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**EFTA SURVEILLANCE AUTHORITY  
RULES OF PROCEDURE**

Adopted 7 January 1994<sup>1</sup>  
Recast 19 December 2017<sup>2</sup>

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<sup>1</sup> [Doc No186989](#).

<sup>2</sup> College Decision No 217/17/COL.

## **THE ORGANISATION OF THE EFTA SURVEILLANCE AUTHORITY**

### *Article 1 – College*

The Members of the EFTA Surveillance Authority shall act collectively in accordance with the present rules and, in so acting, constitute the College.

The functioning of the Authority shall be governed by the principle of collegiality, based on the equal participation of the College Members in the adoption of decisions. Decisions shall be the subject of collective deliberation and all the College Members shall bear collective responsibility for all decisions adopted.

The protocol order of the College shall be headed by the President, followed by the Members according to their length of service. Members with equal length of service shall take precedence according to age.

### *Article 2 – President*

The President shall represent the Authority as a whole publicly while respecting the principle of collegiality.

The President shall oversee the administration of the Authority and is empowered to enter into contracts and otherwise bind the Authority to enable it to function, without however impinging on the powers and functions conferred on the Authority by the EEA Agreement and the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice ('SCA'), in particular Article 5 SCA.

The President shall keep College apprised of his/her general approach as well as of individual issues of concern to other College Members. He/she shall act with due regard to views expressed by other College Members and in conformity with guidelines, policies and procedures laid down by College in accordance with Article 16.

### *Article 3 – Portfolios*

The College shall assign to each Member responsibility for the preparation and implementation of its decisions in particular fields of the EEA Agreement ('portfolios'). Members shall regularly report on and make proposals to College concerning enforcement policy in the fields for which they have responsibility and shall lead the Authority's public communication in those fields.

Portfolios shall be assigned by consensus upon the appointment of one or more new College Members. The assignment shall be re-examined at least every two years, or upon the request of a College Member. If no consensus is reached, the assignment shall remain unchanged, Members retaining their existing portfolios or taking over those assigned to their predecessor (the College Member whose appointment was previously proposed by the Government of the same EFTA State).

### *Article 4 – Departments*

In the performance of its functions, the College shall be assisted by four departments, namely Internal Market Affairs, Competition & State Aid, Legal & Executive Affairs and Administration. The departments shall work in close co-operation.

Each of the departments shall be headed by a Director, who shall be appointed by and accountable to the College as a whole for the actions of his/her department. Directors shall manage their departments in accordance with any policies, procedures and guidelines laid down by the College and shall report to the College regularly as requested. Where responsibility for the preparation and implementation of decisions in particular fields of the EEA Agreement has been assigned to a particular College Member, the Director concerned shall take his/her instructions from that Member.

Before submitting a proposal for a decision to the College, the department preparing the proposal shall consult all other departments which are concerned in the matter. The Director of Legal & Executive Affairs shall be consulted on proposals for legal instruments and measures which may have legal implications. The Director of Administration shall be consulted on proposals which may affect the administration of the Authority, in particular through human resources management or budgetary implications. Any disagreement between departments shall be recorded when submitting the proposal to the College.

The College may set up interdepartmental working groups and other structures to deal with particular matters. It shall appoint the chairperson of any such group and determine the mandate and method of operation of the group.

#### *Article 5 – Deputising*

If the President is prevented from exercising his/her functions, they shall be exercised, during the first six months of the year, by the second most senior Member in the protocol order and, during the second six months of the year, by the third most senior Member. This shall include the exercise of the functions incumbent upon the President in his/her capacity as College Member.

If a College Member is prevented from exercising his/her functions, they shall be exercised by the next following Member in the protocol order or, in the case of the most junior Member, by the immediately preceding Member, able to exercise his/her functions.

If a Director is prevented from exercising his/her functions, they shall be exercised by subordinate officials in the order laid down by the Director. Directors shall inform the Director of Legal & Executive Affairs of the order applicable.

#### *Article 6 – Recusal of College Members*

Without prejudice to Article 9(3) SCA, if a College Member considers that, in order to ensure that the independence of the Authority remains beyond doubt, it would be opportune for him/her not to take part in the deliberations or decisions in all or part of a particular matter, he/she may recuse him/herself.

The College Member shall in that event inform the Director of Legal & Executive Affairs of his/her decision. The Director of Legal & Executive Affairs shall forthwith inform the other College Members as well as any members of staff concerned, and shall take all necessary measures to ensure that the College Member having recused him/herself is no longer involved in the matter concerned.

If the College Member recusing him/herself considers it in the interests of the Authority or the proper functioning of the EEA Agreement that he/she be replaced by an *ad hoc* College Member for the purposes of the matter, he/she shall propose to the other College Members that they replace him/her in accordance with Article 9(3) SCA.

## DECISIONS OF THE EFTA SURVEILLANCE AUTHORITY

### *Article 7 – Types of Decision*

In the exercise of the powers and functions conferred on the Authority by the EEA Agreement and the SCA, in particular Article 5 SCA, the Authority shall take decisions:

- (a) at meetings of the College in accordance with Articles 8-11;
- (b) by written procedure in accordance with Article 12;
- (c) by delegation in accordance with Article 13.

### *Article 8 – College Meetings*

Meetings of the College shall be convened by the President. The College shall, as a general rule, meet once a week. Additional meetings shall be held whenever necessary.

The President shall take the chair at meetings.

Two Members present shall constitute a quorum. For a decision to be adopted, at least two votes in favour of the decision shall be required.

### *Article 9 – College Meeting Agenda*

The President shall issue a draft agenda for each meeting. Any item put forward by a Member for inclusion shall be placed on the draft agenda. Likewise, any item that is still pending more than six months after approval by the Director of Legal & Executive Affairs shall be placed on the draft agenda.

Unless otherwise decided, the draft agenda and the necessary working documents shall be distributed to the Members at least three working days before the day of the meeting.

If requested by a Member, the discussion of an item on the draft agenda shall once be deferred by one meeting, unless the deferment would, due to binding time limits, prevent the College from taking an effective decision on the matter.

The College may decide unanimously, with the express agreement of any College Member unable to be present, to discuss and decide a matter which is not on the draft agenda or in respect of which the necessary working documents have been distributed after the stipulated time limit.

The College, having before it the draft agenda and any requests for amendments thereto, shall approve the agenda at the meeting.

### *Article 10 – Attendance at College Meetings*

Meetings of the College shall not be public. Deliberations shall be and shall remain confidential.

The Director of Legal & Executive Affairs shall attend all meetings. The Directors of departments responsible for preparing draft decisions included in the draft agenda shall, and other Directors may, attend meetings unless College decides otherwise.

The President may, on his/her own initiative or at the request of a Member, invite certain officials of the Authority to attend the whole or part of a meeting and to speak.

When the Authority is required to, or has committed itself to, allowing representatives from another institution, agency or other body to be present at College meetings where certain types of decision are adopted, that institution, agency or other body shall be invited to be represented at any such meeting or the relevant part thereof.

The College may invite any other person to attend the whole or part of a meeting and to speak.

#### *Article 11 – Minutes of College Meetings*

Minutes shall be taken of all meetings of the College.

The minutes shall be authenticated by the signature of the President and counter-signed by the Director of Legal & Executive Affairs.

#### *Article 12 – Decisions by Written Procedure*

On the proposal of a Member, the College may take a decision by means of a written procedure. Any Member may, in the course of the written procedure, request that the proposal be discussed at a College meeting. In such case, the matter shall be placed on the draft agenda of the next College meeting.

The text of the proposed decision shall be distributed to all Members indicating a proposed date for adoption.

The proposal shall be deemed to be agreed to by the College on the proposed date provided, either

- the proposed date is at least three working days after the distribution of the proposal, it is established that the distribution is known to all College Members, at least two College Members have expressed their approval of the proposal, and no request has been made that the proposal be discussed at a College meeting, or
- all College Members have expressed their approval.

The decision shall be recorded in the minutes of the next College meeting.

#### *Article 13 – Delegated Decisions*

Subject to the principle of collegiate responsibility being respected in full, the College may empower a College Member to take, in its name and subject to its control, clearly circumscribed decisions in the fields for which they have been assigned responsibility pursuant to Article 3 and to adopt the definitive text of a decision the substance of which has been determined by the College.

During periods when a sufficient number of College Members to constitute a quorum are not on duty, one or more College Members may be authorised to take any urgent decision that may be required.

Officials may be empowered to take clearly circumscribed measures of management or administration.

Notwithstanding a delegation of decision-making powers, the College in any case retains the right to take any decision itself. Furthermore, the responsible College Member may decide not to exercise the powers delegated and may instead refer the adoption of the decision to the full

College. Decisions identified by any College Member as being of particular importance or interest shall in any case be referred to the full College.

The Director of Legal & Executive Affairs shall regularly inform College of the decisions adopted under powers conferred by a delegation decision and cause them to be taken note of at a College Meeting.

Powers conferred in accordance with this article shall only be exercised with the approval of the Director of Legal & Executive Affairs and may not be sub-delegated, except to the extent expressly laid down in the delegation decision.

#### *Article 14 – Procedure*

The Director of Legal & Executive Affairs shall assist the President in preparing the meetings of the College, in implementing the decision making procedures and in ensuring, where applicable, the communication and publication of decisions of the Authority.

To this end he/she shall ensure that the rules are complied with regarding preparation and submission of documents which the Members are to consider and shall, where applicable, take the necessary steps to ensure official notification of decisions of the Authority and their publication in the EEA Section of and the EEA Supplement to the Official Journal of the European Union.

#### *Article 15 – Authentication*

Legal instruments adopted by the College, at a meeting or by written procedure, shall be authenticated in the language or languages in which they are to be authentic by the signature of the President and the counter-signature of the Director of Legal & Executive Affairs.

Legal instruments adopted by delegation procedure shall be authenticated in the language or languages in which they are to be authentic by the signature of the Member empowered, and the counter-signature of the Director of Legal & Executive Affairs.

In the circumscribed instances where an official has been empowered to adopt legal instruments, these are authenticated by the simple signature of that official.

Electronic signatures shall be used wherever possible.

## **MANAGEMENT AND ADMINISTRATION**

#### *Article 16 – Management and Administrative Decisions*

Management and administrative decisions of the Authority concerning the appointment of officials, the conclusion of contracts and other matters not impinging on the powers and functions conferred on the Authority by the EEA Agreement and the SCA, and in particular Article 5 SCA, shall be taken by the competent Director under the authority of the President and in accordance with policies, procedures and guidelines laid down by the College.

Any decisions regarding the management and administration of the Authority which are liable to have an impact on the ability of the Authority to ensure the proper functioning of the EEA Agreement, such as the appointment of Directors, as well as any changes in the structure, resource allocation or respective responsibilities of the Authority's departments shall only be taken by College as a whole acting by consensus.

The Directors shall be accountable to College for their decisions and report to College as a whole as requested. The College shall, as necessary, lay down rules, guidelines, policies and procedures to give effect to these Rules of Procedure and to provide direction for the management and administration of the Authority as a whole.

The President shall convene Management Meetings at regular intervals at which Directors report to and receive guidance from College on the management and functioning of their departments.

Directors shall regularly consult the Director of Administration concerning the management of their departments regarding human resources, financial, information technology, security and other administrative matters.

## **FINAL PROVISIONS**

### *Article 17 – Entry into Force*

These Rules of Procedure shall enter into force on 1 January 2018.

### *Article 18 – Repeal*

The Rules of Procedure of 7 January 1994, as amended, are repealed and replaced simultaneously to the entry into force of these Rules of Procedure.

All decisions adopted under previous Rules of Procedure shall remain unaffected.

### *Article 19 – Publication*

These Rules of Procedure, which are authentic in the English language, shall be published in the EEA Section of and the EEA Supplement to the Official Journal of the European Union.

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