

## EFTA SURVEILLANCE AUTHORITY DECISION

of 31 May 2023

amending the procedural and substantive rules in the field of State aid by introducing revised Guidelines on the enforcement of State aid rules by national courts

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),

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.

On 10 June 2009, ESA adopted Decision No 254/09/COL, introducing Guidelines on enforcement of State aid law by national courts ('ESA's Guidelines on enforcement').<sup>1</sup>

These guidelines correspond to the European Commission's ('the Commission') Notice on the enforcement of EU State aid rules by national courts ('Notice on enforcement').<sup>2</sup>

On 23 July 2021, the Commission adopted a revised notice on the enforcement of EU State aid rules by national courts ('Revised Notice on enforcement').<sup>3</sup>

The revisions made by the Commission in the Revised Notice on enforcement are also of relevance for the European Economic Area ('the 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.

<sup>1</sup> Published in OJ L 5 May 2011 p.13. ([OJ L 115, 5.5.2011, p. 13](#)).

<sup>2</sup> Published in OJ C 9 April 2009 p.1. ([OJ C 85, 9.4.2009, p. 1](#)).

<sup>3</sup> Published in OJ C 30 July 2021 p.1-28. ([OJ C 305, 30.7.2021, p. 1–28](#)).

It is appropriate to amend ESA's Guidelines on enforcement in line with the Commission's Revised Notice on enforcement.

The revised Guidelines on enforcement (Doc No 1251068) provide national courts and other interested parties with practical information and guidance on the enforcement of State aid rules at national level. The revised Guidelines also incorporate recent developments in EEA case-law.

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 European Commission.

Having consulted the European Commission and the EFTA States,

HAS ADOPTED THIS DECISION:

*Article 1*

The procedural and substantive rules in the field of State aid shall be amended by introducing revised Guidelines on the enforcement of State aid rules by national courts. The revised Guidelines are annexed to this Decision and form an integral part of it.

*Article 2*

The revised Guidelines on the enforcement of State aid rules by national courts replace ESA's Guidelines on enforcement from 2009.

*Article 3*

The revised Guidelines on enforcement will take effect from 1 June 2023.

Done in Brussels,

For the EFTA Surveillance Authority,

Arne Røksund  
President  
Responsible College Member

Stefan Barriga  
College Member

Árni Páll Árnason  
College Member

For Melpo-Menie Joséphidès  
Countersigning as Director,  
Legal and Executive Affairs

*This document has been electronically authenticated by Arne Roeksund, Catherine Howdle.*

ANNEX: Revised Guidelines on the enforcement of State aid rules by national courts (Document No 1251068).