

# EUROPEAN ECONOMIC AREA

## STANDING COMMITTEE OF THE EFTA STATES

### SUBCOMMITTEE V ON LEGAL AND INSTITUTIONAL QUESTIONS

#### The two-pillar structure of the EEA – Surveillance and judicial control

#### I. General

1. Through the Agreement on the European Economic Area (EEA Agreement), the three EEA EFTA States – Iceland, Liechtenstein and Norway – participate fully in the Internal Market of the European Union (EU). In order to achieve the EEA Agreement’s aim of a homogeneous EEA based on common rules and equal conditions of competition, relevant EU acts are continuously incorporated into the EEA Agreement. A two-pillar system of surveillance has also been established, along with mechanisms catering for uniform interpretation and application of common rules throughout the EEA.<sup>1</sup>
2. The institutional framework of the EEA consists of two pillars and is thus often referred to as the “two-pillar structure”. The EU and its institutions constitute one pillar (EU bodies), while the EEA EFTA States and their institutions constitute the other pillar (EEA EFTA bodies), mirroring those of the EU. Between these two pillars, a number of joint bodies have been established. Through these joint bodies, the 31 EEA States jointly implement and develop of the EEA Agreement.

The Two-Pillar EEA Structure



This diagram illustrates the management of the EEA Agreement. The left pillar shows the EFTA States and their institutions, while the right pillar shows the EU side. The joint EEA bodies are in the middle.

<sup>1</sup> For further information see: “The basic features of the EEA Agreement”, available at: <http://www.efta.int/eea/eea-agreement/eea-basic-features>; “The two-pillar structure of the EEA Agreement - Incorporation of new EU acts”, available at: <http://www.efta.int/media/documents/eea/16-532-the-two-pillar-structure-incorporation-of-new-eu-acts.pdf> ; and “How an EU act becomes an EEA act and the need for adaptations”, available at: <http://www.efta.int/media/documents/eea/1113623-How-EU-acts-become-EEA-acts.pdf>

3. The two-pillar structure is necessary because the EEA EFTA States have not transferred any competences regarding surveillance and judicial review to the EU.<sup>2</sup> In addition, the EEA EFTA States are also, as a main rule, constitutionally unable to accept binding decisions made by the EU institutions – especially the European Commission and the European courts – directly.
4. In order to apply to the EEA EFTA States, certain competences and tasks, which are carried out by bodies in the EU pillar, have to be conferred upon bodies in the EFTA pillar. That is why, pursuant to Article 108 EEA, the EEA EFTA States established the EFTA Surveillance Authority and the EFTA Court.
5. The EFTA Surveillance Authority has been granted competences mirroring those of the Commission as regards surveillance, whilst the EFTA Court has been granted competences mirroring those of the Court of Justice of the European Union (CJEU).

## **II. EFTA Surveillance Authority<sup>3</sup>**

6. In monitoring and enforcing the obligations under the EEA Agreement, the EFTA Surveillance Authority, based in Brussels, has powers that correspond to those of the European Commission. The two institutions oversee the application of the same laws in different parts of the EEA. There is close contact and cooperation between the Commission and the EFTA Surveillance Authority to ensure uniform surveillance and application of EEA law throughout the EEA.<sup>4</sup>
7. The EFTA Surveillance Authority ensures that the EEA EFTA States Iceland, Liechtenstein and Norway, respect their obligations under the EEA Agreement. It can investigate possible infringements of EEA law, either on its own initiative or on the basis of complaints.
8. The EFTA Surveillance Authority seeks to protect the rights of individuals and market participants who find their rights infringed by rules or practices of the EEA EFTA States. The EFTA Surveillance Authority may in such cases initiate infringement proceedings against the EEA EFTA State in question and ultimately bring such cases before the EFTA Court.
9. The EFTA Surveillance Authority also enforces rules on state aid, including assessing and taking decisions on the compatibility of state aid measures in the EEA EFTA States with the functioning of the EEA Agreement, and ordering recovery of unlawful state aid.

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<sup>2</sup> For further information see “The two-pillar structure of the EEA Agreement - Incorporation of new EU acts”, available at: <http://www.efta.int/media/documents/eea/16-532-the-two-pillar-structure-incorporation-of-new-eu-acts.pdf>

<sup>3</sup> <http://www.eftasurv.int/>

<sup>4</sup> Articles 105 and 109 EEA, available at: <http://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf>; Article 3(2) SCA, available at <http://www.efta.int/sites/default/files/documents/legal-texts/the-surveillance-and-court-agreement/agreement-annexes-and-protocols/Surveillance-and-Court-Agreement-consolidated.pdf>

10. The EFTA Surveillance Authority furthermore ensures that undertakings operating in the EEA EFTA States abide by rules relating to competition. The EFTA Surveillance Authority can in this respect take binding decisions towards individual undertakings finding an infringement of the competition rules in the EEA Agreement, including the imposition of fines and assess mergers between undertakings where certain thresholds are met.

### **III. EFTA Court<sup>5</sup>**

11. The EFTA Court, based in Luxembourg, is responsible for the judicial control of the EEA EFTA States Iceland, Liechtenstein and Norway, while the European Court of Justice, the General Court of the European Union and the specialized courts exercise judicial control over the EU Member States. This two-pillar system of surveillance and judicial control was endorsed by the CJEU in its Opinion 1/92 and later reaffirmed in the Judgment of the General Court of the European Union in the *Opel Austria* case.<sup>6</sup>
12. The EFTA Court is competent to deal with infringement actions brought by the EFTA Surveillance Authority against an EEA EFTA State with regard to the implementation, application or interpretation of EEA law. Furthermore, it hears appeals against decisions taken by the EFTA Surveillance Authority and gives advisory opinions to courts in the EEA EFTA States on the interpretation of the EEA Agreement. The Court also has jurisdiction to settle disputes between two or more EEA EFTA States regarding the interpretation or application of the EEA Agreement. Accordingly, the jurisdiction of the EFTA Court largely corresponds to the jurisdiction of the CJEU.<sup>7</sup>

### **IV. Cooperation between the EU and EFTA pillars**

13. In order to ensure that the common rules are implemented, interpreted and applied uniformly throughout the EEA, the EEA Agreement and the Surveillance and Court Agreement (SCA) contain several provisions catering for cooperation and exchange of information on surveillance and judicial control between the EU pillar and the EFTA pillar.<sup>8</sup>

### **V. Settlement of disputes**

14. The two-pillar structure of the EEA Agreement implies that the EU side and the EFTA side are to supervise and control their internal matters separately and independently. In the event of a dispute on the interpretation or application of the EEA Agreement between institutions in the EU and EFTA pillars, Article 111 EEA foresees a procedure for reaching an agreement between the Contracting Parties in the EEA Joint Committee. This dispute settlement procedure has never been used, indicating that cooperation mechanisms provided for under the two-pillar structure of the EEA Agreement function well in practice.

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<sup>5</sup> <http://eftacourt.int/>

<sup>6</sup> ECJ 10.04.1992, Opinion 1/92; and EGC 22.01.1977, T-115/94 (*Opel Austria GmbH / Council*), para. 108

<sup>7</sup> Articles 105 and 106 EEA; Article 3(2) SCA

<sup>8</sup> Articles 105, 106 and 109 EEA, Article 6 EEA; Article 3(2) SCA