

Case No: 72107  
Event No: 639933  
Dec. No: 300/12/COL

The logo of the EFTA Surveillance Authority, featuring the text 'EFTA SURVEILLANCE AUTHORITY' in white on a dark blue background.

## EFTA SURVEILLANCE AUTHORITY DECISION

of 5 September 2012

to adopt revised Rules on public access to documents,  
and repealing Decision 407/08/COL

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD to the agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular its Article 13,

Whereas:

Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system, based on democracy and human rights, as referred to in recital 1 of the preamble of the EEA Agreement,

The purpose of these Rules is to ensure openness and transparency at the Authority, while still showing due concern for the necessary limitations due to protection of professional secrecy, legal proceedings and internal deliberations, where this is deemed necessary in order to safeguard the Authority's ability to carry out its tasks,

The Authority should take the necessary measures to inform the public of the new Rules on public access to documents and to train its staff to assist citizens to exercise their rights. In order to facilitate the exercise by citizens of their rights, the Authority should provide access to a register of documents,

HAS ADOPTED THIS DECISION:

### **Article 1**

#### **Purpose**

The purpose of these Rules is:

- (a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to documents held by the Authority,
- (b) to establish rules ensuring the easiest possible exercise of this right, and
- (c) to promote good administrative practice relating to access to documents.

## **Article 2**

### **Beneficiaries and scope**

1. Any natural or legal person has a right to request access to documents of the Authority, subject to the principles, conditions and limits defined in these Rules.
2. These Rules shall apply to documents drawn up or received by the Authority and in its possession, in all areas of activity of the Authority.
3. Without prejudice to Article 4, documents shall be made accessible to the public either following a written application or directly in electronic form or through a register.
4. These Rules shall be without prejudice to rights of public access to documents held by the Authority which might follow from instruments of international or EEA law.

## **Article 3**

### **Definitions**

For the purpose of these Rules:

- (a) 'document' shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the Authority's sphere of responsibility, except unfinished documents or drafts of documents;
- (b) 'third party' shall mean any natural or legal person, or any entity other than the Authority, including the EFTA States, EFTA and institutions and bodies of the European Union and third countries.

## **Article 4**

### **Exceptions**

Under these Rules:

1. The Authority shall refuse access to a document falling within the scope of any arrangement it has concluded with any third party relating to security or any document bearing the security classification "Authority Secret", "Authority Confidential" or "Authority Restricted".

2. Unless there is an overriding public interest in disclosure, the Authority shall refuse access to a document:

- (a) relating to any pending proceedings or open investigation conducted by the Authority pursuant to its powers laid down in Protocols 3 and 4 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. Proceedings are pending and investigations are open within the meaning of this provision until such time as the Authority can no longer be called upon to recommence them;
- (b) relating to gathering, obtaining or receiving information from natural or legal persons in the framework of investigations conducted by the Authority pursuant to its powers laid down in Protocols 3 and 4 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice;
- (c) sent to or received from the European Commission within the framework of cooperation laid down in the EEA Agreement;
- (d) sent to or received from the EFTA competition authorities within the framework of cooperation laid down in Protocol 4 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

3. The Authority shall refuse access to a document where disclosure would undermine the protection of:

- (a) the public interest as regards:
  - public security,
  - defence and military matters,
  - international relations,
  - the financial, monetary or economic policy of an EEA State;
- (b) privacy and the integrity of the individual, in particular in accordance with EEA legislation regarding the protection of personal data.

4. The Authority shall refuse access to a document, unless there is an overriding public interest in disclosure, where disclosure would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property,
- court proceedings and legal advice,
- the purpose of inspections, investigations and audits.

5. The Authority shall refuse access to a document which relates to a matter where the decision has not been taken by the Authority, if disclosure of the document would seriously undermine the Authority's decision-making process, unless there is an overriding public interest in disclosure.

6. The Authority shall refuse access to Authority internal memos or notes and Authority internal communication, except if such memos, notes or communication set out a final decision unavailable in any other form, or if there is an overriding public interest in disclosure.

7. The Authority shall refuse access to its internal manuals, unless there is an overriding public interest in disclosure.

8. As regards third-party documents, the Authority shall consult the third party with a view to assessing whether an exception in paragraph 3 or 4 is applicable, unless it is clear that the document shall not be disclosed or, when the document does not originate from an EFTA State, it is clear that the document shall be disclosed.

9. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

10. The exceptions as laid down in paragraphs 1 to 7 shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to privacy or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.

## **Article 5**

### **Documents in the possession of the EFTA States**

Upon request, the Authority shall indicate whether it considers that disclosure of an Authority document in the possession of an EFTA State would undermine such interests as protected in Article 4.

## **Article 6**

### **Applications**

1. The Authority shall examine applications by any natural or legal person for access to a document made in any written form, including electronic form, in one of the languages referred to in Article 129 of the EEA Agreement and Article 20 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice and in a sufficiently precise manner to enable the Authority to identify the document. The applicant is not obliged to state reasons for the application.

2. If an application is not sufficiently precise, the Authority shall ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of documents.

3. In the event of an application relating to a long document or to a large number of documents, the Authority may confer with the applicant informally, with a view to finding a fair solution. The Authority, in cooperation with the applicant, shall endeavour to arrive at a fair solution as quickly as possible. If no fair solution has been found within a

reasonable time, the applicant may request that the Authority proceed to process the application in accordance with Article 7. The request shall be made in writing.

4. The Authority shall provide information and assistance to citizens on how and where applications for access to documents can be made.

## Article 7

### **Processing of applications**

1. An application for access to a document should be addressed to the Registry of the Authority at:

[registry@eftasurv.int](mailto:registry@eftasurv.int)

or:

EFTA Surveillance Authority  
Registry  
Rue Belliard 35  
B-1040 Brussels  
Belgium

2. An application for access to a document shall be handled as quickly as possible. An acknowledgement of receipt shall be sent to the applicant. As a main rule, the Authority shall either grant access to the document requested and provide access in accordance with Article 8 or, in a written reply, state the reasons for the total or partial refusal within 10 working days from registration of the application.

3. In exceptional cases, for example in the event of an application relating to a long document or to a large number of documents, the time-limit provided for in paragraph 2 may be extended by 30 working days. The Authority shall notify the applicant thereof as quickly as possible.

4. In cases where the Authority consults third parties in accordance with Article 4(8) of these Rules, the time-limit provided for in paragraph 2 or 3 above may be suspended, for the documents concerned and for as long as the consultation is pending. The Authority shall inform the applicant of any such suspension as quickly as possible, and the Authority shall endeavour to complete any such consultation within a reasonable time.

5. Failure by the Authority to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application under paragraph 6 below.

6. In the event of total or partial refusal, the applicant may, within 30 working days of receiving the Authority's reply, make a confirmatory application asking the Authority to reconsider its position. Paragraphs 1 to 4 above apply. The Decision of the Authority shall be adopted by the College Member responsible for public access to documents. In the event of confirmation of the total or partial refusal, the Authority shall inform the applicant of the remedies open to him or her by instituting court proceedings against the Authority under the conditions laid down in Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

Failure by the Authority to reply within the prescribed time-limit shall be considered as a negative reply and thus also entitle the applicant to institute such court proceedings.

## **Article 8**

### **Access following an application**

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of less than 100 A4 pages and direct access in electronic form or through the register shall be free of charge.
2. If a document has already been released by the Authority and is easily accessible to the applicant, the Authority may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.
3. Documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference.

## **Article 9**

### **Register**

1. The Authority shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without undue delay.
2. For each document the register shall contain a reference number, the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner which does not undermine protection of the interests in Article 4.
3. The Authority shall make public the ordinary minutes of its College meetings.

## **Article 10**

### **Direct access in electronic form or through a register**

The Authority shall as far as possible make documents directly accessible to the public in electronic form or through a register in accordance with the rules of the Authority.

**Article 11**

**Administrative practice of the Authority**

The Authority shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by these Rules.

**Article 12**

**Reproduction of documents – copyright**

These Rules shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

**Article 13**

**Entry into force, publication and repeal of Decision 407/08/COL**

These Rules shall enter into force on the day following the adoption of the present Decision and shall be applicable to all access requests decided upon from that date onwards. From the same time, Decision 407/08/COL of 27 June 2008 to adopt new Rules on Public Access to documents, is repealed.

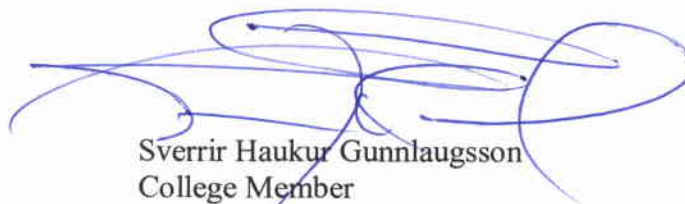
The Authority shall make these Rules available on its website.

Done at Brussels, 5 September 2012.

For the EFTA Surveillance Authority



Oda Helen Sletnes  
President



Sverrir Haukur Gunnlaugsson  
College Member