

A Practical Guide to Enforcement Actions by the EFTA Surveillance Authority

Luxembourg, 30-31 May 2017



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What is the course about?

According to Article 22 of the ESA / Court Agreement, the EFTA Surveillance Authority is responsible for monitoring the application of the EEA law rules by the EFTA Member States. The infringement procedure - Articles 31 to 33 of the ESA / Court Agreement - is the main enforcement mechanism allowing the EFTA Surveillance Authority to initiate proceedings against EFTA countries which are presumed to have failed to fulfil the obligation of proper transposition or application of the EEA rules.

This workshop provides a practical guide to the two phases of the procedure: the pre-litigation (or administrative phase), where the EFTA States are given the opportunity to voluntarily remedy the alleged breach of EEA law and/or explain their position to the EFTA Surveillance Authority, and the litigation (judicial) phase, in front of the EFTA Court in cases where the EFTA Surveillance Authority persistence of the breach. In the particular case of the EFTA countries, the workshop will identify the right methodology to improve the capacity and quality of their responses to the EFTA Surveillance Authority's investigations on alleged infringements and to reduce therefore the risk of initiation of a judicial action. In the potential scenario of the start of the judicial phase of the procedure, the workshop also reviews and identifies the defence strategies which are most likely to improve their position during the litigation. In case of a final condemnatory ruling after the procedure, the workshop also provides tips on how to comply with the judicial decision as swiftly as possible and hence avoid the initiation of a new procedure.

Finally, the various workshop proceedings will draw, where pertinent, an appropriate comparison between this infringement procedure and that specific to the EU.

How will it help you?

This workshop will allow you to acquire a thorough command of the EFTA infringement procedure, enabling you to understand the role of the EFTA Surveillance Authority and the position of the EFTA countries. Thanks to practical descriptions and examples provided by the workshop, you will also get a good grasp of the capacities and prerogatives of both actors and the different respective administrative and procedural strategies they can resort to throughout the procedure. Moreover, this workshop is also conceived as a forum where you will be able to meet and exchange experiences with peers from other EFTA countries and EU Member States. Finally, the programme also features a [study visit to the EFTA court](#). The workshop proceedings scheduled in the afternoon of the first day will take place at the Court's premises.

Who will benefit the most?

This practice-oriented and interactive workshop targets civil servants of EFTA State Authorities, who are in charge of or involved in the implementation and / or application of the EEA law rules and those state officials and legal counsellors answering / preparing the defences of the EFTA States in all stages of the EFTA infringement procedure, irrespective of the level of government or origin of the case (i.e. national, regional and local level). The programme is also relevant to officials in the EU institutions, preparing and implementing EU legal instruments with EEA relevance, as well as private practicing lawyers, consultants and other interested actors from the private sector, who wish to update their knowledge of the EFTA enforcement actions procedure and obtain a comprehensive overview.

Programme

TUESDAY 30 MAY 2017

Venue: EIPA Luxembourg premises

08.30 **Registration of participants**

09.00 **Welcome and introduction to the seminar - Presentation of programme, experts and participants**

Juan Diego Ramírez-Cárdenas Díaz, Chairman of the conference, Senior Lecturer, European Centre for Judges and Lawyers, EIPA Luxembourg

09.30 **The infringement procedure - a commented overview**

- Nature of the procedure and its relation with other judicial and administrative procedures;
- Concept of infringement: which EEA law obligations can be breached and how?
- Identity of the parties in the procedure;
- Which is the role of the EFTA Surveillance Authority throughout the procedure and what are its prerogatives and obligations?
- Main similarities and points of difference with the EU infringement procedure

Juan Diego Ramírez-Cárdenas Díaz

10.30 Coffee break

11.00 **Dealing with the EFTA Surveillance Authority during the pre-litigation phase (1)**

Identification of possible infringements of EEA provisions

- Complaints from citizens, businesses and other stakeholders;
- Own investigations and own initiative cases;
- Preliminary requests for information.

Pre-article 31 letters

- Contents of the letter;
- Obligation for the EFTA State to respond – how to reply;
- Formal decision to initiate the infringement taken by the Authority's College

Letter of formal notice:

- Contents of the letter of formal notice;
- Obligation for the EFTA State to respond:
 - How to respond to the letter of formal notice?
 - Type and content of reply.
- EFTA States' potential answers and their possible outcomes:
 - Classification of the complaint and closure of the file;
 - Institution of the proceedings.

Charlotte Fornø, Officer, Internal Markets Affairs Department, EFTA Surveillance Authority, Brussels (BE) (tbc)

12.00 **Dealing with the EFTA Surveillance Authority during the pre-litigation phase (2)**

Reasoned opinion

- Contents and formal requirements of the reasoned opinion;
- Responding efficiently and effectively to the reasoned opinion - some tips
- Assessing the conformity of the measures taken by the EFTA States to comply with the reasoned opinion;
- EFTA States' conduct and their possible outcomes:
 - Classification of the of the complaint and closure of the file;
 - The case is brought before the EFTA Court.

Plenary discussion: Questions that may be raised at this stage:

1. Is there a difference between cases concerning formal implementation on the one hand and a complaint based on content of the national measure?
2. In which instances can an EFTA State allege that the time period prescribed by EFTA Surveillance Authority's reasoned opinion to present allegations is insufficient?
3. What is the value of the time period marked in the reasoned opinion for the determination of the infringement?
4. What is the legal value of the measures that reasoned opinion may propose the EFTA States to adopt to remedy the infringement?
5. Can the EFTA State still at this stage avoid a court case and how?

Charlotte Fornø

13.00 Lunch

Venue: EFTA Court

14.30 **The litigation phase (1): practical guide on the procedure before the EFTA Court**

- The EFTA Surveillance Authority brings the matter before the EFTA Court: examining the admissibility of the Authority's application
- The proceedings per se:
 - Written phase: the application, the defence, the reply and the rejoinder;
 - The submission of the judicial documents, the service of documents and the time-limits;
 - Measures of organisation of procedure and of inquiry;
 - The oral procedure and the arguments of the parties;
 - Conduct of proceedings, simultaneous interpretation, duration and practical advice.

Programme

- Prerogatives and obligations (burden of the proof et al.) of the EFTA Surveillance Authority at the litigation phase.

Maria Moustakali, Member, Legal and Executive Affairs, EFTA Surveillance Authority, Brussels (BE) (tbc)

Jörgen Reinholdtsen, Legal Secretary, Chamber of Judge Per Christiansen, EFTA Court, Luxembourg (LU)

16.00 Coffee break

16.30 **The litigation phase (2): procedural tips and strategies to improve the EFTA State's position before the EFTA Court**

1. What happens in the court proceedings (what documents to file, how is the oral presentation prepared)? Who represents the EFTA State?
2. What can an EFTA State do to improve its situation during the litigation?
3. What options does the EFTA State have before the EFTA Court, including whether the EFTA State still can remedy the 'damage' done with a view to make the Authority withdraw the case?
4. Who pays what court costs?

Maria Moustakali & Jörgen Reinholdtsen

17.30 Networking reception

WEDNESDAY 31 MAY 2017

Venue: EIPA Luxembourg premises

09.00 **Workshop: Possible defences of the EFTA States**
In an interactive way, participants will have the possibility to analyse different potential defences EFTA States may resort to and to compare with the EFTA Court's reaction to those defences.

- Parallel application;
- Minimal default to fulfil the obligations;
- Opportunity;
- Excessive length of the pre-litigation procedures;
- Shortness of the time-limit set out to transpose the EEA provision;
- Reciprocity;
- Force majeure;
- Unlawfulness (illegality of the measure);
- Elimination of infringement after the expiry of the time limit set out in the reasoned opinion;

Jörgen Reinholdtsen & Dag Sørli Lund, Senior Adviser, Royal Ministry of Foreign Affairs, Legal Affairs Department,, Section for EEA and Trade Law, Oslo (NO) (tbc)

10.30 Coffee break

11.00 **The decision of the EFTA Court and its effects**

- Declaratory nature of the decisions delivered by the EFTA Court;
- Obligation for the EFTA State to take all necessary measures in order to put an end to the infringement;
- Obligation to repeal the national measures contrary to the EEA law.

Jörgen Reinholdtsen & Dag Sørli Lund

12.00 **Failing to comply with the judgment - the initiation of second infringement procedure**

- Article 33 ESA / Court Agreement;
- EFTA Surveillance Authority's discretion;
- Development of the proceedings;
- Final ruling of the EFTA Court

Maria Moustakali

13.00 Lunch

14.00 **The procedures followed in the field of State aid**

- Standard procedure in case of non-implementation of acts incorporated into the EEA Agreement;
- Direct Court referrals in case of non-compliance with conditional or negative decisions;
- Recovery process and obligations imposed by decisions ordering recovery of incompatible state aid;
- The Authority's discretion to bring an action for failure to act before the EFTA Court;
- Overview of the Authority's recovery experiences and case law examples.

Ketill Einarsson, Officer, Competition and State Aid Department, EFTA Surveillance Authority, Brussels (BE) & *Jörgen Reinholdtsen*

15.00 Coffee break

15.30 **The infringement procedure – Case Studies**

In this session, participants will have the opportunity to work with different case studies that deal with all phases of the procedure presented during the seminar and to analyse the potential EFTA Court's decision in each case.

Juan Diego Ramírez-Cárdenas Díaz

17.30 **Conclusions and evaluation**

End of the workshop

General Information

Workshop venues

EIPA Luxembourg

European Centre for Judges and Lawyers

Building of the Chambre des Métiers,
Master Room (4th Floor)
2 Circuit de la Foire Internationale, 1347 Luxembourg
Tel.: +352 426 230-1
www.eipa.eu

EFTA Court

1 Rue du Fort Thüngen
LU-1499 Luxembourg
www.eftacourt.int

Hotel reservations

The European Institute of Public Administration has negotiated prices with a number of selected hotels. All rates are including breakfast and tourist tax. You can find the complete list of hotels available [here](#).

Kirchberg

- **Hotel Novotel Kirchberg**, at the rate of €155
Tel.: +352 4900 11 44 44
E-mail: H1930-RE2@accor.com
<http://businesstravel.accorhotels.com>
(Client code: SC000002048 – Access Code: IN281LU654)
- **Hotel D'Coque**, rates between €60 and €120
Tel.: +352 43 60 60 306
E-mail: reception@coque.lu
www.coque.lu

City Centre

- **Hotel Parc Plaza**, at the rate of €138
Hotel Parc Bellevue, at the rate of €99
Tel: +352 44 23 23 – 23 23
(Reservation code: EIPA)
E-mail : reservation@goeres-group.com
www.goeres-group.com

Should you wish to make use of this possibility, please phone or fax the reservation department of the hotel on one of the above-mentioned numbers and mention the relevant reservation code. Payment is to be made directly and personally to the hotel on checking out.

Local transport

Luxembourg City has several bus stations in the City Centre (Royal, Hamilius, Monterey, Forum Royal, Badanstalt, Charly's Gare). Bus lines 1 and 16, with departure every ten minutes, leave from dock Hamilius 1, go in direction 'Kirchberg', and stop at Kirchberg, stop John F. Kennedy which is within 5 minutes walking distance from the Chambre des Métiers building, where EIPA Luxembourg's premises are located. In addition bus line 16 links Findel Airport (dock 1) to the city centre and the station area.

Meals

Should you require a special menu (e.g. vegetarian, diabetic), please inform the Programme Organiser so that this can be arranged.

Participation

EIPA members' fee*: €630
Regular fee: €700

The participation fee includes documentation, two lunches, one reception and refreshments. Accommodation and travel costs are at the expense of the participants or their administration.

* EIPA members can take advantage of a reduced fee; this is available to all civil servants working for one of EIPA's member countries (i.e. AT, BE, BG, CY, CZ, DE, DK, ES, FI, FR, GR, HU, IE, IT, LT, LU, MT, NL, NO, PL, PT, SE, UK), and civil servants working for an EU institution, body or agency.

Early registration discount

On the regular fee of this seminar, EIPA Luxembourg offers a €50 discount for all registrations received and paid before **17 April 2017**.

Note that reductions cannot be accumulated. For more information, please visit EIPA's website: <http://seminars.eipa.eu> (FAQ - special discounts).

Registration

Kindly complete the online registration form which can be found on EIPA's website <http://seminars.eipa.eu> before **8 May 2017**.

Your name and address will be part of EIPA's database for our mailing purpose only. If you do not want to be included in our mailing database, please tick the box on the registration form.

Confirmation

Confirmation of registration will be forwarded to participants on receipt of the completed registration form.

Payment

Prior payment is a condition for participation. Please indicate the method of payment on the registration form. For cancellations received within 15 days before the activity begins, we will have to charge an administration fee of €150 unless a replacement participant is found.

Cancellation policy

EIPA reserves the right to cancel the seminar up to two weeks before the starting date. EIPA accepts no responsibility for any costs incurred (travel, hotel, etc.). For EIPA's cancellation policy, please visit our website <http://seminars.eipa.eu> (FAQ - Cancellation policy).

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