

## Explanatory note to Complaint Form

Each Contracting Party to the EEA Agreement is responsible for the implementation (adoption of implementing measures before a specified deadline) and correct application of EEA law within its own legal system. Under the EEA Agreement, the EFTA Surveillance Authority is responsible for ensuring that EEA law is correctly applied by the EFTA States. Consequently, where an EFTA State fails to comply with EEA law, the Authority has powers to try to bring the infringement to an end and, where necessary, may refer the case to the EFTA Court. The Authority takes whatever action it deems appropriate in response to either a complaint or indications of infringements which it detects itself.

Non-compliance means failure by an EFTA State to fulfil its obligations under EEA law. It may consist either of an action or omission. The term 'State' is taken to mean the Member State which infringes EEA law, irrespective of the authority - central, regional or local - to which the non-compliance is attributable.

Anyone may lodge a complaint with the Authority against an EFTA State for any measure (law, regulation or administrative action) or practice attributable to an EFTA State, which they consider incompatible with a provision or a principle of EEA law. Complainants do not have to demonstrate a formal interest in bringing proceedings. Neither do they have to prove that they are principally and directly concerned by the infringement complained of. To be admissible, a complaint has to relate to an infringement of EEA law by an EFTA State.<sup>1</sup> It should be borne in mind that the EFTA Surveillance Authority may decide whether or not further action should be taken on a complaint in light of the rules and priorities laid down by the Authority for opening and pursuing infringement procedures.

Anyone who considers a measure (law, regulation or administrative action) or administrative practice to be incompatible with EEA law is advised, before or at the same time as lodging a complaint with the EFTA Surveillance Authority, to seek redress from the national administrative or judicial authorities (including the national or regional ombudsman and/or arbitration or conciliation procedures available). By using the means of redress available at national level, complainants may be able to assert their rights more directly and more personally (e.g. a court order to an administrative body, repeal of a national decision and/or damages) than they would following an infringement procedure successfully brought by the EFTA Surveillance Authority, which may take some time. Indeed, before referring a case to the EFTA Court, the Authority is obliged to hold a series of contacts with the EFTA State concerned to try to terminate the infringement.

---

<sup>1</sup> If the Authority receives a complaint against an EU Member State, it will pass the complaint to the European Commission, which is responsible for ensuring that EEA law is correctly applied by the EU Member States. The Authority will inform the complainant of the transfer to the European Commission.

Furthermore, any finding of an infringement by the EFTA Court has no impact on the rights of the complainant since it does not serve to resolve individual cases. It merely obliges the EFTA State to comply with EEA law. More specifically, any individual claims for damages have to be brought by complainants before the national courts.

The following administrative guarantees exist for the benefit of the complainant:

- a) Following registration by the Authority, a complaint will be assigned an official reference number. An acknowledgement bearing the reference number, which should be quoted in any correspondence, will immediately be sent to the complainant. However, the assignment of an official reference number does not necessarily mean that an infringement procedure will be opened against the EFTA State in question.
- b) Where the Authority makes contact with the authorities of the EFTA State against which a complaint has been lodged, it abides by the choice made by the complainant in Section 13 of the Complaint Form (confidentiality).
- c) The Authority will endeavour to take a decision on the substance (either to open an infringement proceeding or to close the case) within *a year* of the registration of the complaint.
- d) The complainant will be notified in advance by the relevant Directorate of the Authority if it plans to propose that the Authority close the case, with the finding that there is no infringement. The Authority will keep the complainant informed of the course of any infringement procedure.