



# The Innovative Architecture of Financial Regulation in the EEA

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# Financial regulation

- The Lamfalussy Process for legislation
  - Efficiency
  - "Level I and II" acts
- The Larosière Report
  - Committees of national supervisors too weak
  - Establishment of EU level supervision
- The Regulations establishing the EU Financial Supervision System
  - The three authorities – ESMA, EBA and EIOPA
  - SSRB (Banking Union)

# Esma regulation

- Regulation 2010/1095
  - Regulatory ("Level II")
  - Direct supervision
- Board of Supervisors
- Standing Committees
- Voting rights:
  - Supervisors (Yes)
  - Commission (No)

# EU Architecture:

ESMA Decision

Board of Appeals

General Court / ECJ

# EEA Process

- 24.11. 2010 – Adoption in the EU
- 12.15.2010 – Processing start EFTA
- 09.03.2016 – Draft EEA JCD
- 30.09.2016 – JCD adopted (JCD 201/2016)
- 01.10.2016 – JCD Confirmed entry into force

regulatory and supervisory treatment of new or innovative financial activities and providing advice for the Authority to present to the European Parliament, the Council and the Commission.

# EEA Adaptions:

5. The Authority may temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or if so required in the case of an emergency situation in accordance with and under the conditions laid down in Article 18.

The Authority shall review the decision referred to in the first subparagraph at appropriate intervals and at least every 3 months. If the decision is not renewed after a three-month period, it shall automatically expire.

A Member State may request the Authority to reconsider its decision. In that case, the Authority shall decide in accordance with the procedure set out in the second subparagraph of Article 44(1), whether it maintains its decision.

5. The EFTA Surveillance Authority may temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or if so required in the case of an emergency situation in accordance with and under the conditions laid down in Article 18.

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

The EFTA Surveillance Authority shall review the decision referred to in the first two subparagraphs at appropriate intervals and at least every 3 months. If the decision is not renewed after a three-month period, it shall automatically expire.

The EFTA Surveillance Authority shall as soon as possible after the adoption of the decision referred to in the first two subparagraphs inform the Authority of the expiry date. In due time before the expiry of the three-month period referred to in the third subparagraph, the Authority shall submit to the EFTA Surveillance Authority conclusions, accompanied if necessary by a draft. The EFTA Surveillance Authority may inform the Authority of any development it considers relevant for the review.

An EFTA State may request the EFTA Surveillance Authority to reconsider its decision. The EFTA Surveillance Authority shall forward this request to the Authority. In that case the Authority shall, in accordance with the procedure set out in the second subparagraph of Article 44(1), consider

# EEA Adaptions:

EFTA States competent to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned in order to ensure compliance with the EEA Agreement.

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

## AS REGARDS THE EU

4. Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial market participant complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2), the Authority may adopt an individual decision addressed to a financial market participant requiring the necessary action to comply with its obligations under Union law, including the cessation of any practice.

## AS REGARDS THE EFTA STATES

4. Without prejudice to the powers of the EFTA Surveillance Authority under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, where a competent authority does not comply with the decision of the EFTA Surveillance Authority, and thereby fails to ensure that a financial market participant complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2), the EFTA Surveillance Authority may adopt an individual decision addressed to a financial market participant requiring the necessary action to comply with its obligations under the EEA Agreement, including the cessation of any practice.

Decisions by the EFTA Surveillance Authority shall, without undue delay, be adopted on the basis of drafts prepared by the Authority at its own initiative or at the request of the EFTA Surveillance Authority.

5. Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter. Any action by the competent authorities in relation to facts which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.

6. In the report referred to in Article 50(2), the Chairperson of the Authority shall set out the nature and type of disagreements between competent authorities, the agreements reached and the decisions taken to settle such disagreements.

# The EEA architecture

ESMA Draft

EFTA Surveillance Authority

EFTA Court

# Why novelty?

- Also regulates intra-EFTA-situations
- Amendments to the SCA – new article 25a and Protocol 8
- EFTA Surveillance Authority decides, EU Authority participates (without a vote)
- Cf. Competition law with split competence
- Cf. Role of EU Authority and EFTA Surveillance Authority
  - EU side: national supervisors, EU commission no vote
  - EFTA side: independent watchdog, EFTA States no vote

# The future?

- New role of the EFTA Surveillance Authority
  - Integrated in supervision otherwise left to EU national authorities
- Enhanced role of the EFTA Court
  - Going first?
- Example from EU side:
  - Cases T-660/14 and C-577/15 P (SV Capital OÜ)
  - Request to EBA to initiate investigation into FI and LV authorities
  - Case dismissed but ESA decision annulled ex officio
    - Lack of competence
    - No basis in EBA Regulation

