

## PRIVACY STATEMENT

This statement refers to the processing of personal data in the context of antitrust investigations, merger proceedings and state aid investigations carried out by the Competition and State Aid Directorate ("CSA") of the EFTA Surveillance Authority ("the Authority"). The data that are collected and further processed in such investigations include information relating to identified or identifiable natural persons and the processing of such data is subject to the Rules on Data Protection set out in Decision 235/16/COL.<sup>1</sup> The processing occurs under the responsibility of the Authority, acting as the Controller.

### **What is the purpose of the data collection?**

The purpose of an EEA antitrust investigation is to determine whether the undertaking(s) subject to the investigation act in conformity with the competition rules contained in the EEA Agreement (Articles 53 and/or 54, which are equivalent to Articles 101/102 of the Treaty on the Functioning of the European Union ("TFEU")).

The purpose of EEA merger control is to assess whether concentrations of undertakings with a Community dimension or an EFTA dimension significantly impede effective competition in the common market or in a substantial part of it or in the territory of the EFTA States.

The purpose of an EEA state aid investigation is to determine whether measures constitute state aid within the meaning of Article 61(1) and if so whether these can be considered compatible under Articles 59(2) or 61(2) or (3) of the EEA Agreement.

For the purpose of enabling CSA to conduct the necessary investigations, the Authority has been granted enforcement powers to collect information (e.g., by sending requests for information, taking statements, carrying out inspections and sector inquiries).<sup>2</sup>

Information that is collected and further processed by CSA relates to undertakings that are subject to the investigation, as well as other undertakings including the complainant and interested third parties, and rarely individuals, who are involved in the proceedings by providing their input to the Authority's investigation. Such information is only used in evidence for the purpose of applying the EEA respective rules on competition, mergers or state aid, and

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<sup>1</sup> Which are equivalent to [Regulation \(EC\) 45/2001](#) of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ('Regulation 45/2001').

<sup>2</sup> E.g. regarding antitrust investigations: through Chapter II of Protocol 4 to the Surveillance and Court Agreement (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](#))). Regarding merger investigations: Chapter IV and Chapter V of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice on the rules relating to control of concentrations and Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the "EC Merger Regulation"). Regarding State Aid investigations: through Protocol 3 of the Surveillance and Court Agreement.

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.

Furthermore, CSA 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.

### **What personal data do we collect?**

Personal data that are collected and further processed in the context of CSA investigations are the names, contact details (work (e-mail) address, telephone and fax number and occasionally also private contact details), the position of the natural person in the undertaking (e.g., CEO, marketing manager, etc.) and potentially statements of individuals. If commitments pursuant to Article 9 of Chapter II of Protocol 4 to the Surveillance and Court Agreement ("Protocol 4") are envisaged, the personal data collected may include the role in a business which is (potentially) to be divested, as well as data typically inserted in a CV in the context of an application for trustee (mainly relevant professional experience).

### **Who has access to your information and to whom is it disclosed?**

#### *Within the Authority*

Access to antitrust, merger and state aid files is restricted to CSA personnel. The documents collected are stored electronically. Access to the electronic files is restricted to CSA personnel using the Authority's IT infrastructure. In addition, entrance to the Authority's premises is restricted. Certain data may also be made available to other Authority services/departments (without however granting access to the case management application), on a strictly need-to-know basis, in the context of inter-service consultations for assessing the case.

#### *Member States and EU/EEA institutions*

Transfer of information in the antitrust file is possible under certain conditions to competition authorities within the EEA and to national courts of the EFTA Member States. Both are subject to national data protection laws, based on [Directives 95/46](#) and [97/66](#) that contain similar obligations as Regulation 45/2001. Transfer of information is also possible to the European Commission under the cooperation provisions of the EEA Agreement.

Articles 12 and 28 of Chapter II of Protocol 4 guarantee that the information exchanged can only be used by national competition authorities in evidence for the purpose of applying Articles 53 and 54 EEA in respect of the subject matter for which it was collected. A similar safeguard concerning the Commission is contained in Article 9 of Protocol 23 to the EEA Agreement. According to Article 12(3) of Chapter II of Protocol 4, information gathered by the Authority can only be used to impose pecuniary sanctions on natural persons if it has been

collected in a way which respects the same level of protection of rights of defence of natural persons as provided for under the national rules of the receiving authority.

There are also further safeguards for the protection of personal data of natural persons where national courts in the EFTA Member States, when applying Articles 53 and 54 EEA, ask for information from the Authority's competition file. In principle, the Authority should produce documents from its file if the national court can assure appropriate protection of confidentiality of the information covered by the Authority's obligation of professional secrecy (Article 122 of the EEA Agreement) and thus uphold the rights which that provision confers on natural and legal persons. The national court must specify its request and set out why the specific document would be of direct relevance to the national proceedings and whether it could guarantee protection of the requested information (Article 15 of Chapter II of Protocol 4 and the Authority's Notice on cooperation with national courts<sup>3</sup>). According to the case law, the Authority may refuse to provide the information for reasons of confidentiality under the conditions described above or for overriding reasons relating to the need to avoid interference with the functioning and independence of the EEA. In case authorisations from national judicial authorities are necessary, such as for conducting inspections, the Authority may have to provide to the respective judicial authority detailed explanations regarding the subject matter of the inspections. However, the national judicial authority may not demand to be provided with information in the Authority's file (Article 20(8) of Chapter II of Protocol 4).

The Authority can also transfer information under the cooperation provisions of the EEA Agreement to the Commission. According to Article 9 of Protocol 23 to the EEA Agreement, such information can only be used for the purposes of procedures under Articles 53 and 54 of the EEA Agreement and in respect of the subject matter for which it was collected. Like the TFEU, the EEA Agreement only concerns antitrust proceedings against undertakings.

The Authority can also transfer information to the EFTA Court and European Court of Justice under Article 7 of Decision No 235/16/COL for the purposes of Court proceedings.

#### *Access to the file*

Other involved undertakings, which are generally the addressees of a statement of objections, in the context of the rights of defence, parties and their representatives may have access to the file, in accordance with the procedure and safeguards provided in the specific competition legislation. Documents obtained through the 'access to file' procedure may only be used for the purpose of the relevant antitrust proceeding (Article 27 of Regulation No 1/2003).

According to Chapter III of Protocol 4, the complainant, through its involvement in the proceedings, may also have access to the non-confidential version of the statement of objections (Article 6) and the documents on which the Authority bases its provisional

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<sup>3</sup> OJ C 305, 14.12.2006, p. 19 and EEA Supplement to the OJ No 62, 14.12.2006, p. 21.

assessment of its intention to reject a complaint (Article 8), and is entitled to be informed of the reasons for the rejection of its complaint (Articles 7 to 9).

### **How do we protect and safeguard your information?**

Pursuant to Article 12 of Chapter II of Protocol 4, data may only be processed where necessary for the Authority's EEA enforcement tasks and on a legal basis. Applicable regulations list the specific enforcement tools of the Authority in this regard (e.g., the possibility to send written requests for information, carry out inspections and conduct interviews) and set out the applicable procedures and conditions.

Chapters II and III of Protocol 4, as well as the case-law of the EFTA Court, set out clear limits to the powers of investigation of the Authority. In inspections conducted in antitrust cases for example, inspectors are only allowed to take from the undertakings copies of documents relevant for the purpose of their investigation, i.e., documents falling within the scope defined by the inspection decision (or mandate). This limit applies not only to paper documents but also to electronic documents.

Furthermore, information covered by the obligation of professional secrecy may not be disclosed. When deciding on the disclosure of information on natural persons in the context of their decisional powers, the Hearing Officers also need to take into account the rules on Data Protection set out in Decision 235/16/COL. There are special procedures that protect interested third parties where a balancing of interests requires the disclosure of information that is considered to be confidential by those parties.

The various competition regulations also guarantee that any data is collected for specified, explicit and legitimate purposes. The data may only be collected and further processed for the purpose of applying the EEA competition rules and in respect of the subject matter for which it was collected.

### **How can you verify the accuracy of your personal data and, if necessary, correct it?**

Applicable regulations ensure that data are accurate and where necessary kept up to date, since they provide the Authority with various instruments (e.g., written requests for information) to check data accuracy. The competition rules provide 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 a 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 of the EEA (i.e., the proper functioning of competitive markets). The exceptions of Article 20(1) sub b) and sub e) of the rules on Data Protection therefore apply in these cases. However, the data subject will have the chance to address to the Authority a request for the deletion or modification of his/her data which has allegedly been unlawfully processed.

**How long does the Authority keep your data?**

CSA conserves files until closure of the case that is necessary for sound procedure. The electronic file is closed in the case management application ("GoPro"). 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.

**Contact Information**

Should you have any question or request concerning the information submitted or on your rights, feel free to contact the Authority's Data Protection Officer by sending an email message to: [DPO@eftasurv.int](mailto:DPO@eftasurv.int)

**Recourse**

Complaints, in case of conflict, can be addressed to the European Data Protection Supervisor. All details can be found on the following website <http://www.edps.europa.eu/EDPSWEB> .