

Notification to the Data Protection Officer under Article 25 of the Rules on Data Protection (Decision 235/16/COL) (“the Rules”)

Changes affecting the information contained in the notification must be notified promptly to the Data Protection Officer, see Article 25(3) of the Rules.

Date of submission: 22.12.2017

Part 1: Processing

- Unit responsible for the processing operation:
Competition and State Aid Directorate (“CSA”)
- Name of the processing operation:
Processing of data in the context of the Authority’s **antitrust investigations**
- General description of the processing operation:
See GoPro document no. 865300 under case no. 80285
- Sub-Contractors:
Not applicable
- Automated / Manual operations:
All documents concerning an antitrust case are stored by case number in the case management application called “GoPro”. Documents are stored in different formats: most often pdf format, word, excel or PowerPoint. Occasionally other technical formats are used. GoPro also contains procedural steps and case information, such as the composition of the case team, relevant legal basis, type of case, name(s) of undertaking(s) concerned, etc.

Access to GoPro is restricted to the Authority’s personnel and national experts on secondment using the Authority’s IT infrastructure. Access to GoPro is further subject to specific security settings in individual cases. Normally CSA case files are access controlled to specific personnel. Furthermore, case team members may mark files, folders or documents as protected in which case they can only be viewed by specific users (usually the case team). This applies particularly to sensitive information and documents.

Searches can be made in GoPro, e.g. by case number, name of the undertaking, legal basis etc. For further information on *GoPro procedures*, see a separate document no. 858099 filed in GoPro under case no. 80285.

On request from the case team, case files in GoPro can be uploaded into a computer program, Summation¹, which is an e-discovery tool, allowing search on e.g. keywords or categories or dates across all documents of the specific case file. Summation is a separate application. The objective of Summation is to provide to case teams a tool focused on searches of evidence in a case file and collaborative features. Transmission of data from GoPro to Summation is safe. Both systems are in the Authority's premises and accessible only to the Authority's System Administrators. Firewall and security systems prevent people accessing raw data directly.

The Summation operations are used for the sole purpose of the specific investigation and are accessible to the case team (and appointed reviewers) of the specific case only. The results of the Summation operations (comments, tags) are saved in the system itself and stored separately from the case file. After the case is closed, the Summation results are deleted.

The non-confidential versions of the Authority's decisions adopted pursuant to Articles 7 to 10, 23 and 24 of Chapter II of Protocol 4 to the Surveillance and Court Agreement (SCA)² are published on the Authority's website, after any confidentiality claims (with regard to business secrets and other confidential information) have been cleared with the respective parties. Quite rarely, such published decisions may contain the names of top management of the companies, when this is public knowledge.

- Storage:

All documents relating to a case are stored electronically in the GoPro case management filing system. Case handlers may keep their own working files for the cases assigned to them, containing only copies of documents.

For further information on *GoPro procedures*, see a separate document no. 858099. For information on the *email-system*, see document no. 846314 and for information on *Backup procedures*, see document no. 854436. All of these documents on procedures are filed in GoPro under case no. 80285.

- Comments:

Not applicable

- Security measures:

Access to the electronic files is restricted to personnel using the Authority's IT infrastructure. In addition, entrance to the Authority's premises is restricted. Furthermore, open CSA files are access controlled to specific CSA personnel.

¹ Summation is powered by a software provided by AccessData (AccessData Group, LLC, 588 West South 400, Suite 350, Lindon, Utah 84042, Phone: (801)377-5410).

² Following the entry into force of the Agreement amending Protocol 4 to the Agreement of the EFTA States on the establishment of a Surveillance Authority and a Court of Justice of 24 September 2004, Chapter II of Protocol 4 of the Surveillance and Court Agreement will to a large extent reflect in the EFTA pillar Council Regulation (EC) No 1/2003 ([OJ L 1, 4.1.2003, p. 1](#)).

For further information on security measures as applicable to GoPro and the email system, see document no. 858099 on *GoPro procedures* and document no. 846314 on the *email system*, filed under case no. 80285.

Part 2: Purpose and legal basis

- The purpose(s) of the processing operation:

The purpose of an EEA antitrust investigation is to determine whether the undertaking(s) subject to the investigation has/have acted in conformity with the competition rules contained in the EEA Agreement.

Information that is collected and further processed by the Authority mainly relates to undertakings that are subject to the investigation, and rarely individuals, who cooperate with, or are required by decision to provide their input to the Authority's investigation. Such information is only used in evidence for the purpose of applying the EEA competition rules and in respect of the subject matter for which it was collected. As a result of the investigation, and when an infringement of the competition rules by the undertakings has been established, the Authority may impose a fine on the undertakings concerned. It may also impose specific remedies in order to bring the infringement to an end.

The Authority has been granted enforcement powers to collect data (e.g., by sending requests for information, carrying out inspections), transfer data (mainly to competent authorities of the Member States and to the European Commission and the EFTA Court), use data (mainly in the reasoning of the statement of objections and the final decision addressed to the parties) and disclose information (to the addressee of the statement of objections in the context of access to file, to complainants and to the general public by publishing the non-confidential version of the decision).

The Authority and the European Commission, in accordance with Protocols 23 and 24 to the EEA Agreement, respecting Article 56 of the Agreement and Protocol 22, cooperate in the handling of individual cases falling under Article 56(1)(b) and (c), (2), second sentence and (3). These cooperation obligations involve inter alia exchange of information and forwarding of information to competition authorities within the ECN Network.

Furthermore, the Authority may process the contact details for other compatible purposes, such as conducting market surveys, consultations and evaluations of its procedures, in order to improve its practice and legislation. The data subject's input is provided on a voluntary basis on such occasions.

- The legal basis of the processing operation:
 1. Articles 53, 54, 55 and 59 of the EEA Agreement
 2. Chapters II and III of Protocol 4 to the Surveillance and Court Agreement (SCA)

3. [Protocol 23](#) to the EEA Agreement, concerning co-operation between the Commission and the Authority under Articles 53 and 54
4. Article 5 and Article 25(2)(d) of the Data Protection Rules

The Authority's data processing operations in antitrust investigations are justified by Article 5(a) of the Rules (i.e., task carried out in the public interest and legitimate exercise of the authority).

Data may only be processed where necessary for the Authority's antitrust proceedings and on a legal basis. Chapter II of Protocol 4 to the SCA lists the specific enforcement tools of the Authority in this regard (e.g., sending written requests for information, carrying out inspections, taking statements) and provides their modalities.

Article 28 of Chapter II of Protocol 4 guarantees that any data is collected for specified, explicit and legitimate purposes.

Part 3: Data subjects/fields

- Categories of data subjects:
 - Complainants that are natural persons
 - Natural persons that are involved in an economic activity and qualify as an undertaking within the meaning of Chapter II of Protocol 4 to the SCA
 - Representatives and employees of the undertakings that are subject to the investigation in so far as personal data relating to them (e.g., name, position in the company, contact details) are included in the documents gathered during the investigation.
 - Third parties being natural persons (e.g., final consumers (private household) of the undertakings concerned) in so far as personal data relating to them (e.g., name, position in the company, contact details) are mentioned in the file.
- Categories of data / Data fields:
 - Name
 - Contact details (telephone, fax, e-mail, business address and, exceptionally, private home address)
 - Position of the individual in the undertaking
 - Statements of individuals, which may include role in a business and CV data
 - In EEA competition proceedings, no personal data within the meaning of Article 10 of the Authority's Rules is processed. Incidentally, such personal data might appear in the inspection documents taken over by Authority, but such data shall not be further processed by the Authority.

Part 4: Rights of the data subjects

- Information to be provided to the data subjects:

In order to comply with the obligations imposed by Articles 11 and 12 of the Authority's Data Protection Rules, CSA has drafted a Privacy Statement, explaining how it deals with data protection issues in the context of its proceedings; see document no. 868961, filed under case no. 80285 in GoPro. This privacy statement is also available on the Authority's website.

In addition, the Authority has added, to the extent possible, privacy clauses in documents such as requests for information sent to undertakings and Member States and the explanatory note handed over in inspections.

- Procedure to grant rights:

See document no. 863894 on *Procedures for data subject requests (DSR)*, filed under case no. 80285 in GoPro.

For further clarification on antitrust proceedings specifically, Chapter II of Protocol 4 to the SCA provides guarantees that undertakings (which may include natural persons) that are the addressees of a statement of objections have access to the antitrust case file.

Natural persons who are not the addressees of a statement of objections have no such rights. Granting them right of access, blocking and erasing of data would hinder the monitoring and inspection tasks of the Authority when enforcing competition law, which is necessary to safeguard important economic or financial interests in the EEA (i.e., the proper functioning of competitive markets). The exceptions of Article 20(1) sub b) and sub e) of the Rules therefore apply in these cases. However, the data subject has the opportunity to send a request for the deletion or modification of his/her data that has allegedly been unlawfully processed.

- Retention policy and time limit:

The Authority conserves competition files until closure of the case, which is necessary for sound procedure. A case is considered to be pending until the Authority's decision becomes final, either because it has been confirmed by the Court or because it cannot be challenged anymore in Court (i.e., because the deadline for an appeal has expired or the Court has issued a judgement which cannot be challenged again).

After closure of the case, the electronic file is closed in the case management system (GoPro) and remains in principle accessible to Authority staff. This is necessary in order to comply with the Authority's general obligation to preserve the documents that it has obtained within the exercise of its duties and which relate to EEA activities. All personal data, as defined by the rules, is to be deleted from the file once a case has been closed and the data is no longer needed for any administrative purpose or for any relevant statutory or legal obligations.

Personal data processed in the context of consultations, evaluations and other type of feedback regarding Authority activities will be stored for a period of time necessary to be able to contact the stakeholders for feedback. For each specific consultation, evaluation or other type of feedback, the retention period for a contractor would not

exceed 6 months after the date when the final report/output was provided by the contractor to the Authority or when the contract otherwise ended between the contractor and the Authority.

All handling and resolution of data subject requests (DSRs) within the Authority shall be done in accordance with the procedures set out in document no. 863894 on *Procedures for data subject requests (DSR)*, filed under case no. 80285 in GoPro.

Part 5: Recipients

- Categories of recipients of the data:
 1. Member States (national competition authorities and national courts within the EEA EFTA States)
 2. Involved undertakings, which are generally the addressees of the statement of objections (in the context of the access to file procedure), and complainants (through their involvement in the proceedings)
 3. The EFTA Court
 4. The European Commission

See also the relevant legal documents:

- EFTA Surveillance Authority Notice on the co-operation between the EFTA Surveillance Authority and the Courts of the EFTA States in the application of Articles 53 and 54 of the EEA Agreement.³
- EFTA Surveillance Authority Notice on cooperation within the EFTA Network of Competition Authorities.⁴

- Transfer of the data:

For certain consultation and evaluation purposes in view of increasing effectiveness of Authority procedures, the contact details of individuals may be transferred to contractors who will be bound to observe the same data protection and confidentiality standards as the institutions.

The Authority may reveal certain documents to the parties to the procedure (which might sometimes be located outside the EEA) which might contain personal data, to the extent that these are necessary for exercising the rights of defence in the context of the 'access to file' procedure, as regulated in competition legislation. Complainants, which may be located outside the EEA and are involved in antitrust proceedings, may access some information of the file, in accordance with Chapter II of Protocol 4 to the SCA.

³ OJ C 305, 14.12.2006, p. 19–31.

⁴ OJ C 227, 21.9.2006, p. 10–22.