

## **Memo concerning notification requirements under the Services Directive**

### **Introduction**

This document aims to outline how the four notification systems under the Services Directive can be applied in the EEA/EFTA context. The document does not bind the EFTA Surveillance Authority and should be considered a working document. The EFTA States are invited to comment on the contents of this email within two weeks of their receipt thereof.

In order to enable the EEA/EFTA States to fulfil the notification requirements under the Services Directive, a pragmatic approach will have to be taken to the submission of notifications. With regard to Alerts and Case-by-case derogations, the fact that the Authority is not a party to the IMI means that parts of the notification procedures need to be duplicated outside the IMI. With regard to notifications under Articles 15(7) and 39(5) of the Services Directive it is proposed that the system for information sharing with the European Commission and the EU States under Directive 98/34/EC is used as a model.

### **Alerts**

According to Article 32 of the Services Directive, when an EFTA State becomes aware that a particular service may lead to serious damage to the health or safety of persons, it shall inform the Authority and other concerned EEA States of this fact within the shortest possible period of time. This should be done by the EFTA States using the IMI.

However, since the Authority is not a party to the IMI, the EFTA State which is issuing an alert also needs to inform the Authority of this fact separately. This should be done by printing a report of the alert from IMI and sending this by email to [services@eftasurv.int](mailto:services@eftasurv.int). Such a report should not include the personal details of the services provider concerned by the alert or any other information that may be subject to data protection rules. The Authority is merely interested in knowing that an alert has been issued, in which sector and on which grounds. There is a functionality in IMI which allows for the printing of information concerning the alert with the exclusion of personal information. The information received by the Authority will be used for statistical purposes.

Any responses that are received or sent using the IMI following the opening of an alert do not need to be transmitted to the Authority separately until the alert has been closed. Once the closure of the event has been entered into IMI, this information should be transmitted to the Authority using the above-mentioned mail address. Such information should not include personal information concerning the services provider or any other information subject to data protection rules.

### **Case-by-case derogations**

Article 18 of the Services Directive allows the EFTA States to take measures relating to the safety of services in exceptional circumstances, using the procedure outlined in Article 35 of the Services Directive.

In practice the procedure in Article 35 will be carried out using the IMI. Article 35(2) requires that the State wishing to issue a case-by-case derogation first liaise with the State in which the services provider is established. Information at this stage does not need to be transmitted to the Authority. The Authority does however need to be notified when an EFTA State actually intends to adopt the measures in accordance with Article 39(3) or Article 39(6). The notification should be sent to [services@eftasurv.int](mailto:services@eftasurv.int). As in cases concerning alerts, the notifications should not contain personal details of the services provider concerned or any other information subject to data protection rules.

Under normal circumstances, the notification triggers a standstill period of three weeks, during which the measures may not be adopted. The Authority will take a decision on whether the measures are in compliance with the Services Directive within a reasonable time and will communicate this to the EFTA State which has triggered the derogation.

#### **Notifications under Article 15(7) of the Services Directive**

The EFTA States should send notifications under Article 15(7) to [services@eftasurv.int](mailto:services@eftasurv.int) using the same notification forms that are used in the EU. These forms will be made available on the website of the Authority. The Authority will check the completeness of the notifications, assign them a registration number and forward them to the other EFTA States and the Commission. The Commission will in turn forward the notifications to the EU States.

When the Commission receives notifications from the EU States they will register them and forward them directly to the other EU States, the EFTA States and the Authority. This is in line with the procedure currently followed under Directive 98/34/EC. Notification under Article 15(7) does not trigger a standstill period.

In cases where there is an overlap between Article 15(7) and Directive 98/34/EC, the EFTA States may notify only under Directive 98/34/EC. In such cases the notification has to specify which parts of the draft text relate to Article 15(7).

Within three months of receipt of a notification, the Authority shall take a decision on whether it considers the notified rules to be in compliance with the Services Directive or not. This decision will be communicated to the notifying state only. Spontaneous comments from other EEA States will be forwarded to the notifying state only, and will not be circulated among all the EEA States.

#### **Notifications under Article 39(5) of the Services Directive**

The procedure outlined above concerning notifications under Article 15(7) will also be applied for notifications under Article 39(5) with one modification.

If there is an overlap between Article 39(5) and Directive 98/34/EC, the rules have to be notified under both systems. Thus, it is not sufficient to notify only under Directive 98/34/EC, but a separate notification needs to be sent to [services@eftasurv.int](mailto:services@eftasurv.int) using the relevant forms. This is due to the fact that Article 39 does not contain the explicit reference to Directive 98/34/EC that Article 15(7) does.