



Ref. 30167
1 February 2012
(Consolidated version)

DECISION OF THE COUNCIL No. 6 OF 2007

(Adopted at the 12th meeting on 13 December 2007)

as amended by

DECISION OF THE COUNCIL No. 10 OF 2011

(Adopted at the 10th meeting on 8 December 2011)

Public Access to EFTA Documents

THE COUNCIL,

Recognising the public interest of open access to documents within a clearly defined legal framework, taking into account applicable national laws,

Having regard to the fact that, when handling requests for access to documents, the principle of openness shall be applied to the greatest extent possible,

Acknowledging the particular sensitivity of documents relating to the preparation and conduct of negotiations with third countries,

DECIDES:

Article 1

The EFTA Secretariat shall make available to the public by placement on its website the documents listed in the Annex to this Decision.

Article 2

1. Any person may request access to documents drawn up or received by the EFTA Secretariat that are in the EFTA Secretariat's possession. Access to EEA related

documents are regulated by Standing Committee Decision 3/2007/SC (ref. 1072934, 6 December 2007).

2. Access to a document shall be granted unless the limitations in the following articles apply.

Article 3

1. Access to a document shall be refused 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 EFTA State,
- (b) privacy and the integrity of the individual, in particular in accordance with the applicable national law of the EFTA States regarding the protection of personal data,

2. Access of a document shall be refused where disclosure would undermine:

- (a) the protection of commercial interests of a natural or legal person, including intellectual property;
- (b) court proceedings and/or legal advice;
- (c) the purpose of inspections, investigations and audits.

3. Access to a document, drawn up for internal use, which relates to a matter where the decision has not been taken, shall be refused if disclosure of the document would undermine the decision-making process.

4. Access to a document containing opinions for internal use as part of deliberations and preliminary consultations shall be refused even after the decision has been taken if disclosure of the document would undermine future decision-making processes.

5. Access to a document containing EFTA's or its Member States' negotiating positions in current or future trade relations with third countries shall be refused if disclosure would undermine the protection of EFTA's or its Member States' negotiating positions.

6. As regards third-party documents transmitted to the EFTA Secretariat, the EFTA Secretariat shall consult the third party with a view to assessing whether an exception in paragraphs 1 and 2 is applicable, unless it is clear that the document shall or shall not be disclosed.

7. In the cases of paragraphs 2-4 above, access shall nevertheless be granted, wholly or partly, if the EFTA States agree that an overriding public interest in disclosure exists.

Article 4

An EFTA State may request the EFTA Secretariat not to disclose documents originating from that State without its prior agreement. In such cases access to those documents shall be refused until the concerned State's agreement has been given.

Article 5

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

Article 6

1. Applications for access to a document shall be made in any written form, including electronic form, in the English language and in a sufficiently precise manner to enable the EFTA Secretariat to identify the document.
2. If an application is not sufficiently precise, the EFTA Secretariat shall ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information in accordance with Article 10.
3. In the event of an application relating to a very long document or to a very large number of documents, the EFTA Secretariat may confer with the applicant informally, with a view to finding a fair solution.

Article 7

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant.
2. The EFTA Secretariat shall submit the request to the EFTA States for approval, unless it can be assured that the EFTA States would or would not refuse access to the document. The EFTA States shall decide without undue delay.
3. Upon receiving the response from the EFTA States, the EFTA Secretariat shall either inform the applicant that access to the requested document has been granted and provide access in accordance with Article 9 or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to refer the request to the EFTA Council.
4. If it is not possible for the EFTA Secretariat to give the applicant an answer within 12 working days from the registration of the application, the applicant shall be informed in writing of the delay and when the decision can be expected. The applicant shall be informed of his or her right to defer the request to the EFTA Council if he or she has not received an answer within reasonable time.
5. In the event of a total or partial refusal, the applicant may refer the request to the EFTA Council within 15 working days of receiving the EFTA Secretariat's reply.

6. Failure by the EFTA Secretariat to reply within reasonable time from registration of the application entitles the applicant to refer the request to the EFTA Council.

Article 8

A referral to the EFTA Council shall be handled promptly. If access is refused wholly or partly, this shall be communicated to the applicant in a written reply stating the reasons for the refusal.

Article 9

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy.
2. Consultation on the spot, copies of documents of less than 20 pages, and, if available, direct access in electronic form shall be free of charge.
3. The cost of producing and sending a document of more than 20 pages may be charged to the applicant. A fee may likewise be charged for retrieving documents in case of requests for an exceptional large number of documents that are not available in electronic form. However, only total costs that exceed an amount of CHF 100,- will be charged.
4. The Secretariat shall inform the applicant beforehand if the costs are estimated to exceed CHF 100,- and ask if the applicant wishes to proceed with the request. If the applicant has not agreed to proceed with the request within 10 days, the request shall be considered withdrawn.
5. In special cases, e.g. for students, costs above CHF 100,- may be reduced or not charged.
6. If a document has already been released by the EFTA Secretariat and is easily accessible to the applicant, the EFTA Secretariat may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.

Article 10¹

1. The EFTA Secretariat shall keep a register of documents. Access to a list of documents contained in the register shall be provided upon request. References to documents shall be recorded in the register without delay.
2. In addition, the EFTA Secretariat shall keep a public register of documents drawn up by the EFTA Secretariat. This register shall be accessible through the Secretariat's website. Documents classified as "Confidential" or "Strictly confidential" shall not be placed on the public register except if the EFTA States agree to the contrary.

¹ Amended by Council Decision No. 10 of 2011.

3. For each document the registers shall contain a reference number, the title of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner that does not undermine the protection of interests referred to in Article 3.

Article 11

The EFTA Secretariat shall publish a procedure on how and where applications for access to documents can be made and at which cost, if any. The Secretariat shall, on request, provide additional information and assistance.

Article 12

This Decision shall be without prejudice to any existing rules on copyright that may limit a third party's right to reproduce or exploit released documents.

Article 13

The Council Decision No. 4 of 2006 is hereby repealed.

Article 14

This Decision shall take effect from 1 April 2008.²

Article 15

This Decision shall be subject to a review within one year from its day of effect.

² The amendment to Article 10.2 by Council Decision No. 10 of 2011 took effect on 8 December 2011.

EFTA DOCUMENTS TO BE MADE AVAILABLE TO THE PUBLIC ON THE INTERNET

Activities under the EFTA Convention

- EFTA Convention 1960 (Stockholm Convention);
- EFTA Convention 2001 (Vaduz Convention) – Consolidated version;
- Summaries of the EFTA Convention;
- Intra-EFTA trade statistics;
- EFTA annual reports;
- EFTA Budget (general overview);
- EFTA Decision and procedures on public access to documents;
- EFTA Council agendas;
- EFTA Council decisions, unless the Council decides otherwise;
- EFTA Staff Regulations;
- EFTA Financial Regulations;
- EFTA Budget Committee agendas;
- EFTA Statement of Account;
- EFTA committee structure;
- EFTA Consultative Committee agendas, as well as reports and other documents produced by the Committee unless it decides otherwise;
- EFTA Parliamentary Committee agendas, as well as reports and other documents produced by the committee unless it decides otherwise.

Third-Country Relations

- Consolidated versions of free trade agreements (FTAs);
- Declarations on co-operation;
- Trade statistics covering EFTA and third-country partners;
- Joint committee agendas upon agreement with the partners;

- Joint committee decisions;
 - EFTA notifications of FTAs to the WTO, including background information on the agreements.
-