led to significant challenges for national transport authorities, transport operators and people in the transport industry. For ESA, this meant a significant rise in the number of cases that needed to be handled.

During the year, ESA handled 95 notifications and requests for exemptions from the EEA EFTA States related to transport issues, of which the majority were related to the renewal and verification of licences and certificates for transport operators and professionals. ESA issued a [decision](#) authorising Norway to apply an extension of one month to certain certificates and licences, since training facilities for the periodic training of drivers had been closed as part of general

lockdown measures.

In three instances during 2020, ESA issued decisions authorising Norway to grant temporary exceptions from certain provisions on driving time and resting periods for road transport drivers. The purpose of these decisions was to facilitate the continuity of the transport sector. ESA authorised temporary exceptions in April for [drivers of vehicles transporting all types of goods](#) and in September for [drivers of vehicles transporting live animals](#). In December, ESA authorised a temporary [exception allowing drivers to take their regular weekly rest in a vehicle](#) while undergoing travel quarantine.

Increased monitoring

From the beginning of the COVID-19 outbreak, ESA stepped up its monitoring of measures taken by Iceland and Norway seeking to ensure basic air connectivity, with aviation being one of the sectors hardest hit by the pandemic. This work was carried out in close dialogue with the European Commission and governments in the two countries.

In total, ESA was notified of 29 airline routes where temporary measures had been applied to ensure basic connectivity. Furthermore, temporary adjustments were made to ongoing public service obligation (PSO) contracts as a reaction to the outbreak. The purpose

of this monitoring exercise was to assist the states in ensuring that measures put in place were effective and proportionate. At the same time, it was crucial to safeguard the fundamental principles of the EEA Agreement, including rights such as non-discrimination and equal treatment.

The status of passenger rights for all modes of transport within the EEA EFTA States was also given priority by ESA. As the impact of the outbreak became apparent, national governments stepped up their responses to the pandemic and introduced measures to halt the spread of the virus, including travel restrictions and border controls. This led to mass cancellations of flights, and caused disruptions for passengers travelling by rail, ship, bus or coach. While recognising the serious impact that the pandemic had on carriers and providers of transport services, ESA engaged in an open and constructive dialogue with the EEA EFTA States on the enforcement of the EEA rules on passenger rights. Furthermore, ESA endorsed the [European Commission's interpretive guidelines of March 2020 on EU passenger rights](#), encouraging the EFTA States to rebuild consumer confidence during the pandemic.

During the year, ESA [endorsed](#) several other coronavirus-related transport measures taken by the Commission to ensure the continuity of transport. This



included the Commission's [note on exceptional measures in transport](#) published in March; [guidelines on seafarers, passengers and other persons on board ships](#) published in April; [the tourism and transport package](#) published in May; and a [communication upgrading the transport Green Lanes](#) published in October. These measures were endorsed to the extent that they fell within the scope of the EEA Agreement.

Road tunnel safety

ESA took action against Norway and Iceland over their failure to implement minimum safety measures in road tunnels. A [letter of formal notice](#) was sent to Norway in April, which was followed up by a [reasoned opinion](#) in December. A [letter of formal notice](#) was sent to Iceland in July.

In its reasoned opinion to Norway, ESA concluded that 68 tunnels in Norway did not conform to EEA rules on minimum safety requirements for tunnels belonging to the trans-European Road Network (TERN). In the letter of formal notice to Iceland, ESA concluded that three of the four tunnels in Iceland belonging to the TERN did not conform to the same requirements.

A key aim of the EEA rules on minimum safety levels for road tunnels is to prevent serious events that could put lives at risk. As such, ESA takes the view that the Norwegian and Icelandic Governments must prioritise the safety of road tunnel users by advancing refurbishment works to protect people.

Transport security inspections

In the field of aviation and maritime security, one of ESA's most important tasks is to carry out inspections.

The main objective of the regulatory framework on aviation security is to establish and implement appropriate measures to safeguard passengers, crew, ground personnel and the general public against acts of unlawful interference perpetrated on board aircraft or within the confines of an airport.

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

Similarly, the main objective of the EEA maritime security legislation is to introduce and implement measures aimed at enhancing security onboard ships used in international trade and, partly, domestic shipping. It also covers associated port facilities and ports, and seeks to protect these from threats and intentional unlawful acts. As in the field of aviation security, ESA is tasked with conducting maritime security inspections in the EEA EFTA States, assisted by the European Maritime Safety Agency (EMSA).

Given that inspections are normally conducted on-site, the COVID-19 pandemic and related containment measures made it challenging for ESA to conduct its inspections in the EFTA States during 2020. However, ESA was able to adapt and modify its approach to conduct these inspections remotely.

Cooperation with EU transport agencies

ESA continued to work closely with the European Commission and the specialised EU transport agencies on issues related to aviation ([European Union Aviation Safety Agency – EASA](#)), maritime transport ([EMSA](#)) and railways ([European Union Agency for Railways – ERA](#)). These agencies provide ESA with expert advice, either periodically, in accordance with their work programmes, or following a specific ESA request. In the maritime transport sector, they assist ESA with the security inspections, and conduct visits to verify the implementation of EEA legislation concerning maritime safety.

As part of its cooperation with the EU transport agencies, ESA meets regularly with the agencies – on management and case handler level – to discuss key priorities and common work issues. All meetings with the agencies' management were held remotely as of March 2020.

Given the challenges arising from the COVID-19 pandemic, the agencies played a particularly crucial role in 2020 in assessing and providing recommendations on notifications and requests for exemptions received by ESA from the EEA EFTA States concerning transport issues. ESA is working on a joint controllership agreement on data protection with EMSA for maritime safety and security audits in the EEA EFTA States.



FOOD AND FEED SAFETY, ANIMAL HEALTH AND WELFARE

An important aspect of ESA's mandate is monitoring the implementation of EEA legislation related to food and feed safety, animal health and welfare in Iceland and Norway. Legislation in the sector is characterised by being dynamic in nature, both in terms of the substantial number of legislative texts adopted and the specific procedures for rapid implementation in the EEA EFTA States. It is also crucial that legislation is applied without delay across the EEA in order for it to be effective.

Audits in pandemic times

In addition to monitoring compliance with relevant legislation and dealing with complaints and infringement cases, ESA's tasks include conducting audits to ensure that Iceland and Norway apply the relevant legislation

appropriately. In instances where ESA identifies shortcomings in the official control system of a national authority, it will issue recommendations aimed at rectifying the situation. These are included in a report sent to the relevant EEA EFTA State, which is invited to comment on the draft report and propose corrective actions addressing the recommendations, to be included in the [final report published on ESA's website](#)

ESA's audits comprise the gathering of relevant information and appropriate verifications. This work is done through interviews and discussions with stakeholders, as well as a review of documents and records to ascertain that the normal control procedures are adopted and that measures are in place to ensure that necessary corrective actions are taken when necessary. Appropriate verifications refer in most cases to onsite verification, which is a key element of ESA's audits.



When the COVID-19 pandemic first hit Europe, ESA was in the middle of auditing the official controls of ready-to-eat (RTE) food in Iceland. Despite the introduction of containment measures to halt the virus, which limited the possibilities to carry out onsite visits, ESA was able to complete this audit. The [audit report](#) has since been published, recommending improvements to Iceland's official controls of RTE food.

Due to the extensive travel restrictions put in place across Europe from March 2020, essentially rendering all onsite visits impossible, ESA decided to postpone all remaining audits planned for the first half of the year. During the first months of the pandemic, ESA focused instead on developing and adapting internal procedures to the "new normal". This included the development of a new safety procedure for onsite audits, as well as an audit methodology for remote audits.

To continue carrying out its work during the pandemic, ESA opted for a closed-end audit, meaning that the audit would take place between a defined start and end date. During this period, the audit team would hold digital meetings with the competent authorities. While food-business operators would not participate in the meetings, the audit team would review documentary evidence such as inspection reports and laboratory samples from a selection of relevant stakeholders. Audit reports would be issued in line with existing procedures, including recommendations relating

to any shortcomings. It is important to note, however, that without onsite verification, it would not always be possible to conclude whether or not the official controls were in accordance with EEA law.

ESA completed its first remote audit in October 2020, and found that [overall Norway had a good system in place for official controls in establishments producing RTE foods](#), though some shortcomings were identified. The findings and conclusions of this audit are limited in certain aspects where the audit team was, for example, unable to fully verify the competent authorities' activities at the establishment level.

Iceland and Norway country profiles

In cooperation with Iceland and Norway, ESA draws up [country profiles](#) to present, in summary form, the latest information on how control systems for food and feed safety, animal health and welfare are organised in the two countries. The second part of each profile gives the status of actions undertaken in response to recommendations made in ESA's audit reports.

ESA reviews all open recommendations regularly to verify that measures are put in place to address shortcomings identified in the control systems. In addition, ESA schedules a general review audit approximately every three years to assess progress in the implementation of corrective actions proposed by each country. This has a particular emphasis on recommendations repeated in different sectors that address horizontal issues.

In February 2020, ESA visited Norway to conduct a general review audit to update [its country profile](#). Between October 2016 and December 2019, ESA carried out ten audits in Norway, two of which were not included in the scope of the general review audit. In the remaining eight, a total of 62 recommendations were issued. Ten recommendations had previously been identified for specific follow-up, and 16 were closed before the general review, leaving 38 open recommendations to be assessed in the course of the audit. While Norway had made good progress, implementing satisfactory corrective actions for 21 additional recommendations, ESA concluded that it had not yet acted appropriately to address the recommendations made in October 2017 concerning its [import control system](#).

A general review audit of Iceland was carried out remotely in November 2020, covering open recommendations from 11 different audits conducted in 2015-2019. A total of 29 recommendations were closed, and seven were identified for specific follow-up before the general review. The 63 remaining recommendations were assessed during the general review audit.

Iceland has made good progress in addressing the majority of the open recommendations, but controls remain weak on animal by-products. Iceland is requested to implement appropriate measures to address the recommendations made concerning official controls of animal by-products not intended for human consumption, arising from an ESA mission to Iceland [in 2018](#). Iceland's new country profile can be accessed on [ESA's website](#).

Plant protection products

ESA initiated a control project in 2020 to assess the situation in Iceland, Liechtenstein and Norway with regard to plant protection products (PPPs) and the sustainable use of pesticides.

There are three key acts relevant to PPPs: the Pesticide-Residue Regulation ([Regulation \(EC\) No 396/2005](#)), the PPP Regulation ([Regulation \(EC\) No 1107/2009](#) on the authorisation and marketing of PPPs), and the SUD Directive ([Directive 2009/128/EC on the sustainable use of pesticides](#)). While all three legal acts are applicable to Iceland and Norway, only the PPP Regulation and the SUD Directive apply to Liechtenstein. Given the different legal framework, the scope of the PPP project varies between the EEA EFTA States.

The first phase of the project was initiated towards the end of 2020 for Iceland and Norway, with surveys sent to both countries. These will be followed up with desk-based analysis, after which audits will be carried out in Iceland and Norway in 2021 to verify compliance with applicable EEA legislation. The audits will focus on EEA legislation governing the authorisation, marketing and use of PPPs and pesticide residues; the sustainable use of pesticides; and the implementation of official controls. For Liechtenstein, the project is limited to desk-based analysis of the authorisation, marketing and use of PPPs and the sustainable use of pesticides.

STATE AID IN 2020

State aid is public support to commercial activities. It can take many forms, for example cash grants, tax breaks or favourable loans. As a rule, the EEA Agreement prohibits state aid to prevent negative effects on trade and competition, but exemptions can be made for purposes such as environmental protection, regional support and research, innovation and development. The state aid rules in the EEA Agreement are broadly equivalent to those that apply across the European Union.

The general prohibition on state aid that applies in Iceland, Liechtenstein and Norway is enforced by ESA. It is also ESA's role to decide how exceptions to the prohibition are applied.

In 2020, as a result of the COVID-19 pandemic, a record number of state aid cases were opened and 68 decisions were adopted. At the end of the year, 35 state aid cases were pending. These figures include pre-notification discussions, notifications, formal investigations, existing aid reviews, reviews of unlawful aid (mostly complaints), and recovery and evaluation

cases. Monitoring cases and cases of aid under the [General Block Exemption Regulation \(GBER\)](#) are not included in these figures.

2020 was no ordinary year; also for ESA and its work in the field of state aid. The state aid team focused most of its resources on tackling issues related to COVID-19. This consisted of processing notifications and holding informal discussions with the EEA EFTA States. The other large workstream concerned notifications of important environmental aid measures. As a consequence, complaints regarding alleged unlawful aid were temporarily deprioritised. No own-initiative cases were opened in 2020.

eHealth

In December, ESA concluded that Norway's financing of Akson journal AS (Akson), an electronic health (eHealth) record system for municipalities, did not raise any state aid issues.

Previously, in 2019 ESA had concluded that Norway's financing of similar national eHealth solutions and services did not constitute state aid. On 17 November

2020, this conclusion was upheld by the EFTA Court in its judgment in [Case E-9/19 Abelia and WTW](#).

Therefore, in line with its previous practice and the judgment from the EFTA Court, ESA concluded that the relevant activities by Akson were not economic in nature. Rather, Akson would provide services within the Norwegian solidarity-based public healthcare system in order to fulfil the State's duties toward its residents. Consequently, state aid rules do not apply.

Monitoring

Monitoring is *ex post*, or after the fact, control of state aid measures aiming to correct irregularities. Monitoring helps to improve compliance with state aid rules, and has a deterrent effect. It can also facilitate learning and outreach. With the state aid modernisation initiative, monitoring has become even more important. As the scope of the GBER has increased, the share of measures covered by the block exemption has risen significantly. As such, they are not subject to ESA's prior approval, so their compliance with the GBER is checked by way of *ex post* monitoring.

In 2020, ESA selected only one state aid measure for monitoring: the Norwegian GBER scheme for the promotion of environmentally friendly technology. The low selection rate must be seen in light of the increased workload caused by COVID-19. For the same reasons – a lack of resources and the need



to prioritise – ESA brought its monitoring of the following schemes to a close:

- [Norwegian regionally differentiated social security contributions scheme for the transport and energy sectors](#)
- [Approved aid scheme for centres for research-based innovation](#)
- [CLIMIT Demo scheme](#) (also an approved aid scheme)

ESA also closed its monitoring (with recommendations) of the Icelandic GBER scheme on incentives for initial investment, as well the following GBER schemes because of voluntary amendments at the scheme level:

- [Liechtenstein Energy Efficiency Act](#)
- [The Norwegian investor tax incentive scheme](#)
- [The Norwegian aid scheme for the dissemination of films](#)
- [The Norwegian pre-seed capital scheme](#)
- [The Oslo Climate and Energy Fund](#)

At the end of 2020, ESA had five monitoring cases pending, all for Norwegian aid schemes: two from the 2018 monitoring cycle, two from the 2019 cycle and one from the 2020 cycle.

In December, ESA signed a Memorandum of Understanding with the Office of the Auditor-General in Norway. This cooperation aims to contribute to strengthening the methodological approach to monitoring.

GBER

The General Block Exemption Regulation (GBER) allows the EEA EFTA States to adopt a wide range of state aid measures without prior notification to ESA. The GBER covers areas such as research and development and innovation, environmental protection, support to small and medium-sized enterprises (SMEs) and aid for culture and heritage conservation.

For each GBER measure adopted, the EEA EFTA States send ESA an information sheet that sets out the main elements of the measure. [These information sheets are published on ESA's website](#). It is the responsibility of

the EEA EFTA States to ensure that all conditions of the GBER are fulfilled for each adopted measure. In 2020, ESA received 69 information sheets from the EEA EFTA States.

ESA provides guidance to the EEA EFTA States on the interpretation of the GBER through a dedicated email address where the EEA EFTA States can send questions to ESA. In June 2017, the questions received, as well as ESA's answers, were published on ESA's website in the form of a [GBER Questions and Answers](#) document. The questions concerned issues such as:

- The definition of legal concepts such as "undertaking in difficulty"
- At what point in time is aid considered as granted?
- Definitions of sectors and terms used in the GBER
- The condition of incentive effect
- Issues concerning the cumulation of state aid
- Publication of information in line with the GBER

ESA intends to publish an updated version of this document in 2021 covering questions received and answers given since June 2017.

Environmental aid

A principal focus of ESA's state aid work in 2020 was environmental aid. The Norwegian authorities notified five major measures. Two were related to carbon capture and storage (CCS); two were individual aid grants provided by the State-owned entity Enova SF; and one was the approval of two more years of a zero VAT rate for zero-emission vehicles.

The first of the Enova individual aid awards was NOK 2.3 billion (EUR 227.8 million) to Equinor and its partners OMV, Petoro, Idemitsu, DEA and Vår Energi for [the first medium-sized floating offshore wind farm in Europe](#), with 11 turbines and a total of 30 MW installed capacity. The second was a grant of NOK 341 million (EUR 32.2 million) to Boliden Odda for the [development of green technology for zinc production](#).

Carbon Capture and Storage

ESA approved aid of up to EUR 2.1 billion for a

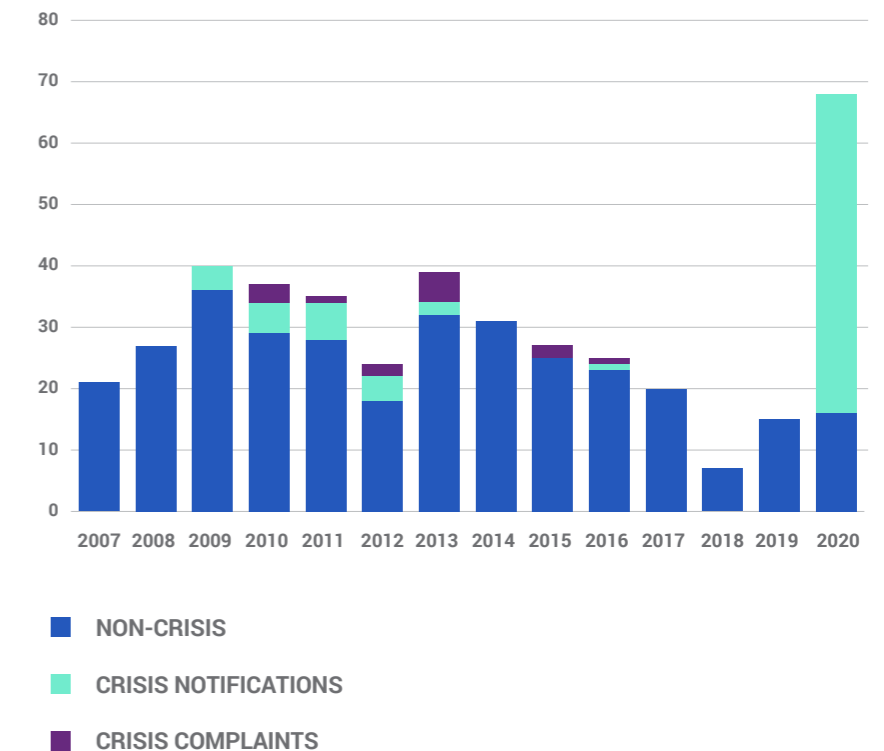
[Norwegian Full-Scale Carbon Capture and Storage](#) measure. This is the largest single state aid award ever approved by ESA. The project will establish infrastructure for the capture, transport and storage of CO₂ emissions, paving the way for future investments, innovation and technology in CCS as a climate change mitigation tool.

The approved project will allow for the establishment of carbon capture facilities at Norcem, a cement factory in Brevik, and Fortum Oslo Varme, a waste-to-energy plant. The captured CO₂ will then be transported and stored deep below the seabed in the North Sea. This part of the process is to be carried out by a joint venture between Shell, Total and Equinor, known as Northern Lights.

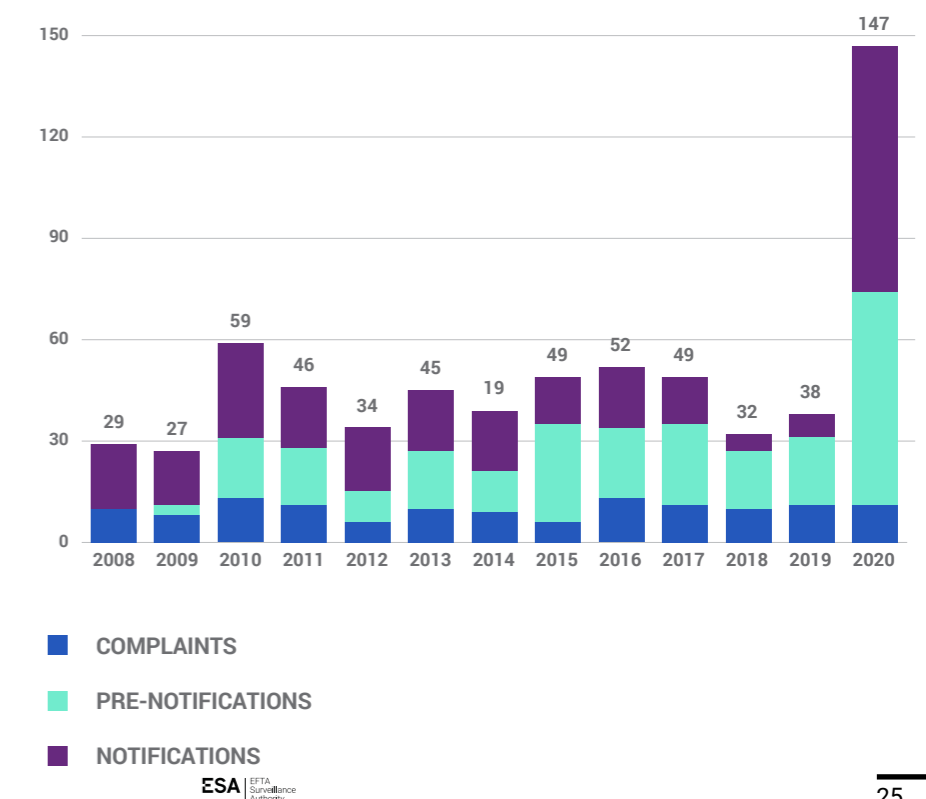
The Full-Scale CCS Project promises to become the first of its kind to go live in Europe. It has an estimated budget of up to NOK 27.6 billion, which will cover construction and ten years of operation. The Norwegian Government will cover around 80% of the project's estimated budget.

ESA also approved the [continued financing of Norway's flagship carbon capture test facilities](#) at the Technology Centre Mongstad. The total operating budget of the test centre is NOK 752 million (EUR 74.6 million), of which NOK 578 million (EUR 54 million) will be granted as aid until the end of 2023.

DECISIONS 2007–2020



(PRE-) NOTIFICATIONS AND COMPLAINTS RECEIVED 2008-2020

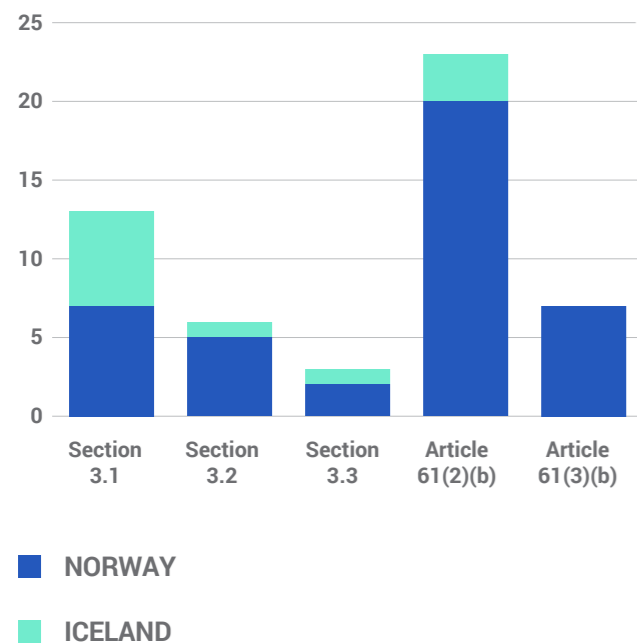


COVID-19 AND STATE AID

The COVID-19 pandemic continues to have a significant impact on the economies of the EEA EFTA States. In response, the three countries have introduced numerous support measures for citizens and businesses to address the adverse effects of the pandemic.

Public support measures that are general and available to all companies do not fall under the scope of state aid control, as they do not provide a selective advantage to specific companies vis-à-vis others in comparable situations. Therefore, these measures can be implemented by the EEA EFTA States without requiring ESA's approval under EEA state aid rules.

COVID-19 DECISIONS BREAKDOWN



However, where a measure or a scheme favours specific companies or the production of certain goods, it may constitute state aid within the meaning of Article 61(1) of the EEA Agreement, provided that all the conditions set out in that Article are fulfilled.

In March, ESA set up a dedicated task force to assist authorities in Iceland, Liechtenstein and Norway with any queries they had or measures they would like to discuss. Thanks to the establishment of this task force, ESA has been in a position to handle to any state aid queries or proposed measures relating to COVID-19 in a swift and efficient manner.

In total, ESA approved 52 COVID-19 related support measures in 2020, many of which required very swift handling and approval. In several instances, ESA was able to adopt a decision within 24 hours of receiving a formal notification.

The COVID-19 support measures assessed and approved by ESA range from individual measures to compensate specific companies for damage sustained as a result of the pandemic, to aid schemes supporting large segments of the economy.

Legal framework for granting COVID-19 aid

Where state aid rules apply, the EEA EFTA States can design ample aid measures to support specific companies or sectors suffering from the consequences of the COVID-19 outbreak, in line with the existing state aid legal framework:

Article 61(2)(b) EEA enables the EEA EFTA States to compensate companies or sectors for damage caused directly by exceptional occurrences, such as those caused by the COVID-19 outbreak. This includes measures to compensate industries that have been particularly hard hit (such as transport, tourism and hospitality) and measures to compensate organisers of

cancelled events for damages suffered due to the pandemic.

The state aid rules also allow for the EEA EFTA States to grant support to remedy a serious disturbance to their economy. The European Commission has adopted a Temporary Framework to enable the EU Member States to support the economy during the pandemic. ESA applies the conditions set out in the Temporary Framework when assessing the compatibility of state aid granted by the EEA EFTA States under **Article 61(3)(b) EEA**.

The Rescue Aid and Restructuring Guidelines, related to **Article 61(3)(c) EEA**, enable the EEA EFTA States to provide urgent rescue aid to companies in need and help them cope with liquidity shortages. In addition, companies that are not (yet) in difficulty can receive such support if they face acute liquidity needs due to exceptional and unforeseen circumstances, such as the COVID-19 pandemic.

Icelandair

On 27 August 2020, ESA [approved state aid to Icelandair](#) to partly compensate for damage to the company resulting from travel restrictions linked to the COVID-19 outbreak.

Icelandair is an international passenger airline operating out of Iceland. It contributes to around 75% of the scheduled domestic passenger air transport in Iceland and in 2020 accounted for 68% of passengers carried to and from Iceland. Since the start of the pandemic, Icelandair has suffered a significant reduction of its services, resulting in high operating losses.

Iceland chose to aid Icelandair by way of a 90% state guarantee on a revolving credit facility of up to USD 120

million (around ISK 16.5 billion). The guarantee will likely result in lower financing costs for Icelandair. In 2021, Iceland will carry out an assessment of the actual damage suffered by Icelandair due to COVID-19, so that if public support exceeds this amount the excess will be returned to the authorities.

ESA's decision to approve the guarantee in favour of Icelandair was based on Article 61(2)(b) EEA, which enables the EEA EFTA States to compensate companies for damage caused directly by the COVID-19 outbreak. As the compensation to Icelandair did not exceed the estimated damage, and considering the safeguards for overcompensation described above, ESA found that the conditions set out in that provision were fulfilled.



COMPETITION LAW IN 2020

ESA is tasked with ensuring that businesses operating in the EEA EFTA States abide by EEA competition law. [EEA competition rules](#) prohibit anti-competitive coordination between companies, such as agreeing to fix prices or to carve up markets. They also prohibit dominant companies from abusing their market power, for example by employing predatory or exclusionary tactics.

The purpose of these rules is to safeguard healthy competition between companies. Fair competition helps to keep prices down and spurs companies to innovate, which means that consumers can enjoy affordable and higher-quality products and services.

Mobile communications services

June 2020 marked a milestone for ESA, as it [announced that it would fine Telenor](#), the Norwegian telecoms company, approximately EUR 112 million for abusing its market dominance – the highest fine ever issued by ESA. ESA found that Telenor had been employing pricing practices (so-called “margin squeeze” conduct) that resulted in rivals making a loss when selling residential mobile broadband services on tablets and laptops in Norway. The period at the centre of ESA’s investigation (from 2008 to the end of 2012) coincided with a critical growth phase for mobile data in Norway, where the first wave of growth was initially most visible on large-screen

devices such as tablets and laptops.

Faced with a loss-making situation, rivals relying on Telenor’s dominant mobile network were hindered in their ability to compete aggressively in this up-and-coming growth market. Telenor’s unfair pricing practices made it much harder for these rivals to offer attractive retail prices and data allowances to Norwegian consumers. While technology has moved on since the time the infringements took place, ESA’s decision is a strong reminder to companies about the consequences of past illegal behaviour. (See “Telenor Case in Focus” on Pages 34-35.)

Regional air transport services

In July, ESA discontinued its investigation of Widerøe, an airline operator, concerning possible anti-competitive behaviour relating to certain public service obligation routes in Norway.

Several regional airports in Norway are equipped with an approach-system called “SCAT-1”. This system is used to guide planes safely to the runway by communicating with SCAT-1 equipment on board the approaching plane.

Widerøe was the only airline owning on-board SCAT-1 equipment, as the manufacturer had ceased to produce it. ESA’s investigation focused on whether Widerøe had restricted competition by refusing to sell or lease its spare on-board equipment to other operators,

meaning that they could not put in a successful bid for publicly financed routes involving airports using SCAT-1. Shortly after ESA opened its investigation, however, the Norwegian Government approved alternative guidance solutions, based on different technology, for the airports in question. This meant that the SCAT-1 system was no longer required for market access.

Meanwhile, ESA assessed the relevant evidence gathered in its investigation, including further information received from Widerøe following ESA’s statement of objections and expressed during an oral hearing in 2018.

[ESA concluded that the evidence collected](#) so far was not sufficient for it to prioritise investing resources into pursuing its investigation further, and the proceedings were therefore closed.

Cooperation with the European Commission

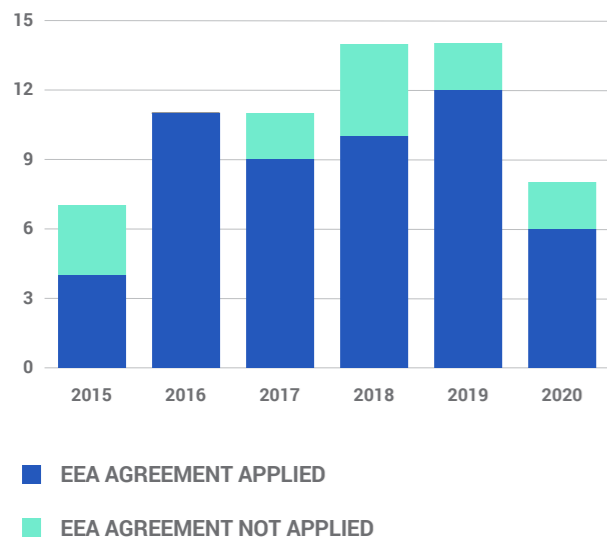
ESA shares its jurisdiction with the European Commission for applying EEA competition rules, and has forged a solid partnership through years of shared policy and case experience.

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

Through these channels, ESA



THE EUROPEAN COMMISSION'S ANTITRUST/CARTEL DECISIONS



The chart to the left shows that the Commission has applied the EEA Agreement in the majority of its antitrust (prohibition/commitment) decisions in recent years. This illustrates the importance of these formal cooperation mechanisms in so-called EEA “cooperation cases”.

The chart below shows further the number of merger cases where information was transmitted by the Commission to ESA in 2020. The majority of the cases are requests for referrals between EU Member States and the Commission. Last year, a total of 19 cases were cooperation cases pursuant to Article 2 of [Protocol 24 to the EEA Agreement](#), indicating that they could have a certain impact on the EEA EFTA States.

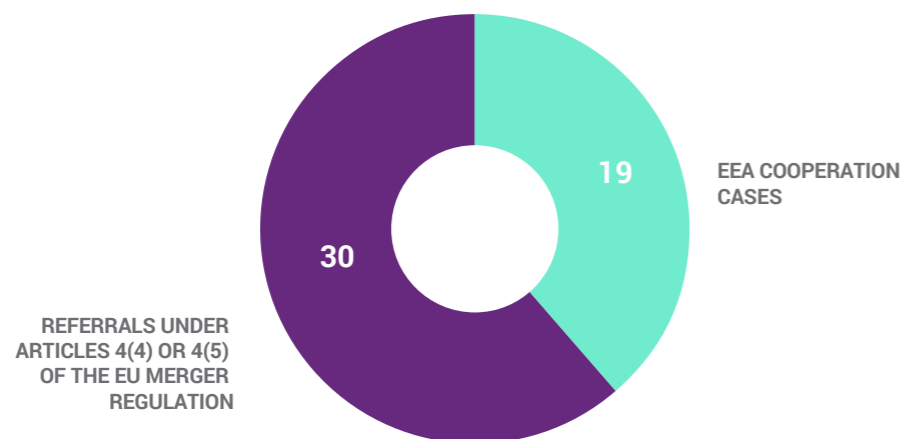
The graph on the top-left, opposite pages shows the total number of prohibitions and conditional clearances of mergers by the European Commission, as well as the significant share of those cases that were deemed cooperation cases pursuant to Protocol 24 EEA between 2015 and 2020.

European Competition Network

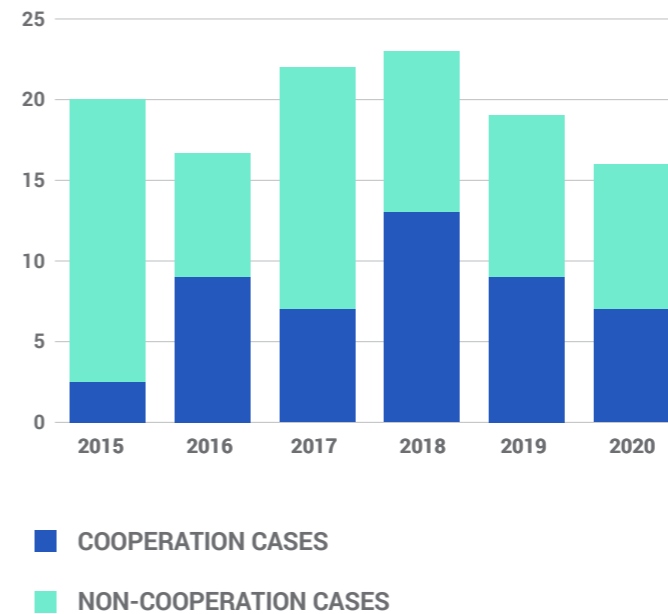
ESA and the national competition authorities in the EEA EFTA States are part of the ECN community. The ECN framework ensures an open and continuous dialogue between enforcers across the EU and EEA on competition policy and experience. It is a key instrument in supporting

is kept closely informed of important developments, and has the opportunity to make its voice heard in cases handled by the Commission (both antitrust and merger cases) concerning the territory of the EEA EFTA States. This is essential because cases handled by the Commission can have a considerable impact on markets and market players in the EEA EFTA States.

MERGER COOPERATION / REFERRAL CASES 2020



THE EUROPEAN COMMISSION'S MERGER INTERVENTIONS



effective and consistent application of competition law across the EEA.

Cooperation with national competition authorities

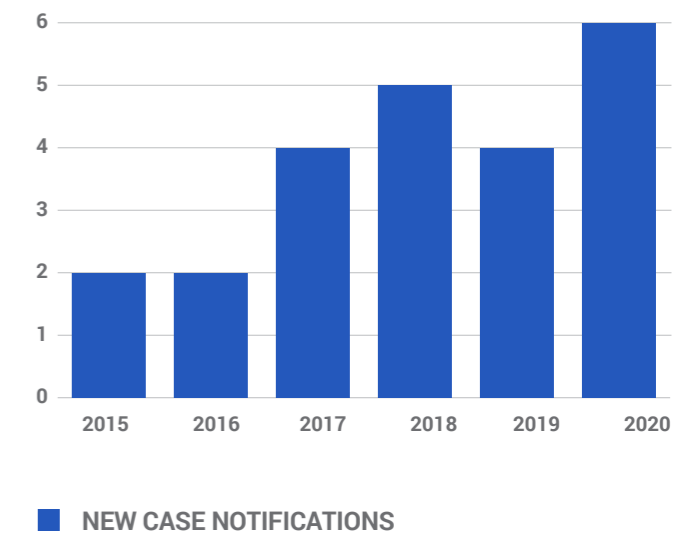
National competition authorities and courts in the EEA EFTA States apply Articles 53 and 54 of the EEA Agreement, in parallel to their equivalent national competition rules, in cases where there is an effect on EEA trade. To ensure coherent and efficient application of these provisions, ESA’s activities in the field of competition are coordinated with those of the national competition authorities.

When acting under Articles 53 or 54 EEA, the national competition authorities in the EEA EFTA States inform ESA of 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 chart on the top-right, the national authorities reported a growing number of new cases involving potential breaches of EEA competition rules between 2015 and 2020.

Before adopting decisions that require an infringement to be brought to an end under Articles 53 or 54 EEA, or

NEW CASE NOTIFICATIONS FROM EFTA COMPETITION AUTHORITIES



that accept commitments from companies involved in such investigations, the competition authorities in the EEA EFTA States must submit a draft decision to ESA. To ensure that competition rules are applied in a consistent manner throughout the EEA, a final decision may only be adopted after ESA has been given the opportunity to comment.

ESA and the national competition authorities in the EEA EFTA States also communicate informally throughout the lifetime of a case.

Cooperation with courts

In safeguarding the coherent application of EEA law, ESA assists the courts in cases involving EEA competition rules and equivalent national provisions.

National courts and appeal tribunals in the EEA EFTA States may request guidance from ESA on the interpretation and application of EEA competition rules. ESA, acting on its own initiative, may also submit observations in an amicus curiae (advisory) role to the courts and appeal tribunals of the EEA EFTA States, where this is required for the coherent application of Articles 53 or 54 EEA. Similarly, ESA can provide observations to the courts in Luxembourg, namely the EFTA Court, the Court of Justice of the European Union

(CJEU) and the General Court. ESA does this in practice on competition cases of EEA interest.

In February and May 2020, ESA submitted written observations to the CJEU on two cases. Both dealt with similar requests for a preliminary ruling concerning the transport sector. The first, [Case C-819/19 *Stichting Cartel Compensation and Equilib Netherlands BV v KLM NV and others*](#), related to a request from the Rechtbank Amsterdam regarding the competence of the national courts of an EU Member State to apply EU and EEA competition rules directly in the aviation sector and to establish infringements of those rules, even if they occurred before the entry into force of [Council Regulation \(EC\) No 1/2003](#) in that sector. The second, [Case C-2/20 *Daimler AG v Walleniusrederierna Aktiebolag and others*](#), related to a request from the High Court of Justice of England and Wales on the same legal issue of direct effect before EU Member State courts with regard to

the maritime sector. The latter request for a preliminary ruling was withdrawn in October 2020, and [the case was therefore removed from the CJEU's register](#).

Both of these cases raise fundamental questions about the competence of EU Member States' national courts to directly enforce the primary competition rules of the Treaty on the Functioning of the European Union (TFEU) and the EEA Agreement during a period in which no implementing provisions existed for a particular area of international transport services. Despite the removal of Case C-2/20 from the register, the CJEU will still have the opportunity in Case C-819/19 to determine the ability of natural and legal persons to claim damages relying on both EU and EEA competition rules.

ESA submitted its view that parties injured by infringements of Articles 101 TFEU and 53 EEA should be able to rely directly on those competition rules before the national courts of EU Member States. This should

RESPONSE TO THE COVID-19 CRISIS

The COVID-19 pandemic presented extraordinary social and economic challenges for businesses and consumers in the European Economic Area in 2020. Given the seriousness of the situation and the need for urgent information, ESA monitored developments closely and prioritised requests for practical guidance on EEA competition rules.

Mindful that the exceptional circumstances may trigger the need for undertakings to cooperate in order to ensure the supply and fair distribution of scarce products to all consumers, the European Competition Network (ECN), in which ESA participates, issued a [joint statement](#) in March on the application of competition law during the crisis.

The joint statement encouraged undertakings to reach out to ESA, the European Commission or the national competition authorities for informal guidance if they had any doubts about the compatibility of cooperation initiatives with EU/EEA competition law. At the same time, the joint statement underlined that if undertakings were to take advantage of the situation by cartelising or abusing a dominant position, the ECN members would not hesitate to take action.

COOPERATION IN COMPETITION LAW ENFORCEMENT

ESA works side by side with its sister organisation, the European Commission, and the national competition authorities of the EEA EFTA States and EU Member States. The close dialogue, supported by both formal and informal communications mechanisms, aims to ensure that EEA competition rules are applied in a consistent manner. Effective communication and close cooperation with European colleagues remain key priorities for ESA. This is to ensure that businesses operating across national borders can have confidence in a common set of rules across the EEA.

include periods where no implementing regulation was in place and only the transitional regimes of Articles 104 and 105 TFEU and Article 55 EEA applied. It is important to stress that the question concerned direct effect before national courts of EU Member States and not those of EFTA States.

In November 2020, ESA submitted amicus curiae observations to Norway's Gulating Court of Appeal in Case No 19-137886FØR GULA/AVD 2 Telenor ASA og Telenor Norge AS (Telenor). In 2018, the Norwegian Competition Authority found that Telenor had abused its dominant position in the Norwegian mobile telephony market through practices aimed at delaying the development of a third mobile network in Norway. The finding was upheld by the Norwegian Competition Appeals Tribunal in 2019. Telenor appealed the decision of the Tribunal to the Court of Appeal. As in its [earlier submission to the Tribunal](#), ESA's observations to the Court focused on two issues: the test for finding actual or potential effects, and the standard by which a company will be considered to have negligently or intentionally committed an abuse.

In December, ESA delivered an oral submission before the Supreme Court of Iceland (Hæstiréttur) in Case No 42/2019 *The Icelandic Competition Authority and The Icelandic State v Byko ehf. and Norvik hf* (the so-called "Byko case"). Earlier, ESA had submitted written amicus curiae observations to the Court concerning an appeal of the judgment of the Court of Appeals (Landsréttur) on 14 June 2019 in Case No 490/2018 *Byko ehf. and Norvik hf. v the Competition Authority and the Icelandic State and the Competition Authority v Byko ehf. and Norvik hf*.

The case concerns a decision by the Icelandic Competition Authority of May 2015, in which it fined Norvik for infringing (by way of its subsidiary Byko) both EEA and Icelandic competition rules. The Icelandic Competition Authority found that Byko had colluded extensively with its biggest competitor in the building materials market. ESA had also submitted written amicus curiae observations before the District Court of Reykjavik in 2016 (Case No E-550/2016) and Landsréttur (as referred to above) in this case. The oral submission (as for the earlier written observations) concerned the circumstances in which EEA trade may be affected, as well as the importance of the appropriate level and deterrent effect of fines in competition cases.

EFFECT ON TRADE

It is the concept "Effect on trade" that determines whether EEA competition rules apply. National competition authorities and courts are obliged to apply EEA competition rules in their respective cases to all anti-competitive practices that are capable of affecting trade between EEA States.

As regards Article 53 EEA, if the agreement as a whole is capable of affecting trade between EEA countries, the entire agreement is subject to EEA law, including any parts that do not individually affect trade.

As regards Article 54 EEA, if the abuse is capable of affecting trade between EEA countries, then it is subject to EEA law.

In its judgment in the Byko case in January 2021, the Supreme Court of Iceland upheld the Icelandic Competition Authority's finding that the collusion in question was likely to influence the pattern of trade between EEA States. It thus concluded that Byko had infringed both Section 10 of the Icelandic Competition Act and Article 53 EEA. In reaching this view, the Court noted that "consideration should be given to whether it is possible to foresee with sufficient probability on the basis of objective criteria that agreements or concerted practices may have a direct or indirect, actual or potential effect on trade patterns between the EEA States".



IN FOCUS: THE TELENOR CASE

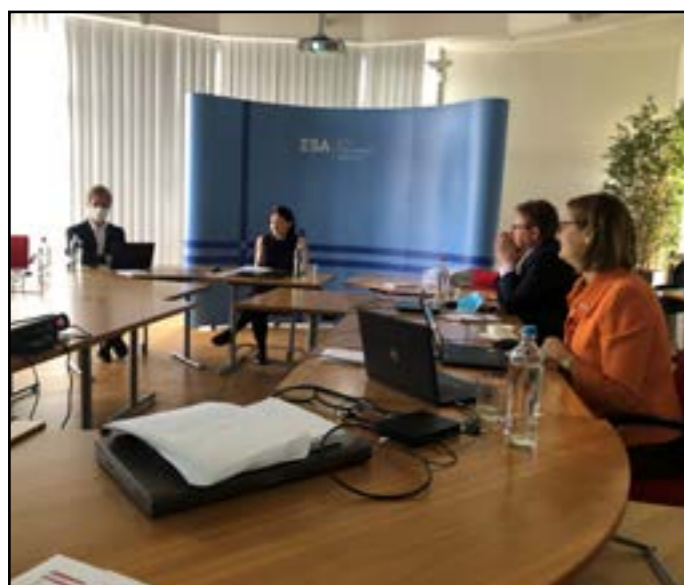
June 2020 marked an important moment in ESA's history. Following a thorough investigation, ESA fined Telenor, the Norwegian telecoms incumbent, approximately EUR 112 million for abusive pricing practices in relation to an emerging data market in Norway.

During the period at the centre of the investigation (2008–2012), the Norwegian mobile communications sector was highly concentrated in comparison to

other markets in the EEA, with only two nationwide mobile network operators (MNOs): Telenor and Telia. As is still the situation today, these MNOs provided mobile communications services at both the upstream (wholesale) level and the downstream (retail) level.

At the wholesale level, ESA found that Telenor held a dominant position on the Norwegian market for access to the mobile telephone networks. Other operators that did not have their own nationwide mobile network had to buy the required wholesale input (network access) from one of the MNOs in order to provide retail services. In such a highly concentrated market setting, rivals relying on these wholesale inputs were important in ensuring a healthy competitive dynamic at the retail level.

However, during a critical growth phase in mobile data in Norway, Telenor's wholesale prices for access to its mobile network were higher than the retail prices it charged its own residential users for accessing mobile broadband ("residential MBB") services on large-screen devices, such as tablets and laptops. Rivals that did not have their own nationwide mobile network and were dependent on buying wholesale access from Telenor (the dominant supplier) were compelled to sell residential standalone MBB services at a loss, even if they were as efficient as Telenor. Faced with negative gross margins due to Telenor's anti-competitive practices, rivals found it much harder to offer attractive packages to consumers when mobile data first started taking off in Norway. This impeded their ability to build scale in an important growth market.



ESA's College meets in June 2020 to adopt the Telenor decision.

ESA found that Telia was not an effective alternative wholesale supplier to which operators could turn to avoid the negative gross margins. Telenor's "margin squeeze" practices therefore prevented rival companies from competing viably from 2008 until the end of 2012. While MBB represented a relatively modest share of total mobile communications services, such services were growing significantly and represented a first critical opportunity to gain a foothold in mobile data services.

For these reasons, ESA concluded that Telenor had engaged in anti-competitive margin squeeze practices, in breach of Article 54 EEA. ESA reached this conclusion by conducting a comprehensive investigation of the markets in question, involving rigorous consideration of the evidence and extensive engagement with Telenor, affording it every opportunity to exercise its rights of defence.

ESA's total fine of approximately EUR 112 million, the highest fine ever issued by ESA, takes account of the duration and gravity of the infringements. The fine was calculated on the basis of the value of Telenor's revenue on the affected markets, in line with ESA's Fining Guidelines.

A [non-confidential version](#) of the decision is available on ESA's website. Telenor subsequently lodged an appeal before the [EFTA Court \(Case E-12/20\)](#), which is still pending at the time of print.

LEGAL AND EXECUTIVE AFFAIRS IN 2020

The Legal and Executive Affairs Department (LEA) is ESA's legal service. The department provides legal advice, reviews all ESA decisions and represents ESA in court. It also supports the College in communicating, formulating and coordinating ESA policy.

The department is responsible for bringing cases against EEA EFTA States in the [EFTA Court](#), should they not fulfil their obligations under EEA law as set out in ESA's formal infringement procedures. Upon request, the EFTA Court advises national courts in the EEA EFTA States on the interpretation of EEA law by delivering advisory opinions. The Court also hears applications brought by companies and individuals, to review the lawfulness of decisions taken by ESA that affect them directly.

ESA participates in all cases before the EFTA Court, as well as in cases before the EU courts that are likely to have a particular impact on EEA law.

Where it may be of assistance, ESA can also participate in court proceedings as a third party before national courts of the EEA EFTA States, as well as before the General Court of the European Union (GCEU), the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR).

Main activities

In 2020, much of ESA's litigation work carried out by LEA concerned social security, recognition of professional

qualifications and financial services. In addition, considerable time was spent working on issues related to the COVID-19 pandemic. Some examples of our litigation activities in 2020 are listed here.

Before the EFTA Court, ESA made submissions arguing for the right to export social security benefits for short stays in other EEA States.

ESA also participated in cases before the CJEU concerning competition and state aid. Moreover, in a case concerning the right to family allowance and child tax credit for workers whose children reside permanently in another EU Member State, ESA successfully applied for the recognition of its right to intervene in direct actions brought before the CJEU by the Commission against an EU Member State. This was the first time ESA had made oral submissions as a third party in a competition case before the national court of an EEA EFTA State.

References and links to all cases be found at the end of this chapter

Upholding EEA law through direct actions

As part of its mandate, ESA can take direct actions against an EEA EFTA State. A direct action is the final step of a formal infringement procedure against a state. Before taking an EEA EFTA State to court, ESA informs the relevant state of its views in a series of informal and then formal steps. During these phases, the state is able to put forward its arguments or resolve the situation by complying with EEA law within the applicable deadline. Generally, matters are resolved before they reach the

court stage, often as a result of the dialogue involved in the formal infringement procedure. In instances where no solution is found, ESA has the possibility to pursue the case in the EFTA Court.

ESA can bring an action against an EEA EFTA State before the EFTA Court for the non-implementation of a directive or the non-incorporation of a regulation into the national legal order. This occurs when the state concerned has breached its EEA law obligations by overrunning the binding deadlines set out in the relevant directive or regulation by at least one year.

ESA can also bring an action before the EFTA Court in substantive cases, for instance if it identifies a situation where national rules deprive businesses or citizens of their EEA rights. The EFTA Court can, likewise, resolve disagreements between ESA and the EEA EFTA States on the interpretation of EEA law.

In 2020, ESA brought one direct action case before the EFTA Court. The case concerned nationality and residence requirements for persons in certain managerial roles in companies incorporated in Norway.

No judgments were delivered in any direct action cases (including for non-incorporation and non-implementation) in 2020.

Referrals from national courts

When a national court faces a case that depends on the interpretation or application of EEA law, it has 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.

In 2020, the Court received 15 requests for advisory opinions on a wide range of questions referred by national courts. ESA presented its arguments in these cases.

Three cases concerned the recognition of professional qualifications in Norway: Case E-03/20 *Norway v Anniken Jenny Lindberg* regarding dental practitioners educated in Denmark, Case E-04/20 *Tor-Arne Martinez Haugland v Norway* regarding psychologists trained in Hungary, and Case E-17/20 *Zvonimir Cogelja v The Directorate of Health* regarding the issuance of evidence of formal qualifications.

ESA presented its arguments in three cases concerning the right to export social security benefits from Norway, two of which involved criminal proceedings. These were Case E-08/20 *Criminal proceedings against N*, Case E-13/20 *O v Labour and Welfare Directorate*, and Case E-15/20 *Criminal proceedings against P*. All three cases related to an admission in 2019 by Norway's Labour and Welfare Administration that it had interpreted EEA rules incorrectly. Specifically, the cases centred around the repayment and/or criminal penalties for having received either sickness benefits (E-08/20) or unemployment benefits (E-13/20 and E-15/20) while staying in another EEA State without specific authorisation from national authorities.

ESA intervened in three cases concerning family rights within the context of free movement as set out under EEA law. One, Case E-01/20 *Abdulkerim Kerim v Norway*, concerned the criteria that should form the basis for determining the concept of "marriage of convenience". In Case E-02/20 *Norway v L*, questions arose as to whether the expulsion of an EEA national from Norway coupled with a permanent exclusion order was permissible. And Case E-16/20 *Q and others v The Norwegian Government, represented by The Immigration Appeals Board*, concerned a child's independent right of residence in Norway and their primary carer's derived right of residence, as well as the right of an EEA national's stepchildren to be resident in Norway after that EEA national's departure.

One case related to medicinal products. Case E-07/20 *Criminal proceedings against M & X AG* concerned

criminal responsibility for trading medicinal products without authorisation, and asked whether the product in question could be considered a medicinal product.

One case concerned workers' rights. In Case E-11/20 *Eyjólfur Orri Sverrisson*, questions arose as to whether time spent travelling for an employer outside of normal working hours constituted "working time".

Finally, four cases dealt with financial and commercial matters, one of which, Case E-06/20 *Pintail AG v Finanzmarktaufsicht*, was later withdrawn. Case E-05/20 *SMA SA and Société Mutuelle d'Assurance du Batiment et des Travaux Publics v Finanzmarktaufsicht* concerned the liability of a supervisory body, Case E-10/20 *ADCADA Immobilien AG PCC in Konkurs v Finanzmarktaufsicht* concerned the obligation to publish a prospectus, and Case E-14/20 *Liti-Link AG v LGT Bank* concerned the provision of information on inducements for investment services.

The EFTA Court delivered nine advisory opinions in 2020, in the following cases:

- Case E-03/19 *Gable Insurance AG in Konkurs* regarding financial services
- Case E-04/19 *Campbell v The Norwegian Government* on family reunification
- Case E-05/19 *Criminal proceedings against F and G* on market manipulation
- Case E-06/19 *Criminal proceedings against H and I* regarding rest periods for drivers
- Three public procurement cases: Case E-07/19 *Tak – Malbik ehf. v the Icelandic Road and Coastal Administration and Þróttur ehf.*, Case E-08/19 *Scanteam AS v the Norwegian Government*, and Case E-13/19 *Hraðbraut ehf. v mennta- og menningarmálaráðuneytið, Verzlunarskóli Íslands ses., Tækniskólinn ehf. and Menntaskóli Borgarfjarðar ehf.*
- Case E-10/19 *Bergbahn Aktiengesellschaft Kitsbüchel v Meleda Anstalt* on money laundering
- Joined Cases E-11/19 and E-12/19 *Adpublisher AG v J and K* regarding data protection

Review of ESA decisions

Parties affected by a decision taken by ESA can seek annulment of the decision before the EFTA Court. ESA



ESA's EFTA Court hearings in 2020 were carried out remotely via digital link.

and the applicant then submit written observations, and the Court rules on the validity of the decision.

One such application was made against an ESA decision in 2020. In Case E-12/20 *Telenor ASA and Telenor Norge AS*, the applicant sought the annulment of ESA Decision No 070/20/COL, in which ESA had fined the applicant EUR 112 million for having abused its dominant position in the Norwegian telecommunications sector.

The EFTA Court delivered one judgment in 2020 resulting from an application for the annulment of an ESA decision. In Case E-09/19 *Abelia and WTW*, the applicants sought the annulment of ESA Decision No 57/19/COL, in which ESA had concluded that the public financing of eHealth and digital health infrastructure in the Norwegian

healthcare system was not state aid within the meaning of EEA law. The Court dismissed the application for annulment as unfounded.

Costs cases

The EFTA Court has the power to determine the level of costs to be awarded to a successful party in a case brought before it.

No costs applications were brought before, or decided by, the Court in 2020.

The Court of Justice and the General Court

The Court of Justice of the European Union (CJEU) has jurisdiction in the field of EU law to interpret EU

legislation. Many EU law instruments are incorporated into EEA law, which applies to the EEA EFTA States. ESA therefore participates in cases before the EU courts that are likely to have a particular impact on EEA law and its future development.

ESA can participate in CJEU cases in a number of ways. In a preliminary reference, where a national court of an EU Member State 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 ask 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. In 2020, the CJEU permitted ESA and the EEA EFTA States to intervene in direct action cases brought by the Commission against EU Member States with its decision in Case C-328/20 *Commission v Austria*.

ESA submitted observations in two new cases before the CJEU in 2020: Cases C-819/19 *Stichting Cartel* and C-2/20 *Daimler* both of which concerned the direct effect of breaches of competition law, with the latter case being withdrawn later in the year. Proceedings started in two further cases in which ESA successfully sought leave to intervene: Case C-328/20 *Commission v Austria* concerning social security, and Case C-465/20 *Commission v Ireland and Apple Sales International and Apple Operations Europe* regarding a Commission state aid decision.

One case – Case C-308/19 *Whiteland Import Export* concerning rules on limitation periods for fining – was brought before the CJEU in 2019 and continued during the course of 2020, with ESA making submissions.

The CJEU handed down judgments in two cases in 2020 in which ESA had been involved. Case C-228/18 *Budapest Bank* concerned anti-competitive conduct, and joined Cases C-558/18 and C-563/18 *Miasto Lowicz and Others* concerned the application of the rule of law in the context of judicial reforms in Poland. Two further cases on the rule of law, Cases C-522/18 *Zakład Ubezpieczeń Społecznych* and C-537/18 *Krajowa Rada Sadownictwa* were withdrawn after ESA made its submissions to the CJEU.

ESA was also involved in two cases pending before the General Court of the European Union (GCEU): Case

T-612/17 *Google v Commission*, which concerned a Commission finding of anti-competitive behaviour, and Case T-876/19 *Broadcom v Commission*, which concerned interim measures in cases of urgent competition law matters. The GCEU handed down a judgment in one case in which ESA had been involved: Case T-892/16 *Apple v Commission*, which concerned a Commission state aid decision and was appealed to the CJEU as Case C-465/20.

National courts and tribunals

Even when ESA is not party to a particular case in the national courts, it may be able to offer insights into EEA law that have a bearing on the issues to be decided. Accordingly, certain national courts can permit ESA to submit *amicus curiae* briefs where this may be of assistance.

In 2020, ESA submitted an *amicus curiae* brief in one such case before Gulating Court of Appeal: Case 19-137886 FØR GULA/AVD 2 *Telenor Norge AS and Telenor ASA v Konkurransetilsynet* regarding competition law.

ESA may also support *amicus curiae* briefs with arguments during oral hearings. In 2020, ESA submitted oral arguments for the first time in a case in the Icelandic Supreme Court. Case 42/2019 *ICA v Byko & Norvik* concerned infringements of competition law, in particular the cross-border effects of such infringements. The Court's ruling was in line with the outcome favoured by ESA in its submissions.

Access to documents

Anyone can request to view documents from ESA. Documents are normally made publicly available upon simple request, though ESA may refuse disclosure in certain circumstances. Once a document has been disclosed, it is uploaded to ESA's website on the [public document database](#). ESA dealt with 99 requests for access to documents in 2020. Should you wish to have access to ESA's documents, please review [ESA's rules on access to documents](#) and send a request by email to registry@eftasurv.int.

ESA'S COURT CASES IN 2020

Cases pending before the courts in 2020

Substance cases:

[E-01/20 – Kerim v The Norwegian Government*](#)

[E-02/20 – Norwegian Government v L](#)

[E-03/20 – The Norwegian Government v Anniken Jenny Lindberg](#)

[E-04/20 – Tor-Arne Martinez Haugland and others v the Norwegian Government](#)

[E-05/20 – SMA SA and Société Mutuelle d'Assurance du Batiment et des Travaux Publics v Finanzmarktaufsicht*](#)

[E-06/20 – Pintail AG v Finanzmarktaufsicht \(withdrawn\)](#)

[E-07/20 – Criminal proceedings against M & X AG](#)

[E-08/20 – Criminal proceedings against N](#)

[E-10/20 – ADCADA Immobilien AG PCC in Konkurs v Finanzmarktaufsicht](#)

[E-11/20 – Eyjólfur Orri Sverrisson v The Icelandic State](#)

[E-13/20 – O v Arbeids- og velferdsdirektoratet](#)

[E-14/20 – Liti-Link AG v LGT Bank AG](#)

[E-15/20 – Criminal proceedings against P](#)

[E-16/20 – Q and others v The Norwegian Government, represented by The Immigration Appeals Board](#)

[E-17/20 – Zvonimir Cogelja v The Directorate of Health](#)

CJEU and GCEU cases:

[T-612/17 – Google v Commission](#)

[C-308/19 – Whiteland Import Export*](#)

[C-819/19 – Stichting Cartel](#)

[T-876/19 – Broadcom v Commission \(removed from register in 2021\)](#)

[C-328/20 – Commission v Austria](#)

[C-465/20 – Commission v Ireland and Apple Sales International and Apple Operations Europe](#)

Review of ESA's decisions:

[E-12/20 – Telenor ASA and Telenor Norge AS v EFTA Surveillance Authority](#)

Non-implementation and non-incorporation cases:

[E-09/20 – EFTA Surveillance Authority v The Kingdom of Norway \(Establishment\)](#)

National courts:

[42/2019 – ICA v Byko & Norvik*](#)

[19-137886 FØR GULA/AVD 2 – Telenor Norge AS and Telenor ASA v Konkurransetilsynet](#)

**These cases reached judgment in 2021*

Judgments delivered in 2020

Substance cases:

[E-03/19 – Gable Insurance AG in Konkurs](#)

[E-04/19 – Campbell v The Norwegian Government](#)

[E-05/19 – Criminal proceedings against F and G](#)

[E-06/19 – Criminal proceedings against H and I](#)

[E-07/19 – Tak – Malbik ehf. v the Icelandic Road and Coastal Administration and Próttur ehf.](#)

[E-08/19 – Scanteam AS v The Norwegian Government](#)

[E-10/19 – Bergbahn Aktiengesellschaft Kitzbühel v Meleda Anstalt](#)

[E-11/19 and E-12/19 – Adpublisher AG v J & K](#)

[E-13/19 – Hraðbraut ehf. v mennta- og menningamálaráðuneytið, Verzlunarskóli Íslands ses., Tækniskólinn ehf. and Menntaskóli Borgarfjarðar ehf.](#)

Review of ESA's decisions:

[E-09/19 – Abelia and WTW AS v EFTA Surveillance Authority \(eHealth\)](#)

CJEU cases:

[C-228/18 – Budapest Bank](#)

[C-522/18 – Zakład Ubezpieczeń Społecznych \(withdrawn\)](#)

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

[C-537/18 – Krajowa Rada Sadownictwa \(withdrawn\)](#)

[C-558/18 and C-563/18 – Miasto Lowicz and Others](#)

[C-2/20 – Daimler \(withdrawn\)](#)

ESA'S 2020 MOOT COURT

Like so many other physical events planned for 2020, ESA's annual EEA Law Moot Court competition, had to be held virtually. This did not prevent seven teams from the Universities of Bergen and Oslo from participating in the competition and putting in their best performance to sway the panel of judges, chaired by Judge Bernd Hammermann of the EFTA Court.

ESA's EEA Law Moot Court competition is an excellent opportunity for young lawyers to put their skills to the test in what aims to resemble an EFTA Court hearing as closely as possible. The 2020 edition, held on 14 and 15 November, was organised by ESA in cooperation with the Faculty of Law at the University of Bergen.

In the first stage of the moot, the seven teams competed against each other over several rounds, until the top two teams – Bergen Team Four and Bergen Team Three – went head-to-head in the final. After an intense and exciting final – which was also broadcast live on ESA's website – Bergen Team Four was declared the winner. The team, which also earned the prize for the best written pleadings, was made up of Matias Alexander Baltazar Birkeland, Elmira Oshnavie, Fredrik Vingnes and Eyolf Aarø. Prizes for best speakers went to Caroline Brochmann Byhring (Bergen Team One) and Matias Alexander Baltazar Birkeland (Bergen Team Four).

After the moot, competitors said that the prospect of mooting complex EEA issues in the English language had been an exciting, interesting and educational one. On top

"Winning and being awarded best speaker is of course very fun, but it is the experience gained in the written pleading and oral rounds that counts the most. That same experience can't be achieved anywhere else!"

of this, they found the experience to have been "intense and, at times, stressful, but nevertheless joyful".

Describing her experience of the moot court, Elmira Oshnavie of the winning team said: "This is probably the most rewarding experience I have had during my studies. To push yourself out of your comfort zone gives an invaluable sense of achievement. I am very grateful for the prize for best written brief and the moot itself. The best part, however, was everything I learned from my incredibly talented teammates."

Matias Alexander Baltazar Birkeland, also of the winning team, echoed this sentiment, saying: "Winning and being awarded best speaker is of course very fun, but



2020 Moot Court winners celebrate their victory.

it is the experience gained in the written pleading and oral rounds that counts the most. That same experience can't be achieved anywhere else!"

The winning team, as well as the winners of the best speaker category, will be invited on a VIP trip to Brussels and Luxembourg for a behind-the-scenes experience of ESA, the EFTA Court, the EU institutions and the Court of Justice of the European Union. They will also participate in expert workshops and engage in in-depth discussions with judges and officials from ESA and other organisations.

ESA's EEA Law Moot Court is an annual event in which students from Icelandic and Norwegian universities have the opportunity to act as advocates, representing different parties in a fictional EEA law case before a judging panel of legal experts. The aim is to reproduce, as closely as possible, the discussions and arguments that take place in a genuine hearing before the EFTA Court. The moot court allows students to make use of what they have learned in law school and apply this to written and oral pleadings in EEA law. It helps them gain practical knowledge of EEA law while building on their competitive instincts, advocacy skills and teamwork.



Moot Court President Judge Bernd Hammermann questions the finalists.

Crucial to a successful moot is the preparatory work. As this experience is a first for many of the competitors, the teams are provided with extensive supporting materials and mentoring before their appearance in court. ESA also offers advocacy training and feedback to all participants, together with coaching provided in collaboration with the university faculties, student organisations and moot alumni.

GLOSSARY OF TERMS

Agreement on the European Economic Area (EEA Agreement) – An agreement that entered into force in 1994 guaranteeing equal rights and obligations within the Internal Market for individuals and economic operators in the European Economic Area.

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 or the opening of a formal investigation.

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

EEA EFTA States – The three EEA EFTA States that are signatories to the EEA Agreement: Iceland, Liechtenstein and Norway.

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

EFTA Court – The judicial body with jurisdiction regarding the obligations of the EEA 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 EEA EFTA States, and advisory opinions in cases referred to it by the national courts of the EEA EFTA States.

EFTA States – The four members of the European Free Trade Association: Iceland, Liechtenstein, Norway and Switzerland.

EFTA Surveillance Authority (ESA) – The organisation set up to ensure that the three EEA EFTA States fulfil their

legal obligations as stated in the EEA Agreement.

European Economic Area (EEA) – An area of economic cooperation consisting of the 27 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 EU are expanded to include the participating EEA EFTA States.

European Free Trade Association (EFTA) – 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.

Management tasks – Cases 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 EEA EFTA States for examination or approval.

Own-initiative cases – These cases are opened by ESA at its own instigation, and 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. Food safety and transport inspections are also covered by own-initiative cases.



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