

EFTA SURVEILLANCE AUTHORITY DECISION

of 8 February 2023

amending the substantive rules in the field of State aid by introducing new Guidelines on State aid for broadband networks

The EFTA Surveillance Authority ('ESA'),

HAVING regard to:

the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61 to 63 and Protocol 26,

the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement'), in particular to Article 24 and Article 5(2)(b),

Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular to Article 1(1) of Part I.

WHEREAS:

Under Article 24 of the Surveillance and Court Agreement, ESA shall give effect to the provisions of the EEA Agreement concerning State aid.

Under Article 5(2)(b) of the Surveillance and Court Agreement, ESA shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if ESA considers it necessary.

Under Article 1(1) of Part I of Protocol 3 to the Surveillance and Court Agreement, ESA shall keep under constant review all systems of aid existing in the EFTA States ⁽¹⁾ and propose any appropriate measures required by the progressive development or by the functioning of the EEA Agreement.

ESA's Guidelines on application of State aid rules in relation to rapid deployment of broadband networks ⁽²⁾, as amended ⁽³⁾, correspond to the European Commission's ('the

⁽¹⁾ Article 1(b) of the Surveillance and Court Agreement states that 'the term "EFTA States" means the Republic of Iceland and the Kingdom of Norway and, under the conditions laid down by Article 1(2) of the Protocol Adjusting the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Principality of Liechtenstein'.

⁽²⁾ ESA's Guidelines on application of state aid rules in relation to rapid deployment of broadband networks introduced by EFTA Surveillance Authority Decision No 73/13/COL of 20 February 2013 amending for the eighty-ninth time the procedural and substantive rules in the field of state aid by introducing a new chapter on the application of state aid rules in relation to the rapid deployment of broadband networks, OJ L 135, 8.5.2014, p. 49.

⁽³⁾ EFTA Surveillance Authority Decision No 302/14/COL of 16 July 2014 amending for the ninety-ninth time the procedural and substantive rules in the field of State aid by modifying certain State aid Guidelines, OJ L 15, 22.1.2015, p. 103.

Commission') Communication on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks ⁽⁴⁾.

On 12 December 2022, the Commission adopted a revised Communication on Guidelines on State aid for broadband networks ('the 2022 Broadband Guidelines') ⁽⁵⁾

The 2022 Broadband Guidelines are also of relevance for the European Economic Area ('EEA').

Uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area in line with the objective of homogeneity established in Article 1 of the EEA Agreement.

According to point II under the heading 'GENERAL' on page 11 of Annex XV to the EEA Agreement, ESA, after consultation with the Commission, is to adopt acts corresponding to those adopted by the Commission.

The 2022 Broadband Guidelines may refer to certain European Union policy instruments and to certain European Union legal acts that have not been incorporated into the EEA Agreement. With a view to ensuring uniform application of State aid provisions and equal conditions of competition throughout the EEA, ESA will generally apply the same points of reference as the Commission when assessing the compatibility of aid with the functioning of the EEA Agreement.

HAVING consulted the Commission,

HAVING consulted the EFTA States,

HAS ADOPTED THIS DECISION:

Article 1

- (1) The substantive rules in the field of State aid shall be amended by introducing new Guidelines on State aid for broadband networks ('the Broadband Guidelines'). The Broadband Guidelines, in form of the 2022 Broadband Guidelines, are annexed to this Decision and form an integral part of it.
- (2) ESA will follow the principles and guidelines set out in the 2022 Broadband Guidelines for the compatibility assessment of all notified aid to broadband networks in respect of which it is called upon to take a decision after 8 February 2023 when the Broadband Guidelines enter into force. Unlawful aid to broadband networks will be assessed in accordance with the rules applicable on the date on which the aid was awarded.

Article 2

ESA applies the 2022 Broadband Guidelines with the following adaptations where applicable, including, but not limited to:

- (a) if there is a reference to 'Member State(s)', ESA reads it as a reference to 'EFTA State(s)' ⁽⁶⁾, or where appropriate 'EEA State(s)';

⁽⁴⁾ Communication from the Commission – EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C 25, 26.1.2013, p. 1.

⁽⁵⁾ C (2022) 9343 final, not yet published in the Official Journal of the European Union.

⁽⁶⁾ The 'EFTA States' refers to Iceland, Liechtenstein and Norway.

- (b) if there is a reference to the 'European Commission', ESA reads it, where appropriate, as a reference to the 'EFTA Surveillance Authority';
- (c) if there is a reference to 'the Treaty' or 'TFEU', ESA reads it as a reference to 'the EEA Agreement';
- (d) if there is a reference to 'the Union', ESA reads it as a reference to 'the EEA';
- (e) if there is a reference to Article 106 TFEU or sections of that Article, ESA reads it as a reference to Article 59 of the EEA Agreement and the corresponding sections of that Article;
- (f) if there is a reference to Article 107 TFEU or sections of that Article, ESA reads it as a reference to Article 61 of the EEA Agreement and the corresponding sections of that Article;
- (g) if there is a reference to Article 108 TFEU or sections of that Article, ESA reads it as a reference to Article 1 of Part I of Protocol 3 of the Surveillance and Court Agreement and the corresponding sections of that Article;
- (h) if there is a reference to Council Regulation (EU) 2015/1589 ⁽⁷⁾, ESA reads it as a reference to Part II of Protocol 3 of the Surveillance and Court Agreement;
- (i) if there is a reference to Commission Regulation (EC) No 794/2004 ⁽⁸⁾, ESA reads it as a reference to EFTA Surveillance Authority Decision 195/04/COL;
- (j) if there is a reference to the wording '(in-)compatible with the internal market', ESA reads it as '(in-)compatible with the functioning of the EEA Agreement';
- (k) if there is a reference to Commission Communications, Notices or Guidelines, ESA reads it as a reference to the corresponding ESA Guidelines.

Article 3

- (1) Point 221(a) of the 2022 Broadband Guidelines is replaced by:

'Pursuant to Article 1(1) of Part I of Protocol 3 of the Surveillance and Court Agreement, ESA proposes that EFTA States must amend, where necessary, their existing broadband aid schemes in order to bring them in line with Section 7.1 of these Broadband Guidelines within 12 months after the entry into force of these Broadband Guidelines'.

- (2) Point 221(b) of the 2022 Broadband Guidelines is replaced by:

'EFTA States should give their explicit unconditional agreement to the appropriate measures (including amendments) proposed in point (a) within 2 months of the entry into force of these Broadband Guidelines. In the absence of any reply within the 2 months, ESA will assume that the EFTA State in question does not agree with the proposed measures.'

⁽⁷⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9.

⁽⁸⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 140, 30.4.2004, p. 1.

Done at Brussels,

For the EFTA Surveillance Authority

Arne Røksund
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This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.

ANNEX: Communication of the European Commission C(2022) 9343 final: Guidelines on State aid for broadband networks (Document No 1343613) and their Annexes I, II, III and IV (Document No 1343614).