

EFTA SURVEILLANCE AUTHORITY DECISION**No 196/03/COL****of 5 November 2003**

amending for the thirty-eighth time the Procedural and Substantive Rules in the Field of State Aid by introducing a new chapter 9B: Complaints – Form for the submission of complaints concerning alleged unlawful state aid

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area ⁽¹⁾, in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice ⁽²⁾, in particular to Article 24, Article 5(2)(b) and Article 1 in Part I of Protocol 3 thereof ⁽³⁾,

WHEREAS under Article 24 of the Surveillance and Court Agreement, the EFTA Surveillance Authority shall give effect to the provisions of the EEA Agreement concerning State aid,

WHEREAS under Article 5(2)(b) of the Surveillance and Court Agreement the EFTA Surveillance Authority 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 the EFTA Surveillance Authority considers it necessary,

RECALLING the Procedural and Substantive Rules in the Field of State Aid ⁽⁴⁾ adopted on 19 January 1994 by the EFTA Surveillance Authority ⁽⁵⁾,

WHEREAS, on 16 May 2003, the European Commission published a new form for the submission of complaints concerning alleged unlawful State aid ⁽⁶⁾,

WHEREAS this form is also of relevance for the European Economic Area,

WHEREAS a uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area,

WHEREAS, according to point II under the heading 'GENERAL' at the end of Annex XV to the EEA Agreement, the EFTA Surveillance Authority is to adopt, after consultation with the Commission, acts corresponding to those adopted by the European Commission,

HAVING consulted the European Commission,

RECALLING that the EFTA Surveillance Authority has consulted the EFTA States in a multilateral meeting on 20 June 2003 on the subject,

HAS DECIDED AS FOLLOW:

1. The State Aid Guidelines shall be amended by adding a new Chapter 9B 'Complaints – Form for the submission of complaints concerning alleged unlawful State aid'.
2. A new section III 'Form for the submission of complaints concerning alleged unlawful State aid' shall be introduced in Annex I to the State Aid Guidelines.

⁽¹⁾ Hereinafter referred to as the EEA Agreement.

⁽²⁾ Hereinafter referred to as the Surveillance and Court Agreement.

⁽³⁾ Protocol 3 to the Surveillance and Court Agreement as amended by the EFTA States on 10 December 2001. The amendments entered into force on 28 August 2003.

⁽⁴⁾ Hereinafter referred to as the State Aid Guidelines.

⁽⁵⁾ Initially published in OJ L 231, 3.9.1994, and in the EEA Supplement thereto No 32 on the same date, last amended by College Decision No 264/02COL of 18.12.2002, not yet published.

⁽⁶⁾ Form for the submission of complaints concerning alleged unlawful State aid (OJ C 116, 16.5.2003, p. 3).

3. The new Chapter 9B and the new section III of Annex I to the State Aid Guidelines can be found in the Annex to this Decision.
4. The EFTA States shall be informed by means of a letter, including a copy of this Decision and including the Annex.
5. The European Commission shall be informed, in accordance with point (d) of Protocol 27 of the EEA Agreement, by means of a copy of this Decision, including the Annex.
6. The Decision, including the Annex, shall be published in the EEA Section of and in the EEA Supplement to the *Official Journal of the European Union*.
7. The Decision shall be authentic in the English language.

Done at Brussels, 5 November 2003.

For the EFTA Surveillance Authority

Einar M. BULL
President

Hannes HAFSTEIN
College Member

ANNEX

‘9B COMPLAINTS — FORM FOR THE SUBMISSION OF COMPLAINTS CONCERNING ALLEGED UNLAWFUL STATE AID

Article 1(3) in Part I as well as Article 2(1) in Part II of Protocol 3 to the Surveillance and Court Agreement provide that the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. The EFTA State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

Aid that has been put into effect in contravention of the above mentioned provisions constitutes “unlawful aid”.

In accordance with Article 10(1) in Part II of Protocol 3 to the Surveillance and Court Agreement where the EFTA Surveillance Authority has in its possession information from whatever source regarding alleged unlawful aid, it shall examine that information without delay.

Furthermore, according to Article 20(2) in Part II of the above mentioned Protocol, any interested party may inform the EFTA Surveillance Authority of any alleged unlawful aid and any alleged misuse of aid (hereinafter referred to as a complaint).

Any person or company may submit a complaint to the EFTA Surveillance Authority. The procedure is free of charge. When investigating complaints the EFTA Surveillance Authority is obliged to respect the procedural rules set out in Protocol 3 to the Surveillance and Court Agreement, and in particular the rights of defence of the EFTA State concerned.

Moreover, as an alternative, or as well as submitting a complaint to the EFTA Surveillance Authority, it is usually possible for third parties whose interests have been adversely affected by the grant of an unlawful aid to pursue the matter before the national courts.

However, the EFTA Surveillance Authority cannot offer advice about the national procedures available in individual cases.

The complaint form in Annex I, section III of these Guidelines sets out the information the EFTA Surveillance Authority needs in order to be able to follow-up a complaint about alleged unlawful or misused aid. Reasons should be given in case it is not possible to complete all the sections of the form.

The form is accessible on the Internet server of the EFTA Surveillance Authority at the following addresses:
<http://www.eftasurv.int>

The website of the EFTA Surveillance Authority also contains much useful information about the State aid rules to be applied in the European Economic Area which may help the complainants or their advisers to complete the form.

The form can be sent to the following address:

EFTA Surveillance Authority
Competition and State Aid Directorate
74, Rue de Trèves
B-1040 Brussels

SECTION III

Form for the submission of complaints concerning alleged unlawful State aid

You can send this form to the following address:

EFTA Surveillance Authority
Competition and State Aid Directorate
74, Rue de Trèves
B-1040 Brussels

I.A. *Information regarding the complainant*

- I.1. Surname and forename of complainant, or corporate name
- I.2. Address or Registered Office:
- I.3. Telephone, fax, e-mail address:
- I.4. Name, address, telephone, fax, e-mail address of a contact person:
- I.5. If the complainant is an enterprise, a brief description of the complainant and its field(s) and place(s) of activity:
- I.6. Please summarise briefly how the award of the alleged aid affects the complainant's interests.

I.B. *Information regarding the representative of the complainant*

- I.7. If the complaint is submitted on behalf of someone else (a person or a firm), please also provide the name, address, fax, e-mail address of the representative and attach written proof that the representative is authorized to act.

II. *Information regarding the EFTA State*

- II.1. EFTA State:
- II.2. Level at which the alleged unlawful State aid has been granted:
 - central government
 - region (please specify)
 - other (please specify)

III. *Information regarding the alleged aid measures complained of*

- III.1. Are you complaining about an alleged aid scheme, or an alleged individual aid?
- III.2. When was the alleged aid given or the alleged aid scheme implemented? What is the duration of the alleged aid scheme (if known)?
- III.3. In which economic sector(s) does this alleged aid apply?
- III.4. What is the amount of the alleged aid? In what form is it given (loans, grants, guarantees, tax incentives or exemptions, etc.)?
- III.5. Who is the beneficiary? In the case of a scheme, who is eligible for the alleged aid?

Please give as much information as possible, including a description of the main activities of the firm(s) concerned.

- III.6. For what purpose was the alleged aid given (if known)?

IV. *Grounds of complaint*

Please explain in detail the grounds for your complaint, including the reasons why you have complained, what rules of the EEA law you think have been infringed by the granting of the alleged aid in question and how this has affected conditions of competition in the European Economic Area and trade between Contracting Parties.

If the alleged aid has damaged your own commercial interests, please explain how.

V. Information on other procedures

- V.1. Details of any approaches already made to the EFTA Surveillance Authority (if possible, attach copies of correspondence):
- V.2. Details of any approaches made to the services of the European Commission (if possible attach copies of correspondence):
- V.3. Approaches already made to national authorities (e.g. central, regional or local government bodies, ombudsman, etc.; if possible, attach copies of correspondence):
- V.4. Recourse to national courts or other procedures (e.g. arbitration or conciliation). (Indicate whether there has already been a decision or award and attach a copy if appropriate):

VI. Supporting documents

List any documents or evidence which have been submitted in support of the complaint, and attach copies. Whenever possible, provide a copy of the national law or other measures establishing the legal basis for the payment of the alleged aid.

VII. Confidentiality

You should be aware that in order to protect the rights of defence of the EFTA State concerned, the EFTA Surveillance Authority may have to disclose your identity and any supporting documents, or their contents, to the EFTA State. Please indicate clearly, if you do not wish your identity or certain documents or information to be disclosed and clearly identify the confidential parts of any documents, giving reasons.

Place, date and signature of complainant'
