

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 processing operation:
Processing of data in the context of the Authority’s **State aid investigations**
- General description of the processing operation:
Processing of data in the context of the Authority’s State aid investigations pursuant to Protocol 3 to the Agreement between the EFTA States on the establishment of a surveillance authority and a court of justice (the “SCA”) and EFTA Surveillance Authority Decision No 195/04/COL of 14 July 2004, including subsequent amendments.¹

See also separate document, no. 868820 on the description of processing data in State Aid cases, filed under case no. 80285 in GoPro.

- Sub-contractors:
Not applicable
- Automated / Manual operations:
All documents concerning the State aid case are stored under a specific case number in an electronic case management application called “GoPro”. Documents are stored mostly in a pdf format, Word, Excel, Outlook or PowerPoint version. Occasionally, other technical formats are used.

GoPro contains also procedural steps and case information, such as the composition of the case team, the relevant legal basis, type of case, priority, name of the undertaking concerned, certain socio-economic data, etc.

¹ College Decision No 195/04/COL on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, published in [OJ L 139, 25.5.2006, p. 37](#) and the EEA Supplement No 26, p. 1.

Access to GoPro is restricted to Authority's personnel and national experts on secondment using the Authority's infrastructure. Case handlers may mark documents as protected in which case they can only be consulted by specific users, usually the case team.

Although notifications and most information submitted by EFTA States occur electronically, some exchanges with the EFTA States and exchanges with third parties sometimes take place in paper form.

All original paper documents relating to cases are transferred and stored in the GoPro system. The electronic file including all registered documents is to be considered as the complete file. For further information on *GoPro procedures*, see a separate document no. 858099 filed in GoPro under case no. 80285.

- **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 filed in GoPro under case no. 80285.

- **Security measures:**

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

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

Part 2: Purpose and legal basis

- **The purpose(s) of the processing operation:**

The purpose of the processing is to exercise the specific competence granted to the Authority under Articles 61 and 62 of the EEA Agreement to decide on the existence and compatibility of State aid with the common market when reviewing existing aid, when taking decisions on new or altered aid and when taking action regarding non-compliance with its decisions or with the requirement as to notification.

Information that is collected and further processed by the Authority relates to undertakings. Only in very rare instances, this may refer to individuals who undertake an autonomous economic activity and thus act as undertakings. Such information is only used in evidence for the purpose of applying the EEA State aid rules and in respect

of the subject matter for which it was collected. As a result of the investigation, and when the measure relates to unlawful and incompatible aid, recovery will be asked from the beneficiary, but this has to be done by the beneficiary to the EFTA State concerned and according to national law.

- The legal basis of the processing operation:
 1. Articles 61 and 62 of the EEA Agreement
 2. Protocol 26 to the EEA Agreement
 3. Protocol 27 to the EEA Agreement
 4. Protocol 3 to the SCA
 5. EFTA Surveillance Authority Decision No 195/04/COL of 14 July 2004, including subsequent amendments
 6. State aid guidelines on professional secrecy in State aid decisions, OJ L 154, 8.6.2006, p. 27 and EEA Supplement No 29, 8.6.2006, p.1.
 7. 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, OJ C 305, 14.12.2006, p. 19 and EEA Supplement to the OJ No 62, 14.12.2006, p. 21.

This processing operation is justified by Article 5a of the Rules (task carried out in the public interest and legitimate exercise of the authority). There are also legal safeguards in the competition regulations ensuring that data (including possible personal data) in State aid proceedings are processed fairly and lawfully.

The procedure is between the Authority and EFTA States. Pursuant to Articles 5 and 10 of Part II of Protocol 3 to the SCA, information necessary for the investigation can be asked from the EFTA State concerned, who can refuse to provide the information if it considers that the information has already been provided, is not available (Article 5(3)) or is not necessary (see C-99/98, *Austria v Commission* [2001] ECR I-1101).

Instruments to collect information are limited: requests or injunctions to EFTA States, invitations to provide comments addressed to undertakings and associations of undertakings, requests for further information to complainants and on site monitoring visits in case of suspected misuse of aid.

Information covered by the obligation of professional secrecy may not be disclosed (Article 24 of Part II of Protocol 3 to the SCA as well as State aid guidelines on professional secrecy in State aid decisions, OJ L 154, 8.6.2006, p. 27 and EEA Supplement No 29, 8.6.2006, p.1.).

When enforcing EEA State aid rules, the Authority does not process any personal data presenting specific risks within the meaning of Article 27 of the rules on Data Protection set out in Decision 235/16/COL that would require prior checking by the European Data Protection Supervisor (EDPS).

Part 3: Data subjects/fields

- Categories of data subjects:
 1. Complainants that are natural persons.
 2. Owners, employees or representatives of the undertakings in so far as personal data relating to them (e.g. name, position in the company, contact details) are included in the document gathered during the investigation.
 3. Individuals in so far as they run an economic activity in their capacity as undertakings.
 4. Third parties being natural persons (e.g. final customers (private household) or participants in trainings 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.
 5. Contact persons from the EFTA States and other undertakings requested to provide information.
- Categories of data / Data fields:
 1. Name
 2. Contact details (telephone, fax, e-mail, business address and exceptionally private home address)
 3. Position of the individual in the undertaking (e.g. owner, marketing manager, CEO)
 4. Business holdings of individuals, in order to examine the SME-status of certain undertakings

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 will add, to the extent possible, privacy clauses, in other documents such as requests for information sent to EFTA States and interested parties.
- Procedure to grant rights:

See document no. 863894 on *Procedures for data subject requests (DSR)*, filed under case no. 80285 in GoPro.
- Retention policy and time limit:

The Authority conserves State aid files until closure of the case, including any related proceedings in front of the EFTA Court, which is necessary for sound procedure.

After closure, the electronic file is closed in the case management system (GoPro) and remains in principle accessible to the Authority's 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 its activities. The Authority is under the obligation to make the documents in its file accessible, with certain limitations. 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.

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. EFTA States
 2. National Courts
 3. European Commission

- Transfer of the data:

Transfer of information in the State aid file can only occur in very specific circumstances, either to the EFTA State under investigation, national courts or the European Commission under the cooperation procedures set out in Article 109 of the EEA Agreement, as well as its Protocol 27.

An undertaking or an association of undertakings providing information and which is not a beneficiary of the State aid measure in question may request, on grounds of potential damage, that its identity be withheld from the EFTA State concerned (Article 6(2) of Part II of Protocol 3 to the SCA).

The Authority's notice² on the enforcement of State aid law by national courts allows for certain cases where national courts can ask for information from the Authority. Courts can obtain guidance on procedural issues. They may obtain information from the Authority regarding factual data, statistics, market studies and economic analyses. Where possible, the Authority will communicate these data or will indicate the source from which they can be obtained.

In addition to the possibility of transmitting information in the Authority's possession to the national courts, Protocol 3 to the SCA provides that the courts may ask for the Authority's opinion on questions concerning the application of State aid rules. The Authority may also apply to the courts of the EFTA States that are responsible for

² 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, OJ C 305, 14.12.2006, p. 19 and EEA Supplement to the OJ No 62, 14.12.2006, p. 21.

applying the State aid rules for the right to intervene as *amicus curiae* in any given case.

Furthermore, the Authority also needs to respect its obligation of professional secrecy. Hence, in view of the limited scope of such cooperation, it seems unlikely that this could entail communication of personal data.