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Legislation

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II

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EUROPEAN ECONOMIC AREA

AGREEMENT BETWEEN THE EFTA STATES ON THE ESTABLISHMENT OF A SURVEILLANCE AUTHORITY AND A COURT OF JUSTICE

The Republic of Austria, the Republic of Finland, the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation,

Having regard to the European Economic Area Agreement,

CONSIDERING that, in accordance with Article 108 (1) of the EEA Agreement, the EFTA States shall establish an independent surveillance authority (EFTA Surveillance Authority) as well as create procedures similar to those existing in the European Community including procedures for ensuring the fulfilment of the obligations under the EEA Agreement and for control of the legality of acts of the EFTA Surveillance Authority regarding competition;

FURTHER CONSIDERING that, in accordance with Article 108 (2) of the EEA Agreement, the EFTA States shall establish a court of justice of the EFTA States;

RECALLING the objective of the Contracting Parties to the EEA Agreement, in full deference to the independence of the courts, to arrive at and maintain a uniform interpretation and application of the EEA Agreement and those provisions of the Community legislation which are substantially reproduced in that Agreement and to arrive at an equal treatment of individuals and economic operators as regards the four freedoms and the conditions of competition;

REITERATING that the EFTA Surveillance Authority and the Commission of the European Communities shall cooperate, exchange information and consult each other on surveillance policy issues and individual cases;

CONSIDERING that the preambles to acts adopted in application of the Treaties establishing the European Economic Community and the European Coal and Steel Community shall, in so far as those acts correspond to the provisions of Protocols 1 to 4 and to the provisions of the acts corresponding to those listed in Annexes I and I to this Agreement, be relevant to the extent necessary for the proper interpretation and application of the provisions of these Protocols and Annexes;

WHEREAS in the application of Protocols 1 to 4 to this Agreement due account shall be paid to the legal and administrative practices of the Commission of the European Communities prior to the entry into force of this Agreement,

HAVE DECIDED to conclude the following Agreement:

PART I

Article 1

For the purposes of this Agreement:

- (a) the term 'EEA Agreement' means the main part of the EEA Agreement, its Protocols and Annexes as well as the acts referred to therein;

- (b) the term 'EFTA State' means a Contracting Party which is a Member of the European Free Trade Association and is a Party to the EEA Agreement and to the present Agreement.

Article 2

The EFTA States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement.

They shall abstain from any measure which could jeopardize the attainment of the objectives of this Agreement.

Article 3

1. Without prejudice to future developments of case law, the provisions of Protocols 1 to 4 and the provisions of the acts corresponding to those listed in Annexes I and II to this Agreement, in so far as they are identical in

substance to corresponding rules of the Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community and to acts adopted in application of these two Treaties, shall in their implementation and application be interpreted in conformity with the relevant rulings of the Court of Justice of the European Communities given prior to the date of signature of the EEA Agreement.

2. In the interpretation and application of the EEA Agreement and this Agreement, the EFTA Surveillance Authority and the EFTA Court shall pay due account to the principles laid down by the relevant rulings by the Court of Justice of the European Communities given after the date of signature of the EEA Agreement and which concern the interpretation of that Agreement or of such rules of the Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community in so far as they are identical in substance to the provisions of the EEA Agreement or to the provisions of Protocols 1 to 4 and the provisions of the acts corresponding to those listed in Annexes I and II to the present Agreement.

PART II

THE EFTA SURVEILLANCE AUTHORITY

Article 4

An independent surveillance authority among the EFTA States, the EFTA Surveillance Authority, is hereby established.

Article 5

1. The EFTA Surveillance Authority shall, in accordance with the provisions of this Agreement and the provisions of the EEA Agreement and in order to ensure the proper functioning of the EEA Agreement:

- (a) ensure the fulfilment by the EFTA States of their obligations under the EEA Agreement and this Agreement;
- (b) ensure the application of the rules of the EEA Agreement on competition;
- (c) monitor the application of the EEA Agreement by the other Contracting Parties to that Agreement.

2. To this end, the EFTA Surveillance Authority shall:

- (a) take decisions and other measures in cases provided for in this Agreement and in the EEA Agreement;
- (b) formulate recommendations, deliver opinions and issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the present Agreement expressly so provides or if the EFTA Surveillance Authority considers it necessary;
- (c) carry out cooperation, exchange of information and consultations with the Commission of the European Communities as provided for in this Agreement and the EEA Agreement;
- (d) carry out the functions which, through the application of Protocol 1 to the EEA Agreement, follow from the acts referred to in the Annexes to that Agreement, as specified in Protocol 1 to the present Agreement.

Article 6

In accordance with the provisions of this Agreement and the EEA Agreement, the EFTA Surveillance Authority may, in carrying out the duties assigned to it, request all the necessary information from the Governments and competent authorities of the EFTA States and from undertakings and associations of undertakings.

Article 7

The EFTA Surveillance Authority shall consist of seven members, who shall be chosen on the grounds of their general competence and whose independence is beyond doubt.

Only nationals of EFTA States may be members of the EFTA Surveillance Authority.

Article 8

The members of the EFTA Surveillance Authority shall be completely independent in the performance of their duties. They shall neither seek nor take instructions from any Government or other body. They shall refrain from any action incompatible with their duties. Each EFTA State undertakes to respect this principle and not to seek to influence the members of the EFTA Surveillance Authority in the performance of their tasks.

The members of the EFTA Surveillance Authority shall not, during their term of office, engage in any other occupation, whether gainful or not.

When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the EFTA Court may, on application by the EFTA Surveillance Authority, rule that the member concerned be, according to the circumstances, either compulsorily retired or deprived of his right to a pension or other benefits in its stead.

Article 9

The members of the EFTA Surveillance Authority shall be appointed by common accord of the Governments of the EFTA States.

Their term of office shall be four years. It shall be renewable.

Article 10

Apart from normal replacement, or death, the duties of a member of the EFTA Surveillance Authority shall end when he resigns or is compulsorily retired. The vacancy thus caused shall be filled for the remainder of the member's term of office.

Article 11

If a member of the EFTA Surveillance Authority no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the EFTA Court may, on application by the EFTA Surveillance Authority, compulsorily retire him.

Article 12

The President of the EFTA Surveillance Authority shall be appointed from among its members for a period of two years by common accord of the Governments of the EFTA States.

Article 13

The EFTA Surveillance Authority shall adopt its own Rules of Procedure.

Article 14

The EFTA Surveillance Authority shall appoint officials and other servants to enable it to function.

The EFTA Surveillance Authority may consult experts or decide to set up such committees and other bodies as it considers necessary to assist it in accomplishing its tasks.

In the performance of their duties, officials and other servants of the EFTA Surveillance Authority shall neither seek nor accept instructions from any Government or from any body external to the EFTA Surveillance Authority.

Members of the EFTA Surveillance Authority, officials and other servants thereof as well as members of committees shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Article 15

The EFTA Surveillance Authority shall act by majority of its Members. In the event of an equal number of votes, the President shall have a casting vote.

The Rules of Procedure shall determine the quorum.

Article 16

Decisions of the EFTA Surveillance Authority shall state the reasons on which they are based.

Article 17

Save as otherwise provided in this Agreement or in the EEA Agreement, decisions of the EFTA Surveillance

Authority shall be notified to those to whom they are addressed and shall take effect upon such notification.

Article 18

Decisions of the EFTA Surveillance Authority shall be published in accordance with the provisions of this Agreement and of the EEA Agreement.

Article 19

Decisions of the EFTA Surveillance Authority which impose a pecuniary obligation on persons other than States, shall be enforceable in accordance with Article 110 of the EEA Agreement.

Article 20

Individuals and economic operators shall be entitled to address and be addressed by the EFTA Surveillance Authority in any official language of the EFTA States and the European Communities as regards notifications, applications and complaints. This shall also cover all instances of a proceeding, whether it be opened on notification, application or complaint or ex officio by the EFTA Surveillance Authority.

Article 21

The EFTA Surveillance Authority shall annually publish a general report on its activities.

PART III

THE EFTA STATES' FULFILMENT OF THEIR OBLIGATIONS PURSUANT TO THE EEA AGREEMENT AND THE PRESENT AGREEMENT

Article 22

In order to ensure the proper application of the EEA Agreement, the EFTA Surveillance Authority shall monitor the application of the provisions of the EEA Agreement and of the present Agreement by the EFTA States.

Article 23

The EFTA Surveillance Authority shall, in accordance with Articles 22 and 37 of this Agreement and Articles 65 (1) and 109 of, and Annex XVI to, the EEA Agreement as well as subject to the provisions contained in Protocol 2 to the present Agreement, ensure that the provisions of the EEA Agreement concerning procurement are applied by the EFTA States.

Article 24

The EFTA Surveillance Authority shall, in accordance with Articles 49, 61 to 64 and 109 of, and Protocols 14, 26, 27, and Annexes XIII, Section I(iv), and XV to, the EEA Agreement, as well as subject to the provisions contained in Protocol 3 to the present Agreement, give effect to the provisions of the EEA Agreement concerning State aid as well as ensure that those provisions are applied by the EFTA States.

In application of Article 5 (2) (b), the EFTA Surveillance Authority shall, in particular, upon the entry into force of this Agreement, adopt acts corresponding to those listed in Annex I.

Article 25

The EFTA Surveillance Authority shall, in accordance with Articles 53 to 60 and 109 of, and Protocols 21 to 25 and Annex XIV to, the EEA Agreement, as well as subject to the provisions contained in Protocol 4 to the present Agreement, give effect to the provisions of the EEA Agreement relating to the implementation of the competition rules applicable to undertakings as well as ensure that those provisions are applied.

In application of Article 5 (2) (b), the EFTA Surveillance Authority shall, in particular, upon the entry into force of this Agreement, adopt acts corresponding to those listed in Annex II.

Article 26

Provisions governing the cooperation, exchange of information and consultation between the EFTA Surveillance Authority and the Commission of the European Communities concerning the application of the EEA Agreement are laid down in Article 109 as well as in Articles 58 and 62 (2) of, and Protocols 1, 23, 24, and 27 to, the EEA Agreement.

PART IV
THE EFTA COURT

Article 27

A court of justice of the EFTA States, hereinafter referred to as the EFTA Court, is hereby established. It shall function in accordance with the provisions of this Agreement and of the EEA Agreement.

Article 28

The EFTA Court shall consist of seven judges.

Article 29

The EFTA Court shall sit in plenary session. Decisions of the Court shall be valid only when an uneven number of its members is sitting in the deliberations. Decisions of the Court shall be valid if five members are sitting. At the request of the Court, the Governments of the EFTA States may, by common accord, allow it to establish chambers.

Article 30

The Judges shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognized competence. They shall be appointed by common accord of the Governments of the EFTA States for a term of six years.

Every three years there shall be a partial replacement of the Judges. Three and four Judges shall be replaced alternately. The three Judges to be replaced after the first three years shall be determined by lot.

Retiring Judges shall be eligible for reappointment.

The Judges shall elect the President of the EFTA Court from among their number for a term of three years. He may be re-elected.

Article 31

If the EFTA Surveillance Authority considers that an EFTA State has failed to fulfil an obligation under the EEA Agreement or of this Agreement, it shall, unless otherwise provided for in this Agreement, deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the EFTA Surveillance Authority, the latter may bring the matter before the EFTA Court.

Article 32

The EFTA Court shall have jurisdiction in actions concerning the settlement of disputes between two or more EFTA States regarding the interpretation or application of the EEA Agreement, the Agreement on a Standing Committee of the EFTA States or the present Agreement.

Article 33

The EFTA States concerned shall take the necessary measures to comply with the judgments of the EFTA Court.

Article 34

The EFTA Court shall have jurisdiction to give advisory opinions on the interpretation of the EEA Agreement.

Where such a question is raised before any court or tribunal in an EFTA State, that court or tribunal may, if it considers it necessary to enable it to give judgment, request the EFTA Court to give such an opinion.

An EFTA State may in its internal legislation limit the right to request such an advisory opinion to courts and tribunals against whose decisions there is no judicial remedy under national law.

Article 35

The EFTA Court shall have unlimited jurisdiction in regard to penalties imposed by the EFTA Surveillance Authority.

Article 36

The EFTA Court shall have jurisdiction in actions brought by an EFTA State against a decision of the EFTA Surveillance Authority on grounds of lack of competence, infringement of an essential procedural requirement, or infringement of this Agreement, of the EEA Agreement or of any rule of law relating to their application, or misuse of powers.

Any natural or legal person may, under the same conditions, institute proceedings before the EFTA Court against a decision of the EFTA Surveillance Authority addressed to that person or against a decision addressed to another person, if it is of direct and individual concern to the former.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

If the action is well founded the decision of the EFTA Surveillance Authority shall be declared void.

Article 37

Should the EFTA Surveillance Authority, in infringement of this Agreement or the provisions of the EEA Agreement, fail to act, an EFTA State may bring an action before the EFTA Court to have the infringement established.

The action shall be admissible only if the EFTA Surveillance Authority has first been called upon to act. If, within two months of being so called upon, the EFTA Surveillance Authority has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the EFTA Court that the EFTA Surveillance Authority has failed to address to that person any decision.

Article 38

If a decision of the EFTA Surveillance Authority has been declared void or if it has been established that the EFTA Surveillance Authority, in infringement of this Agreement

or of the provisions of the EEA Agreement, has failed to act, the EFTA Surveillance Authority shall take the necessary measures to comply with the judgment.

This obligation shall not affect any obligation which may result from the application of Article 46, second paragraph.

Article 39

Save as otherwise provided for in Protocol 7 to this Agreement, the EFTA Court shall have jurisdiction in actions against the EFTA Surveillance Authority relating to compensation for damage provided for in Article 46, second paragraph.

Article 40

Actions brought before the EFTA Court shall not have suspensory effect. The EFTA Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

Article 41

The EFTA Court may in any case before it prescribe any necessary interim measures.

PART V

GENERAL AND FINAL PROVISIONS

Article 42

The Protocols and Annexes to this Agreement shall form an integral part thereof.

Article 43

1. The Statute of the EFTA Court is laid down in Protocol 5 to this Agreement.
2. The EFTA Court shall adopt its rules of procedure to be approved by the Governments of the EFTA States by common accord.

Article 44

1. The legal capacity, privileges and immunities to be recognized and granted by the EFTA States in connection with the EFTA Surveillance Authority and the EFTA Court are laid down in Protocols 6 and 7 to this Agreement, respectively.
2. The EFTA Surveillance Authority and the EFTA Court, respectively, may conclude with the Government of the States in whose territory their seats are situated an

agreement relating to the privileges and immunities to be recognized and granted in connection with it.

Article 45

The seat of the EFTA Surveillance Authority and the EFTA Court, respectively, shall be determined by common accord of the Governments of the EFTA States.

Article 46

The contractual liability of the EFTA Surveillance Authority shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the EFTA Surveillance Authority shall, in accordance with the general principles of law, make good any damage caused by it, or by its servants, in the performance of its duties.

Article 47

The Governments of the EFTA States shall, on a proposal from the EFTA Surveillance Authority and after consulting a committee consisting of the members of

Parliament of the EFTA States who are members of the EEA Joint Parliamentary Committee, each year before 1 January by common accord establish a budget for the coming year and the apportionment of those expenses between the EFTA States.

The EFTA Surveillance Authority shall be consulted before a decision modifying or amending its proposal for a budget is adopted.

Article 48

The Governments of the EFTA States shall, on a proposal from the EFTA Court, each year before 1 January by common accord establish a budget for the EFTA Court for the coming year and the apportionment of those expenses between them.

Article 49

The Governments of the EFTA States may, unless otherwise provided in this Agreement, on a proposal from or after hearing the EFTA Surveillance Authority, by common accord amend the main Agreement as well as Protocols 1 to 4 and 6 and 7. Such an amendment shall be submitted to the EFTA States for acceptance and shall enter into force provided it is approved by all EFTA States. Instruments of acceptance shall be deposited with the Government of Sweden which shall notify all other EFTA States.

Article 50

1. Any EFTA State which withdraws from the EEA Agreement shall *ipso facto* cease to be a Party to the present Agreement on the same day as that withdrawal takes effect.
2. Any EFTA State which accedes to the European Community shall *ipso facto* cease to be a Party to the present Agreement on the same day as that accession takes effect.
3. The Governments of the remaining EFTA States shall, by common accord, decide on the necessary amendments to be made to the present Agreement.

Article 51

Any EFTA State acceding to the EEA Agreement shall accede to the present Agreement on such terms and conditions as may be laid down by common accord by the EFTA States. The instrument of accession shall be deposited with the Government of Sweden which shall notify the other EFTA States.

Article 52

The EFTA States shall communicate to the EFTA Surveillance Authority the measures taken for the implementation of this Agreement.

Article 53

1. This Agreement, drawn up in a single copy and authentic in the English language, shall be ratified by the Contracting Parties in accordance with their respective constitutional requirements.

Before the entry into force of this Agreement, it shall also be drawn up and authenticated in Finnish, French, German, Icelandic, Italian, Norwegian and Swedish.

2. This Agreement shall be deposited with the Government of Sweden which shall transmit a certified copy to each EFTA State.

The instrument of ratification shall be deposited with the Government of Sweden which shall notify all other EFTA States.

3. This Agreement shall enter into force on 1 January 1993 provided that the EEA Agreement enters into force on that day and provided that the instruments of ratification of the present Agreement have been deposited by all EFTA States.

If the EEA Agreement does not enter into force on that day the present Agreement shall enter into force on the day the EEA Agreement enters into force or when all instruments of ratification of the present Agreement have been deposited by all EFTA States, whichever day is the later.

In witness whereof the undersigned plenipotentiaries, being duly authorized thereto, have signed the present Agreement.

Done at Oporto, this second day of May 1992, in a single authentic copy in the English language which shall be deposited with the Government of Sweden. The Depositary shall transmit certified copies to all Signatory States and States acceding to this Agreement.

For the Republic of Austria

For the Republic of Finland

For the Republic of Iceland

For the Principality of Liechtenstein

For the Kingdom of Norway

For the Kingdom of Sweden

For the Swiss Confederation

PROTOCOL 1

on the functions and powers of the EFTA Surveillance Authority which, through the application of Protocol 1 to the EEA Agreement, follow from the Acts referred to in the Annexes to that Agreement

HAVING REGARD to the EEA Agreement and, in particular, Protocol 1 thereto,

NOTING that paragraphs 4 (d) and 5 of Protocol 1 to the EEA Agreement contain references to the EFTA Surveillance Authority and the Standing Committee;

FURTHER NOTING that in paragraph 4 (d) of Protocol 1 to the EEA Agreement reference is made to procedures established among the EFTA States;

WHEREAS for the proper application of acts referred to in the Annexes to the EEA Agreement, it is necessary to establish among the EFTA States the functions corresponding to those of the EC Commission which, through the application of Protocol 1 to the EEA Agreement, should be carried out either by the EFTA Surveillance Authority or the Standing Committee, as well as to establish the procedures to be applied among the EFTA States for that purpose;

Article 1

1. Where the acts referred to in the Annexes to the EEA Agreement contain provisions on procedures under which the EC Commission:

- (a) informs a Member State whether a precautionary measure or a safeguard measure taken by a Member State was justified;
- (b) shall be consulted by a Member State before an exemption or derogation from a provision of an act is granted or undertaken by that State;
- (c) may, before an exemption or derogation from a provision of an act is granted or undertaken by a Member State, agree or authorize that State to do so, including, where necessary, to specify the conditions under which the authorization is granted or to lay down detailed rules concerning its implementation;
- (d) shall, where necessary, hold consultations with the Member States concerned or their competent authorities, in particular with a view to settling differences and disputes and, as the case may be, proposing appropriate solutions;
- (e) in the veterinary and phytosanitary field,
 - may make or arrange for assessments, tests and on-the-spot checks,
 - may give approvals, or the like, or make recommendations regarding plans, programmes, emergency vaccinations, high-risk areas, etc.,
 - shall draw up lists, such as lists of experts, approved zones, approved farms, etc., and, as the case may be, forward them to the Member States;

- (f) in the veterinary field,
 - may adopt appropriate measures in the case of disputes;
- (g) in the field of technical regulations, standards, testing and certification,
 - shall notify the Member States of national technical specifications in respect of which there is a presumption of conformity with the essential safety requirements and, as the case may be, initiate procedures when it considers that such a presumption of conformity must be withdrawn;
- (h) in the field of foodstuffs,
 - may decide whether certain conditions are satisfied;
- (i) in the field of energy,
 - shall implement the procedures provided for by Community law;
- (j) in the field of procurement,
 - may request information from the Member States or their competent authorities and/or shall determine the nature of any additional statistical information required,
 - may establish lists of the categories of activities or services which it considers to be covered by an exclusion,
 - shall lay down the conditions under which Contracting entities shall communicate to it the results of an awarding procedure;

those and comparable functions shall for the EFTA States be carried out by the EFTA Surveillance Authority in accordance with the procedures laid down in the acts referred to.

2. If the EC Commission is entrusted with other comparable functions, the corresponding functions shall also be carried out by the EFTA Surveillance Authority.

Article 2

1. The EFTA Surveillance Authority shall receive information with an EFTA State or a competent authority according to the EEA rules shall submit to it and pass on that information to the EC Commission.

2. The EFTA Surveillance Authority shall further receive corresponding information from the EC Commission for distribution to the EFTA States or their competent authorities.

Article 3

Where, in an act referred to in the Annexes to the EEA Agreement containing the procedures described in Article 1, the EC Commission shall submit a draft measure to be taken to, or otherwise consult, an EC

committee, the EFTA Surveillance Authority shall, according to corresponding procedures to be laid down by the Standing Committee, consult a corresponding committee, if any, set up or designated in accordance with the Agreement on a Standing Committee of the EFTA States.

Article 4

The EFTA Surveillance Authority shall, unless otherwise agreed with the EC Commission, concurrently with the EC Commission prepare, as appropriate, reports, assessments or the like with regard to the EFTA States, in the cases which through the application of paragraph 5 of Protocol 1 to the EEA Agreement follow from the acts referred to in the Annexes to that Agreement and which are not directly related to the functions of the Standing Committee set out in Protocol 1 to the Agreement on a Standing Committee of the EFTA States. The EFTA Surveillance Authority shall consult, and exchange views with, the EC Commission during the preparation of their respective reports, copies of which are to be sent to the EEA Joint Committee.

PROTOCOL 2

on the functions and powers of the EFTA Surveillance Authority in the field of procurement

Article 1

1. Without prejudice to Article 31 of this Agreement, the EFTA Surveillance Authority may invoke the procedure for which the present Article provides when, prior to a contract being concluded, it considers that a clear and manifest infringement of the provisions of the EEA Agreement in the field of procurement has been committed during a contract award procedure falling within the scope of the acts referred to in points 2 and 3 of Annex XVI to the EEA Agreement.

2. The EFTA Surveillance Authority shall notify the EFTA State and the contracting authority concerned of the reasons which have led it to conclude that a clear and manifest infringement has been committed and request its correction.

3. Within 21 days of receipt of the notification referred to in paragraph 2, the EFTA State concerned shall communicate to the EFTA Surveillance Authority:

- (a) its confirmation that the infringement has been corrected;
or
 - (b) a reasoned submission as to why no correction has been made;
or
 - (c) a notice to the effect that the contract award procedure has been suspended either by the contracting authority on its own initiative or on the basis of the powers specified in Article 2 (1) (a) of the act referred to in point 5 of Annex XVI to the EEA Agreement.
4. A reasoned submission in accordance with paragraph 3 (b) of this Article may rely among other matters on the fact that the alleged infringement is already the subject of judicial or other review proceedings

or of a review as referred to in Article 2 (8) of the act referred to in point 5 of Annex XVI to the EEA Agreement. In such a case, the EFTA State shall inform the EFTA Surveillance Authority of the result of those proceedings as soon as it becomes known.

5. Where notice has been given that a contract award procedure has been suspended in accordance with paragraph 3 (c) of this Article, the EFTA State shall notify the EFTA Surveillance Authority when the suspension is lifted or another contract procedure relating in whole or in part to the same subject matter is begun. That notification shall confirm that the alleged infringement has been corrected or include a reasoned submission as to why no correction has been made.

Article 2

1. Not later than 1 January 1996, the EFTA Surveillance Authority shall, together with an advisory committee composed of representatives of the EFTA States, review the manner in which the provisions of this Protocol and the provisions of the act referred to in point 5 of Annex XVI of the EEA Agreement have been implemented and, if necessary, make proposals for amendments. The committee shall have as chairman a representative of the EFTA Surveillance Authority. The committee shall be convened by its chairman either on his own initiative or at the request of one of its members.

2. By 1 March each year the EFTA States shall communicate to the EFTA Surveillance Authority information on the operation of their national review procedures during the preceding calendar year. The nature of the information shall be determined by the EFTA Surveillance Authority in consultation with the advisory committee.

PROTOCOL 3

on the functions and powers of the EFTA Surveillance Authority in the field of State aid

Article 1

1. The EFTA Surveillance Authority shall, in cooperation with the EFTA States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the EEA Agreement.

2. If, after giving notice to the parties concerned to submit their comments, the EFTA Surveillance Authority finds that aid granted by an EFTA State or through EFTA State resources is not compatible with the functioning of the EEA Agreement having regard to Article 61 of the EEA Agreement, or that such aid is being misused, it shall decide that the EFTA State concerned shall abolish or alter such aid within a period of time to be determined by the Authority.

If the EFTA State concerned does not comply with this decision within the prescribed time, the EFTA Surveillance Authority or any other interested EFTA State may, in derogation from Articles 31 and 32 of this Agreement, refer the matter to the EFTA Court directly.

On application by an EFTA State, the EFTA States may, by common accord, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the functioning of the EEA Agreement, in derogation from the provisions of Article 61 of the EEA Agreement, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the EFTA Surveillance Authority has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the EFTA States shall have the effect of suspending that procedure until the EFTA States, by common accord, have made their attitude known.

If, however, the EFTA States have not made their attitude known within three months of the said application being made, the EFTA Surveillance Authority shall give its decision on the case.

3. 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. If it considers that any such plan is not compatible with the functioning of the EEA Agreement having regard to Article 61 of the EEA Agreement, it shall without delay initiate the procedure provided for in paragraph 2. The State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

Article 2

1. An advisory committee shall assist the EFTA Surveillance Authority in its examination of aid granted for transport by rail, road and inland waterway. The committee shall have as chairman a representative of the EFTA Surveillance Authority and shall consist of representatives appointed by each EFTA State. Not less than 10 days' notice of meetings of the committee shall be given and such notice shall include details of the agenda. This period may be reduced for urgent cases.

2. The committee may examine, and give an opinion on, all questions concerning the operation of the provisions of the EEA Agreement on the granting of aid in the transport sector.

3. The committee shall be kept informed of the nature and amount of aid granted to transport undertaking and, generally, of all relevant details concerning such aid, as soon as the latter is notified to the EFTA Surveillance Authority in accordance with the provisions laid down in Annex XIII, Section I (iv), to the EEA Agreement governing the granting of aid in the transport sector.

PROTOCOL 4

on the functions and powers of the EFTA Surveillance Authority in the field of competition

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PART I

GENERAL RULES

CHAPTER I

*Introduction**Article 1*

This Protocol sets out provisions for the implementation of competition rules applicable to undertakings in the EEA Agreement, and in particular for the implementation of Protocols 21 to 25 to that Agreement.

Article 2

1. Chapters II to V, XIII and XIV apply to all sectors covered by the EEA Agreement unless otherwise provided.

2. Chapters II to IV shall not apply to agreements, decisions or concerted practices in the transport sector which have as their object or effect the fixing of transport rates and conditions, the limitation or control of the supply of transport or the sharing of transport markets; nor shall they apply to the abuse of a dominant position, within the meaning of Article 54 of the EEA Agreement, within the transport market. Such cases are covered by Chapters VI to XII.

3. Chapters II to V, XIII and XIV shall not apply to cases covered by Chapter XV, on the conditions set out therein.

Article 3

Chapter XVI sets out the transitional rules applicable for Chapters II to XV.

Article 4

The EFTA Surveillance Authority may, in accordance with Article 49 of this Agreement, submit to the Governments of the EFTA States proposals for amendments to this Protocol including its Appendices.

CHAPTER II

*General procedural rules implementing Articles 53 and 54 of the EEA Agreement**Article 1***Basic provision**

Without prejudice to Article 6 of this chapter and Article 3 of Chapter XVI, agreements, decisions and concerted practices of the kind described in Article 53 (1)

of the EEA Agreement and the abuse of a dominant position in the market, within the meaning of Article 54 of the EEA Agreement, shall be prohibited, no prior decision to that effect being required.

*Article 2***Negative clearance**

Upon application by the undertakings or associations of undertakings concerned, the EFTA Surveillance Authority may certify that, on the basis of the facts in its possession, there are no grounds pursuant to Article 53 (1) or Article 54 of the EEA Agreement for action on its part in respect of an agreement, decision or practice.

*Article 3***Termination of infringements**

1. Where the EFTA Surveillance Authority, upon application or upon its own initiative, finds that there is infringement of Article 53 or Article 54 of the EEA Agreement, it may by decision require the undertakings or associations of undertakings concerned to bring such infringement to an end.

2. Those entitled to make application are:

- (a) EFTA States;
- (b) natural or legal persons who claim a legitimate interest.

3. Without prejudice to the other provisions of this Protocol, the EFTA Surveillance Authority may, before taking a decision pursuant to paragraph 1, address to the undertakings or associations of undertakings concerned recommendations for termination of the infringement.

*Article 4***Notification of new agreements, decisions and practices**

1. Agreements, decisions and concerted practices of the kind described in Article 53 (1) of the EEA Agreement which come into existence after the entry into force of the EEA Agreement and in respect of which the parties seek application of Article 53 (3) of the EEA Agreement shall be notified to the EFTA Surveillance Authority pursuant to Article 56 of the EEA Agreement, the rules referred to in Articles 1 to 3 of Protocol 21 and the rules referred to in Protocol 23 to the EEA Agreement, as well as in Chapters III, VI, VII, IX, X, XI, XII and XV. Until they have been notified, no decision in application of Article 53 (3) may be taken.

2. Paragraph 1 shall not apply to agreements, decisions and concerted practices where:

- (a) the only parties thereto are undertakings from one EC Member State or from one EFTA State and the agreements, decisions or concerted practices do not relate either to imports or to exports between Contracting Parties to the EEA Agreement;
- (b) not more than two undertakings are party thereto, and the agreements only:
 - (i) restrict the freedom of one party to the contract in determining the prices or conditions of business upon which the goods which he has obtained from the other party to the contract may be resold;
 - or
 - (ii) impose restrictions on the exercise of the rights of the assignee or user of industrial property rights — in particular patents, utility models, designs on trademarks — or of the person entitled under a contract to the assignment, or grant, of the right to use a method of manufacture or knowledge relating to the use and to the application of industrial processes;
- (c) they have as their sole object:
 - (i) the development or uniform application of standards or types;
 - or
 - (ii) joint research or development;
 - or
 - (iii) specialization in the manufacture of products including agreements necessary for achieving this:
 - where the products which are the subject of specialization do not, in a substantial part of the territory covered by this Agreement, represent more than 15 % of the volume of business done in identical products or those considered by consumers to be similar by reason of their characteristics, price and use,
 - and
 - where the total annual turnover of the participating undertakings does not exceed ECU 200 million.

These agreements, decisions and concerted practices may be notified to the EFTA Surveillance Authority pursuant to Article 56 of the EEA Agreement, the rules referred to in Articles 1 to 3 of Protocol 21 and the rules referred to in Protocol 23 to the EEA Agreement, as well as in Chapters III, VI, VII, IX, X, XI, XII and XV.

Article 5

Notification of existing agreements, decisions and practices

(See Article 1 of Chapter XVI.)

Article 6

Decisions pursuant to Article 53 (3) of the EEA Agreement

1. Whenever the EFTA Surveillance Authority takes a decision pursuant to Article 53 (3) of the EEA Agreement, it shall specify therein the date from which the decision shall take effect. Such date shall not be earlier than the date of notification.
2. The second sentence of paragraph 1 shall not apply to agreements, decisions or concerted practices falling within Article 4 (2) of this chapter and Article 1 (2) of Chapter XVI, nor to those falling within Article 1 (1) of Chapter XVI which have been notified within the time limit specified in Article 1 (1) of Chapter XVI.

Article 7

Special provisions for existing agreements, decisions and practices

(See Article 3 of Chapter XVI.)

Article 8

Duration and revocation of decisions pursuant to Article 53 (3)

1. A decision in application of Article 53 (3) of the EEA Agreement shall be issued for a specified period and conditions and obligations may be attached thereto.
2. A decision may on application be renewed if the requirements of Article 53 (3) of the EEA Agreement continue to be satisfied.
3. The EFTA Surveillance Authority may revoke or amend its decision or prohibit specified acts by the parties:
 - (a) where there has been a change in any of the facts which were basic to the making of the decision;
 - (b) where the parties commit a breach of any obligation attached to the decision;
 - (c) where the decision is based on incorrect information or was induced by deceit;
 - (d) where the parties abuse the exemption from the provisions of Article 53 (1) of the EEA Agreement granted to them by the decision.

In cases to which subparagraphs (b), (c) or (d) apply, the decision may be revoked with retroactive effect.

Article 9

Powers

1. Subject to review of its decision by the EFTA Court in accordance with Article 108 (2) of the EEA Agreement

and with the relevant provisions of this Agreement, the EFTA Surveillance Authority shall have sole power to declare Article 53 (1) inapplicable pursuant to Article 53 (3) of the EEA Agreement on the conditions set out in Article 56 of the EEA Agreement.

2. The EFTA Surveillance Authority shall have power to apply Article 53 (1) and Article 54 of the EEA Agreement; this power may be exercised notwithstanding that the time limits specified in Articles 1 (1) and 3 (2) of Chapter XVI relating to notification have not expired.

3. As long as the EFTA Surveillance Authority has not initiated any procedure pursuant to Articles 2, 3 or 6, the authorities of the EFTA States shall remain competent to apply Article 53 (1) and Article 54; they shall remain competent in this respect notwithstanding that the time limits specified in Articles 1 (1) and 3 (2) of Chapter XVI relating to notification have not expired.

Article 10

Liaison with the authorities of the EFTA States

1. The EFTA Surveillance Authority shall forthwith transmit to the competent authorities of the EFTA States a copy of the applications and notifications together with copies of the most important documents lodged with the EFTA Surveillance Authority for the purpose of establishing the existence of infringements of Articles 53 or 54 of the EEA Agreement or of obtaining negative clearance or a decision in application of Article 53 (3).

The EFTA Surveillance Authority shall forthwith transmit to the competent authorities of the EFTA States a copy of notifications, complaints and information on opening of ex officio procedures received from the EC Commission pursuant to Articles 2 and 10 of Protocol 23 to the EEA Agreement.

The EFTA Surveillance Authority shall forthwith transmit to the competent authorities of the EFTA States a copy of documents received from the EC Commission pursuant to Article 7 of Protocol 23 to the EEA Agreement.

2. The EFTA Surveillance Authority shall carry out the procedure set out in the first subparagraph of paragraph 1 in close and constant liaison with the competent authorities of the EFTA States; such authorities shall have the right to express their views upon that procedure.

3. An Advisory Committee on Competition shall be consulted prior to the taking of any decision following upon a procedure under the first subparagraph of paragraph 1, and of any decision concerning the renewal, amendment or revocation of a decision pursuant to Article 53 (3) of the EEA Agreement.

The Advisory Committee shall be consulted prior to a proposal referred to in Article 22.

4. The Advisory Committee shall be composed of officials competent in the matter of restrictive practices and monopolies. Each EFTA State shall appoint an official to represent it who, if prevented from attending, may be replaced by another official.

The EC Commission and the EC Member States shall be entitled to be present in the Advisory Committee and to express their views therein. However, their representatives shall not have the right to vote.

5. The consultation shall take place at a joint meeting convened by the EFTA Surveillance Authority; such meeting shall be held not earlier than 14 days after dispatch of the notice convening it. The notice shall, in respect of each case to be examined, be accompanied by a summary of the case together with an indication of the most important documents, and a preliminary draft decision.

In view of the participation provided for in the second subparagraph of paragraph 4, the EC Commission shall receive an invitation to the meeting and the relevant information as provided for in Article 6 of Protocol 23 to the EEA Agreement.

6. The Advisory Committee may deliver an opinion notwithstanding that some of its members or their alternates are not present. A report of the outcome of the consultative proceedings shall be annexed to the draft decision. It shall not be made public.

Article 11

Requests for information

1. In carrying out the duties assigned to it by Articles 55 and 58 of the EEA Agreement, by provisions set out in Protocol 23 and in Annex XIV to the EEA Agreement or by the provisions of this chapter, the EFTA Surveillance Authority may obtain all necessary information from the Governments and competent authorities of the EFTA States and from undertakings and associations of undertakings.

2. When sending a request for information to an undertaking or association of undertakings, the EFTA Surveillance Authority shall at the same time forward a copy of the request to the competent authority of the EFTA State in whose territory the seat of the undertaking or association of undertakings is situated.

3. In its request the EFTA Surveillance Authority shall state the legal basis and the purpose of the request and also the penalties provided for in Article 15 (1) (b) for supplying incorrect information.

4. The owners of the undertakings or their representatives and, in the case of legal persons, companies or firms, or of associations having no legal personality, the persons authorized to represent them by law or by their constitution, shall supply the information requested.

5. Where an undertaking or association of undertakings does not supply the information requested within the time limit fixed by the EFTA Surveillance Authority, or supplies incomplete information, the EFTA Surveillance Authority shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and indicate the penalties provided for in Article 15 (1) (b) and Article 16 (1) (c) and the right to have the decision reviewed by the EFTA Court in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, in particular Article 36.

6. The EFTA Surveillance Authority shall at the same time forward a copy of its decision to the competent authority of the EFTA State in whose territory the seat of the undertaking or association of undertakings is situated.

Article 12

Inquiry into sectors of the economy

1. If any sector of the economy the trend of trade, price movements, inflexibility of prices or other circumstances suggest that in the economic sector concerned competition is being restricted or distorted within the territory covered by the EEA Agreement, the EFTA Surveillance Authority may decide, in accordance with the provisions of Protocol 23 to the EEA Agreement, to conduct a general inquiry into that economic sector and in the course thereof may request undertakings in the sector concerned to supply the information necessary for giving effect to the principles formulated in Articles 53 and 54 of the EEA Agreement and for carrying out the duties entrusted to the EFTA Surveillance Authority.

2. The EFTA Surveillance Authority may in particular request every undertaking or association of undertakings in the economic sector concerned to communicate to it all agreements, decisions and concerted practices which are exempt from notification by virtue of Article 4 (2) of this chapter and Article 1 (2) of Chapter XVI.

3. When making inquiries pursuant to paragraph 2, the EFTA Surveillance Authority shall also request undertakings or groups of undertakings whose size suggests that they occupy a dominant position within the territory covered by the EEA Agreement or a substantial part thereof to supply to the EFTA Surveillance Authority such particulars of the structure of the undertakings and

of their behaviour as are requisite to an appraisal of their position in the light of Article 54 of the EEA Agreement.

4. Article 10 (3) to (6) and Articles 11, 13 and 14 shall apply correspondingly.

Article 13

Investigations by the authorities of the EFTA States

1. At the request of the EFTA Surveillance Authority, the competent authorities of the EFTA States shall undertake the investigations which the EFTA Surveillance Authority considers to be necessary pursuant to Article 14 (1), or which it has ordered by decision pursuant to Article 14 (3). The officials of the competent authorities of the EFTA States responsible for conducting these investigations shall exercise their powers upon production of an authorization in writing issued by the competent authority of the EFTA State in whose territory the investigation is to be made. Such authorization shall specify the subject matter and purpose of the investigation.

2. If so requested by the EFTA Surveillance Authority or by the competent authority of the EFTA State in whose territory the investigation is to be made, the officials of the EFTA Surveillance Authority may assist the officials of such authority in carrying out their duties.

Article 14

Investigating powers of the EFTA Surveillance Authority

1. In carrying out the duties assigned to it by Articles 55 and 58 of the EEA Agreement, by the provisions set out in Protocol 23 and in Annex XIV to the EEA Agreement or by the provisions of this chapter, the EFTA Surveillance Authority may undertake all necessary investigations into undertakings and associations of undertakings in the territory of an EFTA State. To this end the officials authorized by the EFTA Surveillance Authority are empowered:

- (a) to examine the books and other business records;
- (b) to take copies of or extracts from the books and business records;
- (c) to ask for oral explanations on the spot;
- (d) to enter any premises, land and means of transport of undertakings.

2. The officials of the EFTA Surveillance Authority authorized for the purpose of these investigations shall exercise their powers upon production of an authorization in writing specifying the subject matter and purpose of the investigation and the penalties provided

for in Article 15 (1) (c) in cases where production of the required books or other business records is incomplete. In good time before the investigation, the EFTA Surveillance Authority shall inform the competent authority of the EFTA State in whose territory the same is to be made of the investigation and of the identity of the authorized officials. The EFTA Surveillance Authority shall also provide such an authorization to representatives of the EC Commission who shall take part in the investigation in accordance with Article 8 (4) of Protocol 23 to the EEA Agreement.

3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the EFTA Surveillance Authority. The decision shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Article 15 (1) (c) and Article 16 (1) (d) and the right to have the decision reviewed by the EFTA Court in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, in particular Article 36.

4. The EFTA Surveillance Authority shall take decisions referred to in paragraph 3 after consultation with the competent authority of the EFTA State in whose territory the investigation is to be made.

5. Officials of the competent authority of the EFTA State in whose territory the investigation is to be made may, at the request of such authority or of the EFTA Surveillance Authority, assist the officials of the EFTA Surveillance Authority in carrying out their duties.

6. Where an undertaking opposes an investigation ordered pursuant to this Article, the EFTA State concerned shall afford the necessary assistance to the officials authorized by the EFTA Surveillance Authority to enable them to make their investigation.

7. EFTA States shall, after consultation with the EFTA Surveillance Authority, take the necessary measures to this end within six months of the entry into force of the EEA Agreement.

Article 15

Fines

1. The EFTA Surveillance Authority may by decision impose on undertakings or associations of undertakings fines of from ECU 100 to 5 000 where, intentionally or negligently:

- (a) they supply incorrect or misleading information in an application pursuant to Article 2 or in a notification pursuant to Article 4 of this chapter or Article 1 of Chapter XVI;

or

- (b) they supply incorrect information in response to a request made pursuant to Article 11 (3) or (5) or to

Article 12, or do not supply information within the time limit fixed by a decision taken pursuant to Article 11 (5);

or

- (c) they produce the required books or other business records in incomplete form during investigations pursuant to Article 13 or 14, or refuse to submit to an investigation ordered by decision issued in implementation of Article 14 (3).

2. The EFTA Surveillance Authority may by decision impose on undertakings or associations of undertakings fines of ECU from 1 000 to 1 000 000, or a sum in excess thereof but not exceeding 10 % of the turnover in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently:

- (a) they infringe Article 53 (1) or Article 54 of the EEA Agreement;

or

- (b) they commit a breach of any obligation imposed pursuant to Article 8 (1).

In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.

3. Article 10 (3) to (6) shall apply.

4. Decisions taken pursuant to paragraphs 1 and 2 shall not be of a criminal law nature.

5. The fines provided for in paragraph 2 (a) shall not be imposed in respect of acts taking place:

- (a) after notification to the EFTA Surveillance Authority and before its decision in application of Article 53 (3) of the EEA Agreement, provided they fall within the limits of the activity described in the notification;
- (b) before notification and in the course of agreements, decisions or concerted practices in existence at the date of entry into force of the EEA Agreement, provided that notification was effected within the time limits specified in Articles 1 (1) and 3 (2) of Chapter XVI.

6. Paragraph 5 shall not have effect where the EFTA Surveillance Authority has informed the undertakings concerned that after preliminary examination it is of the opinion that Article 53 (1) of the EEA Agreement applies and that application of Article 53 (3) is not justified.

Article 16

Periodic penalty payments

1. The EFTA Surveillance Authority may by decision impose on undertakings or associations of undertakings

periodic penalty payments of from ECU 50 to 1 000 per day, calculated from the date appointed by the decision, in order to compel them:

- (a) to put an end to an infringement of Articles 53 or 54 of the EEA Agreement, in accordance with a decision taken pursuant to Article 3 of this chapter;
- (b) to refrain from any act prohibited under Article 8 (3);
- (c) to supply complete and correct information which it has requested by decision taken pursuant to Article 11 (5);
- (d) to submit to an investigation which it has ordered by decision taken pursuant to Article 14 (3).

2. Where the undertakings or associations of undertakings have satisfied the obligation which it was the purpose of the periodic penalty payment to enforce, the EFTA Surveillance Authority may fix the total amount of the periodic penalty payment at a lower figure than that which would arise under the original decision.

3. Article 10 (3) to (6) shall apply.

Article 17

Review by the EFTA Court

The EFTA Court, in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, shall have unlimited jurisdiction within the meaning of Article 35 of this Agreement to review decisions whereby the EFTA Surveillance Authority has fixed a fine or periodic penalty payment; it may cancel, reduce or increase the fine or periodic penalty payment imposed.

Article 18

Ecu

For the purposes of applying Articles 15 to 17, 'ECU' means the ecu as defined by the competent authorities of the European Communities.

Article 19

Hearing of the parties and of third persons

1. Before taking decisions as provided for in Articles 2, 3, 6, 8, 15 and 16 of this chapter and in Article 3 of Chapter XVI, the EFTA Surveillance Authority shall give the undertakings or associations of undertakings concerned the opportunity of being heard on the matters to which the EFTA Surveillance Authority has taken objection.

2. If the EFTA Surveillance Authority or the competent authorities of the EFTA States consider it necessary, they may also hear other natural or legal persons. Applications to be heard on the part of such persons shall, where they show a sufficient interest, be granted.

3. Where the EFTA Surveillance Authority intends to give negative clearance pursuant to Article 2 or take a decision in application of Article 53 (3) of the EEA Agreement, it shall publish a summary of the relevant application or notification and invite all interested third parties to submit their observations within a time limit which it shall fix being not less than one month. Publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 20

Professional secrecy

1. Without prejudice to Article 9 (3) of Protocol 23 to the EEA Agreement, information acquired as a result of the application of Articles 11, 12, 13 and 14 of this chapter or of Article 58 of the EEA Agreement and Protocol 23 thereto shall be used only for the purpose of the relevant request or investigation.

2. Without prejudice to the provisions of Articles 19 and 21, the EFTA Surveillance Authority and the competent authorities of the EFTA States, their officials and other servants shall not disclose information acquired by them as a result of the application of this Protocol or Article 58 of the EEA Agreement and Protocol 23 thereto and of the kind covered by the obligation of professional secrecy. This obligation shall also apply to the representatives of the EC Commission and of the EC Member States who participate in the Advisory Committee pursuant to Article 10 (4) and in the hearing pursuant to Article 8 (2) of Chapter IV.

3. The provisions of paragraphs 1 and 2 shall not prevent publication of general information or surveys which do not contain information relating to particular undertakings or associations of undertakings.

Article 21

Publication of decisions

1. The EFTA Surveillance Authority shall publish the decisions which it takes pursuant to Articles 2, 3, 6 and 8 of this chapter and to Article 3 of Chapter XVI.

2. The publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

*Article 22***Special provisions**

The EFTA Surveillance Authority may submit to the attention of the EFTA States, for consultation within the Standing Committee in accordance with Article 2 of the Agreement on a Standing Committee of the EFTA States, proposals for exempting, in accordance with Article 53 (3) of the EEA Agreement, certain categories of agreement, decision and concerted practice from the prohibition set out in Article 53 (1) of that Agreement.

*CHAPTER III****Form, content and other details concerning applications and notifications****Article 1***Persons entitled to submit applications and notifications**

1. Any undertaking which is party to agreements, decisions or practices of the kind described in Articles 53 and 54 of the EEA Agreement may submit an application pursuant to Article 2 of Chapter II or a notification pursuant to Article 4 of Chapter II and Article 1 of Chapter XVI. Where the application or notification is submitted by some, but not all, of the undertakings concerned, they shall give notice to the others.
2. Where applications and notifications pursuant to Articles 2, 3 (1), 3 (2) (b) and 4 of Chapter II and Article 1 of Chapter XVI are signed by representatives of undertakings, or associations of undertakings, or natural or legal persons such representatives shall produce written proof that they are authorized to act.
3. Where a joint application or notification is submitted a joint representative should be appointed.

*Article 2***Submission of applications and notifications**

1. Nine copies of each application and notification shall be submitted to the EFTA Surveillance Authority.
2. The supporting documents shall be either original or copies; copies must be certified as true copies of the original.
3. Applications and notifications shall be in an official language of an EFTA State or the European Community. Supporting documents shall be submitted in their original language. Where the original language is not an official language of an EFTA State or the European Community, a translation in one of these languages shall be attached.

*Article 3***Effective date of submission of applications and registrations**

The date of submission of an application or notification shall, without prejudice to Article 11 of Protocol 23 to the EEA Agreement, be the date on which it is received by the EFTA Surveillance Authority. Where, however, the application or notification is sent by registered post, it shall be deemed to have been received on the date shown on the postmark of the place of posting.

*Article 4***Content of applications and notifications**

1. Applications pursuant to Article 2 of Chapter II relating to the applicability of Article 53 (1) of the EEA Agreement and notifications pursuant to Article 4 of Chapter II or Article 1 (2) of Chapter XVI shall be submitted on forms issued for that purpose by the Governments of the EFTA States, by common accord, as shown in Appendix 1, or by the EC Commission.
2. Applications and notifications shall contain the information asked for in these forms.
3. Several participating undertakings may submit an application or notification on a single form.
4. Applications pursuant to Article 2 of Chapter II relating to the applicability of Article 54 of the EEA Agreement shall contain a full statement of the facts, specifying, in particular, the practice concerned and the position of the undertaking or undertakings within the territory covered by the EEA Agreement or a substantial part thereof in regard to products or services to which the practice relates. The forms issued for that purpose by the Governments of the EFTA States, by common accord, as shown in Appendix 1, or by the EC Commission may be used.

*Article 5***Special provisions**

The EFTA Surveillance Authority may submit to the Governments of the EFTA States, in accordance with the provisions of Article 49 of this Agreement, proposals for forms and complementary notes.

*CHAPTER IV****Hearings provided for in Article 19 (1) and (2) of Chapter II****Article 1*

Before consulting the Advisory Committee on Competition, the EFTA Surveillance Authority shall hold a hearing pursuant to Article 19 (1) of Chapter II.

Article 2

1. The EFTA Surveillance Authority shall inform undertakings and associations of undertakings in writing of the objections raised against them. The communication shall be addressed to each of them or to a joint agent appointed by them.

2. The EFTA Surveillance Authority may inform the parties by giving notice in the EEA Section of the *Official Journal of the European Communities*, if from the circumstances of the case this appears appropriate, in particular where notice is to be given to a number of undertakings but no joint agent has been appointed. The notice shall have regard to the legitimate interest of the undertakings in the protection of their business secrets.

3. A fine or a periodic penalty payment may be imposed on an undertaking or association of undertakings only if the objections were notified in the manner provided for in paragraph 1.

4. The EFTA Surveillance Authority shall, when giving notice of objections, fix a time limit up to which the undertakings and associations of undertakings may inform the EFTA Surveillance Authority of their views.

Article 3

1. Undertakings and associations of undertakings shall, within the appointed time limit, make known in writing their views concerning the objections raised against them.

2. They may in their written comments set out all matters relevant to their defence.

3. They may attach any relevant documents in proof of the facts set out. They may also propose that the EFTA Surveillance Authority hear persons who may corroborate those facts.

Article 4

The EFTA Surveillance Authority shall in its decisions deal only with those objections raised against undertakings and associations of undertakings in respect of which they have been afforded the opportunity of making known their views.

Article 5

If natural or legal persons showing a sufficient interest apply to be heard pursuant to Article 19 (2) of Chapter II, the EFTA Surveillance Authority shall afford them the opportunity of making known their views in writing within such time limit as it shall fix.

Article 6

Where the EFTA Surveillance Authority, having received an application pursuant to Article 3 (2) of Chapter II,

considers that on the basis of the information in its possession there are insufficient grounds for granting the application, it shall inform the applicants of its reasons and fix a time limit for them to submit any further comments in writing.

Article 7

1. The EFTA Surveillance Authority shall afford to persons who have so requested in their written comments the opportunity to put forward their arguments orally, if those persons show a sufficient interest or if the EFTA Surveillance Authority proposes to impose on them a fine or periodic penalty payment.

2. The EFTA Surveillance Authority may likewise afford to any other person the opportunity of orally expressing his views.

Article 8

1. The EFTA Surveillance Authority shall summon the persons to be heard to attend on such date as it shall appoint.

2. It shall forthwith transmit a copy of the summons to the competent authorities of the EFTA States, who may appoint an official to take part in the hearing. Likewise, the EFTA Surveillance Authority shall invite the EC Commission to be represented at the hearing. The invitation shall also extend to the EC Member States.

Article 9

1. Hearings shall be conducted by the persons appointed by the EFTA Surveillance Authority for that purpose.

2. Persons summoned to attend shall appear either in person or be represented by legal representatives or by representatives authorized by their constitution. Undertakings and associations of undertakings may moreover be represented by a duly authorized agent appointed from among their permanent staff.

Persons heard by the EFTA Surveillance Authority may be assisted by lawyers or advisers who are entitled to plead before the EFTA Court, or by other qualified persons.

3. Hearings shall not be public. Persons shall be heard separately or in the presence of other persons summoned to attend. In the latter case, regard shall be had to the legitimate interest of the undertakings in the protection of their business secrets.

4. The essential content of the statements made by each person heard shall be recorded in minutes which shall be read and approved by him.

Article 10

Without prejudice to Article 2 (2), information and summonses from the EFTA Surveillance Authority shall be sent to the addressees by registered letter with acknowledgement of receipt, or shall be delivered by hand against receipt.

Article 11

1. In-fixing the time limits provided for in Articles 2, 5 and 6, the EFTA Surveillance Authority shall have regard both to the time required for preparation of comments and to the urgency of the case. The time limit shall be not less than two weeks; it may be extended.

2. Time limits shall run from the day following receipt of a communication or delivery thereof by hand.

3. Written comments must reach the EFTA Surveillance Authority or be dispatched by registered letter before expiry of the time limit. Where the time limit would expire on a Sunday or public holiday, it shall be extended up to the end of the next following working day. For the purpose of calculating this extension, public holidays shall, in cases where the relevant date is the date of receipt of written comments, be those set out in Appendix 2 to this Protocol, and in cases where the relevant date is the date of dispatch, those appointed by law in the country of dispatch.

CHAPTER V

Limitation periods in proceedings and the enforcement of sanctions under the rules relating to transport and competition as contained in Chapters II to IV and VI to XIV

*Article 1**Limitation periods in proceedings*

1. The power of the EFTA Surveillance Authority to impose fines or penalties for infringements of the rules of the EEA Agreement relating to transport or competition shall be subject to the following limitation periods:

- (a) three years in the case of infringements of provisions concerning applications or notifications of undertakings or associations of undertakings, requests for information, or the carrying out of investigations;
- (b) five years in the case of all other infringements.

2. Time shall begin to run upon the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run upon the day on which the infringement ceases.

*Article 2**Interruption of the limitation period in proceedings*

1. Any action taken by the EFTA Surveillance Authority, by the EC Commission at the request of the EFTA Surveillance Authority pursuant to Article 8 of Protocol 23 to the EEA Agreement, or by any EFTA State, acting at the request of the EFTA Surveillance Authority, for the purpose of the preliminary investigation or proceedings in respect of an infringement shall interrupt the limitation period in proceedings. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which have participated in the infringement.

Actions which interrupt the running of the period shall include in particular the following:

- (a) written requests for information by the EFTA Surveillance Authority, or by the competent authority of an EFTA State acting at the request of the EFTA Surveillance Authority; or a decision by the EFTA Surveillance Authority requiring the requested information;
- (b) written authorizations to carry out investigations issued to their officials by the EFTA Surveillance Authority or by the competent authority of any EFTA State at the request of the EFTA Surveillance Authority; or a decision by the EFTA Surveillance Authority ordering an investigation;
- (c) the commencement of proceedings by the EFTA Surveillance Authority;
- (d) notification of the EFTA Surveillance Authority's statement of objections.

2. The interruption of the limitation period shall apply for all the undertakings or associations of undertakings which have participated in the infringement.

3. Each interruption shall start time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the EFTA Surveillance Authority having imposed a fine or a penalty; that period shall be extended by the time during which limitation is suspended pursuant to Article 3.

*Article 3**Suspension of the limitation period in proceedings*

The limitation period in proceedings shall be suspended for as long as the decision of the EFTA Surveillance Authority is the subject of proceedings pending before the EFTA Court in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement.

*Article 4***Limitation period for the enforcement of sanctions**

1. The power of the EFTA Surveillance Authority to enforce decisions imposing fines, penalties, or periodic payments for infringements of the rules of the EEA Agreement relating to transport or competition shall be subject to a limitation period of five years.
2. Time shall begin to run upon the day on which the decision becomes final.

*Article 5***Interruption of the limitation period for the enforcement of sanctions**

1. The limitation period for the enforcement of sanctions shall be interrupted:
 - (a) by notification of a decision varying the original amount of the fine, penalty or periodic penalty payments or refusing an application for variation;
 - (b) by any sanction of the EFTA Surveillance Authority or of an EFTA State at the request of the EFTA Surveillance Authority, for the purpose of enforcing payments, of a fine, penalty or periodic penalty payment.
2. Each interruption shall start time running afresh.

*Article 6***Suspension of the limitation period for the enforcement of sanctions**

The limitation period for the enforcement of sanctions shall be suspended for so long as:

- (a) time to pay is allowed; or
- (b) enforcement of payment is suspended pursuant to a decision of the EFTA Court in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement.

PART II**TRANSPORT****CHAPTER VI*****Application of rules of competition to transport by rail, road and inland waterway***

Due to the division of the text of Regulation (EEC) No 1017/68 between Annex XIV to the EEA Agreement (substantive rules) and the present chapter (procedural rules), the text, as adapted, of Articles 1 to 5 and Articles 7 to 9 is to be found in the act referred to in

point 10 of Annex XIV to the EEA Agreement (Regulation (EEC) No 1017/68). The EFTA Surveillance Authority shall decide on these cases in accordance with the provisions of Article 56 of the EEA Agreement, in particular paragraph (1) (a) and (b) and paragraph (3).

Articles 1 to 5

(No text)

*Article 6***Agreements intended to reduce disturbances resulting from the structure of the transport market**

1. Until such time as appropriate measures to ensure a stable transport market are introduced, the prohibition laid down in Article 2 of the act referred to in point 10 of Annex XIV to the EEA Agreement (Regulation (EEC) No 1017/68) may be declared inapplicable to any agreement, decision or concerted practice which tends to reduce disturbances on the market in question.
2. A decision not to apply the prohibition laid down in Article 2 of the said act, made in accordance with the procedure laid down in Article 14, may not be taken until the Standing Committee has found on the basis of a report by the EFTA Surveillance Authority, that a state of crisis exists in all or part of a transport market.
3. Without prejudice to the provisions of paragraph 2, the prohibition in Article 2 of the said act may be declared inapplicable only where:
 - (a) the agreement, decision or concerted practice in question does not impose upon the undertakings concerned any restriction not indispensable to the reduction of disturbances;
 - and
 - (b) does not make it possible for such undertakings to eliminate competition in respect of a substantial part of the transport market concerned.

Articles 7 to 9

(No text)

*Article 10***Procedures on complaint or on the EFTA Surveillance Authority's own initiative**

Acting on receipt of a complaint or on its own initiative, the EFTA Surveillance Authority shall initiate procedures to terminate any infringement of the provisions of Article 2 or Article 8 of the act referred to in point 10 of Annex XIV to the EEA Agreement (Regulation (EEC) No 1017/68) or to enforce Article 4 (2) of that act.

Complaints may be submitted by:

- (a) EFTA States;
- (b) natural or legal persons who claim a legitimate interest.

Article 11

Result of procedures on complaint or on the EFTA Surveillance Authority's own initiative

1. Where the EFTA Surveillance Authority finds that there has been an infringement of Article 2 or Article 8 of the act referred to in point 10 of Annex XIV to the EEA Agreement (Regulation (EEC) No 1017/68), it may by decision require the undertakings or associations of undertakings concerned to bring such infringement to an end.

Without prejudice to the other provisions of this chapter and the said act, the EFTA Surveillance Authority may, before taking a decision under the preceding subparagraph, address to the undertakings or associations of undertakings concerned recommendations for termination of the infringement.

2. Paragraph 1 shall apply also to cases falling within Article 4 (2) of the said act.

3. If the EFTA Surveillance Authority, acting on a complaint received, concludes that on the evidence before it there are no grounds for intervention pursuant to Article 2, Article 4 (2) or Article 8 of the said act in respect of any agreement, decision or concerted practice, it shall issue a decision rejecting the complaint as unfounded.

4. If the EFTA Surveillance Authority, whether acting on a complaint received or on its own initiative, concludes that an agreement, decision or concerted practice satisfies the provisions both of Article 2 and of Article 5 of the said act, it shall issue a decision applying Article 5. Such decision shall indicate the date from which it is to take effect. This date may be prior to that of the decision.

Article 12

Application of Article 5 of the act referred to in point 10 of Annex XIV to the EEA Agreement (Regulation (EEC) No 1017/68) — Objections

1. Undertakings and associations of undertakings which seek application of Article 5 of the act referred to in point 10 of Annex XIV to the EEA Agreement (Regulation (EEC) No 1017/68) in respect of agreements, decisions and concerted practices falling within the

provisions of Article 2 of the said act to which they are parties may submit applications to the EFTA Surveillance Authority.

2. If the EFTA Surveillance Authority judges an application admissible and is in possession of all the available evidence, and no action pursuant to Article 10 has been taken against the agreement, decision or concerted practice in question, then it shall publish as soon as possible in the EEA Section of the *Official Journal of the European Communities* a summary of the application and invite all interested third parties to submit their comments to the EFTA Surveillance Authority within 30 days. Such publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

3. Unless the EFTA Surveillance Authority notifies applicants, within 90 days from the date of such publication in the EEA Section of the *Official Journal of the European Communities*, that there are serious doubts as to the applicability of Article 5 of the said act, the agreement, decision or concerted practice shall be deemed exempt, in so far as it conforms with the description given in the application, from the prohibition for the time already elapsed and for a maximum of three years from the date of publication in the EEA Section of the *Official Journal of the European Communities*.

If the EFTA Surveillance Authority finds, after expiry of the 90-day time limit, but before expiry of the three-year period, that the conditions for applying Article 5 of the said act are not satisfied, it shall issue a decision declaring that the prohibition in Article 2 of the said act is applicable. Such decision may be retroactive where the parties concerned have given inaccurate information or where they abuse the exemption from the provisions of Article 2 of the said act.

4. If, within the 90-day time limit, the EFTA Surveillance Authority notifies applicants as referred to in the first subparagraph of paragraph 3, it shall examine whether the provisions of Article 2 and of Article 5 of the said act are satisfied.

If it finds that the provisions of Article 2 and of Article 5 of the said act are satisfied it shall issue a decision applying Article 5. The decision shall indicate the date from which it is to take effect. This date may be prior to that of the application.

Article 13

Duration and revocation of decisions applying Article 5 of the act referred to in point 10 of Annex XIV to the EEA Agreement (Regulation (EEC) No 1017/68)

1. Any decision applying Article 5 of the said act taken under Article 11 (4) or under the second subparagraph of

Article 12 (4) shall indicate the period for which it is to be valid; normally such period shall not be less than six years. Conditions and obligations may be attached to the decision.

2. The decision may be renewed if the conditions for applying Article 5 of the said act continue to be satisfied.

3. The EFTA Surveillance Authority may revoke or amend its decision or prohibit specified acts by the parties:

- (a) where there has been a change in any of the facts which were basic to the making of the decision;
- (b) where the parties commit a breach of any obligation attached to the decision;
- (c) where the decision is based on incorrect information or was induced by deceit;
- (d) where the parties abuse the exemption from the provisions of Article 2 of the said act granted to them by the decision.

In cases falling within (b), (c) or (d), the decision may be revoked with retroactive effect.

Article 14

Decisions applying Article 6

1. Any agreement, decision or concerted practice covered by Article 2 of the act referred to in point 10 of Annex XIV to the EEA Agreement (Regulation (EEC) No 1017/68) in respect of which the parties seek application of Article 6 shall be notified to the EFTA Surveillance Authority.

2. Any decision by the EFTA Surveillance Authority to apply Article 6 of the said act shall have effect only from the date of its adoption. It shall state the period for which it is to be valid. Such period shall not exceed three years from the finding of a state of crisis by the Standing Committee provided for in Article 6 (2).

3. Such decision may be renewed by the EFTA Surveillance Authority if the Standing Committee again finds, acting pursuant to the procedure provided for in Article 6 (2), that there is a state of crisis and if the other conditions laid down in Article 6 continue to be satisfied.

4. Conditions and obligations may be attached to the decision.

5. The decision of the EFTA Surveillance Authority shall cease to have effect not later than six months from the coming into operation of the measures referred to in Article 6 (1).

6. The provisions of Article 13 (3) shall apply.

Article 15

Powers

Subject to review of its decision by the EFTA Court in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, the EFTA Surveillance Authority shall have sole power, on the conditions set out in Article 56 of the EEA Agreement:

- to impose obligations pursuant to Article 4 (2) of the act referred to in point 10 of Annex XIV to the EEA Agreement (Regulation (EEC) No 1017/68),
- to issue decisions pursuant to Article 5 of the said act and Article 6 of this chapter.

The authorities of the EFTA States shall retain the power to decide whether any case falls within the provisions of Article 2 or Article 8 of the said act, until such time as the EFTA Surveillance Authority has initiated a procedure with a view to formulating a decision in the case in question or has sent notification as provided for in the first subparagraph of Article 12 (3).

Article 16

Liaison with authorities of the EFTA States

1. The EFTA Surveillance Authority shall carry out the procedures provided for in this chapter in close and constant liaison with the competent authorities of the EFTA States; these authorities shall have the right to express their views on such procedures.

2. The EFTA Surveillance Authority shall immediately forward to the competent authorities of the EFTA States copies of the complaints and applications, and of the most important documents sent to it or which it sends out in the course of such procedures.

The EFTA Surveillance Authority shall forthwith transmit to the competent authorities of the EFTA States a copy of notifications, complaints and information on opening of ex officio procedures received from the EC Commission pursuant to Articles 2 and 10 of Protocol 23 to the EEA Agreement.

The EFTA Surveillance Authority shall forthwith transmit to the competent authorities of the EFTA States a copy of documents received from the EC Commission pursuant to Article 7 of Protocol 23 to the EEA Agreement.

3. An Advisory Committee on Competition in the Transport Industry shall be consulted prior to the taking of any decision following upon a procedure under Article 10 or of any decision under the second subparagraph of Article 12 (3), or under the second subparagraph of paragraph 4 of the same Article, or under paragraph 2 or paragraph 3 of Article 14. The Advisory Committee shall also be consulted prior to a proposal referred to in Article 29.

4. The Advisory Committee shall be composed of officials competent in the matter of restrictive practices and monopolies in transport. Each EFTA State shall appoint two officials to represent it, each of whom, if prevented from attending, may be replaced by some other official.

The EC Commission and the EC Member States shall be entitled to be present in the Advisory Committee and to express their views therein. However, their representatives shall not have the right to vote.

5. Consultation shall take place at a joint meeting convened by the EFTA Surveillance Authority; such meeting shall be held not earlier than 14 days after dispatch of the notice convening it. This notice shall, in respect of each case to be examined, be accompanied by a summary of the case together with an indication of the most important documents, and a preliminary draft decision.

In view of the participation provided for in the second subparagraph of paragraph 4, the EC Commission shall receive an invitation to the meeting and the relevant information as provided for in Article 6 of Protocol 23 to the EEA Agreement.

6. The Advisory Committee may deliver an opinion notwithstanding that some of its members or their alternates are not present. A report of the outcome of the consultative proceedings shall be annexed to the draft decision. It shall not be made public.

Article 17

Consideration by the Standing Committee of questions of principle concerning the provisions on transport as contained in the EEA Agreement raised in connection with specific cases

1. The EFTA Surveillance Authority shall not give a decision in respect of which consultation as laid down in Article 16 is compulsory until after the expiry of 20 days from the date on which the Advisory Committee has delivered its opinion.

2. Before the expiry of the period specified in paragraph 1, any EFTA State may request that the Standing Committee be convened to examine with the EFTA Surveillance Authority any question of principle concerning the provisions on transport as contained in the EEA Agreement which such EFTA State considers to be involved in the particular case for decision.

The Standing Committee shall meet within 30 days from the request by the EFTA State concerned for the sole purposes of considering such questions of principle.

The EFTA Surveillance Authority shall not give its decision until after the meeting of the Standing Committee.

3. Further, the Standing Committee may at any time, at the request of an EFTA State or of the EFTA Surveillance Authority, consider general questions raised by the implementation of the competition policy in the transport sector.

4. In all cases where the Standing Committee is asked to meet to consider under paragraph 2 questions of principle or under paragraph 3 general questions, the EFTA Surveillance Authority shall, for the purpose of this chapter, take into account the policy guidelines which emerge from the meeting.

Article 18

Inquiries into transport sectors

1. If trends in transport, fluctuations in or inflexibility of transport rates, or other circumstances, suggest that competition in transport is being restricted or distorted within the territory covered by the EEA Agreement in a specific geographical area, or over one or more transport links, or in respect of the carriage of passengers or goods belonging to one or more specific categories, the EFTA Surveillance Authority may decide, in accordance with the provisions of Protocol 23 to the EEA Agreement, to conduct a general inquiry into the sector concerned, in the course of which it may request transport undertakings in that sector to supply the information and documentation necessary for giving effect to the principles formulated in Articles 2 to 5, 7 and 8 of the act referred to in point 10 of Annex XIV to the EEA Agreement (Regulation (EEC) No 1017/68) and to Article 6 of this chapter.

2. When making inquiries pursuant to paragraph 1, the EFTA Surveillance Authority shall also request undertakings or groups of undertakings whose size suggests that they occupy a dominant position within the territory covered by the EEA Agreement or a substantial part thereof to supply such particulars of the structure of the undertakings and of their behaviour as are requisite to an appraisal of their position in the light of the provisions of Article 8 of the said act.

3. Article 16 (2) to (6) and Articles 17, 19, 20 and 21 shall apply.

Article 19

Requests for information

1. In carrying out the duties assigned to it by Articles 55 and 58 of the EEA Agreement, by provisions set out in Protocol 23 and in Annex XIV to the EEA Agreement or by provisions of this chapter, the EFTA Surveillance Authority may obtain all necessary information from the governments and competent authorities of the EFTA States and from undertakings and associations of undertakings.

2. When sending a request for information to an undertaking or association of undertakings, the EFTA Surveillance Authority shall at the same time forward a copy of the request to the competent authority of the EFTA State in whose territory the seat of the undertakings is situated.

3. In its request, the EFTA Surveillance Authority shall state the legal basis and the purpose of the request, and also the penalties provided for in Article 22 (1) (b) for supplying incorrect information.

4. The owners of the undertakings or their representatives and, in the case of legal persons, companies or firms, or of associations having no legal personality, the person authorized to represent them by law or by their constitution, shall be bound to supply the information requested.

5. Where an undertaking or association of undertakings does not supply the information requested within the time limit fixed by the EFTA Surveillance Authority, or supplies incomplete information, the EFTA Surveillance Authority shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and indicate the penalties provided for in Article 22 (1) (b) and Article 23 (1) (c), and the right to have the decision reviewed by the EFTA Court in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, in particular Article 36.

6. The EFTA Surveillance Authority shall at the same time forward a copy of its decision to the competent authority of the EFTA State in whose territory the seat of the undertaking or association of undertakings is situated.

Article 20

Investigations by the authorities of the EFTA States

1. At the request of the EFTA Surveillance Authority, the competent authorities of the EFTA States shall undertake the investigations which the EFTA Surveillance Authority considers to be necessary under Article 21 (1), or which it has ordered by decision pursuant to Article 21 (3). The officials of the competent authorities of the EFTA States responsible for conducting these investigations shall exercise their powers upon production of an authorization in writing issued by the competent authority of the EFTA State in whose territory the investigation is to be made. Such authorization shall specify the subject matter and purpose of the investigation.

2. If so requested by the EFTA Surveillance Authority or by the competent authority of the EFTA State in whose territory the investigation is to be made, the

officials of the EFTA Surveillance Authority may assist the officials of such authority in carrying out their duties.

Article 21

Investigating powers of the EFTA Surveillance Authority

1. In carrying out the duties assigned to it by Articles 55 and 58 of the EEA Agreement, by provisions set out in Protocol 23 and in Annex XIV to the EEA Agreement or by provisions of this chapter, the EFTA Surveillance Authority may undertake all necessary investigations into undertakings and associations of undertakings in the territory of an EFTA State. To this end the officials authorized by the EFTA Surveillance Authority are empowered:

- (a) to examine the books and other business records;
- (b) to take copies of or extracts from the books and business records;
- (c) to ask for oral explanations on the spot;
- (d) to enter any premises, land and vehicles of undertakings.

2. The officials of the EFTA Surveillance Authority authorized for the purpose of these investigations shall exercise their powers upon production of an authorization in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Article 22 (1) (c) in cases where production of the required books or other business records is incomplete.

In good time before the investigation, the EFTA Surveillance Authority shall inform the competent authority of the EFTA State in whose territory the same is to be made of the investigation and of the identity of the authorized officials. The EFTA Surveillance Authority shall also provide such an authorization to representatives of the EC Commission who shall take part in the investigation in accordance with Article 8 (4) of Protocol 23 to the EEA Agreement.

3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the EFTA Surveillance Authority. The decision shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Article 22 (1) (c) and Article 23 (1) (d) and the right to have the decision reviewed by the EFTA Court.

4. The EFTA Surveillance Authority shall take decisions referred to in paragraph 3 after consultation

with the competent authority of the EFTA State in whose territory the investigation is to be made.

5. Officials of the competent authority of the EFTA State in whose territory the investigation is to be made, may at the request of such authority or of the EFTA Surveillance Authority, assist the officials of the EFTA Surveillance Authority in carrying out their duties.

6. Where an undertaking opposes an investigation ordered pursuant to this Article, the EFTA State concerned shall afford the necessary assistance to the officials authorized by the EFTA Surveillance Authority to enable them to make their investigation. EFTA States shall, after consultation with the EFTA Surveillance Authority, take the necessary measures to this end within six months of the entry into force of the EEA Agreement.

Article 22

Fines

1. The EFTA Surveillance Authority may by decision impose on undertakings or associations of undertakings fines of from ECU 100 to 5 000 where, intentionally or negligently:

- (a) they supply incorrect or misleading information in an application pursuant to Article 12 or in a notification pursuant to Article 14; or
- (b) they supply incorrect information in response to a request made pursuant to Article 18 or to Article 19 (3) or (5), or do not supply information within the time limit fixed by a decision taken under Article 19 (5); or
- (c) they produce the required books or other business records in incomplete form during investigations pursuant to Article 20 or Article 21, or refuse to submit to an investigation ordered by decision issued in implementation of Article 21 (3).

2. The EFTA Surveillance Authority may by decision impose on undertakings or associations of undertakings fines of from ECU 1 000 to 1 000 000, or a sum in excess thereof but not exceeding 10 % of the turnover in the preceding business year of each of the undertakings participating in the infringement, where either intentionally or negligently:

- (a) they infringe Article 2 or Article 8 of the act referred to in point 10 of Annex XIV to the EEA Agreement (Regulation (EEC) No 1017/68); or
- (b) they commit a breach of any obligation imposed pursuant to Article 13 (1) or Article 14 (4).

In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.

3. Article 16 (3) to (6) and Article 17 shall apply.

4. Decisions taken pursuant to paragraphs 1 and 2 shall not be of a criminal law nature.

Article 23

Periodic penalty payments

1. The EFTA Surveillance Authority may by decision impose on undertakings or associations of undertakings periodic penalty payments of from ECU 50 to 1 000 per day, calculated from the date appointed by the decision, in order to compel them:

- (a) to put an end to an infringement of Article 2 or Article 8 of the act referred to in point 10 of Annex XIV to the EEA Agreement (Regulation (EEC) No 1017/68) of this chapter, the termination of which it has ordered pursuant to Article 11 or to comply with an obligation imposed pursuant to Article 4 (2) of the said act;
- (b) to refrain from any act prohibited under Article 13 (3);
- (c) to supply complete and correct information which it has requested by decision taken pursuant to Article 19 (5);
- (d) to submit to an investigation which it has ordered by decision taken pursuant to Article 21 (3).

2. Where the undertakings or associations of undertakings have satisfied the obligation which it was the purpose of the periodic penalty payment to enforce, the EFTA Surveillance Authority may fix the total amount of the periodic penalty payment at a lower figure than that which would arise under the original decision.

3. Article 16 (3) to (6) and Article 17 shall apply.

Article 24

Review by the EFTA Court

The EFTA Court shall, in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, have unlimited jurisdiction within the meaning of Article 35 of this Agreement to review decisions whereby the EFTA Surveillance Authority has fixed a fine or periodic penalty payment; it may cancel, reduce or increase the fine or periodic penalty payment imposed.

Article 25

Ecu

For the purpose of applying Articles 22 to 24, 'ecu' means the ecu as defined by the competent authorities of the European Communities.

*Article 26***Hearing of the parties and of third persons**

1. Before taking decisions as provided for in Articles 11, 12 (3), second subparagraph, and 12 (4), 13 (3), 14 (2) and (3), 22 and 23, the EFTA Surveillance Authority shall give the undertakings or associations of undertakings concerned the opportunity of being heard on the matters to which the EFTA Surveillance Authority has taken objection.

2. If the EFTA Surveillance Authority or the competent authorities of the EFTA States consider it necessary, they may also hear other natural or legal persons. Applications to be heard on the part of such persons where they show a sufficient interest shall be granted.

3. Where the EFTA Surveillance Authority intends to give negative clearance pursuant to Article 5 of the act referred to in point 10 of Annex XIV to the EEA Agreement (Regulation (EEC) No 1017/68) or Article 6 of this chapter, it shall publish a summary of the relevant agreement, decision or concerted practice and invite all interested third parties to submit their observations within a time limit which it shall fix being not less than one month. Publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

*Article 27***Professional secrecy**

1. Without prejudice to Article 9 of Protocol 23 to the EEA Agreement, information acquired as a result of the application of Articles 18, 19, 20 and 21 of this chapter or Article 58 of the EEA Agreement and Protocol 23 thereto shall be used only for the purpose of the relevant request or investigation.

2. Without prejudice to the provisions of Articles 26 and 28, the EFTA Surveillance Authority and the competent authorities of the EFTA States, their officials and other servants shall not disclose information acquired by them as a result of the application of this Protocol or Article 58 of the EEA Agreement and Protocol 23 thereto and of the kind covered by the obligation of professional secrecy. This obligation shall also apply to the representatives of the EC Commission and of the EC Member States who participate in the Advisory Committee pursuant to Article 16 (4) and in the hearing pursuant to Article 8 (2) of Chapter VIII.

3. The provisions of paragraphs 1 and 2 shall not prevent publication of general information or surveys which do not contain information relating to particular undertakings or associations of undertakings.

*Article 28***Publication of decisions**

1. The EFTA Surveillance Authority shall publish the decisions which it takes pursuant to Articles 11, 12 (3), second subparagraph, 12 (4), 13 (3) and 14 (2) and (3).

2. The publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

*Article 29***Special provisions**

The EFTA Surveillance Authority may submit to the Governments of the EFTA States, in accordance with the provisions of Article 49 of this Agreement, proposals for forms to be used for complaints pursuant to Article 10, applications pursuant to Article 12 and notifications pursuant to Article 14 (1), as well as proposals for complementary notes to the forms.

CHAPTER VII

Form, content and other details of complaints pursuant to Article 10, applications pursuant to Article 12 and notifications pursuant to Article 14 (1) of Chapter VI

*Article 1***Complaints**

1. Complaints pursuant to Article 10 of Chapter VI shall be submitted in writing in an official language of an EFTA State or the European Community; they may be submitted on forms issued for this purpose by the Governments of the EFTA States, by common accord, as shown in Appendix 3, or by the EC Commission.

2. When representatives of undertakings, of associations of undertakings, or of natural or legal persons sign such complaints, they shall produce written proof that they are authorized to act.

*Article 2***Persons entitled to submit applications and notifications**

1. Any undertaking which is party to agreements, decisions or practices of the kind described in Article 2 of the act referred to in point 10 of Annex XIV to the EEA Agreement (Regulation (EEC) No 1017/68) may submit an application pursuant to Article 12 or a notification under Article 14 (1) of Chapter VI. Where the application or notification is submitted by some, but not all, of the undertakings concerned, they shall give notice to the others.

2. Where applications or notifications pursuant to Articles 12 and 14 (1) of Chapter VI are signed by representatives of undertakings, of associations of undertakings, or of natural or legal persons, such representatives shall produce written proof that they are authorized to act.

3. Where a joint application or notification is submitted, a joint representative shall be appointed.

Article 3

Submission of applications and notifications

1. Applications pursuant to Article 12 of Chapter VI shall be submitted on forms issued for this purpose by the Governments of the EFTA States, by common accord, as shown in Appendix 4, or by the EC Commission.

2. Notifications pursuant to Article 14 (1) of Chapter VI shall be submitted on forms issued for this purpose by the Governments of the EFTA States, by common accord, as shown in Appendix 5, or by the EC Commission.

3. Several participating undertakings may submit an application or notification on a single form.

4. Applications and notifications shall contain the information requested in the forms.

5. Nine copies of each application or notification and of the supporting documents shall be submitted to the EFTA Surveillance Authority.

6. The supporting documents shall be either originals or copies. Copies must be certified as true copies of the original.

7. Applications and notifications shall be in an official language of an EFTA State or the European Community. Supporting documents shall be submitted in their original language. Where the original language is not one of the official languages, a translation in one of these languages shall be attached.

Article 4

Special provisions

The EFTA Surveillance Authority may submit to the Governments of the EFTA States, in accordance with the provisions of Article 49 of this Agreement, proposals for forms and complementary notes.

CHAPTER VIII

Hearings provided for in Article 26 (1) of Chapter VI

Article 1

Before consulting the Advisory Committee on Competition in the Transport Industry the EFTA

Surveillance Authority shall hold a hearing pursuant to Article 26 (1) of Chapter VI.

Article 2

1. The EFTA Surveillance Authority shall inform undertakings and associations of undertakings in writing of the objections raised against them. The communications shall be addressed to each of them or to a joint agent appointed by them.

2. The EFTA Surveillance Authority may inform the parties by giving notice in the EEA Section of the *Official Journal of the European Communities*, if from the circumstances of the case this appears appropriate, in particular where notice is to be given to a number of undertakings but no joint agent has been appointed. The notice shall have regard to the legitimate interest of the undertakings in the protection of their business secrets.

3. A fine or a periodic penalty payment may be imposed on an undertaking or association of undertakings only if the obligations were notified in the manner provided for in paragraph 1.

4. The EFTA Surveillance Authority shall, when giving notice of objections, fix a time limit up to which the undertakings and associations of undertakings may inform the EFTA Surveillance Authority of their views.

Article 3

1. Undertakings and associations of undertakings shall, within the appointed time limit, make known in writing their views concerning the objections raised against them.

2. They may in their written comments set out all matters relevant to their defence.

3. They may attach any relevant documents in proof of the facts set out. They may also propose that the EFTA Surveillance Authority hear persons who may corroborate those facts.

Article 4

The EFTA Surveillance Authority shall in its decision deal only with those objections raised against undertakings and associations of undertakings in respect of which they have been afforded the opportunity of making known their views.

Article 5

If natural or legal persons showing a sufficient interest apply to be heard pursuant to Article 26 (2) of Chapter VI, the EFTA Surveillance Authority shall afford them

the opportunity of making known their views in writing within such time limits as it shall fix.

Article 6

Where the EFTA Surveillance Authority, having received an application pursuant to Article 10 (2) of Chapter VI, considers that on the basis of the information in its possession there are insufficient grounds for granting the application, it shall inform the applicants of its reasons and fix a time limit for them to submit any further comments in writing.

Article 7

1. The EFTA Surveillance Authority shall afford to persons who have so requested in their written comments the opportunity to put forward their arguments orally, if those persons show a sufficient interest or if the EFTA Surveillance Authority proposes to impose on them a fine or periodic penalty payment.

2. The EFTA Surveillance Authority may likewise afford to any other person the opportunity of orally expressing his views.

Article 8

1. The EFTA Surveillance Authority shall summon the persons to be heard to attend on such date as it shall appoint.

2. It shall forthwith transmit a copy of the summons to the competent authorities of the EFTA States, who may appoint an official to take part in the hearing. Likewise, the EFTA Surveillance Authority shall invite the EC Commission to be represented at the hearing. The invitation shall also extend to the EC Member States.

Article 9

1. Hearings shall be conducted by the persons appointed by the EFTA Surveillance Authority for that purpose.

2. Persons summoned to attend shall appear either in person or be represented by legal representatives or by representatives authorized by their constitution. Undertakings and associations of undertakings may moreover be represented by a duly authorized agent appointed from among their permanent staff.

Persons heard by the EFTA Surveillance Authority may be assisted by lawyers or advisers who are entitled to plead before the EFTA Court, or by other qualified persons.

3. Hearings shall not be public. Persons shall be heard separately or in the presence of other persons summoned to attend. In the latter case, regard shall be had to the legitimate interest of the undertakings in the protection of their business secrets.

4. The essential content of the statements made by each person heard shall be recorded in minutes which shall be read and approved to him.

Article 10

Without prejudice to Article 2 (2), information and summonses from the EFTA Surveillance Authority shall be sent to the addressees by registered letter with acknowledgement of receipt, or shall be delivered by hand against receipt.

Article 11

1. In fixing the time limits provided for in Articles 2, 5 and 6, the EFTA Surveillance Authority shall have regard both to the time required for preparation of comments and to the urgency of the case. The time limit shall be not less than two weeks; it may be extended.

2. Time limits shall run from the day following receipt of a communication or delivery thereof by hand.

3. Written comments must reach the EFTA Surveillance Authority or be dispatched by registered letter before expiry of the time limit. Where the time limit would expire on a Sunday or public holiday, it shall be extended up to the end of the next following working day. For the purpose of calculating the extension, public holidays shall, in cases where the relevant date is the date of receipt of written comments, be those set out in Appendix 2 to this Protocol, and in cases where the relevant date is the date of dispatch, those appointed by law in the country of dispatch.

CHAPTER IX

Rules for the application of Articles 53 and 54 of the EEA Agreement to maritime transport

Due to the division of the text of Regulation (EEC) No 4056/86 between Annex XIV to the EEA Agreement (substantive rules) and the present chapter (procedural rules), the text, as adapted, of Section I, Articles 1 to 9, is to be found in the act referred to in point 11 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4056/86). The EFTA Surveillance Authority shall decide on these cases in accordance with the provisions of Article 56 of the EEA Agreement, in particular paragraph (1) (a) and (b) and paragraph (3).

Section I

Articles 1 to 9

(No text)

*Section II***Rules of Procedure***Article 10***Procedures on complaint or on the EFTA Surveillance Authority's own initiative**

Acting on receipt of a complaint or on its own initiative, the EFTA Surveillance Authority shall initiate procedures to terminate any infringement of the provisions of Articles 53 (1) or 54 of the EEA Agreement or to enforce Article 7 of the act referred to in point 11 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4056/86).

Complaints may be submitted by:

- (a) EFTA States;
- (b) natural or legal persons who claim a legitimate interest.

*Article 11***Result of procedures on complaint or on the EFTA Surveillance Authority's own initiative**

1. Where the EFTA Surveillance Authority finds that there has been an infringement of Articles 53 (1) or 54 of the EEA Agreement, it may by decision require the undertakings or associations of undertakings concerned to bring such infringement to an end.

Without prejudice to the other provisions of this chapter or to the provisions of the act referred to in point 11 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4056/86), the EFTA Surveillance Authority may, before taking a decision under the preceding subparagraph, address to the undertakings or associations of undertakings concerned recommendations for termination of the infringement.

2. Paragraph 1 shall apply also to cases falling within Article 7 of the said act.

3. If the EFTA Surveillance Authority, acting on a complaint received, concludes that on the evidence before it there are no grounds for intervention under Articles 53 (1) or 54 of the EEA Agreement or Article 7 of the said act, in respect of any agreement, decision or practice, it shall issue a decision rejecting the complaint as unfounded.

4. If the EFTA Surveillance Authority, whether acting on a complaint received or on its own initiative, concludes that an agreement, decision or concerted

practice satisfies the provisions both of Article 53 (1) and of Article 53 (3) of the EEA Agreement, it shall issue a decision applying Article 53 (3). Such decision shall indicate the date from which it is to take effect. This date may be prior to that of the decision.

*Article 12***Application of Article 53 (3) of the EEA Agreement — objections**

1. Undertakings and associations of undertakings which seek application of Article 53 (3) of the EEA Agreement in respect of agreements, decisions and concerted practices falling within the provisions of Article 53 (1) to which they are parties shall, without prejudice to Article 11 of Protocol 23 to the EEA Agreement, submit applications to the EFTA Surveillance Authority.

2. If the EFTA Surveillance Authority judges an application admissible and is in possession of all the available evidence, and no action under Article 10 has been taken against the agreement, decision or concerted practice in question, then it shall publish as soon as possible in the EEA Section of the *Official Journal of the European Communities* a summary of the application and invite all interested third parties and the EFTA States to submit their comments to the EFTA Surveillance Authority within 30 days. Such publications shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

3. Unless the EFTA Surveillance Authority notifies applicants, within 90 days from the date of such publication in the EEA Section of the *Official Journal of the European Communities*, that there are serious doubts as to the applicability of Article 53 (3), the agreement, decision or concerted practice shall be deemed exempt, in so far as it conforms with the description given in the application, from the prohibition for the time already elapsed and for a maximum of six years from the date of publication in the EEA Section of the *Official Journal of the European Communities*.

If the EFTA Surveillance Authority finds, after expiry of the 90-day time limit, but before expiry of the six-year period, that the conditions for applying Article 53 (3) are not satisfied, it shall issue a decision declaring that the prohibition in Article 53 (1) is applicable. Such decision may be retroactive where the parties concerned have given inaccurate information or where they abuse the exemption from the provisions of Article 53 (1).

4. The EFTA Surveillance Authority may notify applicants as referred to in the first subparagraph of paragraph 3 and shall do so if requested by an EFTA State within 45 days of the forwarding to the EFTA State of the application in accordance with Article 15 (2). This

request must be justified on the basis of considerations relating to the competition rules of the EEA Agreement.

If it finds that the conditions of Article 53 (1) and of Article 53 (3) are satisfied, the EFTA Surveillance Authority shall issue a decision applying Article 53 (3). The decision shall indicate the date from which it is to take effect. This date may be prior to that of the application.

Article 13

Duration and revocation of decisions applying Article 53 (3) of the EEA Agreement

1. Any decision applying Article 53 (3) taken under Article 11 (4) or under the second subparagraph of Article 12 (4) shall indicate the period for which it is to be valid; normally such period shall not be less than six years. Conditions and obligations may be attached to the decision.
2. The decision may be renewed if the conditions for applying Article 53 (3) continue to be satisfied.
3. The EFTA Surveillance Authority may revoke or amend its decision or prohibit specified acts by the parties:
 - (a) where there has been a change in any of the facts which were basic to the making of the decision;
 - (b) where the parties commit a breach of any obligation attached to the decision;
 - (c) where the decision is based on incorrect information or was induced by deceit; or
 - (d) where the parties abuse the exemption from the provisions of Article 53 (1) granted to them by the decision.

In cases falling within (b), (c) or (d), the decision may be revoked with retroactive effect.

Article 14

Powers

Subject to review of its decision by the EFTA Court in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, the EFTA Surveillance Authority shall have sole power, on the conditions set out in Article 56 of the EEA Agreement:

- to impose obligations pursuant to Article 7 of the act referred to in point 11 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4056/86),

- to issue decisions pursuant to Article 53 (3) of the EEA Agreement.

The authorities of the EFTA States shall retain the power to decide whether any case falls within the provisions of Article 53 (1) or Article 54, until such time as the EFTA Surveillance Authority has initiated a procedure with a view to formulating a decision in the case in question or has sent notification as provided for in the first subparagraph of Article 12 (3).

Article 15

Liaison with the authorities of the EFTA States

1. The EFTA Surveillance Authority shall carry out the procedures provided for in this chapter in close and constant liaison with the competent authorities of the EFTA States; these authorities shall have the right to express their views on such procedures.
2. The EFTA Surveillance Authority shall immediately forward to the competent authorities of the EFTA States copies of the complaints and applications, and of the most important documents sent to it or which it sends out in the course of such procedures.

The EFTA Surveillance Authority shall forthwith transmit to the competent authorities of the EFTA States a copy of notifications, complaints and information on opening of ex officio procedures received from the EC Commission pursuant to Articles 2 and 10 of Protocol 23 to the EEA Agreement.

The EFTA Surveillance Authority shall forthwith transmit to the competent authorities of the EFTA States a copy of documents received from the EC Commission pursuant to Article 7 of Protocol 23 to the EEA Agreement.

3. An Advisory Committee on Competition in Maritime Transport shall be consulted prior to the taking of any decision following upon a procedure under Article 10 or of any decision issued under the second subparagraph of Article 12 (3), or under the second subparagraph of paragraph 4 of the same Article. The Advisory Committee shall also be consulted prior to a proposal referred to in Article 26.

4. The Advisory Committee shall be composed of officials competent in the sphere of maritime transport and agreements and dominant positions. Each EFTA State shall nominate two officials to represent it, each of whom may be replaced, in the event of his being prevented from attending, by another official.

The EC Commission and the EC Member States shall be entitled to be present in the Advisory Committee and to express their views therein. However, their representatives shall not have the right to vote.

5. Consultation shall take place at a joint meeting convened by the EFTA Surveillance Authority; such meeting shall be held not earlier than 14 days after

dispatch of the notice convening it. This notice shall, in respect of each case to be examined, be accompanied by a summary of the case together with an indication of the most important documents, and a preliminary draft decision.

In view of the participation provided for in the second subparagraph of paragraph 4, the EC Commission shall receive an invitation to the meeting and the relevant information as provided for in Article 6 of Protocol 23 to the EEA Agreement.

6. The Advisory Committee may deliver an opinion notwithstanding that some of its members or their alternates are not present. A report of the outcome of the consultative proceedings shall be annexed to the draft decision. It shall not be made public.

Article 16

Requests for information

1. In carrying out the duties assigned to it by Articles 55 and 58 of the EEA Agreement, by provisions set out in Protocol 23 and in Annex XIV to the EEA Agreement or by provisions of this chapter, the EFTA Surveillance Authority may obtain all necessary information from the governments and competent authorities of the EFTA States and from undertakings and associations of undertakings.

2. When sending a request for information to an undertaking or association of undertakings, the EFTA Surveillance Authority shall at the same time forward a copy of the request to the competent authority of the EFTA State in whose territory the seat of the undertaking or association of undertakings is situated.

3. In its request, the EFTA Surveillance Authority shall state the legal basis and the purpose of the request, and also the penalties provided for in Article 19 (1) (b) for supplying incorrect information.

4. The owners of the undertakings or their representatives and, in the case of legal persons, companies or firms, or of associations having no legal personality, the person authorized to represent them by law or by their constitution, shall be bound to supply the information requested.

5. Where an undertaking or association of undertakings does not supply the information requested within the time limit fixed by the EFTA Surveillance Authority, or supplies incomplete information, the EFTA Surveillance Authority shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and indicate the penalties provided for in Article 19 (1) (b) and Article

20 (1) (c) and the right to have the decision reviewed by the EFTA Court in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, in particular Article 36.

6. The EFTA Surveillance Authority shall at the same time forward a copy of its decision to the competent authority of the EFTA State in whose territory the seat of the undertaking or association of undertakings is situated.

Article 17

Investigations by the authorities of the EFTA States

1. At the request of the EFTA Surveillance Authority, the competent authorities of the EFTA States shall undertake the investigations which the EFTA Surveillance Authority considers to be necessary pursuant to Article 18 (1), or which it has ordered by decision pursuant to Article 18 (3). The officials of the competent authorities of the EFTA States responsible for conducting these investigations shall exercise their powers upon production of an authorization in writing issued by the competent authority of the EFTA State in whose territory the investigation is to be made. Such authorization shall specify the subject matter and purpose of the investigation.

2. If so requested by the EFTA Surveillance Authority or by the competent authority of the EFTA State in whose territory the investigation is to be made, EFTA Surveillance Authority officials may assist the officials of such authority in carrying out their duties.

Article 18

Investigating powers of the EFTA Surveillance Authority

1. In carrying out the duties assigned to it by Articles 55 and 58 of the EEA Agreement, by provisions set out in Protocol 23 and in Annex XIV to the EEA Agreement or by provisions of this chapter, the EFTA Surveillance Authority may undertake all necessary investigations into undertakings and associations of undertakings in the territory of an EFTA State.

To this end the officials authorized by the EFTA Surveillance Authority are empowered:

- (a) to examine the books and other business records;
- (b) to take copies of or extracts from the books and business records;
- (c) to ask for oral explanations on the spot;

(d) to enter any premises, land and vehicles of undertakings.

2. The officials of the EFTA Surveillance Authority authorized for the purpose of these investigations shall exercise their powers upon production of an authorization in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Article 19 (1) (c) in cases where production of the required books or other business records is incomplete. In good time before the investigation, the EFTA Surveillance Authority shall inform the competent authority of the EFTA State in whose territory the same is to be made of the investigation and of the identity of the authorized officials. The EFTA Surveillance Authority shall also provide such an authorization to representatives of the EC Commission who shall take part in the investigation in accordance with Article 8 (4) of Protocol 23 to the EEA Agreement.

3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the EFTA Surveillance Authority. The decision shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Article 19 (1) (c) and Article 20 (1) (d) and the right to have the decision reviewed by the EFTA Court in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, in particular Article 36.

4. The EFTA Surveillance Authority shall take decisions referred to in paragraph 3 after consultation with the competent authority of the EFTA State in whose territory the investigation is to be made.

5. Officials of the competent authority of the EFTA State in whose territory the investigation is to be made, may at the request of such authority or of the EFTA Surveillance Authority, assist the officials of the EFTA Surveillance Authority in carrying out their duties.

6. Where an undertaking opposes an investigation ordered pursuant to this Article, the EFTA State concerned shall afford the necessary assistance to the officials authorized by the EFTA Surveillance Authority to enable them to make their investigation. To this end, EFTA States shall take the necessary measures, after consulting the EFTA Surveillance Authority, within six months of the entry into force of the EEA Agreement.

Article 19

Fines

1. The EFTA Surveillance Authority may by decision impose on undertakings or associations of undertakings fines of from ECU 100 to 5 000 where, intentionally or negligently:

(a) they supply incorrect or misleading information, either in a communication pursuant to Article 5 (5) of the act referred to in point 11 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4056/86) or in an application pursuant to Article 12 of this chapter;

or

(b) they supply incorrect information in response to a request made pursuant to Article 16 (3) or (5), or do not supply information within the time limit fixed by a decision taken under Article 16 (5);

or

(c) they produce the required books or other business records in incomplete form during investigations pursuant to Article 17 or Article 18, or refuse to submit to an investigation ordered by decision issued in implementation of Article 18 (3).

2. The EFTA Surveillance Authority may by decision impose on undertakings or associations of undertakings fines of from ECU 1 000 to 1 000 000, or a sum in excess thereof but not exceeding 10 % of the turnover in the preceding business year of each of the undertakings participating in the infringement, where either intentionally or negligently:

(a) they infringe Article 53 (1) or Article 54 of the EEA Agreement, or do not comply with an obligation imposed under Article 7 of the said act;

(b) they commit a breach of any obligation imposed pursuant to Article 5 of the said act or to Article 13 (1).

In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.

3. Article 15 (3) and (4) shall apply.

4. Decisions taken pursuant to paragraphs 1 and 2 shall not be of a criminal law nature.

5. The fines provided for in paragraph 2 (a) shall not be imposed in respect of acts taking place after notification to the EFTA Surveillance Authority and before its decision in application of Article 53 (3) of the EEA Agreement, provided they fall within the limits of the activity described in the notification.

However, this provision shall not have effect where the EFTA Surveillance Authority has informed the undertakings concerned that after preliminary examination it is of the opinion that Article 53 (1) of the EEA Agreement applies and that application of Article 53 (3) is not justified.

Article 20

Periodic penalty payments

1. The EFTA Surveillance Authority may by decision impose on undertakings or associations of undertakings

periodic penalty payments of from ECU 50 to 1 000 per day, calculated from the date appointed by the decision, in order to compel them:

- (a) to put an end to an infringement of Article 53 (1) or Article 54 of the EEA Agreement the termination of which it has ordered pursuant to Article 11, or to comply with an obligation imposed pursuant to Article 7 of the act referred to in point 11 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4056/86);
- (b) to refrain from any act prohibited under Article 13 (3);
- (c) to supply complete and correct information which it has requested by decision taken pursuant to Article 16 (5);
- (d) to submit to an investigation which it has ordered by decision taken pursuant to Article 18 (3).

2. Where the undertakings or associations of undertakings have satisfied the obligation which it was the purpose of the periodic penalty payment to enforce, the EFTA Surveillance Authority may fix the total amount of the periodic penalty payment at a lower figure than that which would arise under the original decision.

3. Article 15 (3) and (4) shall apply.

Article 21

Review by the EFTA Court

The EFTA Court, in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, shall have unlimited jurisdiction within the meaning of Article 35 of this Agreement to review decisions whereby the EFTA Surveillance Authority has fixed a fine or periodic penalty payment; it may cancel, reduce or increase the fine or periodic penalty payment imposed.

Article 22

Ecu

For the purpose of applying Articles 19 to 21, 'ecu' means the ecu as defined by the competent authorities of the European Communities.

Article 23

Hearing of the parties and of third persons

1. Before taking decisions as provided for in Articles 11, 12 (3), second subparagraph, 12 (4), 13 (3), 19 and 20, the EFTA Surveillance Authority shall give the undertakings or associations of undertakings concerned

the opportunity of being heard on the matters to which the EFTA Surveillance Authority has taken objection.

2. If the EFTA Surveillance Authority or the competent authorities of the EFTA States consider it necessary, they may also hear other natural or legal persons. Applications to be heard on the part of such persons where they show a sufficient interest shall be granted.

3. Where the EFTA Surveillance Authority intends to give negative clearance pursuant to Article 53 (3) of the EEA Agreement, it shall publish a summary of the relevant agreement, decision or concerted practice and invite all interested third parties to submit their observations within a time limit which it shall fix being not less than one month. Publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 24

Professional secrecy

1. Without prejudice to Article 9 of Protocol 23 to the EEA Agreement, information acquired as a result of the application of Articles 17 and 18 of this chapter or Article 58 of the EEA Agreement and Protocol 23 thereto shall be used only for the purpose of the relevant request or investigation.

2. Without prejudice to the provisions of Articles 23 and 25, the EFTA Surveillance Authority and the competent authorities of the EFTA States, their officials and other servants shall not disclose information acquired by them as a result of the application of this Protocol or Article 58 of the EEA Agreement and Protocol 23 thereto and of the kind covered by the obligation of professional secrecy. This obligation shall also apply to the representatives of the EC Commission and of the EC Member States who participate in the Advisory Committee pursuant to Article 15 (4) and in the hearing pursuant to Article 12 (2) of Chapter X.

3. The provisions of paragraphs 1 and 2 shall not prevent publication of general information or surveys which do not contain information relating to particular undertakings or associations of undertakings.

Article 25

Publication of decisions

1. The EFTA Surveillance Authority shall publish the decisions which it takes pursuant to Articles 11, 12 (3), second paragraph, 12 (4) and 13 (3).

2. The publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 26

Special provisions

The EFTA Surveillance Authority may submit to the Governments of the EFTA States, in accordance with the provisions of Article 49 of this Agreement, proposals for forms to be used for complaints pursuant to Article 10 and applications pursuant to Article 12, as well as proposals for complementary notes to the forms.

CHAPTER X

The obligation of communication, the form, content and other details of complaints and of applications, and the hearings provided for in Chapter IX

Section I

Notifications, complaints and applications

Article 1

Notifications

1. Awards at arbitration and recommendations by conciliators accepted by the parties shall be notified to the EFTA Surveillance Authority when they concern the settlement of disputes relating to the practices of conferences referred to in Articles 4 and 5 (2) and (3) of the act referred to in point 11 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4056/86).

2. The obligation of notification applies to any party to the dispute resolved by the award or recommendation.

3. Notifications shall be submitted forthwith by registered letter with an acknowledgement of receipt or shall be delivered by hand against receipt. They shall be written in an official language of an EFTA State or the European Community.

Supporting documents shall be either originals or copies. Copies must be certified as true copies of the original. They shall be submitted in their original language. Where the original language is not an official language of an EFTA State or the European Community, a translation in one of these languages shall be attached.

4. When representatives of undertakings, of associations of undertakings, or of natural or legal persons sign such notifications, they shall produce written proof that they are authorized to act.

Article 2

Complaints

1. Complaints pursuant to Article 10 of Chapter IX shall be submitted in writing in an official language of an EFTA State or the European Community, their form, content and other details being left to the discretion of complainants.

2. Complaints may be submitted by:

- (a) EFTA States;
- (b) natural or legal persons who claim a legitimate interest.

3. When representatives of undertakings, of associations of undertakings, or of natural or legal persons sign such complaints, they shall produce written proof that they are authorized to act.

Article 3

Persons entitled to submit applications

1. Any undertaking which is party to agreements, decisions or practices of the kind described in Article 53 (1) of the EEA Agreement may submit an application pursuant to Article 12 of Chapter IX. Where the application is submitted by some but not all of the undertakings concerned, they shall give notice to the others.

2. Where applications pursuant to Article 12 of Chapter IX are signed by representatives of undertakings, of associations of undertakings, or of natural or legal persons, such representatives shall produce written proof that they are authorized to act.

3. Where a joint application is submitted, a joint representative shall be appointed.

Article 4

Submission of applications

1. Applications pursuant to Article 12 of Chapter IX shall be submitted on forms issued for this purpose by the Governments of the EFTA States, by common accord, as shown in Appendix 6, or by the EC Commission.

2. Several participating undertakings may submit an application on a single form.

3. Applications shall contain the information requested in the form.

4. Nine copies of each application and of the supporting documents shall be submitted to the EFTA Surveillance Authority.

5. The supporting documents shall be either originals or copies. Copies must be certified as true copies of the original.

6. Applications shall be in an official language of an EFTA State or the European Community. Supporting documents shall be submitted in their original language. Where the original language is not an official language of an EFTA State or the European Community, a translation in one of these languages shall be attached.

7. The date of submission of an application shall be the date on which it is received by the EFTA Surveillance Authority, without prejudice to Article 11 of Protocol 23 to the EEA Agreement. Where, however, the application is sent by registered post, it shall be deemed to have been received on the date shown on the postmark of the place of posting.

8. Where an application submitted pursuant to Article 12 of Chapter IX falls outside the scope of that chapter, the EFTA Surveillance Authority shall without delay inform the applicant that it intends to examine the application under the provisions of such other act referred to in Annex XIV to the EEA Agreement as is applicable to the case; however, the date of submission of the application shall be the date resulting from paragraph 7. The EFTA Surveillance Authority shall inform the applicant of its reasons and fix a period for him to submit any comments in writing before it conducts its appraisal pursuant to the provisions of that other act.

Section II

Hearings

Article 5

Before consulting the Advisory Committee on Competition in Maritime Transport, the EFTA Surveillance Authority shall hold a hearing pursuant to Article 23 (1) of Chapter IX.

Article 6

1. The EFTA Surveillance Authority shall inform undertakings and associations of undertakings in writing of the objections raised against them. The communication shall be addressed to each of them or to a joint agent appointed by them.

2. The EFTA Surveillance Authority may inform the parties by giving notice in the EEA Section of the *Official Journal of the European Communities*, if from the circumstances of the case this appears appropriate, in particular where notice is to be given to a number of undertakings but no joint agent has been appointed. The notice shall have regard to the legitimate interest of the undertakings in the protection of their business secrets.

3. A fine or a periodic penalty payment may be imposed on an undertaking or association of undertakings only if the objections were notified in the manner provided for in paragraph 1.

4. The EFTA Surveillance Authority shall, when giving notice of objections, fix a period within which the undertakings and associations of undertakings may inform the EFTA Surveillance Authority of their views.

Article 7

1. Undertakings and associations of undertakings shall, within the appointed period, make known in writing their views concerning the objections raised against them.

2. They may in their written comments set out all matters relevant to their defence.

3. They may attach any relevant documents in proof of the facts set out. They may also propose that the EFTA Surveillance Authority hear persons who may corroborate those facts.

Article 8

The EFTA Surveillance Authority shall in its decision deal only with those objections raised against undertakings and associations of undertakings in respect of which they have been afforded the opportunity of making known their views.

Article 9

If natural or legal persons showing a sufficient interest apply to be heard pursuant to Article 23 (2) of Chapter IX the EFTA Surveillance Authority shall afford them the opportunity of making known their views in writing within such period as it shall fix.

Article 10

Where the EFTA Surveillance Authority, having received a complaint pursuant to Article 10 of Chapter IX, considers that on the basis of the information in its possession there are insufficient grounds for acting on the complaint, it shall inform the persons who submitted the complaint of its reasons and fix a period for them to submit any further comments in writing.

Article 11

1. The EFTA Surveillance Authority shall afford to persons who have so requested in their written comments the opportunity to put forward their arguments orally, if those persons show a sufficient interest or if the EFTA Surveillance Authority proposes to impose on them a fine or periodic penalty payment.

2. The EFTA Surveillance Authority may likewise afford to any other person the opportunity of orally expressing his views.

Article 12

1. The EFTA Surveillance Authority shall summon the persons to be heard to attend on such date as it shall appoint.

2. It shall forthwith transmit a copy of the summons to the competent authorities of the EFTA States, who may appoint an official to take part in the hearing. Likewise, the EFTA Surveillance Authority shall invite the EC Commission to be represented at the hearing. The invitation shall also extend to the EC Member States.

Article 13

1. Hearings shall be conducted by the persons appointed by the EFTA Surveillance Authority for that purpose.

2. Persons summoned to attend shall either appear in person or be represented by legal representatives or by representatives authorized by their constitution. Undertakings and associations of undertakings may moreover be represented by a duly authorized agent appointed from among their permanent staff.

Persons heard by the EFTA Surveillance Authority may be assisted by lawyers or advisers who are entitled to plead before the EFTA Court, or by other qualified persons.

3. Hearings shall not be public. Persons shall be heard separately or in the presence of other persons summoned to attend. In the latter case, regard shall be had to the legitimate interest of the undertakings in the protection of their business secrets.

4. The essential content of the statements made by each person heard shall be recorded in minutes which shall be read and approved by him.

Article 14

Without prejudice to Article 6 (2), information and summonses from the EFTA Surveillance Authority shall be sent to the addressees by registered letter with acknowledgement of receipt, or shall be delivered by and against receipt.

Article 15

1. In fixing the periods provided for in Articles 4 (8), 6, 9 and 10, the EFTA Surveillance Authority shall have regard both to the time required for preparation of

comments and to the urgency of the case. A period shall be not less than two weeks; it may be extended.

2. Periods shall run from the day following receipt of a communication or delivery thereof by hand.

3. Written comments must reach the EFTA Surveillance Authority or be dispatched by registered letter before expiry of the period. Where the period would expire on a Sunday or a public holiday, it shall be extended up to the end of the next following working day. For the purpose of calculating the extension, public holidays shall, in cases where the relevant date is the date of receipt of written comments, be those set out in Appendix 2 to this Protocol, and in cases where the relevant date is the date of dispatch, those appointed by law in the country of dispatch.

Article 16

Special provisions

The EFTA Surveillance Authority may submit to the Governments of the EFTA States, in accordance with the provisions of Article 49 of this Agreement, proposals for forms and complementary notes.

CHAPTER XI

Procedure for the application of the rules on competition to undertakings in the air transport sector

Article 1

Scope

1. This chapter lays down detailed rules for the application of Articles 53 and 54 of the EEA Agreement to air transport services.

2. This chapter shall apply only to international air transport between airports within the territory covered by the EEA Agreement.

Article 2

Exceptions for certain technical agreements

1. The prohibition laid down in Article 53 (1) of the EEA Agreement shall not apply to the agreements, decisions and concerted practices listed in Appendix 7 to this Protocol, in so far as their sole object and effect is to achieve technical improvements or cooperation. This list is not exhaustive.

2. If necessary, the EFTA Surveillance Authority may submit to the Governments of the EFTA States, in accordance with the provisions of Article 49 of this Agreement, proposals for the amendment of the list in Appendix 7.

*Article 3***Procedures on complaint or on the EFTA Surveillance Authority's own initiative**

1. Acting on receipt of a complaint or on its own initiative, the EFTA Surveillance Authority shall initiate procedures to terminate any infringement of the provisions of Articles 53 (1) or 54 of the EEA Agreement.

Complaints may be submitted by:

- (a) EFTA States;
- (b) natural or legal persons who claim a legitimate interest.

2. Upon application by the undertakings or associations of undertakings concerned, the EFTA Surveillance Authority may certify that, on the basis of the facts in its possession, there are no grounds under Article 53 (1) or Article 54 of the EEA Agreement for action on its part in respect of an agreement, decision or concerted practice.

*Article 4***Result of procedures on complaint or on the EFTA Surveillance Authority's own initiative**

1. Where the EFTA Surveillance Authority finds that there has been an infringement of Articles 53 (1) or 54 of the EEA Agreement, it may by decision require the undertakings or associations of undertakings concerned to bring such an infringement to an end.

Without prejudice to the other provisions of this chapter, the EFTA Surveillance Authority may address recommendations for termination of the infringement to the undertakings or associations of undertakings concerned before taking a decision under the preceding subparagraph.

2. If the EFTA Surveillance Authority, acting on a complaint received, concludes that, on the evidence before it, there are no grounds for intervention pursuant to Articles 53 (1) or 54 of the EEA Agreement in respect of any agreement, decision or concerted practice, it shall take a decision rejecting the complaint as unfounded.

3. If the EFTA Surveillance Authority, whether acting on a complaint received or on its own initiative concludes that an agreement, decision or concerted practice satisfies the provisions of both Article 53 (1) and 53 (3) of the EEA Agreement, it shall take a decision applying paragraph 3 of the said Article. Such a decision shall indicate the date from which it is to take effect. This date may be prior to that of the decision.

*Article 4a***Interim measures against anti-competitive practices**

1. Without prejudice to the application of Article 4 (1), where the EFTA Surveillance Authority has clear *prima facie* evidence that certain practices are contrary to Article 53 or 54 of the EEA Agreement and have the object or effect of directly jeopardizing the existence of an air service, and where recourse to normal procedures may not be sufficient to protect the air service or the airline company concerned, it may by decision take interim measures to ensure that these practices are not implemented or cease to be implemented and give such instructions as are necessary to prevent the occurrence of these practices until a decision pursuant to Article 4 (1) is taken.

2. A decision taken pursuant to paragraph 1 shall apply for a period not exceeding six months. Article 8 (5) shall not apply.

The EFTA Surveillance Authority may review that initial decision, with or without modification, for a period not exceeding three months. In such case, Article 8 (5) shall apply.

*Article 5***Application of Article 53 (3) of the EEA Agreement — objections**

1. Undertakings and associations of undertakings which wish to seek application of Article 53 (3) of the EEA Agreement in respect of agreements, decisions and concerted practices falling within the provisions of paragraph 1 of the said Article to which they are parties shall submit application to the EFTA Surveillance Authority.

2. If the EFTA Surveillance Authority judges an application admissible and is in possession of all the available evidence and no action pursuant to Article 3 has been taken against the agreement, decision or concerted practice in question, then it shall publish as soon as possible in the EEA Section of the *Official Journal of the European Communities* a summary of the application and invite all interested third parties and the EFTA States to submit their comments to the EFTA Surveillance Authority within 30 days. Such publications shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

3. Unless the EFTA Surveillance Authority notifies applicants, within 90 days of the date of such publication in the EEA Section of the *Official Journal of the European Communities*, that there are serious doubts as to the applicability of Article 53 (3) of the EEA Agreement, the agreement, decision or concerted practice shall be deemed exempt, in so far as it conforms with the description given in the application, from the prohibition for the time already elapsed and for a maximum of six years from the date of publication in the EEA Section of the *Official Journal of the European Communities*.

If the EFTA Surveillance Authority finds, after expiry of the 90-day time limit, but before expiry of the six-year period, that the conditions for applying Article 53 (3) of the EEA Agreement are not satisfied, it shall issue a decision declaring that the prohibition in Article 53 (1) applies. Such decision may be retroactive where the parties concerned have given inaccurate information or where they abuse an exemption from the provisions of Article 53 (1) or have contravened Article 54.

4. The EFTA Surveillance Authority may notify applicants as referred to in the first subparagraph of paragraph 3; it shall do so if requested by an EFTA State within 45 days of the forwarding to the EFTA State of the application in accordance with Article 8 (2). This request must be justified on the basis of considerations relating to the competition rules of the EEA Agreement.

If it finds that the conditions of Article 53 (1) and (3) of the EEA Agreement are satisfied, the EFTA Surveillance Authority shall issue a decision applying Article 53 (3). The decision shall indicate the date from which it is to take effect. This date may be prior to that of the application.

Article 6

Duration and revocation of decisions applying Article 53 (3) of the EEA Agreement

1. Any decision applying Article 53 (3) of the EEA Agreement adopted pursuant to Articles 4 or 5 of this chapter shall indicate the period for which it is to be valid; normally such period shall not be less than six years. Conditions and obligations may be attached to the decision.

2. The decision may be renewed if the conditions for applying Article 53 (3) of the EEA Agreement continue to be satisfied.

3. The EFTA Surveillance Authority may revoke or amend its decision or prohibit specific acts by the parties:

(a) where there has been a change in any of the facts which were basic to the making of the decision;

or

(b) where the parties commit a breach of any obligation attached to the decision;

or

(c) where the decision is based on incorrect information or was induced by deceit;

or

(d) where the parties abuse the exemption from the provisions of Article 53 (1) of the EEA Agreement granted to them by the decision.

In cases falling under subparagraphs (b), (c) or (d), the decision may be revoked with retroactive effect.

Article 7

Powers

Subject to review of its decision by the EFTA Court, in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, the EFTA Surveillance Authority shall have sole power to issue decisions pursuant to Article 53 (3) of the EEA Agreement, on the conditions set out in Article 56 of the EEA Agreement.

The authorities of the EFTA States shall retain the power to decide whether any case falls under the provisions of Articles 53 (1) or 54 of the EEA Agreement, until such time as the EFTA Surveillance Authority has initiated a procedure with a view to formulating a decision on the case in question or has sent notification as provided by the first subparagraph of Article 5 (3) of this chapter.

Article 8

Liaison with the authorities of the EFTA States

1. The EFTA Surveillance Authority shall carry out the procedures provided for in this chapter in close and constant liaison with the competent authorities of the EFTA States; these authorities shall have the right to express their views on such procedures.

2. The EFTA Surveillance Authority shall immediately forward to the competent authorities of the EFTA States copies of the complaints and applications and of the most important documents sent to it or which it sends out in the course of such procedures.

The EFTA Surveillance Authority shall forthwith transmit to the competent authorities of the EFTA States a copy of notifications, complaints and information on opening of ex officio procedures received from the EC Commission pursuant to Articles 2 and 10 of Protocol 23 to the EEA Agreement.

The EFTA Surveillance Authority shall forthwith transmit to the competent authorities of the EFTA States a copy of documents received from the EC Commission pursuant to Article 7 of Protocol 23 to the EEA Agreement.

3. An Advisory Committee on Competition in Air Transport shall be consulted prior to the taking of any decision following upon a procedure under Article 3 or of any decision under the second subparagraph of

Article 5 (3), or under the second subparagraph of paragraph 4 of the same Article or under Article 6. The Advisory Committee shall also be consulted prior to a proposal referred to in Article 19.

4. The Advisory Committee shall be composed of officials competent in the sphere of air transport and agreements and dominant positions. Each EFTA State shall nominate two officials to represent it, each of whom may be replaced, in the event of his being prevented from attending, by another official.

The EC Commission and the EC Member States shall be entitled to be present in the Advisory Committee and to express their views therein. However, their representatives shall not have the right to vote.

5. Consultation shall take place at a joint meeting convened by the EFTA Surveillance Authority; such a meeting shall be held not earlier than 14 days after dispatch of the notice convening it. In respect of each case to be examined, this notice shall be accompanied by a summary of the case, together with an indication of the most important documents, and a preliminary draft decision.

In view of the participation provided for in the second subparagraph of paragraph 4, the EC Commission shall receive an invitation to the meeting and the relevant information as provided for in Article 6 of Protocol 23 to the EEA Agreement.

6. The Advisory Committee may deliver an opinion notwithstanding that some of its members or their alternates are not present. A report of the outcome of the consultative proceedings shall be annexed to the draft decision. It shall not be made public.

Article 9

Requests for information

1. In carrying out the duties assigned to it by Articles 55 and 58 of the EEA Agreement, by provisions set out in Protocol 23 and in Annex XIV to the EEA Agreement or by provisions of this chapter, the EFTA Surveillance Authority may obtain all necessary information from the governments and competent authorities of the EFTA States and from undertakings and associations of undertakings.

2. When sending a request for information to an undertaking or association of undertakings, the EFTA Surveillance Authority shall forward a copy of the request at the same time to the competent authority of the EFTA State in whose territory the head office of the undertaking or association of undertakings is situated.

3. In its request, the EFTA Surveillance Authority shall state the legal basis and purpose of the request and also the penalties for supplying incorrect information provided for in Article 12 (1) (b).

4. The owners of the undertakings or their representatives and, in the case of legal persons or of companies, firms or associations having no legal personality, the person authorized to represent them by law or by their rules shall be bound to supply the information requested.

5. When an undertaking or association of undertakings does not supply the information requested within the time limit fixed by the EFTA Surveillance Authority, or supplies incomplete information, the EFTA Surveillance Authority shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and indicate the penalties provided for in Article 12 (1) (b) and Article 13 (1) (c), as well as the right to have the decision reviewed by the EFTA Court in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, in particular Article 36.

6. At the same time the EFTA Surveillance Authority shall send a copy of its decision to the competent authority of the EFTA State in whose territory the head office of the undertaking or association of undertakings is situated.

Article 10

Investigations by the authorities of the EFTA States

1. At the request of the EFTA Surveillance Authority, the competent authorities of the EFTA States shall undertake the investigations which the EFTA Surveillance Authority considers to be necessary under Article 11 (1) or which it has ordered by decision adopted pursuant to Article 11 (3). The officials of the competent authorities of the EFTA States responsible for conducting these investigations shall exercise their powers upon production of an authorization in writing issued by the competent authority of the EFTA State in whose territory the investigation is to be made. Such an authorization shall specify the subject matter and purpose of the investigation.

2. If so requested by the EFTA Surveillance Authority or by the competent authority of the EFTA State in whose territory the investigation is to be made, EFTA Surveillance Authority officials may assist the officials of the competent authority in carrying out their duties.

Article 11

Investigating powers of the EFTA Surveillance Authority

1. In carrying out the duties assigned to it by Articles 55 and 58 of the EEA Agreement, by provisions

set out in Protocol 23 and in Annex XIV to the EEA Agreement or by provisions of this chapter, the EFTA Surveillance Authority may undertake all necessary investigations into undertakings and associations of undertakings. To this end the officials authorized by the EFTA Surveillance Authority shall be empowered:

- (a) to examine the books and other business records;
- (b) to take copies of, or extracts from, the books and business records;
- (c) to ask for oral explanations on the spot;
- (d) to enter any premises, land and vehicles used by undertakings or associations of undertakings.

2. The authorized officials of the EFTA Surveillance Authority shall exercise their powers upon production of an authorization in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Article 12 (1) (c) in cases where production of the required books or other business records is incomplete. In good time, before the investigation, the EFTA Surveillance Authority shall inform the competent authority of the EFTA State, in whose territory the same is to be made, of the investigation and the identity of the authorized officials. The EFTA Surveillance Authority shall also provide such an authorization to representatives of the EC Commission who shall take part in the investigation in accordance with Article 8 (4) of Protocol 23 to the EEA Agreement.

3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the EFTA Surveillance Authority. The decision shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Articles 12 (1) (c) and 13 (1) (d) and the right to have the decision reviewed by the EFTA Court.

4. The EFTA Surveillance Authority shall take the decisions mentioned in paragraph 3 after consultation with the competent authority of the EFTA State in whose territory the investigation is to be made.

5. Officials of the competent authority of the EFTA State in whose territory the investigation is to be made may assist the EFTA Surveillance Authority officials in carrying out their duties, at the request of such authority or of the EFTA Surveillance Authority.

6. Where an undertaking opposes an investigation ordered pursuant to this Article, the EFTA State concerned shall afford the necessary assistance to the officials authorized by the EFTA Surveillance Authority to enable them to make their investigation. To this end, EFTA States shall take the necessary measures after

consultation of the EFTA Surveillance Authority within six months of the entry into force of the EEA Agreement.

Article 12

Fines

1. The EFTA Surveillance Authority may, by decision, impose fines on undertakings or associations of undertakings of from ECU 100 to 5 000 where, intentionally or negligently:

- (a) they supply incorrect or misleading information in connection with an application pursuant to Article 3 (2) or Article 5;

or

- (b) they supply incorrect information in response to a request made pursuant to Article 9 (3) or (5), or do not supply information within the time limit fixed by a decision adopted under Article 9 (5);

or

- (c) they produce the required books or other business records in incomplete form during investigations pursuant to Article 10 or Article 11, or refuse to submit to an investigation ordered by decision taken pursuant to Article 11 (3).

2. The EFTA Surveillance Authority may, by decision, impose fines on undertakings or associations of undertakings of from ECU 1 000 to 1 000 000, or a sum in excess thereof, but not exceeding 10 % of the turnover in the preceding business year of the undertakings participating in the infringement, where either intentionally or negligently they:

- (a) infringe Article 53 (1) or Article 54 of the EEA Agreement;

or

- (b) commit a breach of any obligation imposed pursuant to Article 6 (1) of this chapter.

In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.

3. Article 8 shall apply.

4. Decisions taken pursuant to paragraphs 1 and 2 shall not be of a penal nature.

5. The fines provided for in paragraph 2 (a) shall not be imposed in respect of acts taking place after notification to the EFTA Surveillance Authority and before its decision in application of Article 53 (3) of the EEA Agreement, provided they fall within the limits of the activity described in the notification.

However, this provision shall not have effect where the EFTA Surveillance Authority has informed the undertakings or associations of undertakings concerned that, after preliminary examination, it is of the opinion

that Article 53 (1) of the EEA Agreement applies and that application of Article 53 (3) is not justified.

Article 13

Periodic penalty payments

1. By decision, the EFTA Surveillance Authority may impose periodic penalty payments on undertakings or associations of undertakings of from ECU 50 to 1 000 per day, calculated from the date appointed by the decision, in order to compel them:

- (a) to put an end to an infringement of Article 53 (1) or Article 54 of the EEA Agreement, the termination of which has been ordered pursuant to Article 4 of this chapter;
- (b) to refrain from any act prohibited under Article 6 (3);
- (c) to supply complete and correct information which has been requested by decision, taken pursuant to Article 9 (5);
- (d) to submit to an investigation which has been ordered by decision taken pursuant to Article 11 (3);
- (e) to comply with any measure imposed by decision taken under Article 4a.

2. When the undertakings or associations of undertakings have satisfied the obligation which it was the purpose of the periodic penalty payment to enforce, the EFTA Surveillance Authority may fix the total amount of the periodic penalty payment at a lower figure than that which would result from the original decision.

3. Article 8 shall apply.

Article 14

Review by the EFTA Court

The EFTA Court, in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, shall have unlimited jurisdiction within the meaning of Article 35 of this Agreement to review decisions whereby the EFTA Surveillance Authority has fixed a fine or periodic penalty payment; it may cancel, reduce or increase the fine or periodic penalty payment imposed.

Article 15

Ecu

For the purpose of applying Articles 12 to 14, 'ecu' means the ecu as defined by the competent authorities of the European Communities.

Article 16

Hearing of the parties and of third persons

1. Before refusing the certificate mentioned in Article 3 (2), or taking decisions as provided for in Articles 4, 4a, 5 (3) second subparagraph and 5 (4), 6 (3), 12 and 13, the EFTA Surveillance Authority shall give the undertakings or associations of undertakings concerned the opportunity of being heard on the matters to which the EFTA Surveillance Authority takes, or has taken, objection.

2. If the EFTA Surveillance Authority or the competent authorities of the EFTA States consider it necessary, they may also hear other natural or legal persons. Applications by such persons to be heard shall be granted when they show a sufficient interest.

3. When the EFTA Surveillance Authority intends to take a decision pursuant to Article 53 (3) of the EEA Agreement, it shall publish a summary of the relevant agreement, decision or concerted practice in the EEA Section of the *Official Journal of the European Communities* and invite all interested third parties to submit their observations within a period, not being less than one month, which it shall fix. Publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 17

Professional secrecy

1. Without prejudice to Article 9 of Protocol 23 to the EEA Agreement, information acquired as a result of the application of Articles 9 to 11 of this chapter or Article 58 of the EEA Agreement and Protocol 23 thereto shall be used only for the purpose of the relevant request or investigation.

2. Without prejudice to the provisions of Articles 16 and 18, the EFTA Surveillance Authority and the competent authorities of the EFTA States, their officials and other servants shall not disclose information of a kind covered by the obligation of professional secrecy and which has been acquired by them as a result of the application of this Protocol or Article 58 of the EEA Agreement and Protocol 23 thereto. This obligation shall also apply to the representatives of the EC Commission and of the EC Member States who participate in the Advisory Committee pursuant to Article 8 (4) and in the hearing pursuant to Article 11 (2) of Chapter XII.

3. The provisions of paragraphs 1 and 2 shall not prevent publication of general information or of surveys which do not contain information relating to particular undertakings or associations of undertakings.

Article 18**Publication of decisions**

1. The EFTA Surveillance Authority shall publish the decision which it adopts pursuant to Articles 3 (2), 4, 5 (3) second subparagraph, 5 (4) and 6 (3).
2. The publication shall state the names of the parties and the main contents of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 19**Special provisions**

The EFTA Surveillance Authority may submit to the Governments of the EFTA States, in accordance with the provisions of Article 49 of this Agreement, proposals for forms to be used for complaints pursuant to Article 3 and applications pursuant to Articles 3 (2) and 5, as well as proposals for complementary notes to the forms.

CHAPTER XII

Form, content and other details of complaints and of applications, and the hearings provided for in Chapter XI laying down the procedure for the application of the rules of competition to undertakings in the air transport sector

Section I**Complaints and applications****Article 1****Complaints**

1. Complaints pursuant to Article 3 (1) of Chapter XI shall be submitted in writing in an official language of an EFTA State or the European Community, their form, content and other details being left to the discretion of complainants.
2. Complaints may be submitted by:
 - (a) EFTA States;
 - (b) natural or legal persons who claim a legitimate interest.
3. When representatives of undertakings, of associations of undertakings, or of natural or legal persons sign such complaints, they shall produce written proof that they are authorized to act.

Article 2**Persons entitled to submit applications**

1. Any undertaking which is party to agreements, decisions or practices of the kind described in Articles 53 (1) and 54 of the EEA Agreement may submit an application pursuant to Articles 3 (2) and 5 of Chapter XI. Where the application is submitted by some but not all of the undertakings concerned, they shall give notice to the others.
2. Where applications pursuant to Articles 3 (2) and 5 of Chapter XI are signed by representatives of undertakings, of associations of undertakings, or of natural or legal persons, such representatives shall produce written proof that they are authorized to act.
3. Where a joint application is submitted, a joint representative shall be appointed.

Article 3**Submission of applications**

1. Applications pursuant to Articles 3 (2) and 5 of Chapter XI shall be submitted on forms issued for this purpose by the Governments of the EFTA States, by common accord, as shown in Appendix 8, or by the EC Commission.
2. Several participating undertakings may submit an application on a single form.
3. Applications shall contain the information requested in the form.
4. Nine copies of each application and of the supporting documents shall be submitted to the EFTA Surveillance Authority.
5. The supporting documents shall be either originals or copies. Copies must be certified as true copies of the original.
6. Applications shall be in one of the official languages of an EFTA State or the European Community. Supporting documents shall be submitted in their original language. Where the original language is not an official language of an EFTA State or the European Community, a translation in one of these languages shall be attached.
7. The date of submission of an application shall be the date on which it is received by the EFTA Surveillance Authority, without prejudice to Article 11 of Protocol 23 to the EEA Agreement. Where, however, the application is sent by registered post, it shall be deemed to have been received on the date shown on the postmark of the place of posting.
8. Where an application submitted pursuant to Articles 3 (2) and 5 of Chapter XI falls outside the scope

of that chapter, the EFTA Surveillance Authority shall without delay inform the applicant that it intends to examine the application under the provisions of such other acts referred to in Annex XIV to the EEA Agreement as is applicable to the case; however, the date of submission of the application shall be the date resulting from paragraph 7. The EFTA Surveillance Authority shall inform the applicant of its reasons and fix a period for him to submit any comments in writing before it conducts its appraisal pursuant to the provisions of that other act.

Section II

Hearings

Article 4

Before consulting the Advisory Committee on Competition in Air Transport, the EFTA Surveillance Authority shall hold a hearing pursuant to Article 16 (1) of Chapter XI.

Article 5

1. The EFTA Surveillance Authority shall inform undertakings and associations of undertakings in writing of the objections raised against them. The communication shall be addressed to each of them or to a joint agent appointed by them.

2. The EFTA Surveillance Authority may inform the parties by giving notice in the EEA Section of the *Official Journal of the European Communities*, if from the circumstances of the case this appears appropriate, in particular where notice is to be given to a number of undertakings but no joint agent has been appointed. The notice shall have regard to the legitimate interest of the undertakings in the protection of their business secrets.

3. A fine or a periodic penalty payment may be imposed on an undertaking or association of undertakings only if the objections were notified in the manner provided for in paragraph 1.

4. The EFTA Surveillance Authority shall, when giving notice of objections, fix a period within which the undertakings and associations of undertakings may inform the EFTA Surveillance Authority of their view.

Article 6

1. Undertakings and associations of undertakings shall, within the appointed period, make known in writing their views concerning the objections raised against them.

2. They may in their written comments set out all matters relevant to their defence.

3. They may attach any relevant documents in proof of the facts set out. They may also propose that the EFTA Surveillance Authority hear persons who may corroborate those facts.

Article 7

The EFTA Surveillance Authority shall in its decision deal only with those objections raised against undertakings and associations of undertakings in respect of which they have been afforded the opportunity of making known their views.

Article 8

If natural or legal persons showing a sufficient interest apply to be heard pursuant to Article 16 (2) of Chapter XI the EFTA Surveillance Authority shall afford them the opportunity of making known their views in writing within such period as it shall fix.

Article 9

Where the EFTA Surveillance Authority, having received a complaint pursuant to Article 3 (1) of Chapter XI considers that on the basis of the information in its possession there are insufficient grounds for acting on the complaint, it shall inform the persons who submitted the complaint of its reasons and fix a period for them to submit any further comments in writing.

Article 10

1. The EFTA Surveillance Authority shall afford to persons who have so requested in their written comments the opportunity to put forward their arguments orally, if those persons show a sufficient interest or if the EFTA Surveillance Authority proposes to impose on them a fine or periodic penalty payment.

2. The EFTA Surveillance Authority may likewise afford to any other person the opportunity of orally expressing his views.

Article 11

1. The EFTA Surveillance Authority shall summon the persons to be heard to attend on such date as it shall appoint.

2. It shall forthwith transmit a copy of the summons to the competent authorities of the EFTA States, who may appoint an official to take part in the hearing. Likewise, the EFTA Surveillance Authority shall invite the EC Commission to be represented at the hearing. The invitation shall also extend to the EC Member States.

Article 12

1. Hearings shall be conducted by the persons appointed by the EFTA Surveillance Authority for that purpose.

2. Persons summoned to attend shall either appear in person or be represented by legal representatives or by representatives authorized by their constitution. Undertakings and associations of undertakings may moreover be represented by a duly authorized agent appointed from among their permanent staff.

Persons heard by the EFTA Surveillance Authority may be assisted by lawyers or advisers who are entitled to plead before the EFTA Court, or by other qualified persons.

3. Hearings shall not be public. Persons shall be heard separately or in the presence of other persons summoned to attend. In the latter case, regard shall be had to the legitimate interest of the undertakings in the protection of their business secrets.

4. The essential content of the statements made by each person heard shall be recorded in minutes which shall be read and approved by him.

Article 13

Without prejudice to Article 5 (2), information and summonses from the EFTA Surveillance Authority shall be sent to the addressees by registered letter with acknowledgement of receipt, or shall be delivered by hand against receipt.

Article 14

1. In fixing the periods provided for in Articles 3 (8), 5, 8 and 9, the EFTA Surveillance Authority shall have regard both to the time required for preparation of comments and to the urgency of the case. A period shall be not less than two weeks; it may be extended.

2. Periods shall run from the day following receipt of a communication or delivery thereof by hand.

3. Written comments must reach the EFTA Surveillance Authority or be dispatched by registered letter before expiry of the period. Where the period would expire on a Sunday or a public holiday, it shall be extended up to the end of the next following working day. For the purpose of calculating the extension, public holidays shall, in cases where the relevant date is the date of receipt of written comments, be those set out in

Appendix 2 to this Protocol, and in cases where the relevant date is the date of dispatch, those appointed by law in the country of dispatch.

*Article 15***Special provisions**

The EFTA Surveillance Authority may submit to the Governments of the EFTA States, in accordance with the provisions of Article 49 of this Agreement, proposals for forms and complementary notes.

PART III**CONTROL OF CONCENTRATIONS***CHAPTER XIII**Rules relating to control of concentrations between undertakings*

Due to the division of the text of Regulation (EEC) No 4064/89 between Annex XIV to the EEA Agreement (substantive rules) and the present chapter (procedural rules), the text, as adapted, of Articles 1 to 5 is to be found in the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89). The EFTA Surveillance Authority shall carry out the control of concentration in accordance with the provisions of Article 57 of the EEA Agreement, in particular paragraph 2 (b).

Articles 1 to 5

(No text)

*Article 6***Examination of the notification and initiation of proceedings**

1. The EFTA Surveillance Authority, in accordance with the provisions of Article 57 (1) and (2) (b) of the EEA Agreement, shall examine the notification as soon as it is received.

(a) Where it concludes that the concentration notified does not fall within the scope of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89), it shall record that finding by means of a decision.

(b) Where it finds that the concentration notified, although falling within the scope of the said act, does not raise serious doubts as to its compatibility with the functioning of the EEA Agreement, it shall decide not to oppose it and shall declare that it is compatible with the functioning of the EEA Agreement.

- (c) If, on the other hand, it finds that the concentration notified falls within the scope of the said act and raises serious doubts as to its compatibility with the functioning of the EEA Agreement, it shall decide to initiate proceedings.

2. The EFTA Surveillance Authority shall notify its decision to the undertakings concerned and the competent authorities of the EFTA States without delay.

Article 7

Suspension of concentrations

1. For the purposes of paragraph 2 a concentration as defined in Article 1 of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89) shall not be put into effect either before its notification or within the first three weeks following its notification.

2. Where the EFTA Surveillance Authority, following a preliminary examination of the notification within the period provided for in paragraph 1, finds it necessary in order to ensure the full effectiveness of any decision taken later pursuant to Article 8 (3) and (4), it may decide on its own initiative to continue the suspension of a concentration in whole or in part until it takes a final decision, or to take other interim measures to that effect.

3. Paragraphs 1 and 2 shall not impede the implementation of a public bid which has been notified to the EFTA Surveillance Authority in accordance with Article 4 (1) of the said act, provided that the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of those investments and on the basis of a derogation granted by the EFTA Surveillance Authority pursuant to paragraph 4.

4. The EFTA Surveillance Authority may, on request, grant a derogation from the obligations imposed in paragraphs 1, 2 or 3 in order to prevent serious damage to one or more undertakings concerned by a concentration or to a third party. That derogation may be made subject to conditions and obligations in order to ensure conditions of effective competition. A derogation may be applied for and granted at any time, even before notification or after the transaction.

5. The validity of any transaction carried out in contravention of paragraph 1 or 2 shall be dependent on a decision pursuant to Article 6 (1) (b) or 8 (2) or (3) or on a presumption pursuant to Article 10 (6).

This Article shall, however, have no effect on the validity of transactions in securities including those convertible

into other securities admitted to trading on a market which is regulated and supervised by authorities recognized by public bodies, operates regularly and is accessible directly or indirectly to the public, unless the buyer and seller knew or ought to have known that the transaction was carried out in contravention of paragraph 1 or 2.

Article 8

Powers of decision of the EFTA Surveillance Authority

1. Without prejudice to Article 9, all proceedings initiated pursuant to Article 6 (1) (c) shall be closed by means of a decision as provided for in paragraphs 2 to 5.

2. Where the EFTA Surveillance Authority finds that, following modification by the undertakings concerned if necessary, a notified concentration fulfils the criterion laid down in Article 2 (2) of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89), it shall issue a decision declaring the concentration compatible with the functioning of the EEA Agreement.

It may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into *vis-à-vis* the EFTA Surveillance Authority with a view to modifying the original concentration plan. The decision declaring the concentration compatible shall also cover restrictions directly related and necessary to the implementation of the concentration.

3. Where the EFTA Surveillance Authority finds that a concentration fulfils the criterion laid down in Article 2 (3) of the said act, it shall issue a decision declaring that the concentration is incompatible with the functioning of the EEA Agreement.

4. Where a concentration has already been implemented, the EFTA Surveillance Authority may, in a decision pursuant to paragraph 3 or by separate decision, require the undertakings or assets brought together to be separated or the cessation of joint control or any other action that may be appropriate in order to restore conditions of effective competition.

5. The EFTA Surveillance Authority may revoke the decision it has taken pursuant to paragraph 2 where:

- (a) the declaration of compatibility is based on incorrect information for which one of the undertakings is responsible or where it has been obtained by deceit;

or

- (b) the undertakings concerned commit a breach of an obligation attached to the decision.

6. In the case referred to in paragraph 5, the EFTA Surveillance Authority may take a decision under paragraph 3, without being bound by the deadline referred to in Article 10 (3).

Article 9

Referral to the competent authorities of the EFTA States

1. The EFTA Surveillance Authority may, by means of a decision notified without delay to the undertakings concerned and the competent authorities of the other EFTA States, refer a notified concentration to the competent authorities of the EFTA State concerned in the following circumstances.

2. Within three weeks of the date of receipt of the copy of the notification an EFTA State may inform the EFTA Surveillance Authority which shall inform the undertakings concerned that a concentration threatens to create or to strengthen a dominant position as a result of which effective competition would be significantly impeded on a market, within the State, which presents all the characteristics of a distinct market, be it a substantial part of the territory of the EFTA States or not.

3. If the EFTA Surveillance Authority considers that, having regard to the market for the products or services in question and the geographical reference market within the meaning of paragraph 7, there is such a distinct market and that such a threat exists, either:

- (a) it shall itself deal with the case in order to maintain or restore effective competition on the market concerned;

or

- (b) it shall refer the case to the competent authorities of the EFTA State concerned with a view to the application of that State's national competition law.

If, however, the EFTA Surveillance Authority considers that such a distinct market or threat does not exist it shall adopt a decision to that effect which it shall address to the EFTA State concerned.

4. A decision to refer or not to refer pursuant to paragraph 3 shall be taken where:

- (a) as a general rule within the six-week period provided for in Article 10 (1), second paragraph, where the

EFTA Surveillance Authority, pursuant to Article 6 (1) (b), has not initiated proceedings;

or

- (b) within three months at most of the notification of the concentration concerned where the EFTA Surveillance Authority has initiated proceedings under Article 6 (1) (c), without taking the preparatory steps in order to adopt the necessary measures under Article 8 (2), second subparagraph, (3) or (4) to maintain or restore effective competition on the market concerned.

5. If within the three months referred to in paragraph 4 (b) the EFTA Surveillance Authority, despite a reminder from the EFTA State concerned, has not taken a decision on referral in accordance with paragraph 3 nor has taken the preparatory steps referred to in paragraph 4 (b), it shall be deemed to have taken a decision to refer the case to the EFTA State concerned in accordance with paragraph 3 (b).

6. The publication of any report or the announcement of the findings of the examination of the concentration by the competent authority of the EFTA State concerned shall be effected not more than four months after the EFTA Surveillance Authority's referral.

7. The geographical reference market shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas. This assessment should take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between the area concerned and neighbouring areas or of substantial price differences.

8. In applying the provisions of this Article, the EFTA State concerned may take only the measures strictly necessary to safeguard or restore effective competition on the market concerned.

9. In accordance with the relevant provisions of the EEA Agreement, any EFTA State may appeal to the EFTA Court in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, and in particular request the application of Article 41 of this Agreement, for the purpose of applying its national competition law.

10. This Article will be reviewed before the end of the year 1993.

Article 10

Time limits for initiating proceedings and for decisions

1. The decisions referred to in Article 6 (1) must be taken within one month at most. That period shall begin on the day following that of the receipt of a notification or, if the information to be supplied with the notification is incomplete, on the day following that of the receipt of the complete information. That period shall be increased to six weeks if the EFTA Surveillance Authority receives a request from an EFTA State in accordance with Article 9 (2).
2. Decisions taken pursuant to Article 8 (2) concerning notified concentrations must be taken as soon as it appears that the serious doubts referred to in Article 6 (1) (c) have been removed, particularly as a result of modifications made by the undertakings concerned, and at the latest by the deadline laid down in paragraph 3.
3. Without prejudice to Article 8 (6), decisions taken pursuant to Article 8 (3) concerning notified concentrations must be taken within not more than four months of the date on which the proceeding is initiated.
4. The period set by paragraph 3 shall exceptionally be suspended where, owing to circumstances for which one of the undertakings involved in the concentration is responsible, the EFTA Surveillance Authority has had to request information by decision pursuant to Article 11 or to order an investigation by decision pursuant to Article 13.
5. Where the EFTA Court gives a judgment which annuls the whole or part of an EFTA Surveillance Authority decision taken under this chapter, the periods laid down in this chapter shall start again from the date of the judgment.
6. Where the EFTA Surveillance Authority has not taken a decision in accordance with Article 6 (1) (b) or (c) or Article 8 (2) or (3) within the deadlines set in paragraphs 1 and 3 respectively, the concentration shall be deemed to have been declared compatible with the functioning of the EEA Agreement, without prejudice to Article 9.

Article 11

Requests for information

1. In carrying out the duties assigned to it by Articles 57 or 58 of the EEA Agreement, by provisions set out in Protocol 24 and in Annex XIV to the EEA Agreement and by the provisions of this chapter, the EFTA Surveillance Authority may obtain all necessary information from the Governments and competent authorities of the EFTA States, from the persons referred to in Article 3 (1) (b) of the act referred to in point 1 of

Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89), and from undertakings and associations of undertakings.

2. When sending a request for information to a person, an undertaking or an association of undertakings, the EFTA Surveillance Authority shall at the same time send a copy of the request to the competent authority of the EFTA State within the territory of which the residence of the person or the seat of the undertaking or association of undertakings is situated.
3. In its request the EFTA Surveillance Authority shall state the legal basis and the purpose of the request and also the penalties provided for in Article 14 (1) (c) for supplying incorrect information.
4. The information requested shall be provided, in the case of undertakings, by their owners or their representatives and, in the case of legal persons, companies or firms, or of associations having no legal personality, by the persons authorized to represent them by law or by their statutes.
5. Where a person, an undertaking or an association of undertakings does not provide the information requested within the period fixed by the EFTA Surveillance Authority or provides incomplete information, the EFTA Surveillance Authority shall by decision require the information to be provided. The decision shall specify what information is required, fix an appropriate period within which it is to be supplied and state the penalties provided for in Articles 14 (1) (c) and 15 (1) (a) and the right to have the decision reviewed by the EFTA Court in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, in particular Article 36.
6. The EFTA Surveillance Authority shall at the same time send a copy of its decision to the competent authority of the EFTA State within the territory of which the residence of the person or the seat of the undertaking or association of undertakings is situated.

Article 12

Investigations by the authorities of the EFTA States

1. At the request of the EFTA Surveillance Authority, the competent authorities of the EFTA States shall undertake the investigations which the EFTA Surveillance Authority considers to be necessary under Article 13 (1), or which it has ordered by decision pursuant to Article 13 (3). The officials of the competent authorities of the EFTA States responsible for conducting those investigations shall exercise their powers upon production of an authorization in writing issued by the competent authority of the EFTA State within the territory of which the investigation is to be carried out. Such authorization shall specify the subject matter and purpose of the investigation.

2. If so requested by the EFTA Surveillance Authority or by the competent authority of the EFTA State within the territory of which the investigation is to be carried out, officials of the EFTA Surveillance Authority may assist the officials of that authority in carrying out their duties.

Article 13

Investigative powers of the EFTA Surveillance Authority

1. In carrying out the duties assigned to it by Articles 57 and 58 of the EEA Agreement, by provisions set out in Protocol 24 and in Annex XIV to the EEA Agreement and by the provisions of this chapter, the EFTA Surveillance Authority may undertake all necessary investigations into undertakings and associations of undertakings.

To that end the officials authorized by the EFTA Surveillance Authority shall be empowered:

- (a) to examine the books and other business records;
- (b) to take or demand copies of or extracts from the books and business records;
- (c) to ask for oral explanations on the spot;
- (d) to enter any premises, land and means of transport of undertakings.

2. The officials of the EFTA Surveillance Authority authorized to carry out the investigations shall exercise their powers on production of an authorization in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Article 14 (1) (d) in cases where production of the required books or other business records is incomplete. In good time before the investigation, the EFTA Surveillance Authority shall inform, in writing, the competent authority of the EFTA State within the territory of which the investigation is to be carried out of the investigation and of the identities of the authorized officials. The EFTA Surveillance Authority shall also provide such an authorization to representatives of the EC Commission who shall take part in the investigation in accordance with Article 8 (5) of Protocol 24 to the EEA Agreement.

3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the EFTA Surveillance Authority. The decision shall specify the subject matter and purpose of the investigation, appoint the date on which it shall begin and state the penalties provided for in Articles 14 (1) (d) and 15 (1) (b) and the right to have the decision reviewed by the EFTA Court in accordance with Article 108 (2) of the EEA Agreement

and with the relevant provisions of this Agreement, in particular Article 36.

4. The EFTA Surveillance Authority shall in good time and in writing inform the competent authority of the EFTA State within the territory of which the investigation is to be carried out of its intention of taking a decision pursuant to paragraph 3. It shall hear the competent authority before taking its decision.

5. Officials of the competent authority of the EFTA State within the territory of which the investigation is to be carried out may, at the request of that authority or of the EFTA Surveillance Authority, assist the officials of the EFTA Surveillance Authority in carrying out their duties.

6. Where an undertaking or association of undertakings opposes an investigation ordered pursuant to this Article, the EFTA State concerned shall afford the necessary assistance to the officials authorized by the EFTA Surveillance Authority to enable them to carry out their investigation. To this end the EFTA States shall, after consulting the EFTA Surveillance Authority, take the necessary measures within six months of the entry into force of the EEA Agreement.

Article 14

Fines

1. The EFTA Surveillance Authority may by decision impose on the persons referred to in Article 3 (1) (b) of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89), undertakings or associations of undertakings fines of from ECU 1 000 to 50 000 where intentionally or negligently:

- (a) they fail to notify a concentration in accordance with Article 4 of the said act;
- (b) they supply incorrect or misleading information in a notification pursuant to Article 4 of the said act;
- (c) they supply incorrect information in response to a request made pursuant to Article 11 or fail to supply information within the period fixed by a decision taken pursuant to Article 11;
- (d) they produce the required books or other business records in incomplete form during investigations under Article 12 or 13, or refuse to submit to an investigation ordered by decision taken pursuant to Article 13.

2. The EFTA Surveillance Authority may by decision impose fines not exceeding 10 % of the aggregate turnover of the undertakings concerned within the meaning of Article 5 of the said act on the persons or undertakings concerned where, either intentionally or negligently, they:

- (a) fail to comply with an obligation imposed by decision pursuant to Article 7 (4) or 8 (2), second subparagraph;
 - (b) put into effect a concentration in breach of Article 7 (1) or disregard a decision taken pursuant to Article 7 (2);
 - (c) put into effect a concentration declared incompatible with the functioning of the EEA Agreement by decision pursuant to Article 8 (3) or do not take the measures ordered by decision pursuant to Article 8 (4).
3. In setting the amount of a fine, regard shall be had to the nature and gravity of the infringement.
4. Decisions taken pursuant to paragraphs 1 and 2 shall not be of a criminal law nature.

Article 15

Periodic penalty payments

1. The EFTA Surveillance Authority may by decision impose on the persons referred to in Article 3 (1) (b) of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89), undertakings or associations of undertakings concerned periodic penalty payments of up to ECU 25 000 for each day of delay calculated from the date set in the decision, in order to compel them:
- (a) to supply complete and correct information which it has requested by decision pursuant to Article 11;
 - (b) to submit to an investigation which it has ordered by decision pursuant to Article 13.
2. The EFTA Surveillance Authority may by decision impose on the persons referred to in Article 3 (1) (b) of the said act or on undertakings periodic penalty payments of up to ECU 100 000 for each day of delay calculated from the date set in the decision, in order to compel them:
- (a) to comply with an obligation imposed by decision pursuant to Article 7 (4) or Article 8 (2), second subparagraph;
- or
- (b) to apply the measures ordered by decision pursuant to Article 8 (4).
3. Where the persons referred to in Article 3 (1) (b) of the said act, undertakings or associations of undertakings have satisfied the obligation which it was the purpose of the periodic penalty payment to enforce, the EFTA

Surveillance Authority may set the total amount of the periodic penalty payments at a lower figure than that which would arise under the original decision.

Article 16

Review by the EFTA Court

The EFTA Court, in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, shall have unlimited jurisdiction within the meaning of Article 36 of this Agreement to review decisions whereby the EFTA Surveillance Authority has fixed a fine or periodic penalty payments; it may cancel, reduce or increase the fine or periodic penalty payments imposed.

Article 17

Professional secrecy

1. Without prejudice to Article 9 of Protocol 24 to the EEA Agreement, information acquired as a result of the application of Articles 57 and 58 of the EEA Agreement, of Protocol 24 to the EEA Agreement and of Articles 11, 12, 13 and 18 of this chapter shall be used only for the purposes of the relevant request, investigation or hearing.
2. Without prejudice to Article 4 (3) of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89) and of Articles 18 and 20 of this chapter, the EFTA Surveillance Authority and the competent authorities of the EFTA States, their officials and other servants shall not disclose information they have acquired through the application of Protocol 24 to the EEA Agreement, of the said act or of this chapter of the kind covered by the obligation of professional secrecy.
3. Paragraphs 1 and 2 shall not prevent publication of general information or of surveys which do not contain information relating to particular undertakings or associations of undertakings.

Article 18

Hearing of the parties and of third persons

1. Before taking any decision provided for in Articles 7 (2) and (4), 8 (2), second subparagraph, and (3) to (5), Articles 14 and 15, the EFTA Surveillance Authority shall give the persons, undertakings and associations of undertakings concerned the opportunity, at every stage of the procedure up to the consultation of the Advisory Committee, of making known their views on the objections against them.

2. By way of derogation from paragraph 1, a decision to continue the suspension of a concentration or to grant a derogation from suspension as referred to in Article 7 (2) or (4) may be taken provisionally, without the persons, undertakings or associations of undertakings concerned being given the opportunity to make known their views beforehand, provided that the EFTA Surveillance Authority gives them that opportunity as soon as possible after having taken its decision.

3. The EFTA Surveillance Authority shall base its decision only on objections on which the parties have been able to submit their observations. The rights of the defence shall be fully respected in the proceedings. Access to the file shall be open at least to the parties directly involved, subject to the legitimate interest of undertakings in the protection of their business secrets.

4. In so far as the EFTA Surveillance Authority and the competent authorities of the EFTA States deem it necessary, they may also hear other natural or legal persons. Natural or legal persons showing a sufficient interest and especially members of the administrative or management bodies of the undertakings concerned or the recognized representatives of their employees shall be entitled, upon application, to be heard.

Article 19

Liaison with the authorities of the EFTA States

1. The EFTA Surveillance Authority shall transmit to the competent authorities of the EFTA States copies of notifications within three working days and, as soon as possible, copies of the most important documents lodged with or issued by the EFTA Surveillance Authority pursuant to the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89) and this chapter.

2. The EFTA Surveillance Authority shall carry out the procedures set out in the said act and in this chapter in close and constant liaison with the competent authorities of the EFTA States, which may express their views upon those procedures. For the purposes of Article 9 it shall obtain information from the competent authority of the EFTA State as referred to in paragraph 2 of that Article and give it the opportunity to make known its views at every stage of the procedure up to the adoption of a decision pursuant to paragraph 3 of that Article; to that end it shall give it access to the file.

The EFTA Surveillance Authority shall forthwith transmit to the competent authorities of the EFTA States a copy of notifications and information received from the EC Commission pursuant to Articles 3 and 10 of Protocol 24 to the EEA Agreement.

The EFTA Surveillance Authority shall forthwith transmit to the competent authorities of the EFTA States a copy of documents received from the EC Commission pursuant to Article 8 of Protocol 24 to the EEA Agreement.

3. An Advisory Committee on Concentrations shall be consulted before any decision is taken pursuant to Articles 8 (2) to (5), 14 or 15, or prior to a proposal referred to in Article 23.

4. The Advisory Committee shall consist of representatives of the authorities of the EFTA States. Each EFTA State shall appoint one or two representatives; if unable to attend, they may be replaced by other representatives. At least one of the representatives of an EFTA State shall be competent in matters of restrictive practices and dominant positions.

5. Consultation shall take place at a joint meeting convened at the invitation of and chaired by the EFTA Surveillance Authority. A summary of the case, together with the most important documents and a preliminary draft of the decision to be taken for each case considered, shall be sent with the invitation. The meeting shall take place not less than 14 days after the invitation has been sent. The EFTA Surveillance Authority may in exceptional cases shorten that period as appropriate in order to avoid serious harm to one or more of the undertakings concerned by a concentration.

6. The Advisory Committee shall deliver an opinion on the EFTA Surveillance Authority's draft decision, if necessary by taking a vote. The Advisory Committee may deliver an opinion even if some members are absent and unrepresented. The opinion shall be delivered in writing and appended to the draft decision. The EFTA Surveillance Authority shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

7. The Advisory Committee may recommend publication of the opinion. The EFTA Surveillance Authority may carry out such publication. The decision to publish shall take due account of the legitimate interest of undertakings in the protection of their business secrets and of the interest of the undertakings concerned in such publication's taking place.

Article 20

Publication of decisions

1. The EFTA Surveillance Authority shall publish the decisions which it takes pursuant to Article 8 (2) to (5) in the EEA Section of the *Official Journal of the European Communities*.

2. The publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 21

Jurisdiction

1. Subject to review by the EFTA Court in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, the EFTA Surveillance Authority shall have sole jurisdiction, on the conditions set out in Article 58 of the EEA Agreement, to take the decisions provided for in the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89) and this chapter.

2. No EFTA State shall apply its national legislation on competition to any concentration that has an EFTA dimension within the meaning of Article 1 of the said act.

The first subparagraph shall be without prejudice to any EFTA State's power to carry out any enquiries necessary for the application of Article 9 (2) or after referral, pursuant to Article 9 (3), first subparagraph, indent (b), or (5), to take the measures strictly necessary for the application of Article 9 (8).

3. Notwithstanding paragraphs 1 and 2, the EFTA States may take appropriate measures to protect legitimate interests other than those taken into consideration by the said act and this chapter and compatible with the general principles and other provisions as provided for, directly or indirectly, under the EEA Agreement.

Public security, plurality of the media and prudential rules shall be regarded as legitimate interests within the meaning of the first subparagraph.

Any other public interest must be communicated to the EFTA Surveillance Authority by the EFTA State concerned and shall be recognized by the EFTA Surveillance Authority after an assessment of its compatibility with the general principles and other provisions as provided for, directly or indirectly, under the EEA Agreement before the measures referred to above may be taken. The EFTA Surveillance Authority shall inform the EFTA State concerned of its decision within one month of that communication.

Article 22

Application of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89) and of this chapter

1. The act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89) and this chapter alone shall apply to concentrations as defined in Article 3 of the said act.

2. Chapters II, VI, IX and XI and the acts referred to in points 10 and 11 of Annex XIV to the EEA Agreement (Regulations (EEC) No 1017/68 and (EEC) No 4056/86) shall not apply to concentrations as defined in Article 3 of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89).

3. If the EFTA Surveillance Authority finds, at the request of an EFTA State, that a concentration as defined in Article 3 of the said act that has no EFTA dimension within the meaning of Article 1 of the said act creates or strengthens a dominant position as a result of which effective competition would be significantly impeded within the territory of the EFTA State concerned it may, in so far as the concentration affects trade between EFTA States, adopt the decisions provided for in Article 8 (2), second subparagraph, (3) and (4).

4. Articles 2 (1) (a) and (b), and 5 of the said act and Articles 6, 8 and 10 to 20 of this chapter shall apply. The period within which proceedings may be initiated pursuant to Article 10 (1) shall begin on the date of the receipt of the request from the EFTA State. The request must be made within one month at most of the date on which the concentration was made known to the EFTA State or effected. This period shall begin on the date of the first of those events.

5. Pursuant to paragraph 3 the EFTA Surveillance Authority shall take only the measures strictly necessary to maintain or restore effective competition within the territory of the EFTA State at the request of which it intervenes.

6. Paragraphs 3 to 5 shall continue to apply until the thresholds referred to in Article 1 (2) of the said act have been reviewed.

Article 23

Special provisions

The EFTA Surveillance Authority may submit to the Governments of the EFTA States, in accordance with the provisions of Article 49 of this Agreement, proposals for forms to be used for notifications pursuant to Article 4 of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89), as well as proposals for complementary notes to the forms.

Article 24

Relations with countries not party to the EEA Agreement

1. The EFTA State shall inform the EFTA Surveillance Authority of any general difficulties encountered by their

undertakings with concentrations as defined in Article 3 of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89) in a country not party to the EEA Agreement.

2. Initially not more than one year after the entry into force of the EEA Agreement and thereafter periodically the EFTA Surveillance Authority shall draw up a report examining the treatment accorded to EFTA undertakings, in the terms referred to in paragraphs 3 and 4, as regards concentrations in countries not party to the EEA Agreement. The EFTA Surveillance Authority shall submit those reports to the Standing Committee, together with any recommendations.

3. Whenever it appears to the EFTA Surveillance Authority, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that a country not party to the EEA Agreement does not grant EFTA undertakings treatment comparable to that granted by EFTA States to undertakings from that country, the EFTA Surveillance Authority may submit proposals to each of the Governments of the EFTA States with a view to obtaining comparable treatment for EFTA undertakings.

4. Measures taken under this Article shall comply with the obligations of the EFTA States under international agreements, whether bilateral or multilateral.

Article 25

(See Article 10 of Chapter XVI.)

CHAPTER XIV

Detailed rules concerning notifications, time limits and hearings in the field of control of concentrations between undertakings

Section I

Notifications

Article 1

Persons entitled to submit notifications

1. Notifications shall be submitted by the persons or undertakings referred to in Article 4 (2) of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89).

2. Where notifications are signed by representatives of persons or of undertakings, such representatives shall produce written proof that they are authorized to act.

3. Joint notifications should be submitted by a joint representative who is authorized to transmit and to receive documents on behalf of all notifying parties.

Article 2

Submission of notifications

1. Notifications shall be submitted in the manner prescribed in the form issued for this purpose by the Governments of the EFTA States, by common accord, as shown in Appendix 9, or by the EC Commission. Joint notifications shall be submitted on a single form.

2. Nine copies of each notification and of the supporting documents shall be submitted to the EFTA Surveillance Authority at the address indicated in the form as issued by the Governments of the EFTA States, by common accord.

3. The supporting documents shall be either originals or copies of the originals; in the latter case the notifying parties shall confirm that they are true and complete.

4. Notifications shall be in an official language of an EFTA State or of the Community. If undertakings choose to notify the EFTA Surveillance Authority in a language which is not one of the official languages of the States falling within the competence of that Authority, or a working language of that Authority, they shall simultaneously supplement all documentation with a translation into an official language or a working language of that authority. The language which is chosen for the translation shall determine the language in which the undertaking may be addressed by the EFTA Surveillance Authority. Supporting documents shall be submitted in their original language. Where the original language is not one of the official languages as referred to above, a translation into the language of the proceeding shall be attached.

Article 3

Information to be provided

1. Notifications shall contain the information requested by the form as issued by the Governments of the EFTA States, by common accord, or the EC Commission. The information must be correct and complete.

2. Material changes in the facts specified in the notification which the notifying parties know or ought to have known must be communicated to the EFTA Surveillance Authority voluntarily and without delay.

3. Incorrect or misleading information shall be deemed to be incomplete information.

Article 4

Effective date of notifications

1. Subject to paragraph 2, and without prejudice to Article 11 of Protocol 24 to the EEA Agreement, notifications shall become effective on the date on which they are received by the EFTA Surveillance Authority.

2. Subject to paragraph 3, where the information contained in the notification is incomplete in a material respect, the EFTA Surveillance Authority shall without delay inform the notifying parties or the joint representative in writing and shall fix an appropriate time limit for the completion of the information; in such cases, the notification shall become effective on the date on which the complete information is received by the EFTA Surveillance Authority.

3. The EFTA Surveillance Authority may dispense with the obligation to provide any particular information requested by the form as issued by the Governments of the EFTA States, by common accord, or the EC Commission where the EFTA Surveillance Authority considers that such information is not necessary for the examination of the case.

4. The EFTA Surveillance Authority shall without delay acknowledge in writing to the notifying parties or the joint representative receipt of the notification and of any reply to a letter sent by the EFTA Surveillance Authority pursuant to paragraph 2.

Article 5

Conversion of notifications

1. Where the EFTA Surveillance Authority finds that the operation notified does not constitute a concentration within the meaning of Article 3 of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89) it shall inform the notifying parties or the joint representative in writing. In such a case, the EFTA Surveillance Authority may, if requested by notifying parties, as appropriate and subject to paragraph 2 below, treat the notification as an application within the meaning of Article 2 or a notification within the meaning of Article 4 of Chapter II, as an application within the meaning of Article 12 of Chapter VI, as an application within the meaning of Article 12 of Chapter IX or as an application within the meaning of Article 3 (2) or of Article 5 of Chapter XI.

2. In cases referred to in paragraph 1, second sentence, the EFTA Surveillance Authority may require that the information given in the notification be supplemented within an appropriate time limit fixed by it in so far as this is necessary for assessing the operation on the basis of the abovementioned chapters. The application or notification shall be deemed to fulfil the requirements of

such chapters from the date of the original notification where the additional information is received by the EFTA Surveillance Authority within the time limit fixed.

Section II

Time limits for initiating proceedings and for decisions

Article 6

Beginning of the time limit

1. The periods referred to in Article 10 (1) of Chapter XIII shall start at the beginning of the day following the effective date of the notification, within the meaning of Article 4 (1) and (2) of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89).

2. The period referred to in Article 10 (3) of Chapter XIII shall start at the beginning of the day following the day on which proceedings were initiated.

3. Where the first day of a period is not a working day within the meaning of Article 19, the period shall start at the beginning of the following working day.

Article 7

End of the time limit

1. The period referred to in the first subparagraph of Article 10 (1) of Chapter XIII shall end with the expiry of the day which in the month following that in which the period began falls on the same date as the day from which the period runs. Where such a day does not occur in that month, the period shall end with the expiry of the last day of that month.

2. The period referred to in the second subparagraph of Article 10 (1) of Chapter XIII shall end with the expiry of the day which in the sixth week following that in which the period began is the same day of the week as the day from which the period runs.

3. The period referred to in Article 10 (3) of Chapter XIII shall end with the expiry of the day which in the fourth month following that in which the period began falls on the same date as the day from which the period runs. Where such a day does not occur in that month the period shall end with the expiry of the last day of that month.

4. Where the last day of the period is not a working day within the meaning of Article 19, the period shall end with the expiry of the following working day.

5. Paragraphs 1 to 4 shall be subject to the provisions of Article 8.

*Article 8***Addition of holidays**

Where public holiday or other holidays of the EFTA Surveillance Authority as defined in Article 19 fall within the periods referred to in Article 10 (1) and in Article 10 (3) of Chapter XIII, these periods shall be extended by a corresponding number of days.

*Article 9***Suspension of the time limit**

1. The period referred to in Article 10 (3) of Chapter XIII shall be suspended where the EFTA Surveillance Authority, pursuant to Articles 11 (5) or 13 (3) of Chapter XIII, has to take a decision because:

- (a) information which the EFTA Surveillance Authority has requested pursuant to Article 11 (2) of Chapter XIII from an undertaking involved in a concentration is not provided or not provided in full within the time limit fixed by the EFTA Surveillance Authority;
- (b) an undertaking involved in the concentration has refused to submit to an investigation deemed necessary by the EFTA Surveillance Authority on the basis of Article 13 (1) of Chapter XIII or to cooperate in the carrying out of such an investigation in accordance with the abovementioned provision;
- (c) the notifying parties have failed to inform the EFTA Surveillance Authority of material changes in the facts specified in the notification.

2. The period referred to in Article 10 (3) of Chapter XIII shall be suspended:

- (a) in the cases referred to in subparagraph 1 (a), for the period between the end of the time limit fixed in the request for information and the receipt of the complete and correct information required by decision;
- (b) in the cases referred to in subparagraph 1 (b), for the period between the unsuccessful attempt to carry out the investigation and the completion of the investigation ordered by decision;
- (c) in the cases referred to in subparagraph 1 (c), for the period between the occurrence of the change in the facts referred to therein and the receipt of the complete and correct information requested by decision or the completion of the investigation ordered by decision.

3. The suspension of the time limit shall begin on the day following that on which the event causing the suspension occurred. It shall end with the expiry of the day on which the reason for suspension is removed. Where such day is not a working day within the meaning of Article 19, the suspension of the time limit shall end with the expiry of the following working day.

*Article 10***Compliance with the time limit**

The time limits referred to in Article 10 (1) and (3) of Chapter XIII shall be met where the EFTA Surveillance Authority has taken the relevant decision before the end of the period. Notification of the decision to the undertakings concerned must follow without delay.

*Section III***Hearing of the parties and of third parties***Article 11***Decisions on the suspension of concentrations**

1. Where the EFTA Surveillance Authority intends to take a decision under Article 7 (2) of Chapter XIII or a decision under Article 7 (4) of that chapter which adversely affects the parties, it shall, pursuant to Article 18 (1) of that chapter, inform the parties concerned in writing of its objections and shall fix a time limit within which they may make known their views.

2. Where the EFTA Surveillance Authority pursuant to Article 18 (2) of Chapter XIII has taken a decision referred to in paragraph 1 provisionally without having given the parties concerned the opportunity to make known their views, it shall without delay and in any event before the expiry of the suspension send them the text of the provisional decision and shall fix a time limit within which they may make known their views.

Once the parties concerned have made known their views, the EFTA Surveillance Authority shall take a final decision annulling, amending or confirming the provisional decision. Where the parties concerned have not made known their view within the time limit fixed, the EFTA Surveillance Authority's provisional decision shall become final with the expiry of that period.

3. The parties concerned shall make known their views in writing or orally within the time limit fixed. They may confirm their oral statements in writing.

*Article 12***Decisions on the substance of the case**

1. Where the EFTA Surveillance Authority intends to take a decision pursuant to Article 8 (2), second subparagraph, Article 8 (3), (4) and (5), Article 14 or Article 15 of Chapter XIII, it shall, before consulting the Advisory Committee on Concentrations, hold a hearing of the parties concerned pursuant to Article 18 of that chapter.

2. The EFTA Surveillance Authority shall inform the parties concerned in writing of its objections. The communication shall be addressed to the notifying parties or to the joint representative. The EFTA Surveillance Authority shall, when giving notice of objections, fix a time limit within which the parties concerned may inform the EFTA Surveillance Authority of their views.

3. Having informed the parties of its objections, the EFTA Surveillance Authority shall upon request give the parties concerned access to the file for the purposes of preparing their observations. Documents shall not be accessible in so far as they contain business secrets of other parties concerned or of third parties, or other confidential information including sensitive commercial information the disclosure of which would have a significant adverse effect on the supplier of such information or where they are internal documents of the authorities.

4. The parties concerned shall, within the time limit fixed, make known in writing their views on the EFTA Surveillance Authority's objections. They may in their written comments set out all the matters relevant to the case and may attach any relevant documents in proof of the facts set out. They may also propose that the EFTA Surveillance Authority hear persons who may corroborate those facts.

Article 13

Oral hearings

1. The EFTA Surveillance Authority shall afford parties concerned who have so requested in their written comments the opportunity to put forward their arguments orally, if those persons show a sufficient interest or if the EFTA Surveillance Authority proposes to impose a fine or periodic penalty payment on them. It may also in other cases afford the parties concerned the opportunity of expressing their views orally.

2. The EFTA Surveillance Authority shall summon the persons to be heard to attend on such date as it shall appoint.

3. It shall forthwith transmit a copy of the summons to the competent authorities of the EFTA States, who may appoint an official to take part in the hearing.

Article 14

Hearings

1. Hearings shall be conducted by persons appointed by the EFTA Surveillance Authority for that purpose.

2. Persons summoned to attend shall either appear in person or be represented by legal representatives or representatives authorized by their constitution. Undertakings and associations of undertakings may be represented by a duly authorized agent appointed from among their permanent staff.

3. Persons heard by the EFTA Surveillance Authority may be assisted by lawyers or advisers who are entitled to plead before the EFTA Court, or by other qualified persons.

4. Hearings shall not be public. Persons shall be heard separately or in the presence of other persons summoned to attend. In the latter case, regard shall be had to the legitimate interest of the undertakings in the protection of their business secrets.

5. The statements made by each person heard shall be recorded.

Article 15

Hearing of third parties

1. If natural or legal persons showing a sufficient interest, and especially members of the administrative or management organs of the undertakings concerned or recognized workers' representatives of those undertakings, apply in writing to be heard pursuant to the second sentence of Article 18 (4) of Chapter XIII, the EFTA Surveillance Authority shall inform them in writing of the nature and subject matter of the procedure and shall fix a time limit within which they may make known their views.

2. The third parties referred to in paragraph 1 shall make known their views in writing or orally within the time limit fixed. They may confirm their oral statements in writing.

3. The EFTA Surveillance Authority may likewise afford to any other third parties the opportunity of expressing their views.

Section IV

Miscellaneous provisions

Article 16

Transmission of documents

1. Transmission of documents and summonses from the EFTA Surveillance Authority to the addressees may be effected in any of the following ways:

- (a) delivery by hand against receipt;
- (b) registered letter with acknowledgement of receipt;
- (c) telefax with a request for acknowledgement of receipt;
- (d) telex.

2. Subject to Article 18 (1), paragraph 1 above also applies to the transmission of documents from the parties

concerned or from third parties to the EFTA Surveillance Authority.

3. Where a document is sent by telex or by telefax, it shall be presumed that it has been received by the addressee on the day on which it was sent.

Article 17

Setting of time limits

1. In fixing the time limits provided for in Articles 4 (2), 5 (2), 11 (1) and (2), 12 (2) and 15 (1), the EFTA Surveillance Authority shall have regard to the time required for preparation of statements and to the urgency of the case. It shall also take account of public holidays in the country of receipt of the EFTA Surveillance Authority's communication.

2. The day on which the addressee received a communication shall not be taken into account for the purpose of fixing time limits.

Article 18

Receipt of documents by the EFTA Surveillance Authority

1. Subject to Article 4 (1), notifications must be delivered to the EFTA Surveillance Authority at the address indicated in the form as issued by the Governments of the EFTA States, by common accord, or the EC Commission or have been dispatched by registered letter before expiry of the period referred to in Article 4 (1) of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89). Additional information requested to complete notifications pursuant to Article 4 (2) or to supplement notifications pursuant to Article 5 (2) of the said act must reach the EFTA Surveillance Authority at the aforesaid address or have been dispatched by registered letter before the expiry of the time limit fixed in each case. Written comments on EFTA Surveillance Authority communications pursuant to Articles 11 (1) and (2), 12 (2) and 15 (1) must be delivered to the EFTA Surveillance Authority at the aforesaid address before the time limit fixed in each case.

2. Where the last day of a period referred to in paragraph 1 is a day by which documents must be received and that day is not a working day within the meaning of Article 19, the period shall end with the expiry of the following working day.

3. Where the last day of a period referred to in paragraph 1 is a day by which documents must be dispatched and that day is a Saturday, Sunday or public holiday in the country of dispatch, the period shall end with the expiry of the following working day in that country.

Article 19

Definition of EFTA Surveillance Authority working days

The term 'working days' in Articles 6 (3), 7 (4), 9 (3) and 18 (2) means all days other than Saturdays, Sundays, public holidays set out in Appendix 10 to this Protocol and other holidays as determined by the EFTA Surveillance Authority and published in the EEA Section of the *Official Journal of the European Communities* before the beginning of each year.

PART IV

COAL AND STEEL

CHAPTER XV

Rules applicable to undertakings in the field of coal and steel

Section I

General rules regarding agreements and concentrations

Article 1

1. Authorizations pursuant to Article 1 (2) of Protocol 25 to the EEA Agreement may be granted subject to specified conditions and for limited periods. In such cases the EFTA Surveillance Authority shall renew an authorization once or several times if it finds that the requirements of subparagraphs (a) to (c) of Article 1 (2) of Protocol 25 to the EEA Agreement are still met at the time of renewal.

2. The EFTA Surveillance Authority shall revoke or amend an authorization if it finds that as a result of a change in circumstances the agreement no longer meets these requirements, or that the actual results of the agreement or of the application thereof are contrary to the requirements for its authorization.

3. Decisions granting, renewing, amending, refusing or revoking an authorization shall be published together with the reasons therefor; the restrictions imposed by Article 3 (2) shall not apply thereto.

4. The EFTA Surveillance Authority may, as provided in Article 3, obtain any information needed for the application of Article 1 of Protocol 25 to the EEA Agreement and of this Article, either by making a special request to the parties concerned or by means of decisions stating the kinds of agreement, decision or practice which must be communicated to it.

5. The EFTA Surveillance Authority shall have sole jurisdiction, subject to the right to bring actions before the EFTA Court in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement and, on the conditions set out in Article 55 of the EEA Agreement and Protocols 22 and 25 thereto, to rule whether any such agreement or decision is compatible with Article 1 of Protocol 25 to the EEA Agreement.

6. On any undertaking which has entered into an agreement which is automatically void pursuant to Article 1 (3) of Protocol 25 to the EEA Agreement, or has enforced or attempted to enforce, by arbitration, penalty, boycott or any other means, an agreement or decision which is automatically void or an agreement for which authorization has been refused or revoked, or has obtained an authorization by means of information which it knew to be false or misleading, or has engaged in practices prohibited by Article 1 (1) of Protocol 25 to the EEA Agreement, the EFTA Surveillance Authority may impose fines or periodic penalty payments not exceeding twice the turnover on the products which were the subject of the agreement, decision or practice prohibited by Article 1 (1) of Protocol 25 to the EEA Agreement; if, however, the purpose of the agreement, decision or practice is to restrict production, technical development or investment, this maximum may be raised to 10 % of the annual turnover of the undertakings in question in the case of fines, and 20 % of the daily turnover in the case of periodic penalty payments.

Article 2

1. In assessing whether the requirements of Article 2 (2) of Protocol 25 to the EEA Agreement are met, the EFTA Surveillance Authority shall, in accordance with the principle of non-discrimination, take account of the size of like undertakings in the territory covered by the EEA Agreement, to the extent it considers justified in order to avoid or correct disadvantages resulting from unequal competitive conditions.

2. The EFTA Surveillance Authority may make its authorization subject to any conditions which it considers appropriate for the purposes of Article 2 (2) of Protocol 25 to the EEA Agreement.

3. Before ruling on a transaction concerning undertakings at least one of which is not subject to Article 3 of Protocol 25 to the EEA Agreement, the EFTA Surveillance Authority shall obtain the comments of the Governments concerned.

4. Without prejudice to the application of Article 3 to undertakings within its jurisdiction, the EFTA Surveillance Authority may obtain from the natural or legal persons who have acquired or regrouped or are intending to acquire or regroup the rights or assets in question any information needed for the application of Article 2 of Protocol 25 to the EEA Agreement and of the present Article concerning transactions liable to produce the effect referred to in Article 2 (1) of Protocol 25 to the EEA Agreement.

5. If a concentration should occur which the EFTA Surveillance Authority finds has been effected contrary to the provisions of Article 2 (1) of Protocol 25 to the EEA Agreement but which nevertheless meets the requirements of Article 2 (2) of Protocol 25 to the EEA Agreement, the EFTA Surveillance Authority shall make its approval of that concentration subject to payment by the persons who have acquired or regrouped the rights or assets in question of the fine provided for in paragraph 12 (b); the amount of the fine shall not be less than half of the maximum determined in that subparagraph (b) should it be clear that authorization ought to have been applied for. If the fine is not paid, the EFTA Surveillance Authority shall take the steps hereinafter provided for in respect of concentrations found to be unlawful.

6. If a concentration should occur which the EFTA Surveillance Authority finds cannot fulfil the general or specific conditions to which an authorization under Article 2 (2) of Protocol 25 to the EEA Agreement would be subject, the EFTA Surveillance Authority shall, by means of a reasoned decision, declare the concentration unlawful and, after giving the parties concerned the opportunity to submit their comments, shall order separation of the undertakings or assets improperly concentrated or cessation of joint control, and any other measures which it considers appropriate to return the undertakings or assets in question into independent operation and restore normal conditions of competition. Any person directly concerned may institute proceedings against such decisions, as provided in Articles 108 (2) (b) of the EEA Agreement and 18 of the present Agreement. The EFTA Court, in accordance with Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, shall have unlimited jurisdiction to assess whether the transaction effected is a concentration within the meaning of Article 2 (1) of Protocol 25 to the EEA Agreement and of the acts concerning coal and steel as contained in Annex XIV to the EEA Agreement. The

institution of proceedings shall have suspensory effect. Proceedings may not be instituted until the measures provided for above have been ordered, unless the EFTA Surveillance Authority agrees to the institution of separate proceedings against the decision declaring the transaction unlawful.

7. The EFTA Surveillance Authority may at any time, unless Article 41 of this Agreement is applied, take or cause to be taken such interim measures of protection as it may consider necessary to safeguard the interests of competing undertakings and of third parties, and to forestall any step which might hinder the implementation of its decisions. Unless the EFTA Court decides otherwise, proceedings shall not have suspensory effect in respect of such interim measures.

8. The EFTA Surveillance Authority shall allow the parties concerned a reasonable period in which to comply with its decisions, on expiration of which it may impose daily penalty payments not exceeding one-tenth of 1 % of the value of the rights or assets in question.

9. Furthermore, if the parties concerned do not fulfil their obligations, the EFTA Surveillance Authority shall itself take steps to implement its decision.

10. The EFTA Surveillance Authority is also empowered to make such recommendations to the EFTA States concerned as may be necessary to ensure that the measures provided for in the preceding paragraphs are implemented under their own law.

11. In the exercise of its powers, the EFTA Surveillance Authority shall take account of the rights of third parties which have been acquired in good faith.

12. The EFTA Surveillance Authority may impose fines not exceeding:

- (a) 3% of the value of the assets acquired or regrouped or to be acquired or regrouped, on natural or legal persons who have evaded the obligations laid down in paragraph 4;
- (b) 10% of the value of the assets acquired or regrouped, on natural or legal persons who have evaded the obligations laid down in Article 2 (1) of Protocol 25 to the EEA Agreement; this maximum shall be increased by one twenty-fourth for each month which elapses after the end of the 12th month following completion of the transaction until the EFTA Surveillance Authority establishes that there has been an infringement;

- (c) 10% of the value of the assets acquired or regrouped or to be acquired or regrouped, on natural or legal persons who have obtained or attempted to obtain authorization under Article 2 (2) of Protocol 25 to the EEA Agreement by means of false or misleading information;

- (d) 15% of the value of the assets acquired or regrouped, on undertakings within its jurisdiction which have engaged in or been party to transactions contrary to the provisions of Article 2 of Protocol 25 to the EEA Agreement or of the present Article.

13. Persons fined under paragraph 12 may appeal to the EFTA Court as provided in Article 35 of this Agreement.

Article 3

1. The EFTA Surveillance Authority may obtain the information it requires to carry out its tasks. It may have any necessary checks made.

2. Without prejudice to Article 9 of Protocol 23 to the EEA Agreement, the EFTA Surveillance Authority must not disclose information acquired as a result of the application of Articles 55 and 58 of the EEA Agreement, of Protocol 25 thereto and of the provisions of this chapter and which is of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components. This obligation shall also apply to the representatives of the EC Commission and of the EC Member States who participate in the Advisory Committee pursuant to Article 10 (4) of Chapter II and in the hearing pursuant to Article 8 (2) of Chapter IV.

Subject to this reservation, it shall publish such data as could be useful to governments or to any other parties concerned.

3. The EFTA Surveillance Authority may impose fines or periodic penalty payments on undertakings which evade their obligations under decisions taken pursuant to this Article or which knowingly furnish false information. The maximum amount of such fines shall be 1 % of the annual turnover, and the maximum amount of such penalty payments shall be 5 % of the average daily turnover for each day's delay.

4. Any breach of professional secrecy by the EFTA Surveillance Authority which has caused damage to an undertaking may be the subject of an action for compensation before the EFTA Court in accordance with

Article 108 (2) of the EEA Agreement and with the relevant provisions of this Agreement, in particular Article 39.

Article 4

Before imposing a pecuniary sanction or ordering a periodic penalty payment as provided for in this chapter, the EFTA Surveillance Authority must give the party concerned the opportunity to submit its comments.

Article 5

The turnover taken as the basis for calculating any fines and periodic penalty payments imposed on undertakings under this chapter shall be the turnover on products referred to in Protocol 14 to the EEA Agreement.

Section II

Information to be furnished (Article 2 (4) of Section I)

Part one

Compulsory notification

Article 1

All natural and legal persons except persons engaged within the territory covered by the EEA Agreement in the production of coal and steel or in the distribution of those products other than by way of sale to domestic consumers or small craft industries shall, where they effect transactions specified in the following Articles, furnish information as provided for in this Section.

Article 2

The persons referred to in Article 1 shall notify the EFTA Surveillance Authority of any acquisition of rights in an undertaking covered by Article 3 of Protocol 25 to the EEA Agreement and any acquisition of power to exercise on their own behalf or on behalf of third parties rights in any such undertaking, whereby they acquire more than 10% of the voting power at meetings of shareholders or other members of such undertaking and where the total value of the rights held by them exceeds ECU 100 000. Any rights, or power to exercise rights on behalf of others, held by the persons concerned before the transaction in question shall be included in that calculation.

Article 3

Article 1 shall also apply to the acquisition of rights in any undertaking which exercises control over an undertaking covered by Article 3 of Protocol 25 to the EEA Agreement.

Article 4

1. Banks and their agents shall be exempt from the obligation to notify the transactions mentioned in Articles 2 and 3 where exercise of voting rights attaches:

- to shares belonging to customers of those or other banks,
- or
- to registered shares or stock in respect of which the bank is entitled to exercise such rights in a fiduciary capacity on behalf of its clients.

2. Paragraph 1 shall not affect:

- the obligation for banks to furnish information on such transactions under Article 7,
- the obligation for their customers to notify such transactions in accordance with Articles 2 and 3 or to furnish information under Article 7.

Article 5

The EFTA Surveillance Authority may, by special authorization and subject to certain conditions, grant exemption from the obligation to notify the transactions mentioned in Articles 2 and 3 to duly accredited stockbrokers where they do not exercise the voting rights attaching to the stock held by them.

Article 6

The notification provided for in Articles 2 and 3 shall be made within four weeks from the date on which the person required to make notification has knowledge of the transaction in question.

Part two

Special requests for information

Article 7

1. The EFTA Surveillance Authority may, by special request, obtain from the persons mentioned in Article 1 all information necessary for the implementation of Article 2 of Section I regarding:

- (1) acquisition of ownership of or of rights to use premises, industrial plant or concessions of any undertaking if, before such acquisition, those premises, plant or concessions were used in the operations of that undertaking;
- (2) acquisition of rights, in an undertaking, conferring voting powers at meetings of shareholders or other members of such undertaking;
- (3) acquisition of the power to exercise on their own behalf or on behalf of third parties rights of the kind referred to in subparagraph (2) belonging to third parties;

- (4) acquisition by contract of the power to make decisions as to how the profits of an undertaking are shown in the accounts or applied;
- (5) acquisition of the power to participate in the management of an undertaking, alone or with others, whether as owner, beneficiary, manager or member of the managing organs;
- (6) appointment to the Board of Directors of an undertaking.

2. The persons subject to the obligation to furnish information must likewise declare to the EFTA Surveillance Authority at the latter's request the name and address of the actual owner of the rights concerned, where they are empowered:

- to exercise the rights referred to in paragraph 1 in a fiduciary capacity on behalf of a third party,
- to exercise on their own behalf or on behalf of third parties the rights referred to in paragraph 1 belonging to third parties.

Section III

Limitation periods in proceedings and the enforcement of sanctions under Protocol 25 to the EEA Agreement and the present chapter

Article 1

Limitation periods in proceedings

1. The power of the EFTA Surveillance Authority to impose fines for infringements of the provisions of Articles 53 and 54 of the EEA Agreement and Protocol 25 thereto or of the provisions contained in this chapter shall be subject to a limitation period:

- (a) of three years in the case of infringements of provisions concerning applications or communications of the parties, requests for information, or the carrying out of investigations;
- (b) of five years in the case of all other infringements.

2. Time shall begin to run upon the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run upon the day on which the infringement ceases.

Article 2

Interruption of the limitation period in proceedings

1. Any action taken by the EFTA Surveillance Authority for the purpose of the preliminary investigation or proceedings in respect of an infringement shall interrupt the limitation period in proceedings. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one party which has participated in the infringement.

Actions which interrupt the running of period shall include in particular the following:

- (a) written requests for information by the EFTA Surveillance Authority or decisions by the EFTA Surveillance Authority requiring the requested information;
- (b) written authorizations to carry out investigations issued to their officials by the EFTA Surveillance Authority or a decision by the EFTA Surveillance Authority ordering an investigation;
- (c) the commencement of proceedings by the EFTA Surveillance Authority;
- (d) notification by the EFTA Surveillance Authority of a letter giving the party concerned the opportunity to submit its comments, pursuant to Article 4 of Section I.

2. The interruption of the limitation period shall apply for all parties which have participated in the infringement.

3. Each interruption shall start time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the EFTA Surveillance Authority having imposed a fine or a penalty; that period shall be extended by the time during which limitation is suspended pursuant to Article 3.

Article 3

Suspension of the limitation period in proceedings

The limitation period in proceedings shall be suspended for as long as the decision of the EFTA Surveillance Authority is the subject of proceedings pending before the EFTA Court.

Article 4

Limitation period for the enforcement of sanctions

1. The power of the EFTA Surveillance Authority to enforce decisions imposing fines or periodic payments for infringements of the provisions of the EEA Agreement or of provisions made for its implementation shall be subject to a limitation period of five years.

2. Time shall begin to run upon the day on which the decision becomes final.

Article 5

Interruption of the limitation period for the enforcement of sanctions

1. The limitation period for the enforcement of sanctions shall be interrupted:

- (a) by notification of a decision varying the original amount of the fine or periodic penalty payments or refusing an application for variation;
 - (b) by any action of the EFTA Surveillance Authority or of an EFTA State at the request of the EFTA Surveillance Authority, for the purpose of enforcing payments of a fine or periodic penalty payment.
2. Each interruption shall start the time running afresh.

Article 6

Suspension of the limitation period for the enforcement of sanctions

The limitation period for the enforcement of sanctions shall be suspended for so long as:

- (a) time to pay is allowed; or
- (b) enforcement of payment is suspended pursuant to a decision of the EFTA Court.

Section IV

Powers of officials and agents of the EFTA Surveillance Authority instructed to carry out the checks provided for in Protocol 25 to the EEA Agreement and in this chapter

Article 1

1. Officials and agents of the EFTA Surveillance Authority instructed to carry out the checks on undertakings provided for in Protocol 25 and Annex XIV to the EEA Agreement and in the provisions of this chapter, in particular Article 3 (1) of Section I, are hereby empowered:

- (a) to examine books and business records to the extent necessary for the purpose of the check, including records held in automated systems of any kind, wherever such books or business records are kept;
- (b) to take copies or photocopies of or extracts from the books and business records, including data stored in automated systems of any kind;
- (c) to require oral explanations on the spot;
- (d) to enter any premises, land or means of transport of undertakings, and of any third party with whom books or business records have been deposited, and in so doing to have sight of the said books and business records so as to be able to select all those that are relevant and are to be produced for inspection.

2. Forthcoming visits of inspection and the status of the officials shall be duly notified to the State concerned.

Officials of that State may, at its request or at that of the EFTA Surveillance Authority, assist the officials of the EFTA Surveillance Authority in the performance of their tasks.

3. Undertakings shall assist officials and agents of the EFTA Surveillance Authority in carrying out their duties.

Article 2

Officials and agents of the EFTA Surveillance Authority instructed to carry out checks shall exercise their powers upon production of an authorization in writing specifying the purpose of the check. The EFTA Surveillance Authority shall also provide such an authorization to representatives of the EC Commission who shall take part in the investigation in accordance with Article 8 (4) of Protocol 23 to the EEA Agreement.

Article 3

Undertakings shall comply with the obligations imposed by Article 1 of this Section without an individual decision being required for that purpose, failure to do so rendering them liable to the fines and penalties provided for in Article 3 (3) of Section I.

PART V

TRANSITIONAL AND OTHER RULES

CHAPTER XVI

Transitional and other rules

Section I

Rules applicable to Chapters II to XII and XV

Article 1

Notification of existing agreements, decisions and practices

1. Agreements, decisions and concerted practices of the kind described in Article 53 (1) of the EEA Agreement which are in existence at the date of entry into force of the EEA Agreement and in respect of which the parties seek application of Article 53 (3) of the EEA Agreement shall be notified to the EFTA Surveillance Authority pursuant to the provisions in Article 56 of the EEA Agreement, the rules referred to in Articles 1 to 3 of Protocol 21 and Protocol 23 to the EEA Agreement, as well as Chapters III, VI, VII, IX, X, XI, XII and XV, within six months of the date of entry into force of the EEA Agreement.

2. Paragraph 1 shall not apply to agreements, decisions or concerted practices of the kind described in Article 53 (1) of the EEA Agreement and falling under Article 4 (2) of Chapter II; these may be notified to the EFTA Surveillance Authority pursuant to Article 56 of the EEA Agreement, the rules referred to in Articles 1 to 3 of Protocol 21 and Protocol 23 to the EEA Agreement, as well as Chapters III, VI, VII, IX, X, XI, XII and XV.

Article 2

Decisions pursuant to Article 53 (3) of the EEA Agreement

1. Whenever the EFTA Surveillance Authority takes a decision pursuant to Article 53 (3) of the EEA Agreement, it shall specify therein the date from which the decision shall take effect. Such date shall not be earlier than the date of notification.

2. The second sentence of paragraph 1 shall not apply to agreements, decisions or concerted practices falling within Article 4 (2) of Chapter II and Article 1 (2) of this chapter, nor to those falling within Article 1 (1) which have been notified within the time limit specified in Article 1 (1).

Article 3

Special provisions for existing agreements, decisions and practices

1. Where agreements, decisions or concerted practices of the kind described in Article 53 (1) of the EEA Agreement which are in existence at the date of entry into force of the EEA Agreement and notified within the time limits specified in Article 1 (1) of this chapter do not satisfy the requirements of Article 53 (3) of the EEA Agreement and the undertakings or associations of undertakings concerned cease to give effect to them or modify them in such a manner that they no longer fall under the prohibition contained in Article 53 (1) or that they satisfy the requirements of Article 53 (3), the prohibition contained in Article 53 (1) shall apply only for a period fixed by the EFTA Surveillance Authority. A decision by the EFTA Surveillance Authority pursuant to the foregoing sentence shall not apply as against undertakings and associations of undertakings which did not expressly consent to the notification.

2. Paragraph 1 shall apply to agreements, decisions or concerted practices falling under Article 4 (2) of Chapter II which are in existence at the date of entry into force of the EEA Agreement if they are notified within six months after that date.

Article 4

Applications and notifications submitted to the EC Commission prior to the date of entry into force of the EEA Agreement shall be deemed to comply with the provisions on application and notification under that Agreement.

The EFTA Surveillance Authority pursuant to Article 56 of the EEA Agreement and Article 10 of Protocol 23 to the EEA Agreement may require a duly completed form as prescribed for the implementation of the EEA Agreement to be submitted to it within such time as it shall appoint. In that event, applications and notifications shall be treated as properly made only if the forms are submitted within the prescribed period and in accordance with the provisions of the EEA Agreement and of Chapters II, III, V, VII, X, XII and XV of this Protocol.

Article 5

Fines

Fines for infringement of Article 53 (1) of the EEA Agreement shall not be imposed in respect of any act prior to notification of the agreements, decisions and concerted practices to which Articles 1 and 2 of this chapter apply and which have been notified within the period specified therein.

Article 6

The EFTA States shall ensure that the measures affording the necessary assistance to officials of the EFTA Surveillance Authority and the EC Commission, in order to enable them to make their investigations as foreseen under the Agreement, are taken within six months of the entry into force of the EEA Agreement.

Article 7

As regards agreements, decisions and concerted practices already in existence at the date of entry into force of the EEA Agreement which fall under Article 53 (1) of the EEA Agreement, the prohibition in Article 53 (1) shall not apply where the agreements, decisions or practices are modified within six months from the date of entry into force of the EEA Agreement so as to fulfil the conditions contained in the block exemptions provided for in Annex XIV to the EEA Agreement.

Article 8

As regards agreements, decisions of associations of undertakings and concerted practices already in existence at the date of entry into force of the EEA Agreement which fall under Article 53 (1) of the EEA Agreement,

the prohibition in Article 53 (1) shall not apply, from the date of entry into force of the Agreement, where the agreements, decisions or practices are modified within six months from the date of entry into force of the EEA Agreement so as not to fall under the prohibition of Article 53 (1) any more.

Article 9

Agreements, decisions of associations of undertakings and concerted practices which benefit from an individual exemption granted under Article 85 (3) of the Treaty establishing the European Economic Community before the entry into force of the EEA Agreement shall continue to be exempted as regards the provisions of the EEA Agreement, until their date of expiry as provided for in the decisions granting these exemptions or until the EC Commission otherwise decides, whichever date is the earlier.

Section II

Rules applicable to Chapters XIII and XIV

Article 10

The act as referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EEC) No 4064/89) and Chapter XIII shall not apply to any concentration which was the subject of an agreement or announcement or where control was acquired within the meaning of Article 4 (1) of the said act before the entry into force of the EEA Agreement and they shall not in any circumstances apply to any concentration in respect of which proceedings were initiated before that date by an EFTA State's authority with responsibility for competition.

*APPENDICES**(...)**Appendix 7***List of certain technical agreements in the air transport sector referred to in Article 2 of Chapter XI**

- (a) The introduction or uniform application or mandatory or recommended technical standards for aircraft, aircraft parts, equipment and aircraft supplies, where such standards are set by an organization normally accorded international recognition, or by an aircraft or equipment manufacturer;
 - (b) the introduction of uniform application of technical standards for fixed installations for aircraft, where such standards are set by an organization normally accorded international recognition;
 - (c) the exchange, leasing, pooling, or maintenance of aircraft, aircraft parts, equipment or fixed installations for the purpose of operating air services and the joint purchase of aircraft parts, provided that such arrangements are made on a non-discriminatory basis;
 - (d) the introduction, operation and maintenance of technical communication networks, provided that such arrangements are made on a non-discriminatory basis;
 - (e) the exchange, pooling or training of personnel for technical or operational purposes;
 - (f) the organization and execution of substitute transport operations for passengers, mail and baggage, in the event of breakdown/delay of aircraft, either under charter or by provision of substitute aircraft under contractual arrangements;
 - (g) the organization and execution of successive or supplementary air transport operations, and the fixing and application of inclusive rates and conditions for such operations;
 - (h) the consolidation of individual consignments;
 - (i) the establishment or application of uniform rules concerning the structure and the conditions governing the application of transport tariffs, provided that such rules do not directly or indirectly fix transport fares and conditions;
 - (j) arrangements as to the sale, endorsement and acceptance of tickets between air carriers (interlining) as well as the refund, pro-rating and accounting schemes established for such purposes;
 - (k) the clearing and settling of accounts between air carriers by means of a clearing house, including such services as may be necessary or incidental thereto; the clearing and settling of accounts between air carriers and their appointed agents by means of a centralized and automated settlement plan or system, including such services as may be necessary or incidental thereto.
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PROTOCOL 5
on the Statute of the EFTA Court

Article 1

The EFTA Court established by Article 27 of this Agreement shall be constituted and function in accordance with the provisions of this Agreement and of this Statute.

PART I
JUDGES

Article 2

Before taking up his duties each Judge shall, in open court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 3

Immediately after the oath has been taken, the Court shall proceed to choose by lot the Judges of the Court whose terms of office are to expire at the end of the first three years in accordance with Article 30 of the Agreement.

Article 4

The Judges may not hold any political or administrative office.

They may not engage in any occupation, whether gainful or not, unless exemption is granted by the Governments of the EFTA States acting by common accord.

When taking up their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Any doubt on this point shall be settled by decision of the Court.

Article 5

Apart from normal replacement, or death, the duties of a Judge shall end when he resigns.

Where a Judge resigns, his letter of resignation shall be addressed to the President of the Court for transmission to the Governments of the EFTA States. Upon this notification a vacancy shall arise on the bench.

Save where Article 6 applies, a Judge shall continue to hold office until his successor takes up his duties.

Article 6

A Judge may be deprived of his office or of his right to a pension or other benefits in its stead only if, in the unanimous opinion of the Court in plenary, he no longer fulfils the requisite conditions or meets the obligations arising from his office. The Judge concerned shall not take part in any such deliberations.

The Registrar of the Court shall notify such a decision to the Governments of the EFTA States.

Article 7

A Judge who is to replace a member of the Court whose term of office has not expired shall be appointed for the remainder of his predecessor's term.

PART II

ORGANIZATION

Article 8

Decisions of the Court shall be taken by a majority of the Judges sitting in the deliberations and in accordance within conditions laid down in the rules of procedure.

Article 9

The Court shall appoint its Registrar and lay down the rules governing his service.

Article 10

The Registrar shall take an oath before the Court to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 11

The Court shall arrange for replacement of the Registrar on occasions when he is prevented from attending the Court.

Article 12

Officials and other servants shall be attached to the Court to enable it to function. They shall be responsible to the Registrar under the authority of the President.

Article 13

The Judges and the Registrar shall be required to reside at the place where the Court has its seat.

Article 14

The Court shall remain permanently in session. The duration of the judicial vacations shall be determined by the Court with due regard to the needs of its business.

Article 15

No Judge may take part in the disposal of a case in which he has previously taken part as agent or adviser or has acted for one of the parties, or in which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity.

If, for some special reason, any Judge considers that he should not take part in the judgment or examination of a particular case, he shall so inform the President of the Court. If, for some reason, the President considers that any Judge should not sit in a particular case, he shall notify him accordingly.

Any difficulty arising as to the application of this Article shall be settled by decision of the Court.

A party may not apply for a change in the composition of the Court on the grounds of either nationality of a Judge or the absence from the Court of a Judge of the nationality of that party.

Article 16

Rules governing the languages of the Court shall be laid down in the Rules of Procedure of the Court.

PART III

PROCEDURE

Article 17

The EFTA States, the EFTA Surveillance Authority, the Community and the EC Commission shall be represented before the Court by an agent appointed for each case; the

agent may be assisted by an adviser or by a lawyer entitled to practise before a court of a Contracting Party to the EEA Agreement.

Other parties must be represented by a lawyer entitled to practise before a court in a Contracting Party to the EEA Agreement.

Such agents, advisers and lawyers shall, when they appear before the Court, enjoy the rights and immunities necessary to the independent exercise of their duties, under conditions laid down in the Rules of Procedure of the Court.

As regards such advisers and lawyers who appear before it, the Court shall have the powers normally accorded to courts of law, in accordance with the Rules of Procedure of the Court.

Article 18

The procedure before the Court shall consist of two parts: written and oral.

The written procedure shall consist of the communication to the parties of applications, and of replies, if any, as well as of all papers and documents in support or of certified copies of them.

Communications shall be made by the Registrar in the order and within the time laid down in the Rules of Procedure of the Court.

The oral procedure shall consist of the reading of the report presented by a Judge acting as Rapporteur, the hearing by the Court of agents, advisers and lawyers, as well as the hearing, if any, of witnesses and experts.

Article 19

A case shall be brought before the Court by a written application addressed to the Registrar. The application shall contain the applicant's name and permanent address and the description of the signatory, the name of the party against whom the application is made, the subject matter of the dispute, the submissions and a brief statement of the grounds on which the application is based.

The application shall be accompanied, where appropriate, by the measure the annulment of which is sought or by any other relevant documents. If the documents are not submitted with the application, the Registrar shall ask the party concerned to produce them within a reasonable period, but in that event the rights of the party shall not lapse even if such documents are produced after the time limit for bringing proceedings.

Article 20

As soon as a case is pending before the Court, the Registrar shall notify the Governments of the EFTA

States, the EFTA Surveillance Authority, the Community and the EC Commission. Within two months of this notification, the EFTA States, the EFTA Surveillance Authority, the Community and the EC Commission shall be entitled to submit statements of case or written observations to the Court.

Article 21

The Court may require the parties to produce all documents and to supply all information which the Court considers desirable. Formal note shall be taken of any refusal.

The Court may also require the EFTA States not being parties to the case to supply all information which the Court considers necessary for the proceedings.

Article 22

The Court may at any time entrust any individual, body, authority, committee or other organization it chooses with the task of giving an expert opinion.

Article 23

Witnesses may be heard in accordance with the Rules of Procedure of the Court.

Article 24

Witnesses and experts may be heard on oath taken in accordance with the Rules of Procedure of the Court or in the manner laid down by the law of the country of the witness or expert.

Article 25

The Court may order that a witness or expert be heard by the judicial authority of his place of permanent residence.

The order shall be sent for implementation to the competent judicial authority under conditions laid down in the Rules of Procedure of the Court. The documents drawn up in compliance with the letters rogatory shall be returned to the Court under the same conditions.

The Court shall defray the expenses, without prejudice to the right to charge them, where appropriate, to the parties.

Article 26

An EFTA State shall treat any defaulting witness or any violation of an oath by a witness or expert in the same manner as if the offence had been committed before one of its courts with jurisdiction in civil proceedings. At the instance of the Court, the EFTA State concerned shall prosecute the offender before its competent court.

Article 27

The hearing in court shall be public, unless the Court, of its own motion or on application by the parties, decides otherwise for serious reasons.

Article 28

During the hearings the Court may examine the experts, the witnesses and the parties themselves. The latter, however, may address the Court only through their representatives.

Article 29

Minutes shall be made of each hearing and signed by the President and the Registrar.

Article 30

The case list shall be established by the President.

Article 31

The deliberations of the Court shall be and shall remain secret.

Article 32

Judgments shall state the reasons on which they are based. They shall contain the names of the Judges who took part in the deliberations.

Article 33

Judgements shall be signed by the President and the Registrar. They shall be read in open court.

Article 34

The Court shall adjudicate upon costs.

Article 35

The President of the Court may, by way of summary procedure, which may, in so far as necessary, differ from some of the rules contained in this Agreement and which shall be laid down in the Rules of Procedure, adjudicate upon applications to suspend execution as provided for in Article 40 of this Agreement, or to prescribe interim measures pursuant to Article 41 of this Agreement, or to suspend enforcement in accordance with Article 110, fourth paragraph, of the EEA Agreement.

Should the President be prevented from attending, his place shall be taken by another Judge in accordance with the Rules of Procedure.

The ruling of the President or of the Judge replacing him shall be provisional and shall in no way prejudice the decision of the Court on the substance of the case.

Article 36

Any EFTA State, the EFTA Surveillance Authority, the Community and the EC Commission may intervene in cases before the Court.

The same right shall be open to any person establishing an interest in the result of any case submitted to the Court, save in cases between EFTA States or between EFTA States and the EFTA Surveillance Authority.

Submissions made in an application to intervene shall be limited to supporting the submissions of one of the parties.

Article 37

Where the defending party, after having been duly summoned, fails to file written submissions in defence, judgment shall be given against that party by default. An objection may be lodged against the judgment within one month of it being notified. The objection shall not have the effect of staying enforcement of the judgment by default unless the Court decides otherwise.

Article 38

EFTA States, and any other natural or legal persons may, in cases and under conditions to be determined by the Rules of Procedure, institute third-party proceedings to contest a judgment rendered without their being heard, where the judgment is prejudicial to their rights.

Article 39

If the meaning or scope of a judgment is in doubt, the Court shall construe it on application by any party

establishing an interest therein or by the EFTA Surveillance Authority.

Article 40

An application for revision of a judgment may be made to the Court only on discovery of a fact which is of such nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision.

The revision shall be opened by a judgment of the Court expressly recording the existence of a new fact, recognizing that it is of such a character as to lay the case open to revision and declaring the application admissible on this ground.

No application for revision may be made after the lapse of 10 years from the date of the judgment.

Article 41

Periods of grace based on considerations of distance shall be determined by the Rules of Procedure of the Court.

No right shall be prejudiced in consequence of the expiry of a time limit if the party concerned proves the existence of unforeseeable circumstances or of *force majeure*.

Article 42

Proceedings against the EFTA Surveillance Authority in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court or if prior to such proceedings an application is made by the aggrieved party to the EFTA Surveillance Authority. In the latter event the proceedings must be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

PART IV

GENERAL PROVISIONS

Article 43

The Rules of Procedure of the Court shall contain, apart from the provisions contemplated by this Statute, any other provisions necessary for applying and, where required, supplementing it.

Article 44

The Governments of the EFTA States may, on a proposal from or after hearing the Court, by common accord amend this Statute.

PROTOCOL 6

on the legal capacity, privileges and immunities of the EFTA Surveillance Authority

PART I

Article 4

THE EFTA SURVEILLANCE AUTHORITY

Article 1

The EFTA Surveillance Authority shall possess legal personality. It shall in particular have the capacity to contract, to acquire and dispose of movable and immovable property, and to be a party to legal proceedings.

Article 2

1. Within the scope of its official activities, the EFTA Surveillance Authority shall have immunity from jurisdiction and execution, except:

- (a) in so far as it has expressly waived such immunity in a particular case;
- (b) in respect of a civil action by a third party for damage arising from an accident caused by a vehicle or other means of transport belonging to or operated on behalf of the EFTA Surveillance Authority or in respect of a traffic offence involving such means of transport;
- (c) in the event of the attachment, pursuant to a decision by the administrative or judicial authorities, of the salaries and emoluments, including pension rights, owed by the EFTA Surveillance Authority to a Member, an official or other servant or a former Member, official or other servant;
- (d) in respect of a counterclaim directly connected with judicial proceedings initiated by the EFTA Surveillance Authority.

2. The property of the EFTA Surveillance Authority, wherever located, shall be immune:

- (a) from any form of requisition, confiscation or expropriation;
- (b) from any form of sequestration and administrative or provisional judicial constraint, except in the cases provided for in the preceding paragraph.

Article 3

The archives of the EFTA Surveillance Authority and all documents belonging to it or held by it shall be inviolable wherever located.

1. Without being restricted by financial controls, regulations or moratoria of any kind the EFTA Surveillance Authority may:

- (a) hold funds or currency of any kind and operate accounts of any currency;
- (b) freely transfer its funds or currency from one country to another or within any country and convert any currency held by it into any other currency.

2. In exercising its rights under paragraph 1 of this Article the EFTA Surveillance Authority shall pay due regard to any representations made by any State Party to this Protocol and shall give effect to such representations in so far as it is considered possible to do so without detriment to the interests of the EFTA Surveillance Authority.

Article 5

1. The EFTA Surveillance Authority, its assets, income and other property shall be exempt:

- (a) from all direct taxes; the EFTA Surveillance Authority shall not, however, claim exemption from rates, taxes or dues which are in fact charges for public utility services;
- (b) from customs duties and prohibitions and restrictions on imports and exports in respect of articles directly imported or exported by the EFTA Surveillance Authority for its official use. Articles imported under such exemption shall not be sold in the territory of the State into which they were imported except under conditions agreed with the Government of that State;
- (c) from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

2. When purchases or services of substantial value and necessary for the exercise of the official activities of the EFTA Surveillance Authority are made or used by the EFTA Surveillance Authority and when the price of such purchases and services includes taxes or duties, the State Party to this Protocol that has levied the taxes or duties shall take appropriate measures to grant exemption from such taxes or duties or to provide for their reimbursement, if they are identifiable.

Article 6

1. The EFTA Surveillance Authority shall enjoy in the territory of each State Party to this Protocol, for its official communications, treatment not less favourable than that accorded by the Government of that State to any other comparable international organization, in the matter of priorities, rates and taxes for posts and telecommunications and press rates for information to the press and radio.

2. No censorship shall be applied to the official correspondence and other official communications of the EFTA Surveillance Authority.

3. The EFTA Surveillance Authority shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

(f) the same treatment in respect of currency and exchange regulations as is normally accorded to staff members of international organizations;

(g) exemption from all national income tax on their salaries and emoluments paid to them by the EFTA Surveillance Authority, excluding pensions and other similar benefits paid by the EFTA Surveillance Authority. The States Parties to this Protocol reserve the right to take those salaries and emoluments into account when assessing the amount of tax to be applied to income from other sources.

2. The EFTA Surveillance Authority shall specify the classes of officials and other servants to whom paragraph 1 applies and shall inform the EFTA States of its decision. The names of the officials and other servants included in these classes shall regularly be made known to the EFTA States.

Article 8

In addition to the privileges and immunities provided for in Article 7 (1), the Members of the EFTA Surveillance Authority shall enjoy:

(a) immunity from arrest and detention, except when found committing, attempting to commit or just having committed an offence;

(b) immunity from civil and administrative jurisdiction and execution enjoyed by diplomatic agents, except in the case of damage caused by a vehicle or other means of transport belonging to or driven by him;

(c) full immunity from criminal jurisdiction, except in a case of a traffic offence caused by a vehicle or other means of transport belonging to or driven by him, subject to subparagraph (a);

(d) the same customs facilities as regards his personal luggage as are accorded to diplomatic agents.

PART II

THE MEMBERS, OFFICIALS AND OTHER SERVANTS OF THE EFTA SURVEILLANCE AUTHORITY

Article 7

1. The Members of the EFTA Surveillance Authority, the officials and other servants thereof shall enjoy the following privileges and immunities:

(a) immunity from jurisdiction, even after they have left the service of the EFTA Surveillance Authority, in respect of acts, including words written or spoken, done by them in the exercise of their function. This immunity shall, however, not apply in the case of a traffic offence committed by a Member, official or other servant, nor in the case of damage caused by a vehicle or other means of transport belonging to or driven by him;

(b) inviolability for all their official papers and documents;

(c) exemption from all obligations in respect of national service, including military service;

(d) together with members of their families forming part of their households, exemption from all measures restricting immigration and from aliens' registration formalities;

(e) together with members of their families forming part of their households, the same facilities as to repatriation, in time of international crisis, as are normally accorded to staff members of international organizations;

PART III

MEMBERS OF ADVISORY BODIES AND EXPERTS

Article 9

1. Members of advisory bodies assisting the EFTA Surveillance Authority in its work shall enjoy the following privileges and immunities while performing their duties for the EFTA Surveillance Authority or carrying out missions on its behalf:

- (a) immunity from jurisdiction, even after the termination of their mission, in respect of acts, including words spoken or written, done by them in the exercise of their functions; this immunity shall not apply, however, in the case of a traffic offence committed by a member of an advisory body, nor in the case of damage caused by a vehicle or other means of transport belonging to or driven by him;
- (b) inviolability for all their official papers and documents;
- (c) exemption from all measures restricting immigration and from aliens' registration formalities;
- (d) the same treatment in respect of currency and exchange regulations as is accorded to the representatives of foreign governments on temporary official missions.

2. Paragraph 1 shall also apply to experts on missions while performing their duties on behalf of the EFTA Surveillance Authority as well as to representatives of the Commission of the European Communities and the EC Member States who participate in the work of the advisory bodies referred to in paragraph 1.

PART IV

GENERAL PROVISIONS

Article 10

1. The EFTA Surveillance Authority has a duty to waive its immunity in all cases where reliance upon it would impede the course of justice and it can be waived without prejudicing the interests of the Authority.

2. Privileges and immunities are granted to the Members, officials and other servants in the interests of the EFTA Surveillance Authority and not for the personal benefit of the individuals themselves. The EFTA Surveillance Authority shall have the right, and is under a duty, to waive the immunity of a Member, official or other servant in any case where, in its opinion, the immunity would impede the course of justice and could be waived without prejudice to the interests of the Authority.

Article 11

No State Party to this Protocol shall be obliged to accord the privileges and immunities referred to in Article 7 (1) (c), (d) and (e) to its own nationals or permanent residents.

Article 12

The provisions of this Protocol shall not prejudice the right of each State Party to this Protocol to take all precautionary measures necessary in the interest of its security.

Article 13

If any State Party to this Protocol considers that there has been an abuse of a privilege or immunity conferred by this Protocol, consultations shall be held between the State and the EFTA Surveillance Authority to determine whether any such abuse has occurred, and, if so, to ensure that no repetition occurs. A State which considers that any person has abused any privilege or immunity granted to him under this Protocol may require him to leave its territory.

PROTOCOL 7

on the legal capacity, privileges and immunities of the EFTA Court

PART I

Article 4

THE EFTA COURT

Article 1

The EFTA Court shall possess legal personality. It shall in particular have the capacity to contract, to acquire and dispose of movable and immovable property, and to be a party to legal proceedings.

Article 2

1. Within the scope of its official activities, the Court shall have immunity from jurisdiction and execution, except:

- (a) in so far as it has expressly waived such immunity in a particular case;
- (b) in respect of a civil action by a third party for damage arising from an accident caused by a vehicle or other means of transport belonging to or operated on behalf of the Court or in respect of a traffic offence involving such means of transport;
- (c) in the event of the attachment, pursuant to a decision by the administrative or judicial authorities, of the salaries and emoluments, including pension rights, owed by the Court to a Judge, the Registrar, an official or other servant or to a former Judge, Registrar, official or other servant;
- (d) in respect of a counterclaim directly connected with judicial proceedings initiated by the Court.

2. The property of the Court, wherever located, shall be immune:

- (a) from any forms of requisition, confiscation or expropriation;
- (b) from any form of sequestration and administrative or provisional judicial constraint, except in the cases provided for in the preceding paragraph.

Article 3

The archives of the Court and all documents belonging to it or held by it shall be inviolable wherever located.

1. Without being restricted by financial controls, regulations or moratoria of any kind the Court may:

- (a) hold funds or currency of any kind and operate accounts in any currency;
- (b) freely transfer its funds or currency from one country to another or within any country and convert any currency held by it into any other currency.

2. In exercising its rights under paragraph 1 of this Article the Court shall pay due regard to any representations made by any State Party to this Protocol and shall give effect to such representations in so far as it is considered possible to do so without detriment to the interests of the Court.

Article 5

1. The Court, its assets, income and other property shall be exempt:

- (a) from all direct taxes; the Court shall not, however, claim exemption from rates, taxes or dues which are in fact charges for public utility services;
- (b) from customs duties and prohibitions and restrictions on imports and exports in respect of articles directly imported or exported by the Court for its official use. Articles imported under such exemption shall not be sold in the territory of the State into which they were imported except under conditions agreed with the Government of that State;
- (c) from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

2. When purchases or services of substantial value and necessary for the exercise of the official activities of the Court are made or used by the Court and when the price of such purchases and services includes taxes or duties, the State Party to this Protocol that has levied the taxes or duties shall take appropriate measures to grant exemption from such taxes or duties or to provide for their reimbursement, if they are identifiable.

Article 6

1. The Court shall enjoy in the territory of each State Party to this Protocol, for its official communications,

treatment not less favourable than that accorded by the Government of that State to any other comparable international organization, in the matter of priorities, rates and taxes for posts and telecommunications and press rates for information to the press and radio.

2. No censorship shall be applied to the official correspondence and other official communications of the Court.

3. The Court shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

PART II

THE JUDGES, THE REGISTRAR, THE OFFICIALS AND OTHER SERVANTS OF THE COURT

Article 7

1. The Judges shall be immune from legal proceedings. After they have ceased to hold office, they shall continue to enjoy immunity in respect of acts performed by them in their official capacity, including words spoken or written.

2. The Court, sitting in plenary session, may waive the immunity.

3. Where immunity has been waived and criminal proceedings are instituted against a Judge, he shall be tried, in any of the EFTA States, only by the Court competent to judge the members of the highest national judiciary.

Article 8

1. The Judges, the Registrar, the officials and other servants of the Court shall enjoy the following privileges and immunities:

- (a) inviolability for all their official papers and documents;
- (b) exemption from all obligations in respect of national service, including military service;
- (c) together with members of their families forming part of their households, exemption from all measures restricting immigration and from aliens' registration formalities;
- (d) together with members of their families forming part of their households, the same facilities as to repatriation, in time of international crisis, as are

normally accorded to staff members of international organizations;

- (e) the same treatment in respect of currency and exchange regulations as is normally accorded to staff members of international organizations;
- (f) exemption from all national income tax on their salaries and emoluments paid to them by the Court, excluding pensions and other similar benefits paid by the Court. The States Parties to this Protocol reserve the right to take those salaries and emoluments into account when assessing the amount of tax to be applied to income from other sources.

2. In addition to the privileges and immunities provided for above, the Registrar, the officials and other servants shall enjoy immunity from jurisdiction, even after they have left the service of the Court, in respect of acts, including words written or spoken, done by them in the exercise of their function. This immunity shall, however, not apply in the case of a traffic offence committed by the Registrar, an official or other servant, nor in the case of damage caused by a vehicle or other means of transport belonging to or driven by him.

3. The Court shall specify the classes of officials and other servants to whom paragraphs 1 and 2 apply and shall inform the EFTA States of its decision. The names of the officials and other servants included in these classes shall regularly be made known to the EFTA States.

Article 9

In addition to the privileges and immunities provided for in Article 8 (1), the Judges shall enjoy:

- (a) immunity from civil and administrative jurisdiction and execution enjoyed by diplomatic agents, except in the case of damage caused by a vehicle or other means of transport belonging to or driven by him;
- (b) the same customs facilities as regards his personal luggage as are accorded to diplomatic agents.

PART III

GENERAL PROVISIONS

Article 10

1. The Court has a duty to waive its immunity in all cases where reliance upon it would impede the course of justice and it can be waived without prejudicing the interests of the Court.

2. Privileges and immunities are granted to the Registrar, the officials and other servants of the Court in the interests of the Court and not for the personal benefit of the individuals themselves. The Court shall have the right, and is under a duty, to waive the immunity of the Registrar, an official or other servant in any case where, in its opinion, the immunity would impede the course of justice and could be waived without prejudice to the interests of the Court.

Article 11

No State Party to this Protocol shall be obliged to accord the privileges and immunities referred to in Article 8 (1) (b), (c) and (d) to its own nationals or permanent residents.

Article 12

The provisions of this Protocol shall not prejudice the right of each State Party to this Protocol to take all precautionary measures necessary in the interest of its security.

Article 13

If any State party to this Protocol considers that there has been an abuse of a privilege or immunity conferred by this Protocol, consultations shall be held between that State and the Court to determine whether any such abuse has occurred, and, if so, to ensure that no repetition occurs. A State which considers that any person has abused any privilege or immunity granted to him under this Protocol may require him to leave its territory.

ANNEX I

LIST PROVIDED FOR IN ARTICLE 24, SECOND PARAGRAPH, OF THE AGREEMENT BETWEEN THE EFTA STATES ON THE ESTABLISHMENT OF A SURVEILLANCE AUTHORITY AND A COURT OF JUSTICE ⁽¹⁾*Prior notification of State aid plans and other procedural rules*

1. C/252/80/p. 2: The notification of State aids to the Commission pursuant to Article 93 (3) of the EEC Treaty; the failure of Member States to respect their obligations (OJ No C 252, 30. 9. 1980, p. 2).
2. Letter from the Commission to the Member States SG(81) 12740 of 2 October 1981.
3. Letter from the Commission to the Member States SG(89) D/5521 of 27 April 1989.
4. Letter from the Commission to the Member States SG(87) D/5540 of 30 April 1989: Procedure under Article 93 (2) of the EEC Treaty — Time limits.
5. Letter from the Commission to the Member States SG(90) D/28091 of 11 October 1990: State aid — informing Member States about aid cases not objected to by the Commission.
6. Letter from the Commission to the Member States SG(91) D/4577 of 4 March 1991: Communication to the Member States concerning the procedure for the notification of aid plans and procedures applicable when aid is provided in breach of the rules of Article 93 (3) of the EEC Treaty.

Evaluation of aid of minor importance

7. C/40/90/p. 2: Notification of an aid scheme of minor importance (OJ No C 40, 20. 2. 1990, p. 2).

Public authorities' holdings

8. Application of Articles 92 and 93 of the EEC Treaty to public authorities' holdings (Bulletin EC 9-1984).

Aid granted illegally

9. C/318/83/p. 3: Commission communication on aids granted illegally (OJ No C 318, 24. 11. 1983, p. 3).

State guarantees

10. Letter from the Commission to the Member States SG(89) D/4328 of 5 April 1989.
11. Letter from the Commission to the Member States SG(89) D/12772 of 12 October 1989.

Textile and clothing industry

12. Commission communication to the Member States on the Community framework on aid to the textile industry (SEC(71) 363 final — July 1971).
13. Letter from the Commission to the Member States SG(77) D/1190 of 4 February 1977 and Annex (Doc. SEC(77) 317, 25. 1. 1977): Examination of the present situation with regard to aids to the textile and clothing industries.

Synthetic fibres industry

14. C/173/89/p. 5: Commission communication on aid to the EEC synthetic fibres industries (OJ No C 173, 8. 7. 1989, p. 5).

Motor vehicle industry

15. C/123/89/p. 3: Community framework on State aid to the motor vehicle industry (OJ No C 123, 18. 5. 1989, p. 3).

⁽¹⁾ It follows from Articles 5 (2) (b) and 24 of this Agreement that, upon its entry into force, the EFTA Surveillance Authority is obliged to adopt acts corresponding to those listed in this Annex. With regard to amendments to those acts or the adoption of other and future acts in this field, the obligation rests with the EFTA Surveillance Authority according to its competence under this Agreement.

16. C/81/91/p. 4: Community framework on State aid to the motor vehicle industry (OJ No C 81, 26. 3. 1991, p. 4).

Frameworks on general systems of regional aid

17. 471 Y 1104: Council resolution of 20 October 1971 on general systems of regional aid (OJ No C 111, 4. 11. 1971, p. 1).
18. C/111/71/p. 7: Commission communication on Council resolution of 20 October 1971 on general systems of regional aid (OJ No C 111, 4. 11. 1971, p. 7).
19. Commission communication to the Council on general regional aid systems (COM(75) 77, final).
20. C/31/79/p. 9: Commission communication on regional aid systems (OJ No C 31, 3. 2. 1979, p. 9).
21. C/212/88/p. 2: Commission communication on the method for the application of Article 92 (3) (a) and (c) to regional aid (OJ No C 212, 12. 8. 1988, p. 2).
22. C/10/90/p. 8: Commission communication on the revision of the communication of 3 February 1979 (OJ No C 10, 16. 1. 1990, p. 8).
23. C/163/90/p. 5: Commission communication on the method of application of Article 92 (3) (c) to regional aid (OJ No C 163, 4. 7. 1990, p. 5).
24. C/163/90/p. 6: Commission communication on the method of application of Article 92 (3) (a) to regional aid (OJ No C 163, 4. 7. 1990, p. 6).

Community framework on State aid in environmental matters

25. Letter from the Commission to the Member States S/74/30.807 of 7 November 1974.
26. Letter from the Commission to the Member States SG(80) D/8287 of 7 July 1980.
27. Commission communication to the Member States (Annex to the letter of 7 July 1980).
28. Letter from the Commission to the Member States SG(87) D/3795 of 29 March 1987.

Community framework on State aid to research and development

29. C/83/86/p. 2: Community framework for State aids for research and development (OJ No C 83, 11. 4. 1986, p. 2).
30. Letter from the Commission to the Member States SG(90) D/01620 of 5 February 1990.

Rules applicable to general aid schemes

31. Letter from the Commission to the Member States SG(79) D/10478 of 14 September 1979.
32. Control of aid for rescue and restructuring (*Eighth Report on Competition Policy*, point 228).

Rules applicable to cases of cumulation of aid for different purposes

33. C/3/85/p. 3: Commission communication on the cumulation of aids for different purposes (OJ No C 3, 5. 1. 1985, p. 3).

Aid to employment

34. *Sixteenth Report on Competition Policy*, point 253.
35. *Twentieth Report on Competition Policy*, point 280.

Control of aid to the steel industry

36. C/320/88/p. 3: Framework for certain steel sectors not covered by the ECSC Treaty (OJ No C 320, 13. 12. 1988, p. 3).

ANNEX II

LIST PROVIDED FOR IN ARTICLE 25, SECOND PARAGRAPH, OF THE AGREEMENT BETWEEN THE EFTA STATES ON THE ESTABLISHMENT OF A SURVEILLANCE AUTHORITY AND A COURT OF JUSTICE ⁽¹⁾*Control of concentrations*

1. C/203/90/p. 5: Commission notice regarding restrictions ancillary to concentrations (OJ No C 203, 14. 8. 1990, p. 5).
2. C/203/90/p. 10: Commission notice regarding the concentrative and cooperative operations under Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ No C 203, 14. 8. 1990, p.10).

Exclusive dealing agreements

3. C/101/84/p. 2: Commission notice concerning Commission Regulations (EEC) No 1983/83 and (EEC) No 1984/83 of 22 June 1983 on the application of Article 85 (3) of the Treaty to categories of exclusive distribution and exclusive purchasing agreements (OJ No C 101, 13. 4. 1984, p. 2).
4. C/17/85/p. 4: Commission notice concerning Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ No C 17, 18. 1. 1985, p. 4).

Other

5. 362 X 1224 (01): Commission notice on exclusive dealing contracts with commercial agents (OJ No 139, 24. 12. 1962, p. 2921/62).
6. C/75/68/p. 39: Commission notice concerning agreements, decisions and concerted practices in the field of cooperation between enterprises (OJ No C 75, 29. 7. 1968, p. 39) as corrected by OJ No C 84, 28. 8. 1968, p. 14.
7. C/111/72/p. 13: Commission notice of 21 October 1972 concerning imports into the Community of Japanese goods falling within the scope of the Rome Treaty (OJ No C 111, 21. 10. 1972, p. 13).
8. C/1/79/p. 2: Commission notice of 18 December 1978 concerning its assessment of certain subcontracting agreements in relation to Article 85 (1) of the EEC Treaty (OJ No C 1, 3. 1. 1979, p. 2).
9. C/231/86/p. 2: Commission notice on agreements of minor importance which do not fall under Article 85 (1) of the Treaty establishing the European Economic Community (OJ No C 231, 12. 9. 1986, p. 2).
10. C/233/91/p. 2: Guidelines on the application of EEC competition rules in the telecommunication sector (OJ No C 233, 6. 9. 1991, p. 2).

⁽¹⁾ It follows from Articles 5 (2) (b) and 25 of this Agreement that, upon its entry into force, the EFTA Surveillance Authority is obliged to adopt acts corresponding to those listed in this Annex. With regard to amendments to those acts or the adoption of other and future acts in this field, the obligation rests with the EFTA Surveillance Authority according to its competence under this Agreement.

AGREED MINUTES

of the negotiations for an agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice

The Contracting Parties agreed that

Ad Protocol 4, Article 10 (1) of Chapter II, Article 16 (2) of Chapter VI, Article 15 (2) of Chapter IX, Article 8 (2) of Chapter XI and Article 19 (2) of Chapter XIII

the transmission of information to the competent authorities of the EFTA States shall concern all applications and notifications received by the EFTA Surveillance Authority, including those resulting from a misunderstanding, on the part of the economic operators, of the substance rules or the rules contained in Article 56 of the EEA Agreement;

Ad Protocol 4, Article 14 (2) of Chapter II, Article 21 (2) of Chapter VI, Article 18 (2) of Chapter IX and Article 13 (2) of Chapter XIII

the authorization provided by the EFTA Surveillance Authority to the representatives of the EC Commission shall be of declarative nature only;

Ad Protocol 6, Article 7 (1), and Protocol 7, Article 8 (1)

it would be provided in the Headquarters Agreements that the Members of the EFTA Surveillance Authority, the officials and other servants thereof, as well as the Judges, the Registrar, the officials and other servants of the Court shall have the right to import free of customs duties and other import charges their furniture and personal effects, including motor vehicles for their personal use, at the time of taking up their post in the territory of a Contracting Party, and the right to export them free of duty upon termination of their functions, subject to the conditions laid down by the laws and regulations of the Contracting Party concerned;

goods thus imported and exempted shall not be sold, hired out, lent or given away against payment or free of charge, except in accordance with the conditions laid down by the Contracting Party which has granted the exemptions;

they would endeavour to achieve the same in Headquarters Agreements with other States.

Done at Oporto, this 2nd day of May 1992, in a single authentic copy in the English language which shall be deposited with the Government of Sweden. The Depositary shall transmit certified copies to all Signatory States and States acceding to this Agreement.

For the Republic of Austria

For the Republic of Finland

For the Republic of Iceland

For the Principality of Liechtenstein

For the Kingdom of Norway

For the Kingdom of Sweden

For the Swiss Confederation

PROTOCOL

adjusting the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF FINLAND,

THE REPUBLIC OF ICELAND,

THE PRINCIPALITY OF LIECHTENSTEIN,

THE KINGDOM OF NORWAY

AND

THE KINGDOM OF SWEDEN,

WHEREAS the Agreement on the European Economic Area, hereinafter referred to as 'the EEA Agreement', was signed in Oporto on 2 May 1992;

WHEREAS the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice, hereinafter referred to as 'the Surveillance and Court Agreement', was signed in Oporto on 2 May 1992;

WHEREAS it has become clear that one of the signatories to the EEA Agreement, the Swiss Confederation, is not in a position to ratify the EEA Agreement or the Surveillance and Court Agreement and that therefore those Agreements will not apply to Switzerland;

WHEREAS a Protocol Adjusting the EEA Agreement is signed on the same day as this Protocol;

WHEREAS a new date for the entry into force of the Surveillance and Court Agreement has to be laid down;

WHEREAS special provisions are required for the entry into force of the Surveillance and Court Agreement as regards the Principality of Liechtenstein;

WHEREAS a number of adjustments to the Surveillance and Court Agreement are necessary as a consequence of the non-ratification by Switzerland;

HAVE DECIDED to conclude the following Protocol:

Article 1

1. The Surveillance and Court Agreement, as adjusted by this Protocol, shall enter into force on the date of entry into force of this Protocol, between the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway and the Kingdom of Sweden.

2. As regards the Principality of Liechtenstein, the Surveillance and Court Agreement, as adjusted by this Protocol, shall enter into force on the same day as the EEA Agreement enters into force for Liechtenstein and provided that the appropriate decision has been taken by the Signatories to this Protocol regarding the application to Liechtenstein of decisions and other measures taken pursuant to the Surveillance and Court Agreement.

Article 2

1. Since the Swiss Confederation, following its non-ratification of the Surveillance and Court Agreement, is not a Contracting Party thereto, the reference in the preamble to the Agreement to 'THE SWISS CONFEDERATION' as one of the Contracting Parties shall be deleted.

2. Article 1 (b) of the Surveillance and Court Agreement shall be replaced by the following:

'The term "EFTA States" means the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway and the Kingdom of Sweden and, under the conditions laid down in Article (2) of the Protocol Adjusting the Agreement between the EFTA States on the Surveillance and Court Agreement and a Court of Justice, the Principality of Liechtenstein.'

3. The Surveillance and Court Agreement shall be adjusted further in accordance with Articles 3 to 8 of this Protocol.

Article 3

The first paragraph of Article 7 shall be replaced by the following:

'The EFTA Surveillance Authority shall consist of five members, who shall be chosen on the grounds of their general competence and whose independence is beyond doubt.'

Article 4

Article 28 shall be replaced by the following:

'Article 28

The EFTA Court shall consist of five judges.'

Article 5

When the Surveillance and Court Agreement enters into force for Liechtenstein, the number of members of the EFTA Surveillance Authority and the number of judges of the EFTA Court shall be increased.

Article 6

Article 29 shall be replaced by the following:

'Article 29

The EFTA Court shall sit in plenary session. Decisions of the Court shall be valid only when an uneven number of its members is sitting in the deliberations. Decisions of the Court shall be valid if three members are sitting. At the request of the Court, the Governments of the EFTA States may, by common accord, allow it to establish chambers.'

Article 7

The second paragraph of Article 30 shall be replaced by the following:

'Every three years there shall be a partial replacement of the judges. Two and three judges shall be replaced

alternately. The two judges to be replaced after the first three years shall be determined by lot.'

Article 8

Article 53 (3) shall be replaced by the following:

'3. This Agreement shall enter into force on the date and under the conditions provided for in the Protocol Adjusting the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.'

Article 9

1. This Protocol is drawn up in a single original in the English, Finnish, German, Icelandic, Norwegian and Swedish languages, each of these texts being equally authentic.

2. This Protocol shall be ratified by the Contracting Parties in accordance with their respective constitutional requirements.

It shall be deposited with the Government of Sweden which shall transmit certified copies to all the other Contracting Parties.

The instruments of ratification shall be deposited with the Government of Sweden which shall notify all the other Contracting Parties.

3. This Protocol shall enter into force on 1 July 1993, provided that the EEA Agreement enters into force on that date and provided that all the Contracting Parties referred to in Article 1 (1) of this Protocol have deposited their instruments of ratification of the Surveillance and Court Agreement and of this Protocol before that date. After that date, this Protocol shall enter into force on the date the EEA Agreement enters into force or when all instruments of ratification of the Surveillance and Court Agreement and of this Protocol have been deposited by all the Contracting Parties referred to in Article 1 (1) of this Protocol, whichever date is the later.

4. As regards Liechtenstein, this Protocol shall enter into force on the same date as the EEA Agreement enters into force for Liechtenstein, provided that Liechtenstein has deposited its instruments of ratification of the Surveillance and Court Agreement and of this Protocol, and under the conditions laid down in Article 1 (2) of this Protocol.