

Annual report
2022



ESA | EFTA
Surveillance
Authority

2022 ANNUAL REPORT

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LETTER FROM THE COLLEGE

The year 2022 started with a leadership change for the EFTA Surveillance Authority (ESA), and a new professional challenge for us, as we took up our four-year mandate as College members. We soon found ourselves on a steep learning curve, having joined a highly effective organisation with competent staff working tirelessly to ensure that people and business enjoy the benefits of the EEA Agreement.

One of our first projects was a prioritisation exercise. In a cross-departmental project, we identified 60 cases for closure, allowing the organisation to better concentrate its resources on cases that raise important legal questions or wider systemic concerns with serious impact on businesses and individuals. In doing so, we are not only focused on increasing ESA's effectiveness as guardian of the EEA Agreement, but also its efficiency. We aim to bring infringement proceedings to a faster conclusion. Dialogue with the three EEA EFTA states is a key tool in this respect, which has already shown success.

2022 could have been a year of hope, as the end of the COVID-19 pandemic remained visible on the horizon. We allowed for a staggered return of staff to the office, and our new EFTA House was finally turning into the bustling headquarters it was always meant to be.

But instead of hope, 2022 brought war to the

European continent, with Russia invading Ukraine on 24 February. ESA decided to prioritise notifications of State aid as a direct or indirect result of Russia's aggression. Throughout the year, ESA approved six Norwegian measures in this respect, including a grant scheme for businesses particularly affected by severe increases in energy prices and an aid scheme for Norwegian undertakings with significant customer bases in Ukraine, Belarus or Russia.

While crisis measures were at the top of the agenda, ESA continued its focus on climate change, energy and the environment. This included following up on the implementation of the Third Energy Package in the EEA EFTA States and the adoption of revised Guidelines on State Aid for Climate, Environmental Protection and Energy.

Europe is the global leader the fight against climate change, aspiring to become the first climate-neutral continent by 2050. The EEA Agreement plays an increasingly important role in this work. In September, ESA approved aid for two Norwegian projects – Barents Blue and Tizir – participating in a hydrogen value-chain initiative, also known as Hy2Use). Hy2Use supports the construction of hydrogen-related infrastructure and development of hydrogen technologies.

In October, ESA published its second annual Climate Progress Report, tracking the progress made by Iceland

and Norway towards their 2030 emissions-reduction targets. The report shows that both Iceland and Norway need to step up their efforts to reach their 2030 targets.

ESA staff also worked hard on other issues that are important to ensure the rights of people and businesses in the three EEA EFTA States. This includes matters such as labour law, health and safety at work, equal treatment, and consumer protection. ESA conducted security inspections at airports and maritime ports, and carried out several food and veterinary audits in Norway and Iceland, which resulted in more than 40 recommendations to strengthen the official control systems in the two States.

Another milestone was the decision by the EFTA Court to uphold ESA's fine of EUR 112 million to Telenor, a incumbent Norwegian telecom operator, for having abused its market dominance in violation of EEA law. The judgment highlighted the tremendous work undertaken by ESA staff in preparation of the decision taken by ESA in 2020.

ESA continued to strengthen cooperation and synergies with the European Commission and many EU agencies, such as the European Banking Authority (EBA); the European Insurance and Occupational Pensions Authority (EIOPA); the European Securities and Markets Authority (ESMA); and the European Union Agency for the Cooperation of Energy Regulators (ACER). ESA participated actively in numerous board meetings and working groups.



The EFTA House.



ESA's College: Árni Páll Árnason, Arne Røksund (President), Stefan Barriga

The return to the woffice also led to a flurry of visitors coming to ESA. This included high-level visits by ministers and parliamentarians from Iceland, Liechtenstein and Norway, and also business associations, interest groups and students coming to Brussels to learn more about ESA, the EEA Agreement and European cooperation in general.

Having moved into a shared headquarters with the EFTA Secretariat and the Financial Mechanism Office in 2021, last year allowed for greater synergies between the three organisations, especially through joint events. This effort kicked off in May, with the official opening of EFTA House, spearheaded by Foreign Ministers Þórdís Kolbrún Reykfjörð Gylfadóttir, Dominique Hasler and Anniken Huitfeldt, as well as Maroš Šefčovič, Vice-President of the European Commission. In November, the Conference on the Future of Financial Services

attracted more than 120 high-level policymakers, supervisors and market players from across the EU and EFTA States to discuss the road ahead for green and digital finance in the EEA. European Commissioner Mairead McGuinness delivered the keynote speech, stressing the need to improve our resilience against current and future crisis.

Going forward, ESA will continue to work to ensure that people and businesses across the EEA EFTA States can reap the full benefits of the EEA Agreement. In doing so, effective cooperation with a broad range of stakeholders is key, including with the national authorities of the EEA EFTA States, European institutions, private sector representatives as well as individuals. We will continue to strengthen those partnerships. Together, we will make sure that the EEA Agreement continues to deliver on its promise.

THIS IS ESA

The EFTA Surveillance Authority (ESA) monitors compliance with the rules of the European Economic Area (EEA) in the EEA EFTA States, Iceland, Liechtenstein and Norway, 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 27 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 the free movement of goods, persons, services, and capital in all EEA States. 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. The rules therefore apply throughout the entire EEA and ensure 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, providing 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 undertakings, 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. If the EEA EFTA State concerned decides not 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 are similar to those of the European Commission, but they oversee the application of the same laws in different parts of the EEA. Due to their mirror-roles and the need to ensure uniform application of law, there is close contact and cooperation between the two institutions.

HOW ESA IS ORGANISED

ESA is led by a College of three members. Although appointed by the EEA EFTA States, the College members



A selection of ESA's staff.

undertake their functions independently and free of political direction. The current College took office on 1 January 2022. It is led by President Arne Røksund, nominated by Norway, while College members are Árni Páll Árnason, nominated by Iceland and Stefan Barriga, nominated by Liechtenstein, who joined ESA as a College member in October 2021.

Under the leadership of the College, ESA employs experts in law, economics, veterinary science and other fields from all over Europe. In 2022, ESA was divided into the following departments:

- Administration Department, led by Anders Ihr
- Internal Market Directorate, led by Jónína Sigrún Lárusdóttir
- Competition and State Aid Directorate, led by Harald Evensen
- Legal and Executive Affairs Department, led by Melpo-Menie Joséphidès

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 its internal and external activities in 2022.

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.

BUDGET AND FINANCIAL PERFORMANCE

ESA's 2022 budget amounted to EUR 19 million, an increase of 4.0% compared to 2021, and ESA ended the year with a deficit of EUR 84,000 (2021: surplus EUR 742,000). ESA's activities and budget are primarily financed by contributions from Norway (89%), Iceland (9%) and Liechtenstein (2%).

Outside the official budget, ESA received one-off grants totalling EUR 500,000 from the 2021 surplus (2021: EUR 902,000 from the 2020 surplus) to fund additional temporary capacity and staffing needs. ESA also utilised a NOK 2,000,000 (EUR 195,000) one-off grant from the Norwegian Ministry of Climate granted for the 2020-2022 period to fund additional temporary legal capacity in the climate and environment fields.

Mission and outreach activities picked up again after the COVID-19 pandemic, doubling the travel, training and representation expenses compared to 2021.

About 80% (2021: 82%) of ESA's expenditure represents personnel costs and turnover costs, such as salaries, allowances, and benefits as well as recruitment expenses. Capacity issues remained an issue for ESA. Hence, the hiring of additional temporary staff continued to drive staffing expenses. The deficit was caused by higher than foreseen staff salaries driven by higher-than-expected salary indexation. This incidental deficit is covered by a withdrawal from the reserve fund. The reserve fund is a tool available to cover for expenditure under exceptional and unbudgeted circumstances.

ESA's annual financial statements, prepared in

| | Actuals 2022 | Budget 2022 | Actuals 2021 | Budget 2021 |
|---|-----------------|----------------|-----------------|----------------|
| Amounts in thousand EUR | | | | |
| EEA EFTA States' contributions | | | | |
| - Current year | 18 871 | 18 871 | 18 148 | 18 148 |
| - Multi-year contributions for IT investments* | 20 | 20 | 20 | 20 |
| Total EEA EFTA States' contributions | 18 891 | 18 891 | 18 168 | 18 168 |
| Financial income | 35 | - | - | - |
| Other income** | 894 | 150 | 1 166 | 146 |
| Total income | 19 820 | 19 041 | 19 334 | 18 314 |
| Salaries, benefits, allowances and turnover costs | 15 993 | 15 012 | 15 262 | 14 394 |
| Travel, training and representation expenses | 795 | 828 | 371 | 638 |
| Office accommodation expenses*** | 1 455 | 1 302 | 1 577 | 1 528 |
| Supplies and services expenditure | 1 628 | 1 865 | 1 351 | 1 731 |
| Financial expenses | 33 | 34 | 31 | 23 |
| Total expenditure | 19 904 | 19 041 | 18 592 | 18 314 |
| Net (deficit)/surplus for the year | (84) | - | 742 | - |

Notes:

* Multi-year contributions for IT investments represents income from deferred contributions received in 2018 for new IT projects.

** Includes one-off grants from the surplus 2021 amounting to EUR 500,000 for staff expenditure and capacity-building and an additional grant of NOK 2 million (EUR 500,000) from the Norwegian Ministry of Climate and Environment for temporary capacity-building a period.

*** Includes EUR 309,000 (2021: EUR 305,000) interest from a financial lease for the office building which has been classified as office accommodation expenses to align with the budgeted expense category.

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 2021 was approved by the ECC on 16 December 2022, 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.

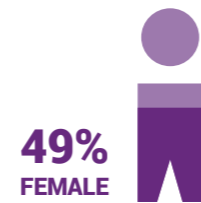
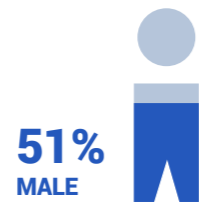
HUMAN RESOURCES

ESA's dedicated staff, with their specific expertise and knowledge, are its most valuable assets. ESA offers a professional, supportive and flexible working environment, with excellent opportunities for collaboration and personal development.

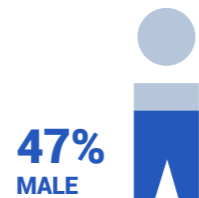
At the end of 2022, ESA employed a total of 84 staff members on fixed-term and temporary contracts, representing 20 nationalities, including 45 EEA EFTA nationals. Of these staff members, 49% were female and 51% male. In management positions, 53% were female and 47% male.

Each year, ESA engages several Junior Professionals from the EEA EFTA States on an 11-month programme to work in its different departments. The EEA EFTA States have established staff regulations providing for employment 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



MANAGERS AT ESA



THE INTERNAL MARKET IN 2022

The European Internal Market refers to a common area that has the 'four freedoms' as its cornerstone. These four freedoms govern the free movement of goods, persons, services and capital, and ensure that economic operators can establish themselves freely. They are crucial in ensuring the rights of people and businesses across the EEA. The four freedoms are further supplemented by horizontal provisions covering issues such as health and safety at work, labour law, equal treatment of men and women, and company law. These provisions are essential for prosperity, growth, competition and trade. They improve efficiency, raise quality and help reduce prices.

To ensure that people and businesses can reap the full benefits of the Internal Market, ESA continuously monitors the application of EEA law in Iceland, Liechtenstein and Norway. ESA can pursue legal action against the States to ensure the proper application and implementation of Internal Market rules. For the Internal Market to function, the EEA EFTA States must ensure the effective and timely implementation of agreed rules in their national legal orders. Among ESA's main priorities is its mandate to launch investigations where an EEA EFTA State has failed to implement legislation incorporated into the EEA Agreement in its national legal order.

WORKERS' RIGHTS

In December, ESA sent a letter of formal notice to Iceland over its failure to correctly implement EEA rules on minimum resting periods and maximum working hours by introducing an obligation to record working time.

The legal framework in Iceland contains no obligation on employers to set up a system for the recording of working time. The Icelandic Government had stated in 2020 that it intended to adopt a new legislative provision introducing this obligation, but it has yet to do so. In its letter, ESA concludes that Iceland has not fulfilled its obligations under the Working Time Directive, which has been interpreted by the Court of Justice of the European Union (CJEU) as requiring employers in the EEA States to set up an objective, reliable and accessible system recording the hours worked by employees. ESA also found that Iceland was in breach of Article 7 of the EEA Agreement, which requires states to fully implement directives in their national legal orders.

PATIENTS' RIGHT

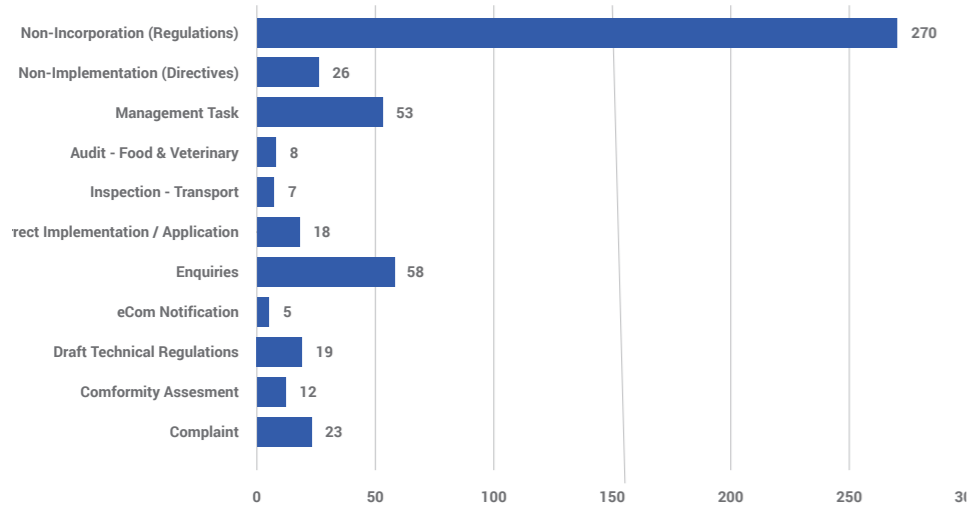
In December, ESA delivered a supplementary reasoned opinion to Norway over national rules that restrict the right of individuals to seek hospital treatment in other EEA countries.

In its reasoned opinion, ESA points out that Norway has established a system that makes it cumbersome for

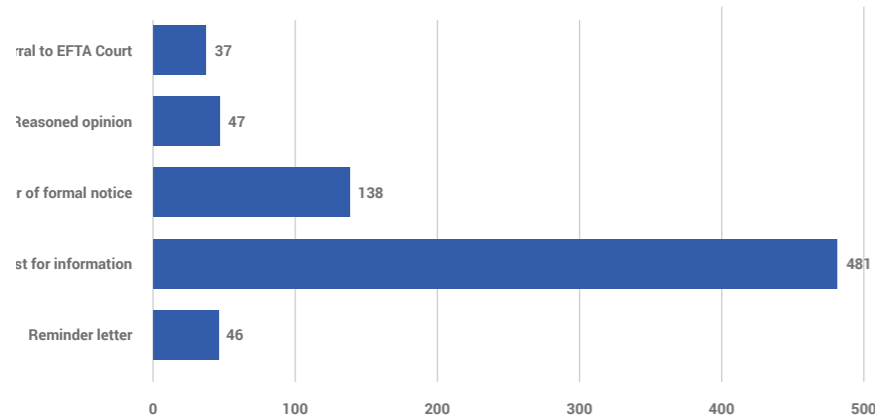


Maria Moustakli (right) and Ciarán Burke of ESA's Internal Market Affairs Directorate, and College Member Árni Páll Árnason (centre).

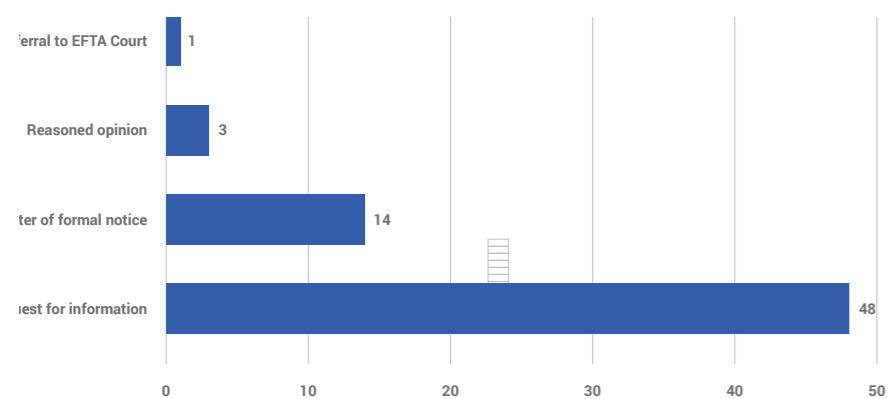
1. NUMBER OF CASES CREATED IN IMA IN 2022



2. INFRINGEMENT LETTERS ISSUED IN 2022



3. INFRINGEMENT LETTERS ISSUED IN 2022 (COMPLAINTS, CONFORMITY ASSESSMENTS, INCORRECT APPLICATION / IMPLEMENTATION)



competent institutions and bodies to apply correctly the relevant rules when assessing applications from individuals seeking access to in-patient treatment in other EEA States. The system also makes it impossible or excessively difficult for patients to identify, understand and effectively claim their EEA rights.

In ESA's view, the Norwegian Patients' Rights Act in its current form does not meet the requirements of EEA rules in several areas. For example, the conditions under the Patients' Rights Act concerning the right to treatment abroad are too strict. These include the requirement that the patients themselves provide documentation stating that the treatment abroad is more effective than the public treatment offered in Norway.

By splitting the competence to handle complaints or appeals concerning rights to in-patient treatment abroad between various appeals bodies, which are restricted by legislative provisions from applying the appropriate legal tests in full, Norway has made it excessively difficult or impossible for individuals to claim their EEA rights. This also constitutes a breach of the principle of legal certainty.

CROSS-BORDER HEALTHCARE

In December, ESA delivered a letter of formal notice to Norway concerning the reimbursement of only 80% of the amount required under the Patients' Rights Directive to patients who receive treatment in other EEA

countries. ESA also identified other restrictions related to patient mobility.

The Patients' Rights Directive, which aims to promote patient mobility across the EEA, establishes a system whereby patients are free to choose their healthcare provider anywhere in the EEA. The costs are to be reimbursed to the patient, up to the level of those that would be covered for treatment in the home country. In Norway, only 80% of these costs are reimbursed to the patient. This practice is rooted in a method of calculation applied to reimbursements by Norway's four regional health authorities. In ESA's view, however, the same method cannot be applied to costs owed directly to patients under the directive.

In addition, ESA found that Norway does not give patients enough time to submit their claims. The current six-month deadline begins on the day of treatment and does not take into account that some healthcare providers may take significant time to send invoices.

Lastly, ESA concluded that the rules requiring patients to provide translations at their own cost are too restrictive, in particular the need to use a state-authorised translator at their own expense.

EQUAL TREATMENT OF MEN AND WOMEN

In April 2017, ESA sent a reasoned opinion to Liechtenstein concluding that a provision in the country's legal order permitting insurers to use gender as a risk factor was incompatible with the EEA Agreement. Liechtenstein had a national provision allowing insurers and related financial service providers to use gender when calculating premiums and benefits, leading to different rates for men and women.

ESA considered this to be a breach of the principle of equal treatment and non-discrimination between men and women. It referred, among others, to the *Test-Achats* judgment of 2011, in which the CJEU had ruled against any provisions allowing the use of gender in calculating premiums and benefits.

In 2021, the Liechtenstein Parliament adopted amendments to the Equal Treatment Act, repealing the national provision considered to be incompatible with

EEA law. Liechtenstein has thus rectified its breach and the country's legal framework now complies with EEA law. ESA therefore closed the case in April 2022.

EEA-UK SEPARATION AGREEMENT MONITORING

2022 represented the second year in which ESA exercised its mandate under the EEA-UK Separation Agreement. ESA's duties in this regard include the monitoring of measures undertaken by Iceland, Liechtenstein and Norway to ensure that the rights of UK nationals residing in the EEA EFTA States covered by the Separation Agreement are respected. The Separation Agreement provides for the continuation of certain rights for UK nationals who resided and worked in the three EEA EFTA States before 31 December 2020, and who have continued to do so after this date.

In its first year of monitoring the Separation Agreement, ESA undertook a mapping exercise to set out and prioritise tasks that needed to be undertaken in order for ESA to fulfil its mandate. This included updating the rules of procedure, updating ESA's website to provide relevant information to UK nationals and establishing a new correspondence channel, and issuing a guidance note on ESA's powers under the Separation Agreement and the rights of UK nationals and their families.

After this exercise was complete, ESA issued its first Annual Report on the EEA-UK Separation Agreement. ESA found that Iceland, Liechtenstein and Norway had taken the appropriate steps to implement the Separation Agreement in their domestic legal orders and to keep those UK nationals and their families falling under the scope of the Agreement informed.

The Annual Report provides a detailed overview of how ESA has fulfilled its mandate to oversee the rights of UK nationals in Iceland, Liechtenstein and Norway following the United Kingdom's departure from the European Union and the European Economic Area. The [latest report](#) was discussed with the governments of the EEA EFTA States and the UK at a meeting in London in June 2022.



ENSURING SAFE, SECURE AND SUSTAINABLE TRANSPORT

The safe, secure and sustainable transport of goods, services and people is fundamental to 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 onsite inspections in the EEA EFTA States. It also makes sure that national rules on electronic communications, information society, postal and audiovisual services comply with EEA legislation.

EXCEPTIONAL TRANSPORT MEASURES

The extraordinary circumstances brought about by the COVID-19 pandemic led to significant challenges for national transport authorities, transport operators and people working in the industry. In 2022, the number of exceptional transport measures declined drastically compared to the previous two years. As such, ESA mainly followed up on pandemic-related transport measures that had been notified to ESA in 2020 and 2021 to ensure that the functioning of the Internal Market had returned to its regular state.

ESA examined whether measures taken to ensure that critical domestic air services and minimum

international air services were still in place in Iceland and Norway. In both states, measures taken through derogation from EEA rules on public service obligations on air routes expired in 2022. ESA also followed up on exemptions from road-transport safety rules in the EEA, as well as exemptions from maritime safety rules on the validity of ship and seafarer certificates, which also expired in the course of 2022.

In its [Decision No 069/22/COL](#), ESA approved the draft performance plan submitted by Norway for air navigation services and network functions under the Single European Sky. The approval process for the reference period had to be revised due to the pandemic, where the performance targets were adjusted and the effect of COVID-19 restrictions on navigation charges were mitigated.

NEW PACKAGE OF RAILWAYS RULES

On 1 June, the [Fourth Railway Package entered into force in the EEA EFTA States](#), completing the EEA single market in the area of railway services. The new rules cover both technical and market access aspects of railways. ESA has been preparing for the new tasks assigned to it under this new set of rules, including building stronger cooperation with the European Union Agency for Railways (ERA) and the relevant national competent authorities. Implementation of the new rules is presently being assessed by ESA.

AIR-GROUND COMMUNICATION SERVICES

In 2022, ESA referred Norway to the EFTA Court, alleging [failure to implement certain rules applicable to data link services](#) for the Single European Sky. According to these rules, the air-traffic service (ATS) provider designated by an EEA EFTA State must ensure that data link services are implemented within the airspace under its responsibility. The EEA EFTA State is to ensure that air-ground communication services meeting certain requirements of the [Regulation](#) are made available to operators of aircraft flying within the airspace under its responsibility. The deadline to comply with these obligations expired in 2018. Since 2020, Norway has acknowledged its failure to implement the relevant rules, setting out technical challenges, unreasonable costs

and safety concerns as reasons. In its response to a [reasoned opinion from ESA to Norway](#), Norway stated that it expects to implement the relevant rules in 2025, which is seven years past the deadline for compliance. ESA in December 2022 asked the EFTA Court to declare that Norway is in breach of EEA law on aviation safety.

ACCESS TO THE BUS AND COACH SERVICES MARKET

In 2022, ESA sent a [letter of formal notice to Iceland alleging incorrect implementation of the rules on access to the EEA single market for bus and coach services](#). According to ESA's assessment, the conditions under which non-resident EEA carriers can operate national road passenger services within Iceland are too restrictive. According to EEA rules, the transport of goods or passengers between two places in the same country (known as 'cabotage') by a transport operator established in an EEA State is allowed for both regular and occasional services. The issue at hand concerns the definition of 'temporary cabotage services', which are not as such defined under EEA law. ESA alleges that Iceland has established an arbitrary duration condition on the freedom to provide services in the road cabotage sector. This point is being scrutinised in parallel by the European Commission in infringement proceedings against Denmark ([INFR\(2021\)2072](#)).

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 rules on aviation and maritime security is to safeguard passengers, crew, ground and port personnel, economic operators and entities, as well as the general public from unlawful acts against aircraft and airports, or ships and ports.

Central to the regulatory framework 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.

In 2022, ESA conducted five inspections: three in the field of aviation security, and two in the field of maritime security.

ELECTRONIC COMMUNICATIONS, POSTAL AND AUDIOVISUAL MEDIA SERVICES

ESA monitors the implementation of EEA rules related to electronic communications, postal and audiovisual media services, and ensures the provision of universal services in Iceland, Liechtenstein and Norway. In addition, ESA makes sure that specific measures imposed on undertakings by the national regulatory authorities (NRAs) of the EEA EFTA States follow EEA rules on telecommunications and postal services. It does so by engaging in continuous dialogue with the NRAs and stakeholders to identify solutions that will benefit both businesses and consumers.

In 2022, ESA received and assessed seven notifications from the NRAs concerning the imposition of obligations on undertakings under EEA telecommunications legislation.

COOPERATION WITH EU AGENCIES AND REGULATORY BODIES

In carrying out its mandate in the transport sector, ESA works closely with the specialised EU agencies, including the [European Union Aviation Safety Agency \(EASA\)](#), the [European Maritime Safety Agency \(EMSA\)](#) and the [European Union Agency for Railways \(ERA\)](#). These agencies provide ESA with expert advice, either periodically or on a case-by-case basis, or following a specific ESA request. In the maritime transport sector, EMSA assists ESA with security inspections, and conducts visits to verify the implementation of EEA legislation concerning maritime safety.

As part of this cooperation, ESA meets regularly with the agencies – at the management and case-handler levels – to discuss key priorities and common work issues. One area of cooperation is data protection. ESA is currently working on the development of a joint controllership agreement on data protection with EMSA for maritime safety and security audits in the EEA EFTA States.

In the field of telecommunications, ESA cooperates with the [Body of European Regulators for Electronic Communications \(BEREC\)](#), and participates in the work of the [European Regulators Group for Postal Services \(ERGP\)](#) and the [European Regulators Group for Audiovisual Media Services \(ERGA\)](#).

A truck on a Norwegian countryside road.



Fish hung to dry in Iceland.

FOOD AND FEED SAFETY, ANIMAL HEALTH AND WELFARE

ESA is responsible for monitoring the implementation of EEA legislation on food and feed safety, and animal health and welfare in Iceland and Norway. Legislation in this sector is characterised by its dynamic nature, in terms of both the substantial number of legislative procedures for the rapid implementation of legislation in the EEA EFTA States, which must apply without delay across the entire EEA in order to be effective.

The national competent authorities in Iceland and Norway are responsible for the implementation of risk-based official controls to verify that operators along the food and feed chain comply with EEA law. ESA verifies

the application of these rules in Iceland and Norway, while Liechtenstein is subject to a different surveillance system for food and feed safety and animal health.

ESA carried out four audits in Norway and three in Iceland in 2022. In addition, it conducted one follow-up audit in Iceland and several desk-based analyses. Overall, the two states have incorporated the relevant EEA legislation into their national legislation, and the competent authorities are clearly designated and have the relevant powers to enforce it. Nevertheless, ESA made more than 40 recommendations in its 2022 audit reports to strengthen the official control systems in the two states. Approximately one-third of the recommendations address the general obligations of the competent

authorities, such as the absence of (or inadequate) arrangements in place to ensure the effectiveness and appropriateness of official controls, or an incomplete overview or insufficient control of operators, processes and activities subject to official controls or documented control procedures.

ANIMAL WELFARE AT POULTRY FARMS

ESA found that the Norwegian control system is unable to ensure that EEA welfare legislation is being complied with for laying hens. Contrary to previous feedback provided to ESA, the Norwegian Food Safety Authority did not carry out controls to address the shortcomings identified in two previous audits for laying hens conducted in 2009 and 2012.

EEA legislation establishes minimum standard for various factors to give laying hens the opportunity to practise natural behaviour. ESA found insufficient access to perches and feed and, for free-range laying hens, a lack of access to outdoor areas. Ineffective controls since the implementation of the legislation in 2002 have led the Norwegian Food Safety Authority to wrongly conclude that EEA animal welfare legislation is being complied with. This also concerns a decision not to carry out controls on the welfare of laying hens since 2019. Consequently, laying hens have been kept in conditions inferior to the minimum standards required by EEA rules for a substantial period.

During the same audit, ESA assessed the welfare of broilers in Norway. National legislation includes stricter stocking density requirements for broilers than the requirements found in EEA legislation, and these are generally enforced effectively by the Norwegian Food Safety Authority. ESA also found that satisfactory corrective actions had been taken by the competent authorities to address the shortcomings previously identified in this area.

FISHERY PRODUCTS FOR HUMAN CONSUMPTION

ESA found that the official control systems in Iceland and Norway cover the production of fishery products from catch to consumer. However, the control system in Iceland is weakened by an incomplete overview of landing sites, including the control and registering of vessels. In Norway, meanwhile, official controls

are not always carried out in line with the frequency established by the risk-based system. Both states have established written procedures, enabling the competent authorities to undertake official controls in a consistent and harmonised manner. This part of the respective control systems is, however, weakened by the relevant procedures not being adhered to.

POULTRY MEAT AND POULTRY MEAT PRODUCTS

ESA found several shortcomings in Iceland's controls of poultry meat and poultry meat products, including weak animal health controls prior to slaughter (ante mortem) and weak controls of slaughtered animals for sign of disease (post mortem) resulting in unsafe meat being placed on the market. Immediately after the audit, ESA requested that the Icelandic authorities take urgent action to strengthen these official controls, which resulted in immediate corrective actions being outlined.

ESA found that Norway had established official controls on poultry slaughter and the processing of poultry meat. Some shortcomings were identified, including the control of animal by-products, and in certain post-mortem inspections. In addition, ESA found that arrangements for routinely verifying the implementation of official controls by the competent authority were inadequate.

FOOD AND FEED OF NON-ANIMAL ORIGIN FROM THIRD COUNTRIES

ESA found that Norway had an effective system in place for official controls on products of non-animal origin from third countries. The system can be further strengthened by ensuring that official controls are performed in accordance with documented procedures, and that border-control posts have the facilities needed for the particular nature of such goods, as well as the volumes being handled.

Iceland, too, had a framework in place for official controls for such products. If products were presented for controls, documentation, identity and physical checks were carried out in line with EEA requirements. ESA nevertheless found that relevant consignments were not always identified and presented for official controls. Consequently, there was no assurance that only compliant feed and foods of non-animal origin

entering Iceland from third countries are placed on the market.

VERIFICATION OF CORRECTIVE ACTIONS

ESA systematically follows up on all open recommendations and engages in continuous communication with Iceland and Norway to monitor progress on the implementation of corrective actions following audits.

ESA in 2022 carried out a follow-up audit in Iceland to verify that the national competent authorities had satisfactorily addressed the recommendations issued after a previous audit. In 2019, ESA discovered severe shortcomings and concluded that Iceland could not guarantee that mussels placed on the market were safe for human consumption. Subsequent controls revealed that not enough progress had been made since the 2019 audit, and that there was a continued risk that mussels harmful to consumers' health were being placed on the market. ESA is continuing its dialogue with Iceland and monitoring the implementation of further corrective measures.

Also in 2019, ESA found that Norway did not have a reliable system for granting and maintaining infectious salmon anaemia (ISA)-free status for aquaculture establishments. ESA cancelled a scheduled follow-up audit after receiving information in February 2022 that there were no more ISA-free compartments or zones in Norway.

FORMAL INFRINGEMENTS

In Case E-3/22 EFTA Surveillance Authority v Iceland, the EFTA Court ruled in favour of ESA that Iceland had failed to fulfil its obligations concerning methods for handling the direct disposal of fallen stock, slaughterhouse waste and home-slaughter waste.

On 18 May 2022, ESA sent a letter of formal notice ([Decision No 112/22/COL](#)) to Iceland concerning the incorrect implementation of EEA food hygiene requirements, and Iceland's failure to undertake official controls on fish oil.

Further details on ESA's work in the food and veterinary issues can be found in the annual reports on the operation of official controls in Iceland and Norway. These are available [on ESA's website](#).



FROM CLIMATE CHANGE TO FINANCE

In 2022, ESA continued its work on monitoring the EEA EFTA States' compliance with their climate goals, environmental standards and EEA public procurement rules, as well as with EEA rules concerning the energy and financial markets.

To maximise its resources and boost cross-sectoral synergies, ESA established a new unit to deal with climate, environment, energy, financial services and public procurement.

Alongside its traditional enforcement activities, ESA carried out both recurrent and new regulatory tasks. These included decisions addressed to financial market operators (for example on Nasdaq Oslo's [temporary opt-out of MiFIR access provisions](#)) and to competent authorities in the energy sector (such as its opinion on the [certification of Statnett](#)).

To perform these tasks, the unit further strengthened its cooperation with the EU and EEA EFTA institutions,

and in particular with EU agencies such as the Agency for the Cooperation of Energy Regulators (ACER), the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA). Highlighting the need for collaboration across the EEA, in November ESA co-organised a conference with the European Free Trade Association (EFTA), bringing together their main counterparts and relevant stakeholders to discuss the [Future of Financial Services](#).

CLIMATE CHANGE

ESA is responsible for monitoring whether Iceland and Norway meet their climate goals as part of a Europe-wide effort to significantly reduce greenhouse gas (GHG) emissions by 2030.

In October, ESA issued its second [Climate Progress Report](#). The report is published annually and tracks

progress made in reducing GHG emissions in Iceland and Norway in line with their commitments under the Effort-Sharing Regulation ([Regulation \(EU\) No 2018/842](#)) and the Land Use, Land-Use Change and Forestry (LULUCF) Regulation ([Regulation \(EU\) No 2018/841](#)). The latest report finds that both states need to take additional action if they are to attain their 2030 climate targets.

The Effort-Sharing and LULUCF Regulations were incorporated into the EEA Agreement in 2019 by EEA Joint Committee Decision No 269/2019, following an agreement between Iceland, Norway and the EU to deepen their cooperation on climate change. The Effort-Sharing Regulation sets binding targets for reductions in GHG emissions by 2030. It applies to sectors such as agriculture, buildings, transport, waste and industry not covered by the European Emissions Trading System (ETS).

The LULUCF Regulation, meanwhile, aligns the actions of the EU, Iceland and Norway to reduce certain GHG emissions related to land use, land use change and forestry. In the context of this regulation, ESA in 2022 began to prepare for its assessment of the long-term strategies of Iceland and Norway for the land use and forestry sectors.

The EEA EFTA States participate in the ETS (Directive 2003/87/EC), a carbon market functioning across the EEA, and a cornerstone of the policies to reduce GHG emissions in Europe. The ETS is currently in its fourth trading period, which will run until 2030. In 2022, ESA collaborated closely with the European Commission and the EEA EFTA States in carrying out its regulatory tasks under the ETS.

CARBON CAPTURE AND STORAGE

Undertakings in Iceland (Carbfix) and Norway (Northern Lights) intend to contribute to climate change mitigation through carbon capture and storage (CCS), the geological storage of carbon dioxide (CO₂). Under the CCS Directive ([2009/31/EC](#)), undertakings are required to obtain a storage permit issued by the national competent authority. As part of the authorisation process, ESA is tasked with reviewing the draft storage

permit, and can issue an opinion on the company's compliance with the Directive. In 2022, ESA prepared the groundwork for this review, and has established cooperation with the national competent authorities in both Iceland and Norway in preparation for the drafting of their respective storage permits.

ENERGY VOLATILITY

In 2022, ESA followed closely the impact of Russia's aggression against Ukraine on energy prices and security of supply on households and the economy, including the measures adopted by the EEA EFTA States to address the situation.

ESA followed up on the implementation in the EEA EFTA States of the Third Energy Package, which entered into force in these countries in October 2019 with the aim of strengthening the internal market for energy. ESA's follow-up actions included the issuance of an [opinion](#) on the certification of the Norwegian transmission system operator, Statnett, verifying its compliance with the unbundling rules of the Third Energy Package.

In accordance with the two-pillar structure of the EEA Agreement, ESA continued its cooperation with ACER on matters involving one or more of the EEA EFTA States, including upcoming decisions on terms and conditions, and methodologies under the network codes.

MINING WASTE IN NORWAY

In 2022, ESA followed up on how mining waste is handled in Norway. It is also investigating whether the current Norwegian practice of allowing the disposal of mining waste into Norwegian fjords complies with the requirements set out in the Water Framework Directive ([2000/60/EC](#)). To this end, ESA issued a call for information inviting all stakeholders and individuals to provide information on the effects of mining waste on bodies of water in Norway. In 2022, ESA started its work on assessing the information received, with the assistance of technical experts.

PUBLIC PROCUREMENT AND DEFENCE

In 2019 and 2020, a purchasing body procured items

for the Norwegian Armed Forces without going through public procurement procedures. The items procured primarily constituted the basic kit required by new recruits and some items for ceremonial purposes. The purchasing body relied on the defence exemption (Article 123(b) of the EEA Agreement), which applies under strict conditions to certain products indispensable for defence purposes. The Norwegian Government indicated that critical shortages justified its reliance on the defence exemption.

ESA did not investigate the individual contracts, but rather the wider application of the defence exemption. It was concerned about purchasing bodies waiting until shortages of military equipment were critical in order to rely on the exemption. ESA also noted that the procurement directives ([2014/24/EU](#) and [2009/81/EC](#)) contained specific provisions to address situations of extreme urgency. However, the urgency cannot be attributable to the contracting authority.

The Norwegian Government gave ESA assurances that these contracts could not set a precedent for future procurement procedures, recalling the importance of procurement in the defence sector and the conditions for relying on the defence exemption. In addition, the Norwegian Government addressed the reasons that had led to the critical shortage of military personal equipment with the Armed Forces. In light of these elements, ESA considered the risk of wrongful reliance on the defence exemption law, and decided to close the case without taking formal action.

Procurement rules foster innovation in the defence sector. Moreover, they ensure that the limited resources of the Armed Forces are well spent, and that Norwegian producers of military equipment can access markets in other EEA States and vice versa. In times of increased military spending, proper application of procurement rules is therefore beneficial to the whole EEA.

FINANCIAL SERVICES

In 2022, ESA brought Iceland before the EFTA Court for the late transposition into national law of [37 implementing and delegated acts](#) in the area of financial services. The acts in question relate to the banking and

securities market sectors, and form part of a unified regulatory framework intended to complete the single market in financial services. They must be transposed into Iceland's national law in a timely manner to ensure a more resilient, transparent and efficient EEA financial sector.

BANKING AND INSURANCE INFRINGEMENTS

In September, ESA opened infringement proceedings against Norway, and in two separate cases issued letters of formal notice over its incorrect implementation and application of EEA acts within the field of banking and insurance.

The letters of formal notice (see Decision Nos [182/22/COL](#) and [184/22/COL](#)) concern the incorrect implementation and application of EEA acts in the field of banking and insurance, and relate to rules on the assessment of acquisitions and increases of qualifying holdings.

COOPERATION WITH THE EUROPEAN SUPERVISORY AUTHORITIES

To ensure the uniform surveillance and application of rules in the single market for financial services, ESA continued its close cooperation in 2022 with the three EU financial supervisory authorities – EBA, EIOPA and ESMA – at both the technical and board levels.

TEMPORARY OPT-OUT OF MIFIR ACCESS PROVISIONS

In June, ESA [approved](#) the renewal of Nasdaq Oslo ASA's temporary exemption (opt-out) from access provisions based on Article 36 (5) of the Markets in Financial Instruments Regulation (MiFIR). The decision, based on the conclusion that the trading venue continues to meet the requirements needed, allows Nasdaq to opt out of the access provisions under MiFIR for exchange-traded derivatives. ESA's assessment was performed in close cooperation with ESMA.

ANTI-MONEY LAUNDERING IMPLEMENTATION

ESA closely monitors the application of the EEA legal framework on anti-money laundering and countering the financing of terrorism (AML/CFT), as incorporated into

the EEA Agreement, to ensure the integrity and proper functioning of financial markets.

In October, ESA participated in a targeted review of AML/CFT supervision of the banking sector in one of the EEA EFTA States, organised by the EBA. This was a comprehensive full-week review that tested the consistent and effective application of EEA law and AML/CFT guidelines. AML/CFT implementation reviews are qualitative assessments of competent authorities' approaches to the AML/CFT supervision of banks across the EEA.

CONFERENCE ON THE FUTURE OF FINANCIAL SERVICES IN THE EEA

On 9 November, ESA and the EFTA Secretariat hosted [The Future of Financial Services in the EEA](#) conference. The event, held at EFTA House, brought together high-level policymakers, supervisors and market players, who exchanged views on the road ahead for green finance and financial supervision within the EEA.

European Commissioner Mairead McGuinness; Chair of ESMA Verena Ross; ESA College Member Stefan Barriga; and CEO of CICERO Shades of Green Harald Francke Lund provided keynote speeches. Representatives from the private sector, national and European supervisory authorities, the European Commission and academia animated the panel debates.



Government buildings on the Peter-Kaiser square in Liechtenstein.



Jon Loge Ramstad, Ketill Einarsson, Harald Evensen and Carsten Nielsen from ESA's Competition and State Aid Directorate.

STATE AID THE YEAR IN REVIEW

State aid is public support for 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, in order to prevent any negative effects on trade and competition. Still, exemptions are made for a variety of purposes, including environmental protection, regional development support, and research, innovation and development. The substantive 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.

The year 2022 was an eventful one in the field of State

aid. As in the preceding two years, ESA's State aid team prioritised support measures aimed at addressing the negative economic impact of the COVID-19 pandemic, and subsequently of Russia's aggression against Ukraine. A further priority in 2022 concerned measures related to environmental aid.

ESA adopted a total of 37 decisions on substance cases in 2022. Another five decisions were adopted concerning the revision of guidelines. The majority of the decisions – 22 in total – were so-called crisis measures. ESA also adopted a decision, following two complaints, on [temporary amendments to the Norwegian Petroleum Tax Act](#) introduced during the early stages of the COVID-19 pandemic, finding that the amendments did not constitute state aid. A further 14 important non-crisis decisions were adopted, including the approval of aid to a new [airport in Mo i Rana](#) in Norway, the closing

of a complaint case concerning alleged aid to [Sandnes Ulf football stadium](#) in Norway and the approval of a [production grant scheme for media](#) in Norway

Despite a drop in the number of state aid decisions in 2022 compared to 2021, several other, much bigger decisions were taken. These included many non-crisis decisions, such as those concerning important projects of common European interest (IPCEIs), the Norwegian carbon dioxide (CO₂) compensation scheme and an investigation into the financing of streetlights in Bergen. These cases required significant resources and larger case teams.

At the end of 2022, some 50 State aid cases were pending, including pre-notification discussions, notifications, formal investigations, existing aid reviews, reviews of unlawful aid (mostly complaints) and monitoring and guidelines cases. ESA also opened one own-initiative case in the field of State aid.

IPCEI PROJECTS

On 21 September, ESA approved NOK 743 million (EUR 74 million) in aid for two Norwegian projects, Barents Blue and Tizir. These form part of a hydrogen value-chain initiative, also known as Hy2Use. The decision was taken in parallel with the European Commission, which on the same day approved 35 IPCEIs in 13 EU Member States. IPCEIs are large projects that address a market failure or other important systemic failure and, consequently, require common European solutions. During the assessment period, ESA worked in close cooperation with the Commission and evaluated the Norwegian measures under ESA guidelines that correspond to the Commission's IPCEI guidelines.

The Hy2Use initiative aims to ensure the development of a renewable and low-carbon hydrogen market by supporting the construction of hydrogen-based infrastructure. This makes particular use of large-scale electrolyzers and transport infrastructure, and supports the development of hydrogen technologies across multiple industrial sectors. In 2022, ESA assessed the Norwegian measures under its guidelines corresponding to the [European Commission's revised](#)

[communication](#) on State aid rules for IPCEIs.

The [Barents Blue](#) and [Tizir](#) projects are part of the overall structure of Hy2Use. The aid provided by Norway compensates both projects for certain costs, including those related to research, development and innovation going beyond existing state-of-the-art solutions. Barents Blue seeks to develop a production method for blue ammonia, which is ammonia produced with close to zero CO₂ emissions. Tizir aims to replace coal with hydrogen in its production process of high-value titanium slag and high-purity pig iron, which will lead to a significant reduction in its carbon footprint.

COVID-19 SUPPORT

The COVID-19 pandemic continued to have a significant impact on the EEA EFTA States' economies in 2022, and its effects are still being felt. To address these, the EEA EFTA States continued to introduce new support measures and to prolong existing ones. In total, ESA adopted 16 decisions approving COVID-19 support measures in 2022. This number is considerably lower than in the previous two years, and most decisions concerned the prolongation or amendment of previously approved schemes rather than the introduction of new measures.

State aid rules allow the EEA EFTA States to grant support to remedy serious disturbances to their economies. In 2020, the European Commission adopted a temporary framework to enable the EU Member States to support the economy during the pandemic. This framework was amended and prolonged six times. ESA applied 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 vast majority of the COVID-19 support measures ESA approved in 2022 were designed to fit under and comply with the conditions set out in the framework.

The temporary framework was phased out in 2022, and after 30 June no new aid could be granted on the basis of the framework.



TEMPORARY CRISIS FRAMEWORK

Following Russia's invasion of Ukraine on 23 March 2022, the European Commission adopted a temporary crisis framework (TCF) to enable Member States to support the economy. The TCF complements the existing State aid toolbox with the other possibilities already available, such as damages compensation. ESA applies the conditions set out in the TCF when assessing the compatibility of State aid granted by the EEA EFTA States that fall within the scope of the TCF.

The TCF, as initially adopted, was based on Article 107(3)(b) of the Treaty on the Functioning of the European Union (TFEU) (Article 61(3)(b) EEA), recognising that European economies were experiencing a serious disturbance. As a remedy, three types of aid were provided: limited amounts of aid; liquidity support (state guarantees and subsidised loans); and aid to compensate for high energy prices, allowing partial compensation to companies, in particular intensive energy users.

On 20 July, the Commission adopted the first amendment to the TCF to allow the acceleration of the rollout of renewable energy, storage and renewable heat, and to decarbonise industrial production processes through electrification and/or the use of renewables and certain types of electricity-based hydrogen and energy-efficiency measures. This meant going beyond the existing possibilities [under Article 107\(3\)\(c\) TFEU \(Article 61\(3\)\(c\) EEA\)](#).

On 28 October, the Commission adopted the second TCF amendment, allowing the continued use of the flexibility provided by state aid rules. The TCF was prolonged until 31 December 2023, and additional flexibility was added to existing aid measures, for instance by increasing the ceilings set for limited amounts of aid up to EUR 2 million. The amendment also introduced new measures aimed at supporting electricity demand reduction, and clarified the criteria for the assessment of recapitalisation support measures.

In 2022, ESA adopted six decisions concerning measures notified on the basis of the TCF, all of which were Norwegian. The first two measures were designed to help companies that had lost considerable revenue due their large Russian customer base. The remaining

four measures aimed to address the negative effects of higher energy prices on certain companies in Norway.

CLIMATE, ENERGY AND ENVIRONMENTAL PROTECTION

Climate, energy and environmental protection remain an important part and a key priority of ESA's State aid work. ESA has relied directly on the EEA Agreement in its assessment of related measures and, until February 2022, on its [Guidelines on State Aid for Environmental Protection and Energy 2014-2020](#).

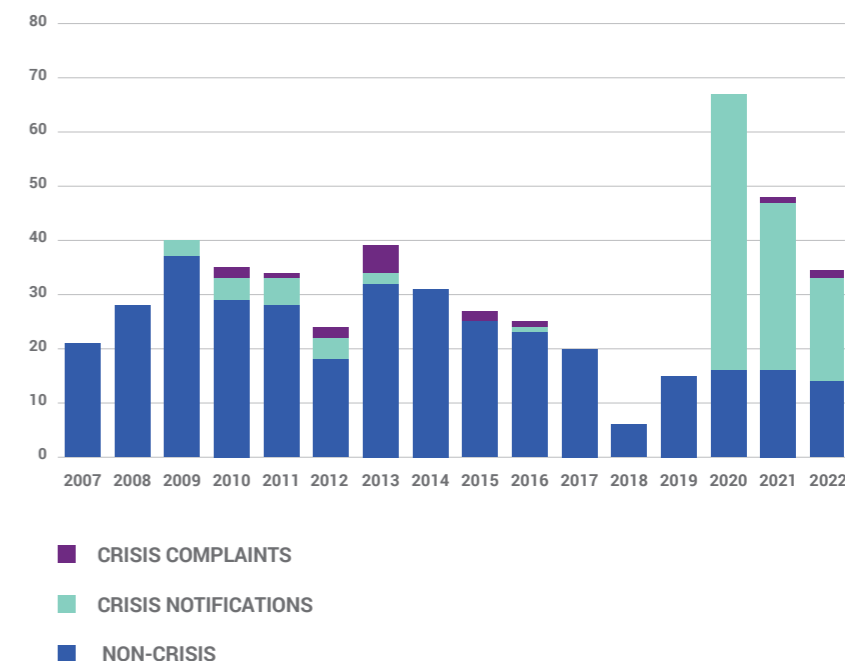
On 9 February, ESA [adopted](#) new [Guidelines on State Aid for Climate, Environmental Protection and Energy 2022](#), which it now applies whenever it takes an aid decision related to climate, energy and environmental protection (except for measures that have not been notified to ESA). It is yet to adopt its first decision under these guidelines.

ESA's [Guidelines](#) on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 (the ETS Guidelines) are an important instrument to allow public funding to tackle the risk of carbon leakage. On 26 January, ESA adopted a decision [supplementing](#) these guidelines.

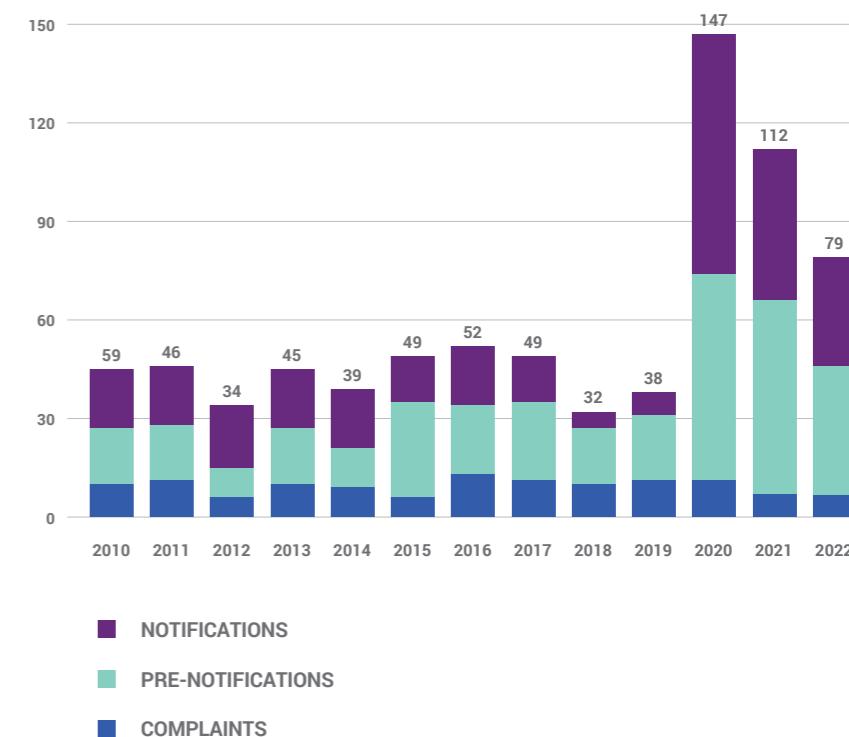
NORWEGIAN CO2 COMPENSATION SCHEME

On 7 September, ESA approved the new [Norwegian aid scheme for the compensation of indirect emission costs](#) under the ETS

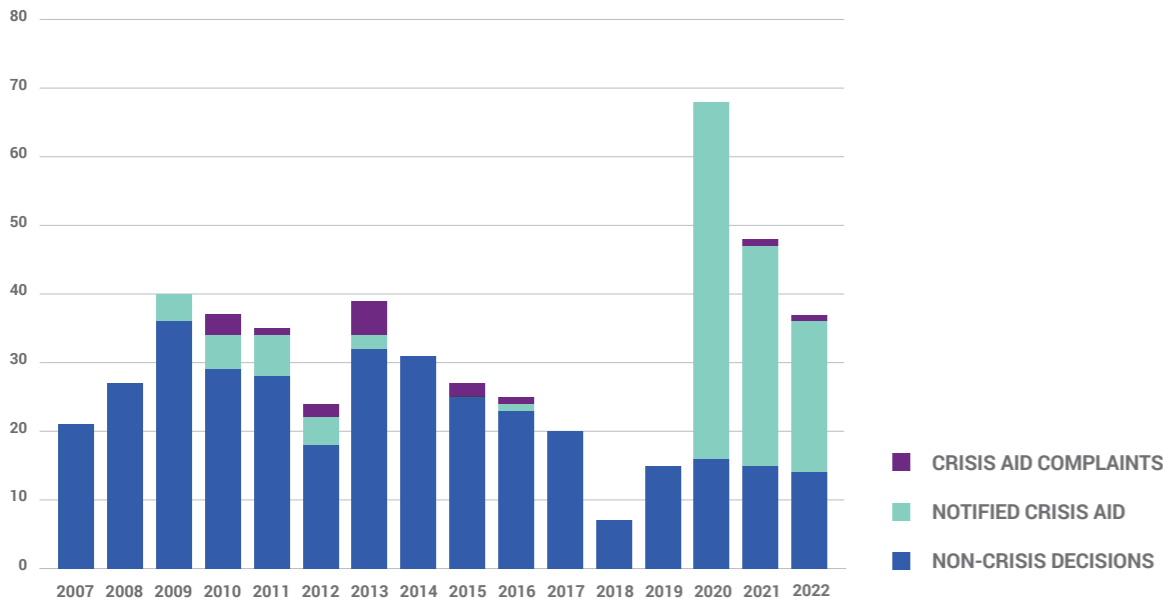
DECISIONS 2007-2022



(PRE-) NOTIFICATIONS AND COMPLAINTS RECEIVED 2009-2022



DECISIONS ADOPTED 2007–2022



Guidelines. The scheme partially compensates certain energy-intensive companies, such as basic aluminium, manganese alloy and iron manufacturers, for higher electricity prices resulting from emission costs under the EU Emissions Trading System (ETS). ESA previously approved a similar scheme in 2013.

The support measure aims to reduce the risk of 'carbon leakage', which may follow from the relocation of production to countries outside the EEA with less stringent climate policies, higher carbon intensity in electricity generation, and lower electricity prices.

Companies active in eligible sectors can receive maximum compensation of 75% of indirect emission costs incurred. The duration of the measure is from 1 January 2021 until 31 December 2030. The initial estimated total budget was NOK 101 billion, and the estimated annual budget for 2021 was NOK 3.65 billion. In early 2023, ESA approved an amendment to the scheme, involving a price floor that will reduce the overall estimated budget of the scheme by NOK 23 billion.

NORWEGIAN ZERO-EMISSION VEHICLES SCHEME

ESA's two amendment and prolongation decisions concerning Norwegian tax incentives for zero-emission vehicles are examples of direct application of the EEA Agreement in assessing aid measures. On 15 December, ESA approved the prolongation decisions concerning Norwegian tax incentives for zero-emission vehicles. On 15 December, ESA approved [the prolongation of and amendments to certain tax incentives for zero-emission vehicles](#). The scheme was extended for two years until 31 December 2024. Its objective is to encourage consumers to purchase zero-emission vehicles to reduce CO₂ emissions from the transport sector.

The approved scheme limits the application of zero value added tax (VAT) to car prices up to NOK 500 000 (EUR 50 000). Above that threshold, the standard VAT rate of 25% is applied. Furthermore, the zero VAT rate on battery electric vehicles now applies only to passenger vehicles. Commercial electric vehicles, such as class 2 vans, trucks, buses and other vehicles, are therefore subject to standard VAT rates from 1 January 2023.



ESA's College and Directors meet Norwegian Finance Minister Trygve Slagsvold Vedum.

With these amendments, the Norwegian authorities seek to target the scheme more at vehicles that require support, while scaling back the amount of support for more expensive vehicles. ESA first [approved the scheme in 2015](#) and prolonged it [for two more years in 2020](#). ESA approved [amendments to the scheme](#) in April 2022.

FORMAL INVESTIGATIONS

ESA has to open a formal investigation when, after a preliminary examination, it has not been able to conclude without doubt that a potential state aid measure is in line with the EEA Agreement. During the formal investigation, any interested party is invited to comment on ESA's preliminary views and doubts. The relevant State then has the opportunity to respond to the comments from the interested parties.

Following a formal investigation, ESA will adopt a closure decision that can be one of the following: a decision concluding that the relevant measure does not constitute state aid (a no aid decision);

a decision concluding that the aid is compatible with the functioning of the EEA Agreement (a positive decision); a positive decision with conditions attached, subject to which aid may be considered compatible (a conditional decision); or a decision concluding that the aid is not compatible with the functioning of the EEA Agreement (a negative decision). Should a decision find that aid is not compatible with EEA rules and the aid has already been granted, this may require the relevant EEA EFTA State to ensure the recovery of the aid.

In 2022, ESA opened one formal investigation concerning the Norwegian Catapult scheme and closed one concerning the financing of the streetlight infrastructure in Bergen, Norway.

NORWEGIAN CATAPULT SCHEME

In September, ESA initiated a formal investigation into certain state aid granted under the [Norwegian Catapult scheme](#). The objective of the scheme is to assist the establishment and development of so-called catapult

centres established to support small and medium-sized enterprises in the development and launching of products.

During its 2018 monitoring cycle, ESA assessed certain aid granted under the scheme. The aid in question included investment aid for tangible assets, such as equipment, to innovation clusters. In its preliminary assessment, ESA found that the aid did not fulfil the applicable conditions under the General Block Exemption Regulation (GBER). ESA has further doubts as to the compatibility of this aid with the EEA Agreement, so has decided to open a formal investigation procedure.

BERGEN STREETLIGHT AID RECOVERY

In July, ESA adopted a decision closing a formal investigation, concluding that parts of the financing granted for the operation of the streetlight infrastructure in Bergen were not compatible with state aid rules.

Having received a complaint from NELFO, an employers’ organisation, ESA opened a formal investigation in 2019 into potential state aid for the operation of streetlights in Bergen. ESA explored whether the municipality of Bergen had overcompensated the largest power company in western Norway, BKK, for operating and maintaining the streetlights. BKK is currently the owner of the streetlight infrastructure, which it acquired when it took over another company owned by the municipality. The municipality of Bergen is responsible for the streetlights along municipal roads, and finances these for the public good.

In its July 2022 decision, ESA concluded that companies within the BKK Group, recently rebranded as Eviny, were overcompensated for the operation and maintenance of streetlights along municipal roads in Bergen. ESA also found that the BKK Group had been overcompensated for capital costs. This overcompensation is incompatible with the EEA

Agreement. The Norwegian authorities must therefore recover the incompatible state aid.

ESA also found, however, that the municipality’s purchase of 12 000 new LED fixtures did not in itself confer an advantage on the BKK Group. As such, this did not constitute State aid. The decision has been appealed to the EFTA Court in Case E-10/22 Evigny AS v ESA.

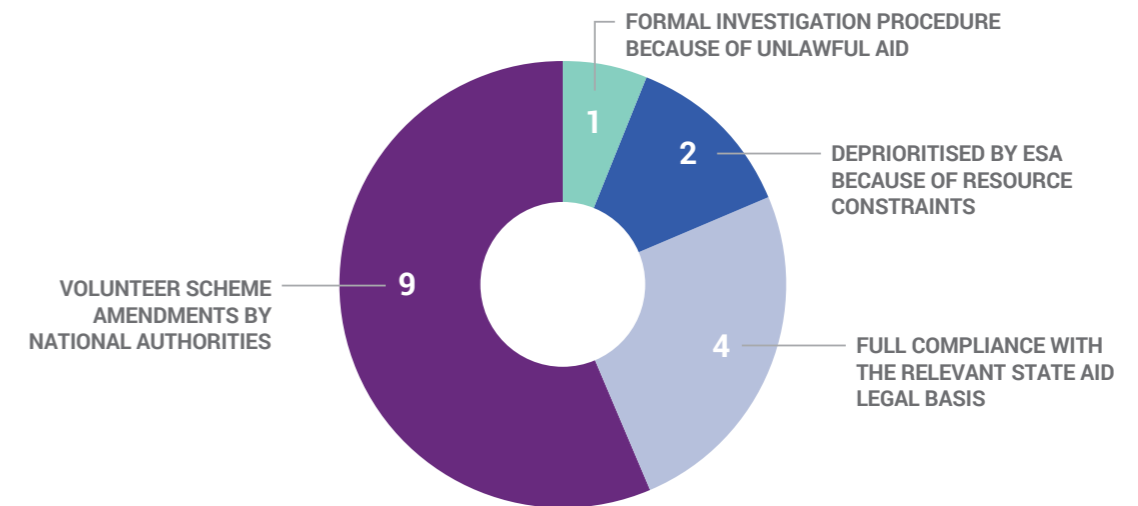
MONITORING

Monitoring is an ex post control that aims to correct irregularities in State aid measures. It helps to improve compliance with State aid rules both directly and indirectly (through its deterrent effect), and facilitates learning and outreach. It is an important part of the State aid decentralisation process and, as such, is a cornerstone of the current State aid control system.

The work conducted by ESA’s monitoring team follows an annual cycle that starts in September and finishes in spring or early summer, after two to four rounds of questions and replies. Some follow-up work might be needed for the national granting authorities when a new monitoring cycle is initiated in September.

A monitoring exercise always contains a thorough assessment of the scheme design and scheme documents, including the national legal basis. ESA conducts in-depth assessments of some individual aid awards provided to specific aid beneficiaries. If irregularities are detected, a follow-up phase is initiated, during which the national granting authorities amend the scheme documents (in the case of scheme-level irregularities) or recover unlawful aid (in the case of aid award irregularities affecting compatibility).

MONITORING OUTCOMES (END OF 2022)



ESA OPENED FIVE MONITORING CASES IN 2022:

- Scheme to support innovation companies (Iceland), [GBER 23/2020/R&D&I](#)
- National innovation aid scheme (Norway), [GBER 9/2020/MULTI](#)
- Promotion of energy from renewable sources (Norway), [GBER 18/2021/ENV](#)
- Innovation projects for the industrial sector (Norway), [GBER 11/2022/R&D&I](#)
- Aid scheme for audiovisual works (Norway), [GBER 44/2021/CUL](#)

No monitoring cases were closed in 2022, but ten monitoring measures remained open.

The type of irregularity most frequently found at the scheme level is when legally required conditions have not been included. The second most frequent type of scheme-level mistake relates to a lack of transparency in the aid granted.

At the level of individual aid to undertakings, the irregularity detected most often is the granting of operating aid under the GBER, wrongly labelled as investment aid.

ESA’s findings demonstrate that the same irregularities often appear in several measures in the same EEA EFTA State. ESA will follow up on such irregularities with a more horizontal approach going forward.

In 2023, ESA will focus on finalising ongoing monitoring cases. For resource reasons, ESA will further deprioritise the assessment of individual aid awards for some measures.

EEA COMPETITION LAW IN 2022

ESA is tasked with ensuring that undertakings operating in the EEA EFTA States comply with [the EEA competition rules](#), which mirror competition rules in the EU.

The purpose of these rules is to safeguard healthy and fair competition between companies. Fair competition helps to keep prices down, and spurs companies to innovate and operate efficiently. As a result, consumers have greater choice and can enjoy affordable, higher-quality products and services. In addition, increased competition within the EEA makes European companies stronger competitors in global markets.

Competition policy is part of a broad regulatory and enforcement toolbox to ensure that markets work to the benefit of consumers in the EEA. By keeping markets open and competitive, and ensuring a level playing

field, competition policy helps with the achievement of wider priorities and objectives, such as the greening and digitalisation of the EEA economy. Antitrust enforcement ensures that partnerships between companies, for example in the area of sustainability-enhancing initiatives, bring benefits without leading to harmful cartels or anti-competitive agreements that limit product availability or inflate prices.

ESA's Competition and State Aid Department has investigative powers similar to the European Commission's Directorate-General for Competition. For example, it can examine complaints or start an own-initiative investigation. It can gather evidence through requests for information, unannounced inspections ('dawn raids') or via leniency applications. And it can impose fines of up to 10% of global turnover on companies that breach competition rules.

EFTA COURT UPHOLDS ESA'S FINE AGAINST TELENOR

In 2022, ESA welcomed the EFTA Court's judgment in [Case E-12/20](#), upholding in full ESA's [decision](#) of 29 June 2020 and the record fine of approximately EUR 112 million imposed on Telenor. In its decision, ESA concluded that Telenor, the Norwegian telecoms incumbent, had abused its market dominance in violation of Article 54 EEA. Telenor had engaged in an illegal pricing strategy (margin squeeze), meaning that rivals without their own nationwide mobile network who were reliant on Telenor's dominant mobile network were making a loss when selling residential mobile broadband services on tablets and laptops in Norway. The abuse in question ran from 2008 to the end of 2012, when mobile data was in a critical growth phase (see ESA's [2021 Annual Report](#) for more details).

ansvarene
svarlig for å påse at de overholder

konkurransereglene kan skyldes
ger eller undersøkelser igangsatt på eget

MERGER CONTROL

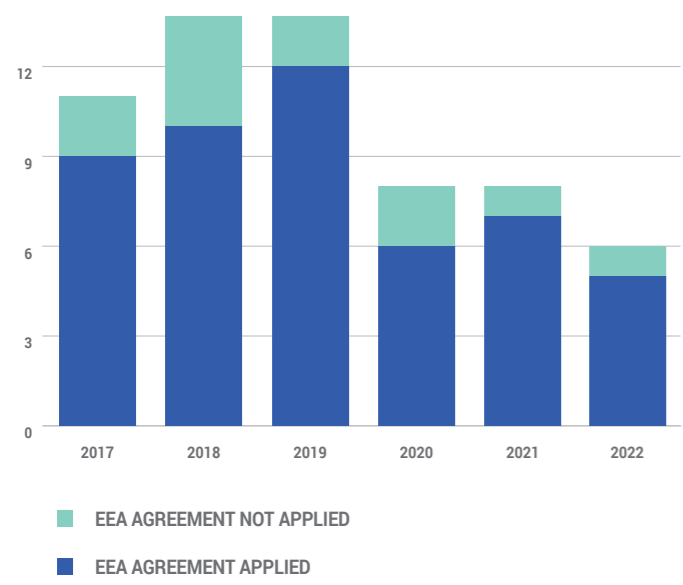
In the field of merger control, the rules on [jurisdiction](#) (see Article 57 EEA) mean that, in practice, the European Commission is generally the competent authority for assessing mergers under the EEA Agreement. However, ESA and the EEA EFTA States remain informed and involved by virtue of the EEA cooperation rules (see [Protocol 24 EEA](#)).

Article 22 of the EU Merger Regulation ('EUMR') allows EU NCAs to request that the Commission review a particular concentration, if that concentration affects trade between Member States and threatens to significantly affect competition within the territory of the Member State(s) making the request.

The NCAs of Iceland and Norway have been more active than most EU Member States in joining referrals to the Commission, through Protocol 24 EEA and ESA. In doing so, they ensure that the Commission will take the interests of consumers and businesses in their respective countries into account within the scope of its review. ESA participated in the shaping of guidance and practical application of the referral mechanism, and facilitates and ensures the smooth processing of cases as their frequency and importance has increased.

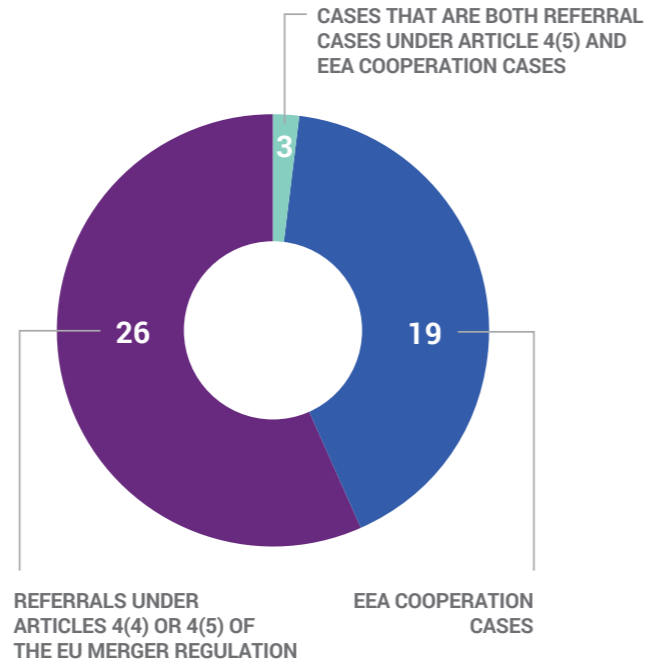
COOPERATION ON ANTITRUST AND MERGER CONTROL
 ESA shares jurisdiction with the European Commission for the application of EEA competition rules. They have forged a solid partnership through years of shared policy and case experience.
 Competition rules in the EEA are anchored in the 'one-stop-shop' principle, meaning that either the Commission or ESA, but not both, is competent to handle any given case (see Articles 56 and 57 EEA). However, robust mechanisms are rooted in the competition framework to ensure that both authorities communicate regularly on their respective cases.
 Through these channels, ESA is kept closely informed of important developments, and has the opportunity to make its voice heard in antitrust and merger cases handled by the Commission 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.

1. THE EUROPEAN ANTITRUST/CARTEL DECISIONS



Graph 1 shows that the Commission has applied the EEA Agreement in the large majority of its antitrust cases in recent years ('cooperation cases'). This illustrates the importance of these formal cooperation mechanisms.
 Graph 2 shows further the number of merger cases where information was transmitted by the Commission to ESA in 2022. The majority of these cases are requests for referrals between EU Member States and the Commission. Last year, a total of 20 cases were cooperation cases under Article 2 of Protocol 24 EEA, indicating that they could have a certain impact on the EEA EFTA States.
 Graph 3 shows the total number of prohibitions and conditional clearances of mergers by the Commission, as well as the significant share of those cases that were deemed cooperation cases under Protocol 24 EEA between 2017 and 2022.

2. MERGER COOPERATION AND REFERRAL CASES 2022



TELL ESA ABOUT COMPETITION CONCERNS
 ESA encourages citizens and undertakings to inform it of any suspected infringements of EEA competition rules in Iceland, Liechtenstein or Norway. This information can even be submitted anonymously. More information on how to report a suspected infringement or make a formal complaint can be found on ESA's website.

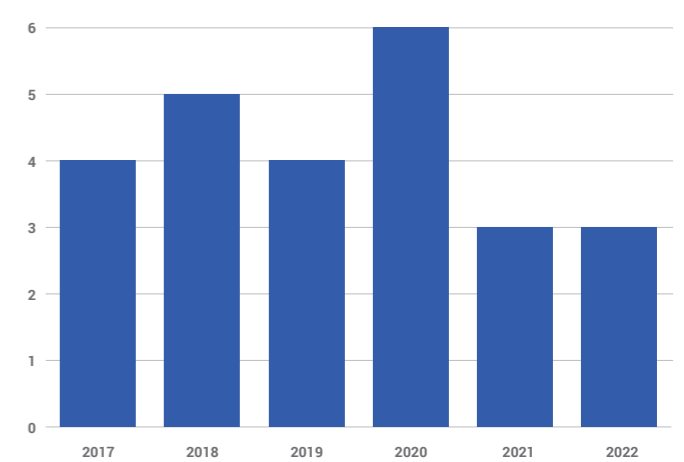
EUROPEAN COMPETITION NETWORK
 ESA and the EEA EFTA NCAs are part of the European Competition Network (ECN), which includes the European Commission and the EU NCAs. The ECN framework ensures open and continuous dialogue

between enforcers across the EEA on competition policy and experience. It is a key instrument in supporting effective and consistent application of competition law across the EEA.
COOPERATION WITH NATIONAL COMPETITION AUTHORITIES
 NCAs and national courts in the EEA EFTA States apply Articles 53 and 54 EEA, in parallel with 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 NCAs. When acting under Article 53 or 54 EEA, the EEA EFTA NCAs already inform ESA of new investigations at the stage of the first formal investigative measure. Sharing background information early on helps to identify the most appropriate authority to deal with a given case.
 The number of new EEA competition cases reported by the EEA EFTA NCAs in recent years

3. THE EUROPEAN COMMISSION MERGER INTERVENTIONS



4. NEW CASE NOTIFICATION FROM EEA EFTA NCAs



can be seen in graph 4 below.

Before adopting a decision that requires an infringement to be brought to an end under Article 53 or 54 EEA, or that accepts commitments from the companies involved in such an investigation, EEA EFTA NCAs 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.

In addition to these formal cooperation mechanisms set out in Chapter II of Protocol 4 SCA, ESA and the NCAs also communicate informally throughout the lifetime of a case.

Within the EFTA Competition Network, ESA, the Norwegian and Icelandic NCAs and the Liechtenstein Bureau of Competition regularly discuss competition law and hold expert-level meetings on technical or case-specific issues. Within this network, regular collective training initiatives are organised, for example lunch seminars and newcomer training initiatives.

COOPERATION WITH THE COURTS

To safeguard 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 tribunals of the EEA EFTA States, where this is required for the coherent application of Article 53 or 54 EEA. Similarly, ESA may submit observations to the European courts in Luxembourg, namely the EFTA Court, the Court of Justice of the European Union (CJEU) and the General Court of the European Union (GCEU). ESA does this in select competition cases of EEA interest.

In 2022, ESA made written submissions in support of the European Commission's position in the appeal proceedings before the CJEU in [Case C-48/22 P Google LLC and Alphabet Inc v Commission \(Google Shopping\)](#). Here, the Commission found that Google had abused

GUIDANCE ON SUSTAINABILITY AND DIGITAL INNOVATION INITIATIVES

ESA stands ready to respond to companies' requests for guidance to provide legal certainty under EEA competition rules, including where they are contemplating potentially novel agreements to pursue sustainability objectives or new forms of cooperation in the area of innovation in digital markets. In some instances, ESA may also consider adopting decisions finding that competition rules are not applicable to certain initiatives, where these are in the public interest.

its dominant position in the market for general search by positioning and displaying more favourably its own comparison shopping service compared to competing comparison shopping services.

ESA focused its submissions on two points relevant to its enforcement policy and practice. First, regarding Google's arguments that competition authorities must always undertake a counterfactual analysis in abuse of dominance cases, ESA argued that the focus of the investigation was the potential anti-competitive effects of Google's conduct. Neither case-law nor the rules of evidence support restricting the means by which a competition authority may prove its case. In ESA's view, the GCEU ([Case T-612/17](#)) was correct to conclude that if competition authorities were required to conduct a counterfactual analysis of the type advanced by Google, this would effectively oblige them to demonstrate that the conduct had actual effects, which is not required by Article 102 TFEU or Article 54 EEA. Second, ESA

supported the Commission's view that an abuse of a dominant position does not require a finding that equally efficient competitors (EECs) would be excluded. While an EEC test can be a useful tool for assessing anti-competitive effects, ESA submitted that case-law imposes no requirement on competition authorities to use it, even in respect of pricing abuses.

ESA also submitted written observations to the CJEU in [Case C-298/22 Banco BNP](#), where a Portuguese court referred questions for a preliminary ruling on the interpretation of Article 101 TFEU in the context of information exchange between competing banks.

The first question referred to the CJEU was whether an exchange of information between competitors can be characterised as a restriction of competition by object. ESA submitted that, in principle, Article 101 TFEU does not preclude an information exchange with features such as those found by the national court from being classified as a restriction of competition by object. However, this is for the national court to decide.

Under the second question, ESA looked at the circumstances in which claimed efficiencies are capable of calling into question an initial finding that a practice is by nature sufficiently harmful to be characterised as a restriction by object. ESA concluded that, pursuant to case-law, this is only the case where such efficiencies are demonstrated, relevant, specifically related to the practice concerned and sufficiently significant to justify a reasonable doubt as to whether that practice caused,

or was capable of causing, a sufficient degree of harm to competition. This matter would also be for the national court to assess.

ESA also intervened in support of the Commission's appeal in [Case C-376/20 P Commission v CK Telecoms UK Investments](#). This case concerns a number of important aspects of EEA merger control. ESA focused its submissions on the standard of proof required to establish a significant impediment to effective competition under the EU Merger Regulation (EUMR). In its judgment, the GCEU applied a standard of proof of 'strong probability'. However, in the view of ESA and the Commission, both case-law and the structure of the EUMR suggests that the standard of proof required to prohibit a concentration is not elevated above that of 'more likely than not'.

The EU Courts also handed down two judgments in 2022 in cases where ESA had previously submitted observations. In [Case T-227/21 Illumina/Grail](#), the GCEU agreed that Article 22 allowed for referrals from Member States that did not themselves have jurisdiction over the merger. The case is under appeal before the CJEU ([Cases C-611/22 P](#) and [C-625/22 P](#)), in which ESA is also participating. Lastly, in 2022, the CJEU handed down its judgment in [Case C-377/20 Servizio Elettrico Nazionale](#), concerning abuse of a dominant position (Article 102 TFEU), in which ESA participated in the oral hearing. See the [2021 Annual Report](#) for more details on both cases.

REMEMBER ESA WHEN SUBMITTING A LENIENCY APPLICATION

Did you know that applying for leniency with the national competition authority (NCA) in Norway or Iceland does not provide full legal certainty for your company or client if Article 53 EEA is applicable in addition to the respective national competition law? This is because ESA or the European Commission will also have jurisdiction in the application of Article 53 EEA to the conduct concerned. Moreover, should ESA or the Commission initiate proceedings, this would even relieve the NCA of its competence to apply Article 53 EEA.

So, in order to fully protect your position, remember to submit an application with ESA and/or the Commission when approaching the NCA in Iceland or Norway! More information on ESA's leniency programme and how to apply for leniency can be found on [ESA's website](#).

UPDATING THE EUROPEAN COMPETITION TOOLBOX

In 2022, the European Commission continued to update the European competition toolbox. It adopted a new [Block Exemption Regulation on Vertical Agreements](#) (VBER) and [Guidelines on Vertical Restraints](#). The revised rules provide businesses with simpler, clearer and up-to-date rules and guidance in respect of the application of EU competition rules to so-called 'vertical agreements' between companies active at different levels of the supply chain (distribution agreements). At the moment of publication of this Annual Report, the VBER had not yet been incorporated into the EEA Agreement.

The Commission also adopted [Guidelines](#) on the application of EU competition law (Article 101 TFEU) to collective agreements regarding the working conditions of solo self-employed persons, providing clarity on when certain self-employed people can get together to negotiate better working conditions collectively without breaching EU competition rules.

Finally, the Commission adopted a revised [Informal Guidance Notice](#), setting out the conditions under which undertakings can seek informal guidance on the application of EU competition rules to novel or unresolved questions. These conditions have been made more flexible than under the 2004 Notice, allowing the Commission to address a wider range of issues in guidance letters. ESA will accordingly update its [2006 Informal Guidance Notice](#). At the same time, the Commission withdrew the [Temporary Framework](#) on antitrust issues stemming from COVID.

Within the framework of the ECN, ESA actively monitored and contributed to discussions on these important guidance initiatives, as well as contributing to: (i) the ongoing revision of the Market Definition Notice; (ii) the evaluation of the EU antitrust enforcement framework (Regulation (EC) Nos 1/2003 and 773/2004, mirrored in Chapters II and III of [Protocol 4 SCA](#)); and (iii) the draft revised Block Exemption Regulations on R&D

and Specialisation, and the Guidelines on Horizontal Cooperation Agreements.

Another important milestone in 2022 was the entry into force on 1 November of the EU Regulation on contestable and fair markets in the digital sector (the 'Digital Markets Act' or 'DMA'). The aim of the DMA is to contribute to a fairer and more open and contestable digital sector. It establishes a set of narrowly defined objective criteria for qualifying a large online platform as a 'gatekeeper'. Only gatekeepers providing "core platform services" will have to comply with the well-defined set of do's and don'ts listed under the DMA. The Commission will be the sole enforcer of the regulation. At the time of publishing this Annual Report, the DMA had not yet been incorporated into the EEA Agreement and therefore ESA's role was still unclear.

ESA AND THE ELECTRONIC COMMUNICATIONS SECTORS

The electronic communications (eCom) regulatory framework requires national regulatory authorities (NRAs) in the EEA EFTA States to notify certain draft measures to ESA prior to their adoption. The eCom team of ESA's Competition and State Aid Department assesses whether these measures are compliant with the eCom regulatory framework and EEA competition law principles. ESA may comment on notified draft measures and, in relation to certain sections, has a right of veto and to request the amendment or withdrawal of the draft national

measures.

ESA's eCom team cooperates closely with its counterparts at the European Commission's Directorate-General for Communications Networks, Content and Technology (DG Connect), with the aim of ensuring coherent application of legislation throughout the EEA.

REVIEW OF REGULATORY OBLIGATIONS

ESA reviewed several notifications in 2022 concerning the imposition of regulatory remedies in Norway and Iceland. In [March](#), ESA reviewed the annual review by the Norwegian Communications Authority (Nkom) of the permitted profitability for dominant telecoms operators for the year 2022, and again in [November](#) for 2023. In [March](#), ESA had no comments on Nkom's proposal to allow Telenor to decommission certain telecoms exchanges that had never been used for broadband.

The Electronic Communications Office of Iceland (ECOI) submitted its proposed regulation for Mila's exchange rectifier equipment and its annual review of Mila's permitted profitability. Following pre-notification discussions, ESA had [no comments](#) on ECOI's proposals.

DEREGULATION IN LIECHTENSTEIN

In [September](#), ESA reviewed a notification from Liechtenstein's *Amt für Kommunikation* (AK) proposing to deregulate the country's retail fixed telephony market. The market has not been included in the markets susceptible to *ex ante* regulation since the 2016 [Recommendation on Relevant Markets](#). The AK found that the market is now sufficiently competitive and that

NEW SMP GUIDELINES

In November, ESA adopted new [Guidelines](#) on market analysis and the assessment of significant market power (SMP) under the eCom regulatory framework.

LEGAL AND EXECUTIVE AFFAIRS IN 2022

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

LEA is responsible for bringing cases against the 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 also 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.

ESA participates in all cases before the EFTA Court. It also takes part 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 participate in court proceedings as a third party before national courts in 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 2022

In 2022, ESA's litigation work at the EFTA Court covered social security, state aid, public procurement, labour law, tax surcharges, food safety and freedom of movement. Before the CJEU, ESA participated in cases concerning competition and state aid.

HOW ESA WORKS TO UPHOLD EEA LAW

Direct actions: A direct action is the final step in a formal infringement procedure against an EEA EFTA State. Before taking a matter to court, ESA informs the State of its views in a series of informal and formal steps. The State is then able to put forward its arguments or resolve the situation by complying with EEA law within

the applicable deadline. Generally, matters are resolved before the court stage through the dialogue involved in the formal infringement procedure. However, should this not resolve the matter, the possibility remains for ESA to pursue the option of a court referral.

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

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. Likewise, the EFTA Court can resolve disagreements between ESA and the EEA EFTA States on the interpretation of EEA law.

ESA brought five direct action cases before the EFTA Court in 2022.

In Case E-3/22 *EFTA Surveillance Authority v Iceland*, Iceland failed to fulfil its obligations concerning methods for handling the direct disposal of fallen stock, slaughterhouse waste and home-slaughter waste. The Court delivered its judgment in July 2022 in favour of ESA.

In Case E-15/22 *EFTA Surveillance Authority v Norway*, ESA sought a declaration that Norway had failed to fulfil its obligations concerning air traffic management by not providing or operating data link services within the timeframe set out in the relevant legislation.

Three cases concerned non-incorporation or non-implementation of EEA law in the national legal order. In Cases E-6/22, E-7/22 and E-8/22, *EFTA Surveillance Authority v Iceland*, ESA brought Iceland before the EFTA Court for failing to transpose 37 acts in the field of financial services into its national legal order. The Court delivered its judgments in November 2022 in favour of ESA in all three cases.

REFERRALS FROM NATIONAL COURTS

When a national court has a case before it 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 these cases by submitting written and oral arguments to the Court.

In 2022, the Court received nine requests for advisory opinions on a wide range of questions.

From Norway:

- Case E-2/22 *A v Arbeids- og velferdsdirektoratet* and Case E-5/22 *Christian Maitz v AHV-IV-FAK* concerned the coordination of social security systems.
- Case E-4/22 *Stendi AS & Norlandia Care Norge AS v Oslo Kommune* concerned public procurement processes.

From Iceland:

- Case E-9/22 *Verkfræðingafélag Íslands, Stéttarfélag tölvunarfræðinga & Lyfjafræðingafélag Íslands v Íslenska ríkið* concerned collective redundancies.
- Case E-13/22 *Birgir Þór Gylfason & Jórunn S. Gröndal v Landsbankinn hf.* concerned consumer protection, in particular the terms for calculating interest set out in a credit mortgage agreement.



From Liechtenstein:

- Case E-11/22 *RS v Steuerverwaltung des Fürstentums Liechtenstein* concerned tax rates for EEA nationals who were employed in Liechtenstein but not resident for tax purposes on national territory.
- Case E-12/22 Maximilian Maier concerned the right to be appointed as a legal aid lawyer.
- Case E-14/22 Alexander Amann concerned a prohibition on lawyers on advertising their services to certain groups, and on contacting potential clients.

EFTA Court advisory opinions:

- Case E-03/21 *PRA Group Europe AS v Staten v/Skatteetaten* on freedom of establishment and direct taxation.
- Three cases on the coordination of social security systems: Case E-5/21 *Anna Bryndís Einarsdóttir v the Icelandic Treasury*, and Case E-2/22 *A v Arbeids- og velferdsdirektoratet* and Case E-5/22 *Christian Maitz v AHV-IV-FAK*, mentioned above.

REVIEW OF ESA DECISIONS

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

One such application was filed against a decision of ESA in the EFTA Court in 2022. In Case E-1-/22, *Modiano Limited & Standard Wool (UK) Limited v EFTA Surveillance Authority*, the Applicants sought the annulment of ESA's closure of a complaint case concerning the Norwegian Wool Subsidy Scheme.

The EFTA Court delivered two judgments in 2022 regarding decisions taken by ESA.

In May 2022, in Case E-12/20 *Telenor ASA & Telenor Norge AS v EFTA Surveillance Authority*, the Court upheld ESA's Decision No 070/20/COL imposing a fine on Telenor ASA and Telenor Norge AS for abusing their

dominant position in the Norwegian telecommunications sector.

In June 2022, in Case E-4/21 *SÝN hf. v EFTA Surveillance Authority*, the Court annulled ESA's Decision No 023/21/COL on state aid to Farice ehf. for investment in a submarine cable connecting Iceland to Europe.

COSTS CASES

The EFTA Court is empowered to determine the level of costs to be awarded to a successful party in a case before it. No costs applications were either brought before, or decided by, the Court in 2022.

CJEU AND GCEU

The CJEU has jurisdiction in the field of EU law to interpret EU legislation. Since many EU law instruments are incorporated into EEA law, ESA 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 the following ways: in a preliminary reference, where the 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 CJEU Statute, including in direct action cases brought by the Commission against EU Member States.

In 2022, ESA submitted written pleadings in four cases before the CJEU. Three of these concerned merger control (Case C-611/22 P *Illumina Inc v Commission*, Case C-625/22 P *Grail v Commission* and Case C-376/20 P *Commission v CK Telecoms UK Investments*), one concerned anti-competitive exchanges of information (Case C-298/22 *Banco BPN*) and one was on abuse of a dominant position (Case C-48/22 P *Google Shopping*).

The CJEU and GCEU handed down judgments in two cases in 2022 in which ESA had participated: Case C-377/20 *Servizio Elettrico Nazionale*, concerning abuse of a dominant position; and Case C-328/20 *European Commission v Republic of Austria* regarding the coordination of social security systems. The GCEU

handed down a judgment in Case T-227/21 *Illumina v Commission* on merger control, which was then appealed to the CJEU.

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 can 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 to those courts.

ESA did not participate in any cases in the national courts in 2022.

PUBLIC ACCESS TO DOCUMENTS

Anyone can request public access to documents held by ESA. Documents are normally made publicly available upon simple request, though ESA may refuse disclosure in certain circumstances set out in its [rules on access to documents](#). Once a document has been disclosed, it is uploaded to ESA's [website](#). In 2022, ESA dealt with 114 requests for access to documents. Public access

requests can be sent to ESA by email at registry@eftasurv.int.

LINKS TO ESA'S COURT CASES IN 2022**CASES BROUGHT BEFORE THE COURTS IN 2022****EFTA Court:**

- [E-1/22 G. Modiano Limited & Standard Wool \(UK\) Limited v EFTA Surveillance Authority *](#)
- [E-2/22 A v Arbeids- og velferdsdirektoratet *](#)
- [E-3/22 EFTA Surveillance Authority v Iceland *](#)
- [E-4/22 Stendi AS & Norlandia Care Norge AS v Oslo Kommune](#)
- [E-5/22 Christian Maitz v AHV-IV-FAK](#)
- [E-6/22 EFTA Surveillance Authority v Iceland *](#)
- [E-7/22 EFTA Surveillance Authority v Iceland *](#)
- [E-8/22 EFTA Surveillance Authority v Iceland *](#)
- [E-9/22 Verkfræðingafélag Íslands, Stéttarfélag tölvunarfræðinga & Lyfjafræðingafélag Íslands v Íslenska ríkið](#)
- [E-10/22 Eviny AS v EFTA Surveillance Authority](#)
- [E-11/22 RS v Steuerverwaltung des Fürstentums Liechtenstein](#)
- [E-12/22 Maximilian Maier](#)
- [E-13/22 Birgir Þór Gylfason & Jórunn S. Gröndal v Landsbankinn hf.](#)
- [E-14/22 Alexander Amann](#)
- [E-15/22 EFTA Surveillance Authority v Norway](#)

CJEU and GCEU:

- [C-611/22 P Illumina Inc v Commission and C-625/22 P Grail v Commission](#)
- [C-298/22 Banco BPN](#)
- [C-48/22 P Google & Alphabet v Commission \(Google Shopping\)](#)

* These cases also reached judgment in 2022.

JUDGMENTS FROM EARLIER CASES DELIVERED IN 2022**EFTA Court:**

- [E-12/20 Telenor ASA & Telenor Norge AS v EFTA Surveillance Authority](#)
- [E-3/21 PRA Group Europe AS v Staten v/Skatteetaten](#)
- [E-4/21 SÝN hf. v EFTA Surveillance Authority](#)
- [E-5/21 Anna Bryndís Einarsdóttir v the Icelandic Treasury](#)

CJEU and GCEU:

- [C-328/20 Commission v Austria](#)
- [C-377/20 Servizio Elettrico Nazionale & Others](#)
- [T-227/21 Illumina v Commission](#)

EXTERNAL RELATIONS AND OUTREACH

The fizzling out of the COVID-19 pandemic in the spring of 2022, and a return to the office, led to a flurry of meeting activities for ESA staff, especially for the College and the communications unit. More than 70 events, including bilateral meetings, visits, presentations and conferences, were organised or co-organised by ESA's communications staff. The large majority of these took place in Brussels, either at ESA's headquarters at EFTA House or the premises of other organisations.

Among ESA's bigger events last year was the 2021-2022 EEA Law Moot Court, as well as the opening of EFTA House and the Future of Financial Services in the EEA conference, which were both co-organised with the EFTA Secretariat.

MOOT COURT

The 2021-22 EEA Law Moot Court was held in Reykjavík on 2 and 3 April 2022, with participation from students at university in Iceland and Norway. Hosted by the Icelandic Supreme Court, the President of the [EFTA Court](#) Páll Hreinsson, sat as the 2021-22 EEA Law Moot Court President. The winning team were Maria Øverland, Sofie Gade-Lundlie Tallberg, Tomas Lund Skare, Matias Holmen and Theodor Karlsen, from the University of Bergen. Theodor Karlsen and Filiz Mert were awarded Best Speaker prizes.

The winners participated in a VIP trip to Brussels and Luxembourg, where they saw behind-the-scenes at ESA, the EU institutions, the EFTA Court and the Court of Justice of the EU. The week included expert workshops and in-depth discussions with judges and officials.

THE FUTURE OF FINANCIAL SERVICES IN THE EEA

ESA and the EFTA Secretariat on 9 November 2022 hosted a conference on the Future of Financial Services in the European Economic Area (EEA). The event

convened high-level policymakers, supervisors and market players for a discussion on the road ahead for green, clean, and digital finance along with the financial supervision within the EEA.

Among the speakers at the conference were Mairead McGuinness, the European Commissioner for Financial Stability, Financial Services and the Capital Markets Union; Verena Ross, Chair of the European Securities and Markets Authority (ESMA); Harald Francke Lund CEO of Norway's leading institute for climate research CICERO Shades of Green; and Stefan Barriga, ESA's College Member responsible for financial services. Additionally, two panel discussions were held, which included participants from the European Commission, LGT Private Banking, the Norwegian Ministry of Finance, University of Bergen, and the Central Bank of Iceland. The conference, which took place in the new EFTA House was attended by ambassadors, EEA financial and legal experts, representatives from the EU institutions, government ministries and civil society.

ESA AND THE MEDIA

ESA in 2022 published 81 press releases, of which 48 were also published in Norwegian, 25 in Icelandic and five in German. Throughout 2022, ESA was mentioned in news media more than 2,600 times according to Retriever, the news monitoring service.



The winning team of ESA's 2021-22 EEA Law Moot Court.



European Commission Vice-President Maroš Šefčovič, Norway's Ambassador to the EU Rolf Einar Fife, and ESA President Arne Røksund.



ESA's College meets Council of the European Union Secretary-General Thérèse Blanchet and her team.



ESA's College meets head of Norwegian trade union LO Peggy Hessen Følsvik and her team.



ESA's leadership meets Norwegian Foreign Affairs Minister Anniken Huitfeldt.

GLOSSARY OF TERMS

Agreement on the European Economic Area (EEA Agreement) – The Agreement that created 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. These cases do not necessarily lead to the initiation of infringement proceedings against one or more EEA EFTA States or undertakings, or the opening of formal investigations.

Complaints – Cases in which 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.

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 European Union are expanded to include the participating EEA EFTA States.

EEA EFTA States – The three EFTA States that participate in the EEA: Iceland, Liechtenstein and Norway.

EEA Joint Committee – The 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 EFTA 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 Surveillance Authority (ESA) – The organisation that ensures that the three EEA EFTA States fulfil their legal obligations as stated in the EEA Agreement.

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

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