

**EFTA SURVEILLANCE AUTHORITY
RULES ON PUBLIC ACCESS TO DOCUMENTS**

Adopted on 3 March 2021 by College Decision No 015/21/COL
Date of entry into force: 8 March 2021

Whereas:

- (1) 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.
- (2) In line with the principles of good administration, the EFTA Surveillance Authority (“the Authority”) is obliged to ensure openness and transparency. However, the Authority must also ensure that it offers sufficient protection for the requirements of professional secrecy in carrying out its tasks, and for the safeguarding of legal proceedings, the protection of confidential complaints, and the Authority’s own internal deliberations and decision-making, where necessary.
- (3) The duties and obligations undertaken by the Authority under the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“SCA”) are equivalent to the duties of the European Institutions in respect of the EU pillar of the EEA. Accordingly, when interpreting a provision of the present rules which is identical or similar to a provision in Regulation (EC) No 1049/2001,¹ the Authority should apply the interpretation of the Court of Justice of the European Union and the European Ombudsman insofar as possible.
- (4) These Rules govern public access to documents. They are unaffected by, and cannot undermine, any system of the Authority which gives or may give rights to specific parties, such as the rules for access to the Authority’s file in the field of competition law enforcement and in the financial services sector.²

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

² See, further, Appendix I.

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 the grant of public 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, within its sphere of responsibility.
3. Without prejudice to Article 4, documents shall be made accessible to the public, either following a request or on the initiative of the Authority. Documents made accessible shall be published in electronic form in the public document database on the Authority's website.
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.
5. These Rules shall not affect, and shall not undermine, any system of the Authority establishing rights of access for specific parties, in particular those listed in Appendix I.

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 but not limited to the EEA States, the institutions of the European Free Trade Association, the institutions 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, 4 and 8 SCA. 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 SCA;
 - (c) relating to gathering, obtaining or receiving information obtained through on-site inspections, investigations and information requests, as referred to in Protocol 8 SCA;
 - (d) sent to or received from the EFTA States’ competition authorities within the framework of cooperation laid down in Protocol 4 SCA;
 - (e) sent to or received from the EFTA States’ competent authorities in financial services within the framework of cooperation laid down in Protocol 8 SCA;
 - (f) sent to or received from the Commission of the European Union or the EU Agencies listed in Appendix II to the present Rules, within the framework of cooperation laid down in the EEA Agreement and the SCA;
 - (g) sent to or received from the UK Independent Monitoring Authority and the European Commission within the framework of cooperation laid down in the Separation Agreement³ and the SCA.

³ *Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable*

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

- (a) the public interest as regards:
 - (i) public security,
 - (ii) defence and military matters,
 - (iii) international relations,
 - (iv) 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 and the rules of the Authority 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:

- (i) commercial interests of a natural or legal person, including intellectual property,
- (ii) court proceedings and legal advice,
- (iii) 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 its internal memos, opinions or notes and Authority internal communication, except if such memos, opinions, notes or communication set out a final decision that is 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:

- (a) the Authority shall consult the third party with a view to assessing whether an exception in paragraph 3 or 4 is applicable.

- (b) No consultation is required if it is clear that the document shall not be disclosed. The Authority shall retain the discretion to initiate a consultation in such circumstances.
- (c) No consultation is required if it is clear that the document shall be disclosed, *and* the document does not originate from an EFTA State. The Authority shall retain the discretion to initiate a consultation in such circumstances.

9. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released. The Authority shall ensure that redactions are made in a manner which safeguards the parts of the document that are covered by an exception.

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 security classified or otherwise 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 or EU institution would undermine such interests as protected in Article 4.

Article 6

Information and assistance to requesters

1. The Authority shall provide information and assistance to the public on how and where to make requests for the grant of public access to documents.
2. A request for the grant of public access to a document should be addressed to the Registry of the Authority at registry@eftasurv.int or sent by post to the address given on the Authority's website.
3. If a request for the grant of public access is received in another form or by an Authority staff member other than the Registrar, that request shall be forwarded to the Registry as soon as practicably possible.
4. Time limits for the processing of requests for the grant of public access to documents shall be calculated as of the point at which the request is recorded by the Authority's Registry.
5. Requests received on non-working days (such as weekends, public holidays or during periods in which the Authority is closed), or received after office hours, shall be recorded the next working day.

Article 7

Requirements for requests for the grant of public access

1. The Authority shall examine requests by any natural or legal person for the grant of public access to a document or documents.
2. Requests must be made in writing (including but not limited to email) and in one of the languages referred to in Article 129 of the EEA Agreement and Article 20 SCA.
3. Although the Authority is permitted to ask the requester for further information about the request in order to help process the request, the requester is not obliged to state their reasons for the request.

Article 8

Clarification of requests

1. Requests must be made in a sufficiently precise manner to enable the Authority to identify the document or documents concerned.
2. If a request is not sufficiently precise, the Authority shall ask the requester for clarification. Within 15 working days of receipt of the clarification, the Authority shall provide to the requester a list of documents that may fall within the scope of the request, comprising:
 - (a) Document number
 - (b) Document name (insofar as this can be stated without disclosing information which falls under one or more of the exemptions set out in Article 4)
 - (c) Document type and status
 - (d) Preliminary indications as to possible exemptions which may apply to the document
3. Following the provision of a list, the requester shall indicate to which of the listed documents they would like to request a grant of public access. The Authority shall then proceed to process the request in accordance with Article 9.
4. The procedure set out in paragraph 2 may be abrogated if a request which would otherwise require clarification relates to a set of documents which are all clearly covered by the same exemption(s) set out in Article 4.
5. In the event of a request relating to a large number of documents, the Authority may extend the period set out in paragraph 2 by an additional 15 working days.

6. The time periods in paragraphs 2 and 5 shall be suspended during periods in which the Authority is awaiting responses from either the requester or third parties.

Article 9

Processing requests

1. A request for the grant of public access shall be handled promptly.
2. An acknowledgement of receipt shall be sent to the requester from the Registry. In the event that a clarification of the request is required under Article 8, an email requesting such clarification shall then be sent from the Authority team handling public access to documents.
3. As a main rule, the Authority shall reply to the requester within 15 working days from registration of the application, and shall either:
 - (a) grant public access to the document requested, or
 - (b) state in writing the reasons for the total or partial refusal.
4. In the event of full or partial public access being granted, the Authority shall communicate to the requester how to access the document, in accordance with Article 11(1) or (2).
5. In exceptional cases, such as in the event of a request relating to a long or complex document, or to a large number of documents, the time limit provided for in paragraph 3 may be extended by 30 working days. The Authority shall notify the requester of the extension as soon as practicable, and in any event before the expiry of the original time limit, together with the reason for such extension.
6. In cases where the Authority consults third parties in accordance with Article 4(8) of these Rules, the time limit provided for in paragraph 3 or 5 above may be suspended, for the request as a whole and for as long as the consultation is pending. The Authority shall inform the requester of any such suspension as quickly as possible, and the Authority shall endeavour to ensure that any such consultation is completed within a reasonable time.
7. Failure by the Authority to reply within prescribed time limits shall entitle the requester to make a confirmatory application under Article 10 below.

Article 10

Confirmatory applications

1. In the event of total or partial refusal, the requester may, within 15 working days of receiving the Authority's reply, make a confirmatory application asking the Authority to take a formal position regarding the request for the grant of public

access to documents. The confirmatory application may cover some or all of the documents requested.

2. In the event of receipt of a confirmatory application, a reasoned Decision on Public Access shall be adopted by the College Member responsible for public access to documents.

3. In the event that the Decision confirms the total or partial refusal (which would normally be the case) the Authority shall inform the requester of the remedies open to them by instituting court proceedings against the Authority under the conditions laid down in Article 36 SCA.

4. The Decision is to be adopted within 30 working days and shall be addressed to the requester. Failure by the Authority to reply within the prescribed time limit shall be considered as a negative reply and thus also entitle the requester to institute such court proceedings.

Article 11

Grant of public access following a request

1. Public access shall in all cases be granted by the full or partial publication of the document(s) in the public document database on the Authority's website.

2. If a document has already been released by the Authority and is easily accessible to the requester, the Authority shall inform the requester how to obtain the requested document.

3. Additionally, a requester may request to consult a document at the premises of the Authority, or may request a paper copy. The Authority shall endeavour to accommodate such requests. Any costs necessarily incurred in producing and sending copies of more than 100 A4 pages may be charged to the requester.

4. A requester may request the document in an alternative format such as Braille, large print or tape. No charge is to be made for more accessible formats where the requester can show that there is a need for such format.

Article 12

Grant of public access on the initiative of the Authority

1. A list of document types that are published routinely is annexed to the present Rules as Appendix III. Such publication may be partial, and the Authority may decide not to publish on its own initiative a document of a type listed in Appendix III.

2. In order to ensure transparency as to the Authority's activities, the ordinary minutes of its College meetings are published routinely on the Authority's website.

3. The provisions of this article are without prejudice to Articles 3 to 5 above. In the event that a request for public access is received for an unpublished document, the list set out in Appendix III shall not be taken into account for the purposes of the Authority's assessment on the grant of public access.

Article 13

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 14

Extension of time limits

1. In the event of extraordinary and unforeseen circumstances having an unavoidable impact on the ability of the Authority to process requests for public access to documents in accordance with the time limits set out in the present Rules, the Authority may adopt a Decision temporarily extending these time limits. Such a Decision shall set out in detail the reasons for the extension.

2. The Decision shall not apply to any requests for a grant of public access to documents received before the Decision was taken.

3. The Decision shall be published on the Authority's website.

Article 15

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 16

Entry into force and publication

1. These Rules shall enter into force on 8 March 2021 and shall be applicable to all access requests made on or after that date.

2. The Authority shall make these Rules available on its website.

Appendix I

List of Authority systems giving rights of access to file to specific parties:

Competition

Cases pursuant to Articles 53, 54 and 57 of the EEA Agreement, in particular rules set out in Article 27(1) and (2) of Chapter II and Article 15(1) and(2) of Chapter III of Protocol 4 to the SCA, as well as rules set out in Article 17(1) and (2) of Chapter V of Protocol 4 to the SCA, as further implemented in the Authority's *Notice on the rules for access to the EFTA Surveillance Authority file in Cases pursuant to Articles 53, 54 and 57 of the EEA Agreement*.⁴

Financial Services

CRA Regulation (Reg 1060/2009), in particular Art 23e(4) and 25.
EMIR (Reg 648/2012), Art 64 and 67.

⁴ OJ C 250, 25.10.2007, p. 16 and EEA Supplement to the OJ No 50, 25.10.2007, p. 1

Appendix II⁵

List of EU institutions referred to in paragraph 4(2)(f):

Commission of the European Union
European Aviation Safety Agency (EASA)
European Maritime Safety Agency (EMSA)
European Railways Authority (ERA)
European Authority for the Cooperation of Energy Regulators (ACER)
European Securities and Markets Authority (ESMA)
European Banking Authority (EBA)
European Insurance and Occupational Pensions Authority (EIOPA)
European Systemic Risk Board (ESRB)
European Food Safety Authority (EFSA)
European Anti-Fraud Office (OLAF)
Body of European Regulators for Electronic Communications (BEREC)
European Data Protection Board (EDPB)
European Environment Agency (EEA)

⁵ Updated by College Decision 112/21/COL of 9 June 2021

Appendix III

List of document types which are routinely published on the website of the Authority:

Please note that the Authority may decide not to publish, or to only partially publish, a document falling into the types described below. This list will not be taken into account in the Authority's assessment regarding a request for the grant of public access to a specific unpublished document.

General

- Minutes of ordinary College Meetings
- Annual Reports
- ESA at a glance

Internal Market Affairs

- Internal Market Scoreboards
- Food and veterinary unit audit reports and country profiles
- Animal health, food and feed safety decisions
- Draft technical regulations notified to the Authority
- Approved biocide use requests
- Decisions exempting certain activities from public procurement rules
- Decisions addressed to financial market operators
- Letters of formal notice, reasoned opinions and closure decisions adopted in the following case types:
 - Complaint (COM)
 - Conformity Assessment (CON)
 - Incorrect Implementation/Application (INC)
 - Non-Implementation (Directives)(NON)
 - Non-Incorporation (Regulations)(REG)

eCom

- eCom recommendations and guidelines
- Draft eCom measures notified to the Authority and the Authority's response

Competition and State Aid

- State aid scoreboards
- State aid guidelines
- Best practices, notices and guidelines in the field of competition
- GBER information sheets submitted to the Authority
- Non-confidential versions of Authority decisions taken pursuant to Articles 7 to 10, 23 and 24 of Chapter II of Protocol 4 SCA
- Non-confidential versions of Authority decisions in the field of state aid
- Preliminary assessments in the field of state aid