

EFTA Surveillance Authority

The EFTA Surveillance Authority ensures that the participating EFTA States – Iceland, Liechtenstein and Norway – respect their obligations under the EEA Agreement.

The Authority protects the rights of individuals and market participants who find their rights violated by rules or practices of the EFTA States or companies within those States.

The Authority also enforces restrictions on state aid and ensures that companies operating in the EFTA States abide by the rules relating to competition.



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EFTA SURVEILLANCE
AUTHORITY



Safeguarding the EEA Agreement

In the course of the last 20 years, the EEA Agreement has made a strong contribution to securing jobs and prosperity in Iceland, Liechtenstein and Norway. It has done so by engendering a form of co-operation which is broad in scope, which has in turn led to a detailed set of rules becoming part of day-to-day life in ministries, municipalities and enterprises alike. However, the EEA is a fragile construction.

The common rules found in the EEA are intended, among other things, to ensure that companies have access to the Internal Market without discrimination, and free from the restrictions imposed by arbitrary barriers to trade. For this to work, all new common rules must be introduced simultaneously and be applied equally in each EEA State. Unfortunately, for the time being, that is not always the situation in the EFTA States.

During the last two years, the EFTA Surveillance Authority has brought a record number of cases before the EFTA Court on the basis that Iceland and Norway have failed to incorporate new rules in a timely manner, or to correctly apply such rules. In the same period the Authority has opened hundreds of formal infringement procedures. Fortunately, in most of these cases a solution can be found. However, the deadlines for incorporation may be breached by as much as one year or more. On top of this, the Authority notes that there is a backlog of about 500 legal acts that have not yet been incorporated into the EEA Agreement, even though they are already in force in the EU.

While the EU Member States continue to improve their ability to implement new, common rules into their national legislations, the situation in the EFTA States is more critical. EU Member States are made subject to fines if they are found to be in breach of their deadlines for implementation. The EEA, on the other hand, is based on trust: trust that agreements are binding and trust that these agreements will be followed up by action. Unfortunately, experience shows that this is not always sufficient.

The solution is to be found neither in fine words, nor in short bursts of effort followed by long periods of inactivity. The EEA requires a high and enduring level of attention over the long term on the part of politicians and administrators alike.

The institutional framework of the EEA has proven to be surprisingly robust, but building trust takes time, and tearing it down can happen quickly. The EEA Agreement risks rapidly losing both its value and its relevance if those who have undertaken commitments are no longer committed, and the rights developed no longer give rights to those who require them.

A heavy responsibility rests upon Iceland, Liechtenstein and Norway if the EEA Agreement is to endure into its third decade.

Oda Helen Sletnes,
President
EFTA Surveillance Authority



Read the full Annual Report online

This summary report gives a brief overview of the Authority's activities and highlights a few of the many cases handled by the Authority in 2013. To read more about these and other cases, please visit www.eftasurv.int/2013



Monitoring “the four freedoms”

The Authority monitors the EFTA States in order to ensure that they effectively implement the Internal Market rules, which mostly consist of regulations and directives, into their national legal orders and that they apply those rules correctly.

In this context, the Authority performs broadly the same tasks as the European Commission, and the two institutions work closely together.

The Internal Market is based on the rules concerning “the four freedoms” – the free movement of goods, persons, services and capital. These have been at the centre of European integration since the signing of the Treaty of Rome in 1957.

Highlights from 2013:

Ban on frequent flyer points lifted

After a final warning from the Authority, Norway abolished its ban on the collection of frequent flyer points on domestic air routes in May 2013. In the Authority’s view, the prohibition was not in line with the Unfair Commercial Practices Directive. It also constituted an unjustified restriction of the freedom to provide services and the freedom of establishment.

Currency indexation of loans in Iceland

The prohibition of loans in Icelandic *krona* that are indexed to the value of other currencies, is in breach of the principle of free movement of capital. The ban may dissuade Icelandic financial institutions from financing their loans in other currencies. This view is expressed by the Authority in a reasoned opinion sent to Iceland in May 2013.

While it may be lawful to restrict the granting of high-risk financial products to consumers, the Authority considers that this can be achieved by other, less restrictive measures.

Iceland has indicated that it intends to revise the ban.



Fish farming ownership restrictions

Norway has amended its rules on ownership restrictions in the fish farming industry. Following a complaint, the Authority found in 2012 that the rules constituted a restriction to the freedom of establishment.

Ban on fresh meat import not in line with EEA law

Under Icelandic law, the importation of fresh meat, meat preparations (such as sausages) and other meat products is subject to an authorisation procedure.

In a letter of formal notice to Iceland in October 2013, the Authority has taken the view that this procedure is in breach of the Directive concerning veterinary checks in EEA trade and cannot be justified on grounds of protection of health and life of humans or animals.

Internal Market Scoreboard

The high number of non-implementation cases referred to the EFTA Court should be seen in connection with the most recent results in the Internal Market Scoreboard. The EEA EFTA States had the worst score since the year 2000, at an average 2.0 % implementation deficit. The target is 1 %.

Both Iceland and Norway were significantly above the target, at 3.2 % and 1.8 % respectively. Only Liechtenstein is on target with a 1.0 % deficit.

Highlights from 2013:

The financing of Harpa

Harpa Concert Hall and Conference Centre is a landmark in Reykjavik, owned by the Icelandic State and the City of Reykjavik. Its considerable annual deficit has been covered over the state and municipality budgets.

Following an investigation initiated by the Authority after a complaint, the owners of Harpa have, among other things, introduced separate accounts and new methods for allocating costs and income.

In December 2013, the Authority concluded that the public financing of Harpa is compatible with the state aid rules.

Public hospital pharmacies in Norway

The Authority has required Norway to take appropriate measures in order to bring the financing of publicly-owned hospital pharmacies in line with the state aid rules.

Following a complaint, the Authority has proposed several measures in order to avoid cross-subsidising. The measures include, among other things, that separate accounts be kept for the retail activities of these pharmacies and that all costs be correctly assigned or allocated. Norway has accepted the proposed measures.

New regional aid guidelines

In October 2013, the Authority adopted new guidelines on regional aid, corresponding to similar guidelines adopted by the European Commission. The new guidelines will apply from 1 July 2014 until 31 December 2020.

The state aid rules

State aid is economic assistance provided by public bodies to undertakings active on a market. Such assistance can consist of public support measures in numerous forms.

The EEA Agreement contains a general prohibition on state aid in order to prevent distortions of competition and negative effects on intra-EEA trade. The rules seek to ensure a level playing field for companies across Europe, and to prevent government assistance from being used as a form of protectionism in the absence of trade barriers.

The prohibition is, however, subject to exceptions, recognising that government intervention can be necessary to correct market failure and for other purposes.

Highlights from 2013:

Procurement rules in oil and gas production

In April 2013, the Authority granted an exemption from the EEA procurement rules to activities related to exploration and production of crude oil and natural gas on the Norwegian Continental Shelf.

The decision followed a thorough assessment of whether the criteria for allowing such an exemption were met. In particular, the Authority considered whether or not activities in the markets for exploration of crude oil and natural gas, production of oil, and production of natural gas are directly exposed to competition.

Investigation of Telenor

The Authority is continuing to examine information obtained during unannounced inspections carried out at the headquarters of Norwegian telecommunications company Telenor in December 2012. A significant amount of data, including electronic data, was collected by the Authority.

The investigation is aimed at ascertaining whether there is any evidence of infringements of the EEA competition rules.

Inspection at Statoil

In May 2013, at the request of the European Commission, the Authority carried out an unannounced inspection at the premises of Statoil ASA in Norway. The inspection was part of the Commission's investigation of European companies engaged in oil trade.

The Authority's role in the investigation ended when it handed over the seized material to the Commission.

Enforcement of competition rules

The Authority's main task in the field of competition is to ensure that undertakings active in the EFTA States comply with the EEA competition rules. For this purpose, the Authority enjoys wide powers of investigation and may impose fines of up to 10 percent of global turnover on undertakings that act in contravention of the rules.

It is further incumbent upon the Authority to supervise the application of the EEA competition rules by the competition authorities of the EFTA States.

Highlights from 2013:

Proceedings against EFTA States

The Authority brought proceedings against the States before the EFTA Court during 2013 in a total of 10 cases. That is a record number. Eight cases were against Iceland and two cases were against Norway. In all of those cases, the Authority obtained judgments in its favour finding that the defendant States had failed to adopt the measures necessary to implement EEA law in the national legal order (judgments in Cases E-9/13, E-10/13, E-11/13, E-12/13, E-13/13, E-14/13, E-15/13, E-16/13, E-17/13 and E-18/13).

Review of Authority decisions

In 2013 seven applications for the annulment of decisions taken by the Authority were lodged by undertakings or associations of undertakings. Two of those cases concern public access to documents (E-4/13 and E-5/13 *DB Schenker v ESA*), one concerned the decision to close an investigation into infringement by a State (E-2/13 *Bentzen Transport v ESA*), three concerned state aids decisions (E-1/13 *Mila v ESA*, E-8/13 *Abelia v ESA*, E-19/13 *Konkurrenten v ESA*) and one is an action for the annulment of the Authority's decision to approve a list of major events to be broadcast on free to air TV in Norway (E-21/13 *FIFA v ESA*). In Case E-2/13 *Bentzen Transport v ESA*, the EFTA Court dismissed the application as inadmissible. In Case E-1/13 *Mila v ESA*, the EFTA Court annulled the Authority's decision. The other cases are still pending.

The EFTA Court

A referral to the EFTA Court is the final step in the Authority's formal infringement procedure against an EFTA State. The Court also rules in appeals brought by other parties, concerning decisions taken by the Authority. Finally, the Court gives advisory opinions to courts in the EFTA States on the interpretation of EEA rules.

The Authority participates in all cases before the EFTA Court.



Referrals from national courts

The Authority lodged observations in six cases referred by national courts to the EFTA Court for an advisory opinion [Cases E-11/12 *Beatrix Koch*, E-15/12 *Wahl v Iceland*, E-3/13 *Fred. Olsen*, E-6/13 *Metacom*, E-7/13 *Creditinfo* and E-20/13 *Fred. Olsen*].

The Court of Justice of the European Union

The Authority lodged observations in four preliminary ruling cases pending before the Court of Justice [Cases C-507/12 *Saint Prix*, C-617/12 *AstraZeneca*, C-48/13 *Nordea Bank* and C-83/13 *Fonnship A/S*].

Access the Authority's documents online

To enhance accessibility and transparency, the Authority has launched an online Public Document Database. This tool allows for anyone to easily see documents which have been made public by the Authority.

As a main rule, documents handled by the Authority should be publicly available, and anyone can ask for access. The Authority can, however, refuse disclosure of certain documents.

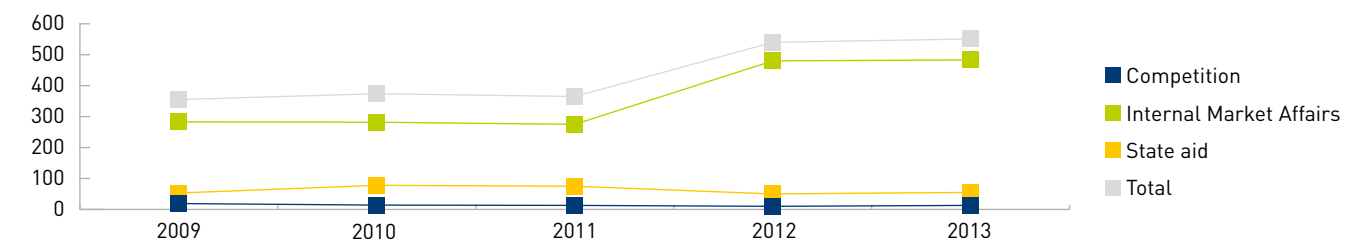
Minutes of the College meetings are always published on the website, giving public insight to all formal decisions. A weekly updated document registry is also published.

See www.eftasurv.int/access

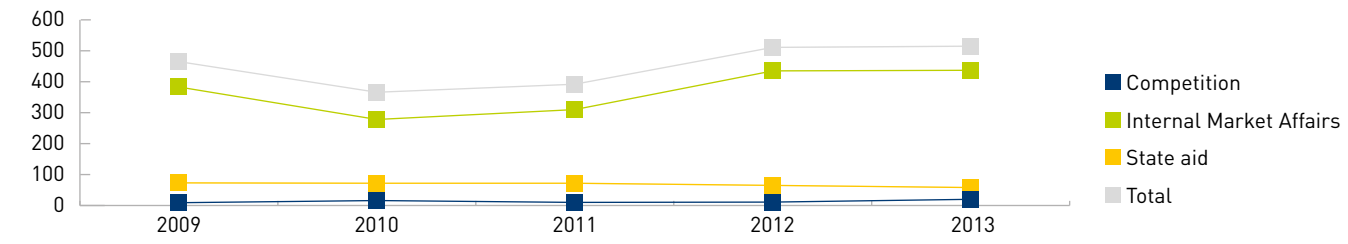


Case handling

New cases, by field of work:



Cases closed by the Authority, by field of work:



Budget

The activities and operating budget for the Authority are financed by contributions from Iceland (9%), Liechtenstein (2%) and Norway (89%). The Authority's total budget for 2013 was EUR 12.7 million, a nominal increase of 2.6% compared with 2012.

Safeguarding the EEA Agreement

Working at the EFTA Surveillance Authority means working in a truly international environment. Strategically located in the European Quarter of Brussels, the Authority has over 70 dedicated and competent officials of more than 14 different nationalities.

As case handlers the Authority employs highly skilled and experienced professionals with a keen interest in European law. Case handlers get the opportunity to work with a portfolio of cases extending over a variety of legal areas.

An attractive work place

The Authority strives for sound legal analysis, personal development and team work, matched with attractive working conditions. Staff are normally employed on fixed-term contracts for three years, usually renewed once, but the Authority also offers shorter temporary positions. Employment opportunities for highly qualified candidates are regularly available.

Emphasis is put on a good work/life balance and the Authority provides an attractive compensation package, including competitive salaries and favourable tax conditions and advantages. For staff members with children, Brussels offers a vast choice of international schools.

Read more at www.eftasurv.int/jobs

Traineeships

Being a trainee at the Authority is a great way to kick-start a career. Each year the Authority offers six candidates from the EEA EFTA States the possibility to join it for 10 exciting months. The experience will prove beneficial for careers in both the private and public sectors. The application process commences in February each year.

Read more at www.eftasurv.int/trainee