



Public access to documents

Task Force on Access to Information under the Aarhus Convention

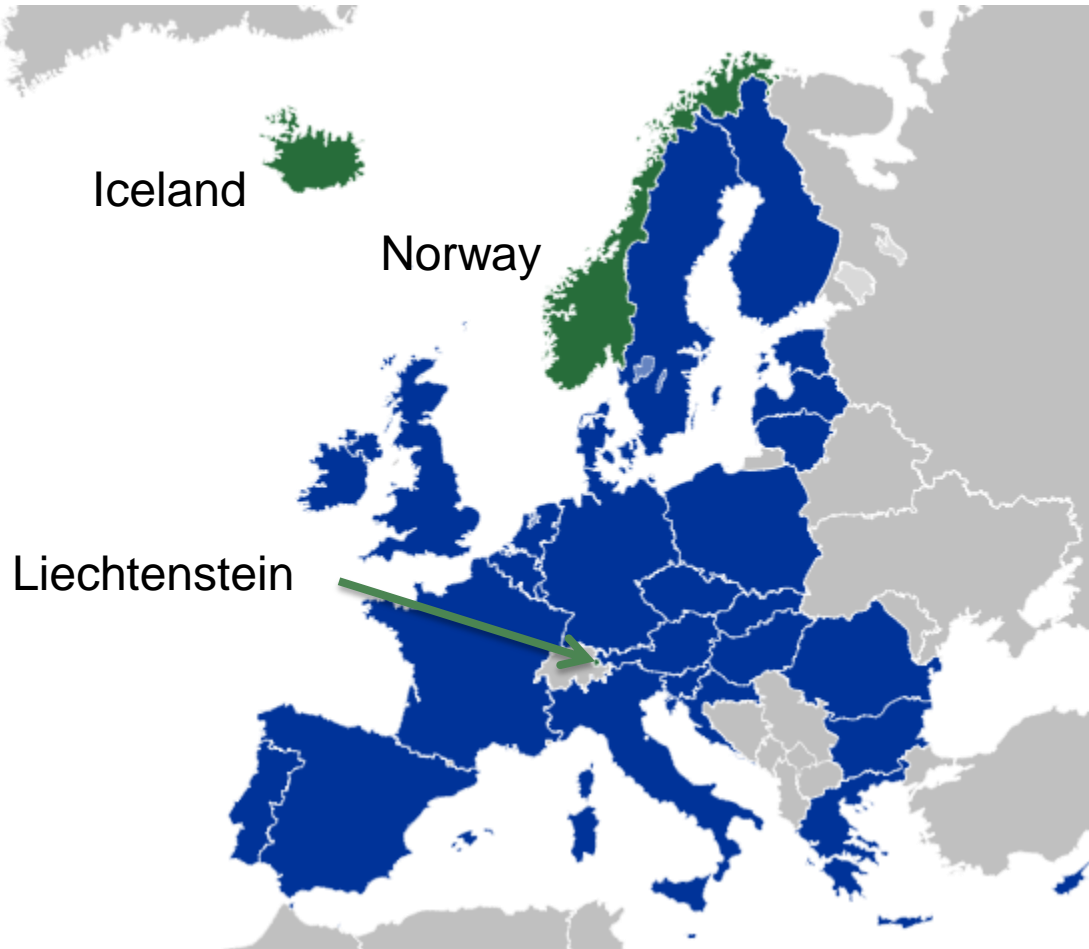
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European Economic Area (EEA)





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Internal Market
Affairs

Competition
and State Aid

Legal and
Executive Affairs

Administration

The Authority's Rules on public access to documents

- Largely correspond to EU Regulation 1049/2001
- Any natural/legal person can ask for access, free of charge
- **Public** access > uploaded onto database

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Public Documents

Doc no.: Name: Case no.: Case name:

Doc type: State: College decision no.: Date from: Date to:

Search content:

This database contains documents to which the Authority has granted public access. If you request public access to a document, and access is granted, the document will be made available in this database. Before submitting a request for public access to a document you may want to check whether the document is already available in the database.

EFTA Surveillance Authority

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Other EEA Institutions



Main rule:

We grant public access to all of our documents

Why?

to ensure openness and transparency

There are however exceptions

Exclusion of drafts and unfinished documents

Article 3(a): For the purpose of these Rules:

'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;

Article 4: *Exceptions – “Overriding Public Interest”*

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

- Case-law still unclear on who must demonstrate its existence/absence
- Must always assist the applicant if needed

Article 4(3): *Exceptions – Public interest, Privacy*

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.

Exceptions under Article 4(4)

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.*

Exceptions under Article 4

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.*

Art.4: 3rd Party Consultation and Partial Access

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.

- Important rule – commonly used
- Consultation = not technically binding

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

- If applicable => a non-confidential version is prepared

Processing of applications (Art.7)

3. 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.

Confirmatory Application (Art.7)

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.*



EFTA Court

- Has the last word in interpretation of EEA law
- Proceedings against EFTA States
- **Review of Authority decisions**
- Advisory opinions to courts in the EFTA States



EFTA Court cases on public access

- E-14/11 *Schenker I*, judgment of 21 December 2012 (decision annulled)
- E-7/12 *Schenker II*, judgment of 9 July 2013 (dismissed)
- Joined Cases E-4&5/12, *Risdal & Konkurrenten*, order of 7 October 2013 (dismissed)
- E-8/12 *Schenker III*, order of 12 May 2014 (dismissed)
- E-4/13 *Schenker IV* (dismissed)
- E-5/13 *Schenker V* (partially dismissed)
- E-22/14 *Schenker VI* (discontinued)



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