



Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

EFTA Surveillance Authority

The following template is submitted by the EFTA Surveillance Authority (“ESA”) pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

ESA is an independent surveillance authority tasked with monitoring compliance with the Agreement on the European Economic Area (“EEA Agreement”) in the EEA EFTA (“European Free Trade Area”) States: Iceland, Liechtenstein and Norway (“the EFTA States”). Such compliance enables those States to participate in the Internal Market of the European Union (“EU”).

The competition rules in the EEA Agreement are equivalent to the competition rules in the EU. These rules prohibit agreements and conduct that restrict or distort competition ([Article 53](#)) and prohibit dominant firms from abusing their market power ([Article 54](#)).

Based on this equivalence, the case law of the Court of Justice and of the General Court of the European Union is relevant for the interpretation of Articles 53 and 54 of the EEA Agreement. (See Articles 1(1) and 6 of the [EEA Agreement](#) and recitals (4) and (15) of the Preamble to the EEA Agreement. See *also* Article 3(2) of the [Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice](#) (“SCA”), and Joined Cases E-9/07 and E-10/07 *L’Oréal* [2008] EFTA Ct. Rep. 258, paragraphs 27-28).

Within the field of competition law, ESA has equivalent powers and similar functions to those of the European Commission (“the Commission”). ESA ensures that the EEA competition rules are properly implemented into the national legal systems of the EFTA States.

ESA also enforces the EEA competition rules in the EFTA States in order to make sure that undertakings active in those States comply with the EEA competition rules. In this respect, ESA enjoys wide powers of investigation and may impose fines of up to 10% of global turnover on undertakings that breach the EEA competition rules.

In addition, as set out in Article 11 of Chapter II of [Protocol 4](#) to the SCA, ESA and the competition authorities of the EFTA States shall apply the two prohibitions contained in the EEA competition provisions (Articles 53 and 54 EEA) in close cooperation.

ESA also has jurisdiction to take action against any EFTA State that enacts or maintains in force measures concerning public undertakings or undertakings with special or exclusive rights that are contrary to provisions in the EEA Agreement, including Articles 53 and 54 EEA (see Article 59 of the [EEA Agreement](#)).

In the field of merger control, the rules on jurisdiction are such that the Commission in practice handles all cases. ESA and the competition authorities of the EFTA States are entitled to be involved in cases that raise competition concerns in those States. ESA cooperates closely with the Commission in both antitrust and merger cases.

More information about ESA can be found on ESA's [website](#).

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

ESA does not discriminate based on nationality in its investigation and enforcement of the EEA competition rules. If an ESA investigation were to involve a party from another jurisdiction (e.g. where its conduct has substantial and foreseeable effects in the EEA territory), that party would be subject to the same rules and procedural guidance that ESA applies to all parties in all other such cases.

c) Transparency and Predictability

i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.

ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.

iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.

iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.

v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.

i. The EEA competition rules are publicly available. These rules are codified in Chapter 1, Part IV of the [EEA Agreement](#). In addition, the key aspects of the EEA competition rules are outlined on ESA's [website](#). Links to the full text of the legislation and the Protocols of the EEA Agreement, which contain additional rules for the application of the EEA Agreement in the field of competition, are also available on ESA's website.

ii. In accordance with Articles 108 and 110 of Chapter 3, Part VII of the [EEA Agreement](#), and Article 13 of the SCA, ESA has procedural rules in place for antitrust investigation and enforcement proceedings.

These procedural rules are set out in [Protocol 4](#) to the [SCA](#) and the [Rules of Procedures of the EFTA Surveillance Authority](#). Both of these are available on ESA's website.

iii. As noted in points i and ii above, all of the relevant legislation and procedural rules applicable to antitrust investigation and enforcement proceedings are publicly available.

In accordance with Article 22 of the [Rules of Procedures of the EFTA Surveillance Authority](#), these rules of procedure are also published in the EEA Section of, and the EEA Supplement to, the Official Journal of the European Communities.

iv. ESA follows the applicable procedural rules in its investigations and enforcement proceedings. Failure to do so would subject ESA to potential sanctions in the EFTA Court (see Article 36 of the [SCA](#)).

v. ESA has published, and continuously updates, information clarifying or explaining its investigations and enforcement proceedings.

Pursuant to Article 5(2)(b) and Article 25(1) of the [SCA](#), ESA has issued and made publicly available an act which provides practical guidance on the conduct of proceedings before ESA concerning Articles 53 and 54 EEA by describing ESA's internal practices and procedures. This is entitled the [Notice on best practices for the conduct of proceedings concerning Articles 53 and 54 of the EEA Agreement](#) ("Notice on best practices"). This Notice on best practices seeks to increase the understanding of ESA's investigative process and thereby:

- enhance the efficiency of investigations; and
- ensure a high degree of transparency and predictability in the process.

In addition, ESA has adopted and made available on its [website](#) a series of notices and guidelines relating to different aspects of the interpretation and application of the EEA

competition rules. These notices and guidelines take account of similar instruments adopted by the Commission.

In accordance with Article 30(1) of Chapter II of Protocol 4 to the SCA and paragraphs 141-146 of the [Notice on best practices](#), ESA publishes [press releases](#) informing the public of ESA's investigations and enforcement activities. In addition, [case databases](#) on ESA's website and in the Official Journal of the European Union and the EEA Supplement to the Official Journal offer the possibility to search for published non-confidential versions of decisions and case summaries.

In accordance with Article 21 of the [SCA](#), ESA publishes a general report on its activities annually on its website. This [Annual Report](#) provides a concise overview of facts and figures as well as of the most important cases of the year.

d) Investigative Process

i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.

ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.

iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.

i. ESA informs persons that they are subject to an investigation as soon as is practically possible and legally permissible, and includes information on the legal basis for the investigation and the conduct or action that is under investigation.

Addressees are informed of the fact that they are subject to a preliminary investigation and of the subject matter, legal basis and purpose of such investigation when the first investigative measure is addressed to them (normally a request for information or an inspection), (see paragraphs 15 and 21 of the [Notice on best practices](#)).

ii. ESA provides any person subject to an investigation with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic and procedural issues.

During the investigative phase, the Competition and State Aid Directorate (“the CSA Directorate”) may hold meetings (or conduct phone calls) with the parties subject to the proceedings (see paragraph 38 of the [Notice on best practices](#)).

In particular, the CSA Directorate will offer State of Play meetings to parties being investigated in order to contribute to the quality and efficiency of the decision-making process and to ensure transparency and communication between the CSA Directorate and the parties. These meetings provide a mechanism for informing the parties of the status of the proceedings at key points in the procedure (see paragraphs 56 and 57 of the [Notice on best practices](#)).

The parties are always free to present relevant information or other facts directly to the investigating team. These discussions may include both procedural and substantive aspects of the investigation, and typically involve senior officers, including the director and the deputy director of the CSA Directorate (see paragraphs 62 and 66 of the [Notice on best practices](#)).

iii. ESA focuses investigative requests only on information relevant to the competition issues under review and provides persons reasonable time to respond to such requests during its investigations (see section 2.5 of the [Notice on best practices](#)).

Under Article 6 of the SCA and Article 18 of Chapter II of [Protocol 4](#) to the SCA, ESA may, by simple request or by decision, require undertakings and associations of undertakings to provide all “necessary information” within a specific time limit. Information is necessary, in particular, if it may enable ESA to verify the existence of the alleged infringement referred to in the request (see paragraph 29 of the [Notice on best practices](#)).

Addressees are given a reasonable time limit to reply to the request, according to the length and complexity of the request and taking into account the requirements of the investigation (see paragraph 34 of the [Notice on best practices](#)). In general, this time limit will be at least two weeks from the receipt of the request. However, addressees may ask for the time limit to be extended if they have difficulties responding within the time limit set (see paragraphs 35 and 36 of the [Notice on best practices](#)).

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

ESA always endeavours to conclude investigations and enforcement proceedings within a reasonable time period.

There are no formal time limits on the length of ESA’s investigations. However, it follows from paragraph 18 of the [Notice on best practices](#) that when ESA opens proceedings under Article 11(6) of Chapter II of Protocol 4 to the SCA, ESA will

allocate resources to the case and will endeavour to deal with the case in a timely manner.

ESA's powers to impose fines and periodic penalty payments are subject to certain limitation periods, as set out in Article 25 of Chapter II of [Protocol 4](#) to the SCA.

f) Confidentiality

i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.

ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.

iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.

i. ESA's investigations are subject to a number of rules, policies and guidance documents regarding the identification and treatment of confidential information. These materials are publicly available.

ESA's practice for the identification and protection of confidential information is set out in Article 16 of Chapter III of [Protocol 4](#) to the SCA. This Article states that information, including documents, shall not be communicated or made accessible by ESA in so far as it contains business secrets or other confidential information of any person. The procedure for identifying confidential information is described in Article 16(2) and (3) of Chapter III of [Protocol 4](#) to the SCA.

The [Notice on best practices](#) contains further information regarding these confidentiality protections (see paragraphs 37, 40, 88-94, 138-140, and 145-146).

As regards complainants, ESA has issued a [Notice on the handling of complaints by ESA under Articles 53 and 54 of the EEA Agreement](#), which provides guidance on the identification and treatment of confidential information.

The protection of confidential information in relation to parties' access to file is covered by a separate [Notice on access to file](#) (see section 3.2).

ESA has also issued and made an [explanatory note](#) publicly available, in order to explain what may constitute business secrets and other confidential information, and to provide guidance as to how persons subject to an investigation can claim confidentiality.

ii. ESA protects from unlawful disclosure all confidential information obtained or used during investigations or enforcement proceedings.

In accordance with Article 122 of the EEA Agreement and Article 14 of the SCA, ESA has a general duty to protect confidential information that could seriously harm the undertaking if disclosed. Against this background, rules relating to the protection of professional secrecy are set out in Article 28 of Chapter II [Protocol 4](#) to the SCA.

Notwithstanding this, in antitrust proceedings confidential information may exceptionally be disclosed when such disclosure is necessary to prove an infringement of Articles 53 or 54 EEA, or to safeguard the rights of defence of the parties (see Article 15(3) Chapter III of Protocol 4 to the SCA and paragraph 24 of the [Notice on access to file](#)).

As regards complainants, it follows from paragraph 139 on the [Notice on best practices](#), that at all stages of the proceedings ESA will respect genuine and justified requests from complainants or from information providers regarding the confidential nature of their submissions or contacts with ESA, including, where appropriate, their identity (see also Article 5(2) of Chapter III [Protocol 4](#) to the SCA).

In addition, ESA has an internal Staff Code of Conduct that provides staff members with guidance regarding their obligations of confidentiality.

iii. ESA takes into consideration both the interests of persons concerned and of the public in fair, effective and transparent enforcement regarding the disclosure of confidential information during enforcement proceedings.

Access to ESA's file is one of the procedural guarantees intended to apply the principle of equality of arms and to protect the rights of the defence (see paragraph 1 of the [Notice on access to file](#)). In cases where ESA's file includes documents containing business secrets or other confidential information to which access may be partially or totally restricted, access will be granted, where possible, to non-confidential versions of the original information (see paragraph 8 of the [Best Practices on the disclosure of information in data rooms in proceedings under Articles 53 and 54 EEA](#)). Where confidentiality can only be assured by summarising the relevant information, access will be granted to a summary (see paragraph 17 of the [Notice on access to file](#)).

However, the qualification of a piece of information as confidential is not a bar to its disclosure in cases where the need to safeguard the rights of the defence of the parties through the provision of the widest possible access to ESA's file outweighs the concern to protect confidential information of other parties (see paragraph 24 of the [Notice on access to file](#)).

Furthermore, paragraph 91 of the [Notice on best practices](#) provides for two additional procedures, namely negotiated disclosure to a restricted circle of persons and the data room procedure. These can safeguard the rights of defence while respecting the legitimate interests of confidentiality of the undertakings or persons from which ESA has obtained the information.

In order to provide practical guidance on when and how to use data rooms to disclose in a restricted manner business secrets and other confidential information obtained during proceedings under Articles 53 and 54 EEA, ESA has issued [Best](#)

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

ESA has rules, policies and guidelines to ensure that its officials are objective and impartial and do not have material conflicts of interest.

As required by Articles 8 and 14 of the SCA, ESA is an independent public body and its staff members are completely independent, impartial and free from undue outside influence in the performance of their duties. They are prohibited from seeking or taking instructions from any Government or other body. They must also refrain from any action incompatible with their duties, and must not be involved in ESA's decision-making process in a way that serves their personal interests or where their actions are the result of external pressure.

All decisions which formally bind ESA are taken by the College, whose independence is required to be beyond doubt (see Article 12 of the [Rules of Procedures of the EFTA Surveillance Authority](#) and Article 7 of the [SCA](#)).

Specific provisions on conduct relating to independence, objectivity and impartiality are set out in ESA's internal Staff Code of Conduct.

h) Notice and Opportunity to Defend

i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.

ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.

iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.

i. ESA provides persons with timely notice of the alleged violations or claims against them in enforcement proceedings.

In cases based on formal complaints, ESA will provide the parties subject to the proceedings with the opportunity to comment on a non-confidential version of the complaint, and to review non-confidential versions of other 'key submissions' already submitted to ESA, such as significant submissions by the complainant or interested third parties (see paragraphs 67-69 of the [Notice on best practices](#)). This is done at an early stage, unless it is considered likely to prejudice the investigation, and at the latest shortly after the opening of proceedings.

Indeed, parties subject to proceedings are given ample opportunity for open and frank discussions and to make their points of view known to ESA's staff, including senior management of the CSA Directorate (Director or Deputy Director) and, if appropriate, with the College member responsible for competition (see paragraphs 56, 62 and 66 of the [Notice on best practices](#)).

ii. ESA provides persons subject to enforcement proceedings with timely access to information necessary to prepare an adequate defence.

ESA will offer State of Play meetings at several key stages of the case, in particular shortly after the opening of proceedings, where the CSA Directorate will inform the parties subject to the proceedings of the issues identified at this stage and of the anticipated scope of the investigation (see paragraphs 56-62 of the [Notice on best practices](#)).

Before adopting a decision adversely affecting the interests of an addressee, in particular a decision finding an infringement of Articles 53 and/or 54 EEA and ordering its termination (Article 7 of Chapter II of Protocol 4 to the SCA) and/or imposing fines (Article 23 of Chapter II of Protocol 4 to the SCA), ESA will give the parties subject to the proceedings the opportunity to be heard in relation to the matters on which ESA has objected. ESA will do this by adopting a Statement of Objections, the purpose of which is to inform the parties concerned of the objections raised against them, with a view to enabling them to exercise their rights of defence in writing and orally (see Article 10 of Chapter III of Protocol 4 to the SCA and paragraphs 77 and 78 of the [Notice on best practices](#)).

The addressees of the Statement of Objections are granted access to ESA's file in order to allow them to effectively express their views on the preliminary conclusions reached by ESA in its Statement of Objections (see Article 27 of Chapter II and Articles 15 and 16 of Chapter III of Protocol 4 to the SCA, paragraph 88 of the [Notice on best practices](#), and paragraph 1 of the [Notice on access to file](#)).

iii. ESA will provide persons subject to an administrative proceeding with reasonable opportunities to defend themselves, including the opportunity to be heard and to present, respond to, and challenge evidence.

Article 27 of Chapter II of [Protocol 4](#) to the SCA requires that the rights of defence of the parties concerned are fully respected by ESA in the proceedings regarding Articles 53 and 54 EEA.

ESA is therefore committed to ensuring that the effective exercise of the right to be heard is respected in its proceedings (see Article 27 of Chapter II and Articles 10-12 and 14 of Chapter III of Protocol 4 to the SCA, paragraphs 74, 77-79, 88, 95, 102 and 105-106 of the [Notice on best practices](#) and paragraph 5 of [Best Practices on the disclosure of information in data rooms in proceedings under Articles 53 and 54 EEA](#)). Indeed, ESA bases its decisions only on objections on which the parties concerned have been able to comment.

With respect to proceedings leading to a prohibition decision, an independent hearing officer has the function of safeguarding the effective exercise of procedural rights (see [Decision 442/12/COL](#)). This includes the right to be heard (see paragraph 75 of the [Notice on best practices](#)). Prior to a final decision being taken by the College, the hearing officer informs the College whether the right to exercise procedural rights effectively has been respected throughout the administrative proceedings (see paragraph 76 of the [Notice on best practices](#)).

i) Representation by Counsel and Privilege

i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.

ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.

iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.

i. ESA will always accept the request of a person engaging with ESA as part of investigations or enforcement proceedings to be represented by qualified legal counsel of their choosing.

ii. ESA will provide a person a reasonable opportunity to present views on substantive and procedural issues via counsel in accordance with applicable law.

As outlined in response to point h) above, ESA offers persons subject to an investigation multiple opportunities to meet ESA's staff, including senior management of the CSA Directorate (Director or Deputy Director), in order to present and explain their views, present evidence and engage with substantive issues and procedural matters.

In almost all such instances, persons appearing before ESA are represented by counsel and counsel typically lead the presentation.

iii. ESA will recognise applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between persons and their legal counsel relating to the solicitation or rendering of legal advice (see paragraph 47 of the [Notice on best practices](#)). Communications between lawyer and client are protected by legal professional privilege provided that they are made for the purpose and interest of the exercise of the client's rights of defence in competition proceedings and that they emanate from independent lawyers. This is in line with the case law of the Court of Justice of the European Union which has considered that the protection of the confidentiality of communications between lawyer and client is an essential corollary to the full exercise of the rights of defence (see Case 155/79 AM&S Europe Limited v Commission ('AM&S') [1982] ECR 1575 paragraph 18 and 23).

Paragraphs 47-54 of the [Notice on best practices](#) provide further guidance on the treatment of privileged information.

j) Decisions in Writing

i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.

ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.

i. In accordance with Articles 12 and 14 of the [Rules of Procedures of the EFTA Surveillance Authority](#), ESA's final decisions in which it finds a violation, or imposes a prohibition, remedy, or sanction under the EEA Competition rules, are issued in writing.

ESA's decisions contain a statement of reasons, which sets out the findings of fact and conclusions of law on which they are based, as well as describing any remedies or sanctions (see Article 16 of the [SCA](#) and Article 30 of Chapter II of Protocol 4 to the SCA).

ESA ensures that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions (see Article 18 of the [SCA](#), Article 30 of Chapter II of Protocol 4 to the SCA and paragraph 145 of the [Notice on best practices](#)).

ii. ESA ensures that all commitments it accepts to resolve competition concerns are in writing (see Articles 12 and 14 of the [Rules of Procedures of the EFTA Surveillance Authority](#)).

In accordance with Article 30 of Chapter II of Protocol 4 to the SCA and paragraph 125 of the [Notice on best practices](#), ESA publishes the full text of the non-confidential version of any commitments on its website, as well as a notice in the Official Journal of the European Union and the EEA Supplement to the Official Journal (market test notice). ESA will also publish a summary of the case and the main content of the commitments, whilst respecting the obligations of professional secrecy (see Article 27(4) of Chapter II of Protocol 4 to the SCA and paragraph 125 of the [Notice on best practices](#)). In order to enhance the transparency of the process, ESA will also publish a press release, setting out the key issues of the case and the proposed commitments.

In accordance with Article 27(4) of Chapter II of Protocol 4 to the SCA, ESA must conduct a market test of the commitments before making them binding by decision (see paragraphs 125 and 129 of the [Notice on best practices](#)). ESA will only conduct a market test if it considers that the commitments offered *prima facie* address the competition concerns identified.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

The EFTA Court has jurisdiction to review not only fining decisions, but all binding decisions adopted by ESA (see Articles 35 and 36 of the [SCA](#), Article 31 of Chapter II of Protocol 4 to the SCA and Article 108 of Chapter 3, Part VII of the [EEA Agreement](#)).