

## Explanatory note to Complaint Form

Each Contracting Party to the EEA Agreement is responsible for the implementation (adoption of implementing measures before a specified deadline) and correct application of EEA law within its own legal system. Under the EEA Agreement, the EFTA Surveillance Authority is responsible for ensuring that EEA law is correctly applied by the EEA EFTA States. Consequently, where an EEA EFTA State fails to comply with EEA law, the Authority has powers to try to bring the infringement to an end and, where necessary, may refer the case to the EFTA Court. The Authority takes whatever action it deems appropriate in response to either a complaint or indications of infringements which it detects itself.

Non-compliance means failure by an EEA EFTA State to fulfil its obligations under EEA law. It may consist either of an action or omission. The term 'State' is taken to mean the Member State which infringes EEA law, irrespective of the authority - central, regional or local - to which the non-compliance is attributable.

Anyone may lodge a complaint with the Authority against an EEA EFTA State for any measure (law, regulation or administrative action) or practice attributable to an EEA EFTA State, which they consider incompatible with a provision or a principle of EEA law. Complainants do not have to demonstrate a formal interest in bringing proceedings. Neither do they have to prove that they are principally and directly concerned by the infringement complained of. To be admissible, a complaint has to relate to an infringement of EEA law by an EEA EFTA State. Complaints relating to infringements by EU Member States of their EEA law obligations should be lodged with the [European Commission](#). It should be borne in mind that the EFTA Surveillance Authority may decide whether or not further action should be taken on a complaint in light of the rules and priorities laid down by the Authority for opening and pursuing infringement procedures.

Anyone who considers a measure (law, regulation or administrative action) to be incompatible with EEA law is advised, before or at the same time as lodging a complaint with the EFTA Surveillance Authority, to seek redress from the national administrative or judicial authorities (including the national or regional ombudsman and/or arbitration or conciliation procedures available). By using the means of redress available at national level, complainants may be able to assert their rights more directly and more personally (e.g. a court order to an administrative body, repeal of a national decision and/or damages) than they would following an infringement procedure successfully brought by the EFTA Surveillance Authority, which may take some time. Indeed, before referring a case to the EFTA Court, the Authority is obliged to hold a series of contacts with the EFTA State concerned to try to terminate the infringement.

Furthermore, any finding of an infringement by the EFTA Court has no impact on the rights of the complainant since it does not serve to resolve individual cases. It merely obliges the EEA EFTA State to comply with EEA law. More specifically, any individual claims for damages have to be brought by complainants before the national courts.

The following administrative guarantees exist for the benefit of complainants:

- a) Following registration by the Authority, a complaint will be assigned a case number (as set out in a letter of acknowledgement to the complainant). This case number should be quoted in any subsequent correspondence with the Authority. Assignment of a case number to a complaint does not necessarily mean that an infringement procedure will be opened against the EEA EFTA State in question.
- b) When the Authority contacts the EEA EFTA State against which the complaint has been made, it will abide by the choice made by the complainant regarding confidentiality, including disclosure of the complainant's identity. However, it should be borne in mind that the disclosure of the complainant's identity by the Authority may in some cases be indispensable to the handling of the complaint or may be unavoidable due to the factual circumstances of the complaint. Should the Authority decide it is necessary to disclose the complainant's identity, the Authority will contact the complainant in advance.
- c) The Authority will endeavour to take a decision on the substance of a complaint (either to open an infringement procedure or to close the case) within one year of registration of the complaint.
- d) Where the Authority plans to close a case with the finding that there is no infringement, the complainant will be informed in advance by the relevant Directorate of the Authority. The complainant will be given the opportunity to comment on the intention to close the case. The Authority will keep the complainant informed of the course of any infringement procedure.
- e) Upon closure of a complaint case, the Authority normally deletes all personal data processed in the context of the case. Should there be a need to process personal data after the complaint case has been closed, mainly due to another linked case the Authority is pursuing on the same subject, the Authority will inform the complainant of this so that they are able to object to the further processing of their personal data.