

Case No: 63740
Event No: 454884
Dec. No: 407/08/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 27 June 2008

to adopt new Rules on Public Access to documents

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD to the agreement on the European Economic Area, in particular Article 108 thereof,

HAVING REGARD to the agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 13 thereof,

HAVING REGARD to the Rules of Procedures of the EFTA Surveillance Authority,

Whereas openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system, based on democracy and human rights, as referred to in recital 1 of the preamble of the EEA Agreement,

Whereas the purpose of these Rules is to ensure the highest degree possible of openness and transparency at the Authority, while still showing due concern to the necessary limitations due to protection of professional secrecy, legal proceedings and internal deliberations, where this is deemed necessary in order to safeguard the Authority's ability to carry out its tasks,

Whereas the Authority wishes, to adopt rules on access to documents substantively similar to Regulation 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents,

Whereas the Authority will in the application of the rules strive to achieve a homogeneous interpretation with that of the Community Courts and the European Ombudsman when interpreting a provision of these which is identical to a provision in Regulation 1049/2001 so as to ensure at least the same degree of openness as provided for by the Regulation,

Whereas the EFTA Surveillance Authority should take the necessary measures to inform the public of the new Rules on access to documents and to train its staff to assist citizens

to exercise their rights. In order to facilitate for citizens to exercise their rights, the Authority should provide access to a register of documents,

HAS ADOPTED THIS DECISION:

Article 1

Purpose

The purpose of these Rules is:

- (a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to EFTA Surveillance Authority (hereinafter “the Authority”) documents produced or held by the Authority in such a way as to ensure the widest possible access to documents,
- (b) to establish rules ensuring the easiest possible exercise of this right, and
- (c) to promote good administrative practice on access to documents.

Article 2

Beneficiaries and scope

1. Any citizen of an EEA State, and any natural or legal person residing or having its registered office in an EEA State, has a right of access to documents of the Authority, subject to the principles, conditions and limits defined in these Rules.
2. The Authority may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in an EEA State.
3. These Rules shall apply to all documents held by the Authority, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the Authority.
4. Without prejudice to Article 4, documents shall be made accessible to the public either following a written application or directly in electronic form or through a register.
5. These Rules shall be without prejudice to rights of public access to documents held by the Authority which might follow from instruments of international or EEA law.

Article 3

Definitions

For the purpose of these Rules:

(a) 'document' shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the Authority's sphere of responsibility;

(b) 'third party' shall mean any natural or legal person, or any entity other than the Authority, including the EFTA States, EFTA and European Community institutions and bodies and third countries.

Article 4

Exceptions

1. The Authority shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest as regards:

- public security,
- defence and military matters,
- international relations,
- the financial, monetary or economic policy of an EEA State;

(b) privacy and the integrity of the individual, in particular in accordance with EEA legislation regarding the protection of personal data.

2. The Authority shall refuse access to a document where disclosure would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property,
- court proceedings and legal advice,
- the purpose of inspections, investigations and audits,

unless there is an overriding public interest in disclosure.

3. Access to a document, drawn up by the Authority for internal use or received by the Authority, which relates to a matter where the decision has not been taken by the Authority, shall be refused if disclosure of the document would seriously undermine the Authority's decision-making process, unless there is an overriding public interest in disclosure.

4. Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the Authority concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the Authority's decision-making process, unless there is an overriding public interest in disclosure.

5. As regards third-party documents, the Authority shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall not be disclosed or, when the document does not originate from an EFTA State, it is clear that the document shall be disclosed.

6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

7. The exceptions as laid down in paragraphs 1 to 4 shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to privacy or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.

Article 5

Documents in the possession of the EFTA States

Upon request, the Authority shall indicate whether it considers that disclosure of an Authority document in the possession of an EFTA State would undermine the provisions of Article 4.

Article 6

Applications

1. The Authority shall examine applications by any natural or legal person for access to a document made in any written form, including electronic form, in one of the languages referred to in Article 129 of the EEA Agreement and Article 20 of the Agreement Between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice and in a sufficiently precise manner to enable the Authority to identify the document. The applicant is not obliged to state reasons for the application.

2. If an application is not sufficiently precise, the Authority shall ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of documents.

3. In the event of an application relating to a very long document or to a very large number of documents, the Authority may confer with the applicant informally, with a view to finding a fair solution.

4. The Authority shall provide information and assistance to citizens on how and where applications for access to documents can be made.

Article 7

Processing of applications

1. An application for access to a document shall be handled as quickly as possible. An acknowledgement of receipt shall be sent to the applicant. As a main rule, the Authority shall either grant access to the document requested and provide access in

accordance with Article 8 or, in a written reply, state the reasons for the total or partial refusal within 5 working days from registration of the application.

2. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 20 working days, provided that the applicant is notified in advance and that detailed reasons are given.

Article 8

Access following an application

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of less than 100 A4 pages and direct access in electronic form or through the register shall be free of charge.

2. If a document has already been released by the Authority and is easily accessible to the applicant, the Authority may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.

3. Documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference.

Article 9

Registers

1. The Authority shall, as soon as possible, provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without undue delay.

2. For each document the register shall contain a reference number, the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner which does not undermine protection of the interests in Article 4.

Article 10

Direct access in electronic form or through a register

The Authority shall as far as possible make documents directly accessible to the public in electronic form or through a register in accordance with the rules of the Authority.

Article 11

Administrative practice of the Authority

The Authority shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by these Rules.

Article 12

Reproduction of documents

These Rules shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

Article 13

Entry into force

These Rules shall be applicable from 30 June 2008 and apply to requests for access to documents submitted to the Authority after that date.

The Authority shall publish these Rules in the EEA Supplement to the Official Journal of the European Union.

Done at Brussels, 27 June 2008.

For the EFTA Surveillance Authority

Per Sanderud
President

Kurt Jaeger
College Member