

**AGREEMENT AMENDING PROTOCOL 4 TO THE AGREEMENT BETWEEN  
THE EFTA STATES ON THE ESTABLISHMENT OF A SURVEILLANCE  
AUTHORITY AND A COURT OF JUSTICE**

THE REPUBLIC OF ICELAND  
THE PRINCIPALITY OF LIECHTENSTEIN  
THE KINGDOM OF NORWAY

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice as adjusted by the Protocol Adjusting 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, and in particular Article 49 thereof,

In agreement with the EFTA Surveillance Authority,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty<sup>1</sup>.

Having regard to Decision No 130/2004 of the EEA Joint Committee of 24 September 2004 amending Annex XIV, Protocol 21 and Protocol 23 to the EEA Agreement,

Whereas, therefore, Protocol 4 to the Surveillance and Court Agreement should be amended,

HAVE AGREED AS FOLLOWS:

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<sup>1</sup> OJ L 1, 4.1.2003, p. 1.

Article 1

Chapter II of Part I of Protocol 4 to the Surveillance and Court Agreement shall be replaced by the following:

**‘CHAPTER II**

**GENERAL PROCEDURAL RULES IMPLEMENTING  
ARTICLES 53 AND 54 OF THE EEA AGREEMENT**

SECTION I

**PRINCIPLES**

*Article 1*

**Application of Articles 53 and 54 of the EEA Agreement**

1. Agreements, decisions and concerted practices caught by Article 53(1) of the EEA Agreement which do not satisfy the conditions of Article 53(3) of the EEA Agreement shall be prohibited, no prior decision to that effect being required.
2. Agreements, decisions and concerted practices caught by Article 53(1) of the EEA Agreement which satisfy the conditions of Article 53(3) of the EEA Agreement shall not be prohibited, no prior decision to that effect being required.
3. The abuse of a dominant position referred to in Article 54 of the EEA Agreement shall be prohibited, no prior decision to that effect being required.

*Article 2*

**Burden of proof**

In any national or EFTA proceedings for the application of Articles 53 and 54 of the EEA Agreement, the burden of proving an infringement of Article 53(1) or of Article 54 of the EEA Agreement shall rest on the party or the authority alleging the infringement. The undertaking or association of undertakings claiming the benefit of Article 53(3) of the EEA Agreement shall bear the burden of proving that the conditions of that paragraph are fulfilled.

### *Article 3*

#### **Relationship between Articles 53 and 54 of the EEA Agreement and national competition laws**

1. Where the competition authorities of the EFTA States or national courts apply national competition law to agreements, decisions by associations of undertakings or concerted practices within the meaning of Article 53(1) of the EEA Agreement which may affect trade between the Contracting Parties to the EEA Agreement within the meaning of that provision, they shall also apply Article 53 of the EEA Agreement to such agreements, decisions or concerted practices. Where the competition authorities of the EFTA States or national courts apply national competition law to any abuse prohibited by Article 54 of the EEA Agreement, they shall also apply Article 54 of the EEA Agreement.
2. The application of national competition law may not lead to the prohibition of agreements, decisions by associations of undertakings or concerted practices which may affect trade between the Contracting Parties to the EEA Agreement but which do not restrict competition within the meaning of Article 53(1) of the EEA Agreement, or which fulfil the conditions of Article 53(3) of the EEA Agreement or which are covered by an act for the application of Article 53(3) of the EEA Agreement. EFTA States shall not under this act be precluded from adopting and applying on their territory stricter national laws which prohibit or sanction unilateral conduct engaged in by undertakings.
3. Without prejudice to general principles and other provisions of EEA law, paragraphs 1 and 2 do not apply when the competition authorities and the courts of the EFTA States apply national merger control laws nor do they preclude the application of provisions of national law that predominantly pursue an objective different from that pursued by Articles 53 and 54 of the EEA Agreement.

## SECTION II

### **POWERS**

#### *Article 4*

#### **Powers of the EFTA Surveillance Authority**

For the purpose of applying Articles 53 and 54 of the EEA Agreement, the EFTA Surveillance Authority shall have the powers provided for by this Chapter.

## *Article 5*

### **Powers of the competition authorities of the EFTA States**

The competition authorities of the EFTA States shall have the power to apply Articles 53 and 54 of the EEA Agreement in individual cases. For this purpose, acting on their own initiative or on a complaint, they may take the following decisions:

- requiring that an infringement be brought to an end,
- ordering interim measures,
- accepting commitments,
- imposing fines, periodic penalty payments or any other penalty provided for in their national law.

Where on the basis of the information in their possession the conditions for prohibition are not met they may likewise decide that there are no grounds for action on their part.

## *Article 6*

### **Powers of the national courts**

National courts shall have the power to apply Articles 53 and 54 of the EEA Agreement.

## SECTION III

### **DECISIONS BY THE EFTA SURVEILLANCE AUTHORITY**

## *Article 7*

### **Finding and termination of infringement**

1. Where the EFTA Surveillance Authority, acting on a complaint or on its own initiative, finds that there is an infringement of Article 53 or of Article 54 of the EEA Agreement, it may by decision require the undertakings and associations of undertakings concerned to bring such infringement to an end. For this purpose, it may impose on them any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end. Structural remedies can only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. If the EFTA Surveillance Authority has a legitimate interest in doing so, it may also find that an infringement has been committed in the past.

2. Those entitled to lodge a complaint for the purposes of paragraph 1 are natural or legal persons who can show a legitimate interest and EFTA States.

#### *Article 8*

##### **Interim measures**

1. In cases of urgency due to the risk of serious and irreparable damage to competition, the EFTA Surveillance Authority, acting on its own initiative may by decision, on the basis of a *prima facie* finding of infringement, order interim measures.

2. A decision under paragraph 1 shall apply for a specified period of time and may be renewed in so far this is necessary and appropriate.

#### *Article 9*

##### **Commitments**

1. Where the EFTA Surveillance Authority intends to adopt a decision requiring that an infringement be brought to an end and the undertakings concerned offer commitments to meet the concerns expressed to them by the EFTA Surveillance Authority in its preliminary assessment, the EFTA Surveillance Authority may by decision make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the EFTA Surveillance Authority.

2. The EFTA Surveillance Authority may, upon request or on its own initiative, reopen the proceedings:

(a) where there has been a material change in any of the facts on which the decision was based;

(b) where the undertakings concerned act contrary to their commitments; or

(c) where the decision was based on incomplete, incorrect or misleading information provided by the parties.

#### *Article 10*

##### **Finding of inapplicability**

Where the public interest under the EEA Agreement relating to the application of Articles 53 and 54 of the EEA Agreement so requires, the EFTA Surveillance Authority, acting on its own initiative, may by decision find that Article 53 of the EEA Agreement is not

applicable to an agreement, a decision by an association of undertakings or a concerted practice, either because the conditions of Article 53(1) of the EEA Agreement are not fulfilled, or because the conditions of Article 53(3) of the EEA Agreement are satisfied.

The EFTA Surveillance Authority may likewise make such a finding with reference to Article 54 of the EEA Agreement.

## SECTION IV

### COOPERATION

#### *Article 11*

#### **Cooperation between the EFTA Surveillance Authority and the competition authorities of the EFTA States**

1. The EFTA Surveillance Authority and the competition authorities of the EFTA States shall apply the EEA competition rules in close cooperation.
2. The EFTA Surveillance Authority shall transmit to the competition authorities of the EFTA States copies of the most important documents it has collected with a view to applying Articles 7, 8, 9, 10 and Article 29(1). At the request of the competition authority of an EFTA State, the EFTA Surveillance Authority shall provide it with a copy of other existing documents necessary for the assessment of the case.
3. The competition authorities of the EFTA States shall, when acting under Article 53 or Article 54 of the EEA Agreement, inform the EFTA Surveillance Authority in writing before or without delay after commencing the first formal investigative measure. This information may also be made available to the competition authorities of the other EFTA States.
4. No later than 30 days before the adoption of a decision requiring that an infringement be brought to an end, accepting commitments or withdrawing the benefit of a block exemption act, the competition authorities of the EFTA States shall inform the EFTA Surveillance Authority. To that effect, they shall provide the EFTA Surveillance Authority with a summary of the case, the envisaged decision or, in the absence thereof, any other document indicating the proposed course of action. This information may also be made available to the competition authorities of the other EFTA States. At the request of the EFTA Surveillance Authority, the acting competition authority shall make available to the EFTA Surveillance Authority other documents it holds which are necessary for the assessment of the case. The information supplied to the EFTA Surveillance Authority may be made available to the competition authorities of the other EFTA States. National competition authorities may also exchange between themselves information necessary for the assessment of a case that they are dealing with under Article 53 or Article 54 of the EEA Agreement.

5. The competition authorities of the EFTA States may consult the EFTA Surveillance Authority on any case involving the application of EEA law.
6. The initiation by the EFTA Surveillance Authority of proceedings for the adoption of a decision under Section III should relieve the competition authorities of the EFTA States of their competence to apply Articles 53 and 54 of the EEA Agreement. If a competition authority of an EFTA State is already acting on a case, the EFTA Surveillance Authority shall only initiate proceedings after consulting with that national competition authority.
7. The EFTA Surveillance Authority shall forthwith transmit to the competent authorities of the EFTA States information received from the EC Commission pursuant to Articles 2, 3(1) first indent, 4, 7, 8(1) and 11 of Protocol 23 to the EEA Agreement. The EFTA Surveillance Authority may also transmit other information pursuant to Protocol 23 of the EEA Agreement.

#### *Article 11 A*

#### **Leniency information received pursuant to Protocol 23 to the EEA Agreement**

1. The competition authorities of the EFTA States cannot use information referred to in Article 11(7) as the basis for starting an investigation on their own behalf in cases where the EFTA Surveillance Authority received that information from the EC Commission in accordance with Article 2(1) or (2) of Protocol 23 to the EEA Agreement, and that information concerns a case which has been initiated as a result of an application for leniency. This is without prejudice to any power of the competition authorities of the EFTA States to open an investigation on the basis of information received from other sources.
2. The limitations and conditions stated in Article 9(4) and 9(5) of Protocol 23 to the EEA Agreement shall apply mutatis mutandis between the EFTA Surveillance Authority and the competition authorities of the EFTA States to the forwarding of information according to Article 11(7).

#### *Article 11 B*

#### **Leniency information originating from the EFTA Surveillance Authority or from the competition authorities of the EFTA States**

1. Where the EFTA Surveillance Authority or a competition authority of an EFTA State deals with a case which has been initiated as a result of a leniency application, information submitted to the other authorities pursuant to Article 11 (1) to (6) in such cases will not be used by these authorities as the basis for starting an investigation on their own behalf whether under the competition rules of the EEA Agreement or, in the case of competition authorities of the EFTA States, under their national competition law or other laws. This is without prejudice to any power of the authority to open an

investigation on the basis of information received from other sources or, subject to paragraphs (2) and (3) below, to request, be provided with and use information pursuant to Article 12 from any of the other authorities, including the authority to whom the leniency application was submitted.

2. Save as provided under paragraph 3, information voluntarily submitted by a leniency applicant will only be transmitted to another authority pursuant to Article 12 with the consent of the applicant. Similarly other information that has been obtained during or following an inspection or by means of or following any other fact-finding measures which, in each case, could not have been carried out except as a result of the leniency application will only be transmitted to another authority pursuant to Article 12 if the applicant has consented to the transmission to that authority of information it has voluntarily submitted in its application for leniency. Once the leniency applicant has given consent to the transmission of information to another authority, that consent may not be withdrawn. This paragraph is without prejudice, however, to the responsibility of each applicant to file leniency applications to whichever authorities it may consider appropriate.

3. Notwithstanding the above, the consent of the applicant for the transmission of information to another authority pursuant to Article 12 is not required in any of the following circumstances:

(a) No consent is required where the receiving authority has also received a leniency application relating to the same infringement from the same applicant as the transmitting authority, provided that at the time the information is transmitted it is not open to the applicant to withdraw the information which it has submitted to that receiving authority.

(b) No consent is required where the receiving authority has provided a written commitment that neither the information transmitted to it nor any other information it may obtain following the date and time of transmission as noted by the transmitting authority, will be used by it or by any other authority to which the information is subsequently transmitted to impose sanctions:

- (i) on the leniency applicant;
- (ii) on any other legal or natural person covered by the favourable treatment offered by the transmitting authority as a result of the application made by the applicant under its leniency programme; or
- (iii) on any employee or former employee of any of the persons covered by (i) or (ii).

A copy of the receiving authority's written commitment will be provided to the applicant.

(c) In the case of information collected by a competition authority of an EFTA State under Article 22(1) on behalf of and for the account of the authority to whom the leniency application was made, no consent is required for the transmission of such information to, and its use by, the authority to whom the application was made.

## *Article 12*

### **Exchange of information**

1. For the purpose of applying Articles 53 and 54 of the EEA Agreement the EFTA Surveillance Authority and the competition authorities of the EFTA States shall have the power to provide one another with and use in evidence any matter of fact or of law, including confidential information.

2. Information exchanged shall only be used in evidence for the purpose of applying Article 53 or Article 54 of the EEA Agreement and in respect of the subject matter for which it was collected by the transmitting authority. However, where national competition law is applied in the same case and in parallel to EEA competition law and does not lead to a different outcome, information exchanged under this Article may also be used for the application of national competition law.

3. Information exchanged pursuant to paragraph 1 can only be used in evidence to impose sanctions on natural persons where:

— the law of the transmitting authority foresees sanctions of a similar kind in relation to an infringement of Article 53 or Article 54 of the EEA Agreement or, in the absence thereof,

— the information has been collected in a way which respects the same level of protection of the rights of defence of natural persons as provided for under the national rules of the receiving authority. However, in this case, the information exchanged cannot be used by the receiving authority to impose custodial sanctions.

### *Article 13*

#### **Suspension or termination of proceedings**

1. Where competition authorities of two or more EFTA States have received a complaint or are acting on their own initiative under Article 53 or Article 54 of the EEA Agreement against the same agreement, decision of an association or practice, the fact that one authority is dealing with the case shall be sufficient grounds for the others to suspend the proceedings before them or to reject the complaint. The EFTA Surveillance Authority may likewise reject a complaint on the ground that a competition authority of an EFTA State is dealing with the case.
2. Where a competition authority of an EFTA State or the EFTA Surveillance Authority has received a complaint against an agreement, decision of an association or practice which has already been dealt with by another competition authority, it may reject it.

### *Article 14*

#### **Advisory Committee**

1. The EFTA Surveillance Authority shall consult an Advisory Committee on Restrictive Practices and Dominant Positions prior to the taking of any decision under Articles 7, 8, 9, 10, 23, Article 24(2) and Article 29(1).
2. For the discussion of individual cases, the Advisory Committee shall be composed of representatives of the competition authorities of the EFTA States. For meetings in which issues other than individual cases are being discussed, an additional EFTA State representative competent in competition matters may be appointed. Representatives may, if unable to attend, be replaced by other representatives.

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.

3. The consultation may take place at a meeting convened and chaired by the EFTA Surveillance Authority, held not earlier than 14 days after dispatch of the notice convening it, together with a summary of the case, an indication of the most important documents and a preliminary draft decision. In respect of decisions pursuant to Article 8, the meeting may be held seven days after the dispatch of the operative part of a draft decision. Where the EFTA Surveillance Authority dispatches a notice convening the meeting which gives a shorter period of notice than those specified above, the meeting may take place on the proposed date in the absence of an objection by any EFTA State. The Advisory Committee shall deliver a written opinion on the EFTA Surveillance Authority's preliminary draft decision. It may deliver an opinion even if some members are absent and are not represented. At the request of one or several members, the positions stated in the opinion shall be reasoned.

4. Consultation may also take place by written procedure. However, if any EFTA State or the EC Commission so requests, the EFTA Surveillance Authority shall convene a meeting. In case of written procedure, the EFTA Surveillance Authority shall determine a time-limit of not less than 14 days within which the EFTA States are to put forward their observations for circulation to all other EFTA States. In case of decisions to be taken pursuant to Article 8, the time-limit of 14 days is replaced by seven days. Where the EFTA Surveillance Authority determines a time-limit for the written procedure which is shorter than those specified above, the proposed time-limit shall be applicable in the absence of an objection by any EFTA State.

5. The EFTA Surveillance Authority shall take the utmost account of the opinion delivered by the Advisory Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

6. Where the Advisory Committee delivers a written opinion, this opinion shall be appended to the draft decision. If the Advisory Committee recommends publication of the opinion, the EFTA Surveillance Authority shall carry out such publication taking into account the legitimate interest of undertakings in the protection of their business secrets.

7. At the request of a competition authority of an EFTA State, the EFTA Surveillance Authority shall include on the agenda of the Advisory Committee cases that are being dealt with by a competition authority of an EFTA State under Article 53 or Article 54 of the EEA Agreement. The EFTA Surveillance Authority may also do so on its own initiative. In either case, the EFTA Surveillance Authority shall inform the competition authority concerned.

A request may in particular be made by a competition authority of an EFTA State in respect of a case where the EFTA Surveillance Authority intends to initiate proceedings with the effect of Article 11(6).

The Advisory Committee shall not issue opinions on cases dealt with by competition authorities of the EFTA States. The Advisory Committee may also discuss general issues of EEA competition law.

8. In view of the participation provided for in the second subparagraph of paragraph 2, the EC Commission shall receive an invitation to participate in consultations in accordance with paragraphs 3 and 4, and the relevant information as provided for in Article 6 of Protocol 23 to the EEA Agreement.

## *Article 15*

### **Cooperation with national courts**

1. In proceedings for the application of Article 53 or Article 54 of the EEA Agreement, courts of the EFTA States may ask the EFTA Surveillance Authority to transmit to them information in its possession or its opinion on questions concerning the application of the EEA competition rules.

2. EFTA States shall forward to the EFTA Surveillance Authority a copy of any written judgment of national courts deciding on the application of Article 53 or Article 54 of the EEA Agreement. Such copy shall be forwarded without delay after the full written judgment is notified to the parties.

3. Competition authorities of the EFTA States, acting on their own initiative, may submit written observations to the national courts of their EFTA State on issues relating to the application of Article 53 or Article 54 of the EEA Agreement. With the permission of the court in question, they may also submit oral observations to the national courts of their EFTA State. Where the coherent application of Article 53 or Article 54 of the EEA Agreement so requires, the EFTA Surveillance Authority, acting on its own initiative, may submit written observations to courts of the EFTA States. With the permission of the court in question, it may also make oral observations.

For the purpose of the preparation of their observations only, the competition authorities of the EFTA States and the EFTA Surveillance Authority may request the relevant court of the EFTA State to transmit or ensure the transmission to them of any documents necessary for the assessment of the case.

4. This Article is without prejudice to wider powers to make observations before courts conferred on competition authorities of the EFTA States under the law of the EFTA State.

## *Article 16*

### **Uniform application of EEA competition law**

1. When national courts rule on agreements, decisions or practices under Article 53 or Article 54 of the EEA Agreement which are already the subject of a decision by the EFTA Surveillance Authority, they cannot take decisions running counter to the decision adopted by the EFTA Surveillance Authority. They must also avoid giving decisions which would conflict with a decision contemplated by the EFTA Surveillance Authority in proceedings it has initiated. To that effect, the national court may assess whether it is necessary to stay its proceedings. This obligation is without prejudice to the rights and obligations under Article 34 of the Surveillance and Court Agreement.

2. When competition authorities of the EFTA States rule on agreements, decisions or practices under Article 53 or Article 54 of the EEA Agreement which are already the subject of a decision by the EFTA Surveillance Authority, they cannot take decisions which would run counter to the decision adopted by the EFTA Surveillance Authority.

## SECTION V

### POWERS OF INVESTIGATION

#### *Article 17*

##### **Investigations into sectors of the economy and into types of agreements**

1. Where the trend of trade between the Contracting Parties to the EEA Agreement, the rigidity of prices or other circumstances suggest that competition may be restricted or distorted within the territory covered by the EEA Agreement, the EFTA Surveillance Authority may conduct its inquiry into a particular sector of the economy or into a particular type of agreements across various sectors. In the course of that inquiry, the EFTA Surveillance Authority may request the undertakings or associations of undertakings concerned to supply the information necessary for giving effect to Articles 53 and 54 of the EEA Agreement and may carry out any inspections necessary for that purpose.

The EFTA Surveillance Authority may in particular request the undertakings or associations of undertakings concerned to communicate to it all agreements, decisions and concerted practices.

The EFTA Surveillance Authority may publish a report on the results of its inquiry into particular sectors of the economy or particular types of agreements across various sectors and invite comments from interested parties.

2. Articles 14, 18, 19, 20, 22, 23 and 24 shall apply *mutatis mutandis*.

#### *Article 18*

##### **Requests for information**

1. In order to carry 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 this Chapter, the EFTA Surveillance Authority may, by simple request or by decision, require undertakings and associations of undertakings to provide all necessary information.

2. When sending a simple request for information to an undertaking or association of undertakings, the EFTA Surveillance Authority shall state the legal basis and the purpose

of the request, specify what information is required and fix the time-limit within which the information is to be provided, and the penalties provided for in Article 23 for supplying incorrect or misleading information.

3. Where the EFTA Surveillance Authority requires undertakings and associations of undertakings to supply information by decision, it shall state the legal basis and the purpose of the request, specify what information is required and fix the time-limit within which it is to be provided. It shall also indicate the penalties provided for in Article 23 and indicate or impose the penalties provided for in Article 24. It shall further indicate the right to have the decision reviewed by the EFTA Court.

4. The owners of the undertakings or their representatives and, in the case of legal persons, companies or firms, or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested on behalf of the undertaking or the association of undertakings concerned. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. The EFTA Surveillance Authority shall without delay forward a copy of the simple request or of the decision to the competition authority of the EFTA State in whose territory the seat of the undertaking or association of undertakings is situated and the competition authority of the EFTA State whose territory is affected.

6. At the request of the EFTA Surveillance Authority the governments and competition authorities of the EFTA States shall provide the EFTA Surveillance Authority with all necessary information to carry out the duties assigned to it by this Chapter.

#### *Article 19*

#### **Power to take statements**

1. In order to carry out the duties assigned to it by this Chapter, the EFTA Surveillance Authority may interview any natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation.

2. Where an interview pursuant to paragraph 1 is conducted in the premises of an undertaking, the EFTA Surveillance Authority shall inform the competition authority of the EFTA State in whose territory the interview takes place. If so requested by the competition authority of that EFTA State, its officials may assist the officials and other accompanying persons authorised by the EFTA Surveillance Authority to conduct the interview.

## *Article 20*

### **The EFTA Surveillance Authority's powers of inspection**

1. In order to carry out the duties assigned to it by this Chapter, the EFTA Surveillance Authority may conduct all necessary inspections of undertakings and associations of undertakings.
2. The officials and other accompanying persons authorised by the EFTA Surveillance Authority to conduct an inspection are empowered:
  - (a) to enter any premises, land and means of transport of undertakings and associations of undertakings;
  - (b) to examine the books and other records related to the business, irrespective of the medium on which they are stored;
  - (c) to take or obtain in any form copies of or extracts from such books or records;
  - (d) to seal any business premises and books or records for the period and to the extent necessary for the inspection;
  - (e) to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers.
3. The officials and other accompanying persons authorised by the EFTA Surveillance Authority to conduct an inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the penalties provided for in Article 23 in case the production of the required books or other records related to the business is incomplete or where the answers to questions asked under paragraph 2 of the present Article are incorrect or misleading. In good time before the inspection, the EFTA Surveillance Authority shall give notice of the inspection to the competition authority of the EFTA State in whose territory it is to be conducted.

The EFTA Surveillance Authority shall provide an authorisation as referred to in the first subparagraph to representatives of the EC Commission who shall take part in the investigation in accordance with Article 8(3) of Protocol 23 to the EEA Agreement.

4. Undertakings and associations of undertakings are required to submit to inspections ordered by decision of the EFTA Surveillance Authority. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the penalties provided for in Articles 23 and 24 and the right to have the decision reviewed by the EFTA Court. The EFTA Surveillance Authority shall take such decisions after consulting the competition authority of the EFTA State in whose territory the inspection is to be conducted.

5. Officials of as well as those authorised or appointed by the competition authority of the EFTA State in whose territory the inspection is to be conducted shall, at the request of that authority or of the EFTA Surveillance Authority, actively assist the officials and other accompanying persons authorised by the EFTA Surveillance Authority. To this end, they shall enjoy the powers specified in paragraph 2.

6. Where the officials and other accompanying persons authorised by the EFTA Surveillance Authority find that an undertaking opposes an inspection ordered pursuant to this Article, the EFTA State concerned shall afford them the necessary assistance, requesting where appropriate the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their inspection.

7. If the assistance provided for in paragraph 6 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

8. Where authorisation as referred to in paragraph 7 is applied for, the national judicial authority shall control that the decision by the EFTA Surveillance Authority is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the EFTA Surveillance Authority, directly or through the EFTA State competition authority, for detailed explanations in particular on the grounds the EFTA Surveillance Authority has for suspecting infringement of Articles 53 and 54 of the EEA Agreement, as well as on the seriousness of the suspected infringement and on the nature of the involvement of the undertaking concerned. However, the national judicial authority may not call into question the necessity for the inspection nor demand that it be provided with the information in the EFTA Surveillance Authority's file. The lawfulness of the decision by the EFTA Surveillance Authority shall be subject to review only by the EFTA Court.

## *Article 21*

### **Inspection of other premises**

1. If a reasonable suspicion exists that books or other records related to the business and to the subject matter of the inspection, which may be relevant to prove a serious violation of Article 53 or Article 54 of the EEA Agreement, are being kept in any other premises, land and means of transport, including the homes of directors, managers and other members of staff of the undertakings and associations of undertakings concerned, the EFTA Surveillance Authority can by decision order an inspection to be conducted in such other premises, land and means of transport.

2. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the right to have the decision reviewed by the

EFTA Court. It shall in particular state the reasons that have led the EFTA Surveillance Authority to conclude that a suspicion in the sense of paragraph 1 exists. The EFTA Surveillance Authority shall take such decisions after consulting the competition authority of the EFTA State in whose territory the inspection is to be conducted.

3. A decision adopted pursuant to paragraph 1 cannot be executed without prior authorisation from the national judicial authority of the EFTA State concerned. The national judicial authority shall control that the decision by the EFTA Surveillance Authority is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard in particular to the seriousness of the suspected infringement, to the importance of the evidence sought, to the involvement of the undertaking concerned and to the reasonable likelihood that business books and records relating to the subject matter of the inspection are kept in the premises for which the authorisation is requested. The national judicial authority may ask the EFTA Surveillance Authority, directly or through the EFTA State competition authority, for detailed explanations on those elements which are necessary to allow its control of the proportionality of the coercive measures envisaged.

However, the national judicial authority may not call into question the necessity for the inspection nor demand that it be provided with information in the EFTA Surveillance Authority's file. The lawfulness of the decision by the EFTA Surveillance Authority shall be subject to review only by the EFTA Court.

4. The officials and other accompanying persons authorised by the EFTA Surveillance Authority to conduct an inspection ordered in accordance with paragraph 1 of this Article shall have the powers set out in Article 20(2)(a), (b) and (c). Article 20(5) and (6) shall apply *mutatis mutandis*.

## Article 22

### **Investigations by competition authorities of EFTA States**

1. The competition authority of an EFTA State may in its own territory carry out any inspection or other fact-finding measure under its national law on behalf and for the account of the competition authority of another EFTA State in order to establish whether there has been an infringement of Article 53 or Article 54 of the EEA Agreement. Any exchange and use of the information collected shall be carried out in accordance with Article 12.

2. At the request of the EFTA Surveillance Authority, the competition authorities of the EFTA States shall undertake the inspections which the EFTA Surveillance Authority considers to be necessary under Article 20(1) or which it has ordered by decision pursuant to Article 20(4). The officials of the competition authorities of the EFTA States who are responsible for conducting these inspections as well as those authorised or appointed by them shall exercise their powers in accordance with their national law.

If so requested by the EFTA Surveillance Authority or by the competition authority of the EFTA State in whose territory the inspection is to be conducted, officials and other accompanying persons authorised by the EFTA Surveillance Authority may assist the officials of the authority concerned.

## SECTION VI

### **PENALTIES**

#### *Article 23*

#### **Fines**

1. The EFTA Surveillance Authority may by decision impose on undertakings and associations of undertakings fines not exceeding 1 % of the total turnover in the preceding business year where, intentionally or negligently:

(a) they supply incorrect or misleading information in response to a request made pursuant to Article 17 or Article 18(2);

(b) in response to a request made by decision adopted pursuant to Article 17 or Article 18(3), they supply incorrect, incomplete or misleading information or do not supply information within the required time-limit;

(c) they produce the required books or other records related to the business in incomplete form during inspections under Article 20 or refuse to submit to inspections ordered by a decision adopted pursuant to Article 20(4);

(d) in response to a question asked in accordance with Article 20(2)(e),

— they give an incorrect or misleading answer,

— they fail to rectify within a time-limit set by the EFTA Surveillance Authority an incorrect, incomplete or misleading answer given by a member of staff, or

— they fail or refuse to provide a complete answer on facts relating to the subject matter and purpose of an inspection ordered by a decision adopted pursuant to Article 20(4);

(e) seals affixed in accordance with Article 20(2)(d) by officials or other accompanying persons authorized by the EFTA Surveillance Authority have been broken.

2. The EFTA Surveillance Authority may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently:

- (a) they infringe Article 53 or Article 54 of the EEA Agreement; or
- (b) they contravene a decision ordering interim measures under Article 8; or
- (c) they fail to comply with a commitment made binding by a decision pursuant to Article 9.

For each undertaking and association of undertakings participating in the infringement, the fine shall not exceed 10 % of its total turnover in the preceding business year.

Where the infringement of an association relates to the activities of its members, the fine shall not exceed 10 % of the sum of the total turnover of each member active on the market affected by the infringement of the association.

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

4. When a fine is imposed on an association of undertakings taking account of the turnover of its members and the association is not solvent, the association is obliged to call for contributions from its members to cover the amount of the fine.

Where such contributions have not been made to the association within a time-limit fixed by the EFTA Surveillance Authority, the EFTA Surveillance Authority may require payment of the fine directly by any of the undertakings whose representatives were members of the decision-making bodies concerned of the association.

After the EFTA Surveillance Authority has required payment under the second subparagraph, where necessary to ensure full payment of the fine, the EFTA Surveillance Authority may require payment of the balance by any of the members of the association which were active on the market on which the infringement occurred.

However, the EFTA Surveillance Authority shall not require payment under the second or the third subparagraph from undertakings which show that they have not implemented the infringing decision of the association and either were not aware of its existence or have actively distanced themselves from it before the EFTA Surveillance Authority started investigating the case.

The financial liability of each undertaking in respect of the payment of the fine shall not exceed 10 % of its total turnover in the preceding business year.

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

## *Article 24*

### **Periodic penalty payments**

1. The EFTA Surveillance Authority may, by decision, impose on undertakings or associations of undertakings periodic penalty payments not exceeding 5 % of the average daily turnover in the preceding business year per day and calculated from the date appointed by the decision, in order to compel them:

(a) to put an end to an infringement of Article 53 or Article 54 of the EEA Agreement, in accordance with a decision taken pursuant to Article 7;

(b) to comply with a decision ordering interim measures taken pursuant to Article 8;

(c) to comply with a commitment made binding by a decision pursuant to Article 9;

(d) to supply complete and correct information which it has requested by decision taken pursuant to Article 17 or Article 18(3);

(e) to submit to an inspection which it has ordered by decision taken pursuant to Article 20(4).

2. Where the undertakings or associations of undertakings have satisfied the obligation which the periodic penalty payment was intended to enforce, the EFTA Surveillance Authority may fix the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision. Article 23(4) shall apply correspondingly.

## SECTION VII

### **LIMITATION PERIODS**

## *Article 25*

### **Limitation periods for the imposition of penalties**

1. The powers conferred on the EFTA Surveillance Authority by Articles 23 and 24 shall be subject to the following limitation periods:

(a) three years in the case of infringements of provisions concerning requests for information or the conduct of inspections;

(b) five years in the case of all other infringements.

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

3. Any action taken by the EFTA Surveillance Authority or by the competition authority of an EFTA State for the purpose of the investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. 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 has 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 competition authority of an EFTA State;

(b) written authorisations to conduct inspections issued to its officials by the EFTA Surveillance Authority or by the competition authority of an EFTA State;

(c) the initiation of proceedings by the EFTA Surveillance Authority or by the competition authority of an EFTA State;

(d) notification of the statement of objections of the EFTA Surveillance Authority or of the competition authority of an EFTA State.

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

5. 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 periodic penalty payment. That period shall be extended by the time during which limitation is suspended pursuant to paragraph 6.

6. The limitation period for the imposition of fines or periodic penalty payments 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 26*

### **Limitation period for the enforcement of penalties**

1. The power of the EFTA Surveillance Authority to enforce decisions taken pursuant to Articles 23 and 24 shall be subject to a limitation period of five years.

2. Time shall begin to run on the day on which the decision becomes final.

3. The limitation period for the enforcement of penalties shall be interrupted:
  - (a) by notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation;
  - (b) by any action of the EFTA Surveillance Authority or of an EFTA State, acting at the request of the EFTA Surveillance Authority, designed to enforce payment of the fine or periodic penalty payment.
4. Each interruption shall start time running afresh.
5. The limitation period for the enforcement of penalties shall be suspended for so long as:
  - (a) time to pay is allowed;
  - (b) enforcement of payment is suspended pursuant to a decision of the EFTA Court.

## SECTION VIII

### **HEARINGS AND PROFESSIONAL SECRECY**

#### *Article 27*

#### **Hearing of the parties, complainants and others**

1. Before taking decisions as provided for in Articles 7, 8, 23 and Article 24(2), the EFTA Surveillance Authority shall give the undertakings or associations of undertakings which are the subject of the proceedings conducted by the EFTA Surveillance Authority the opportunity of being heard on the matters to which the EFTA Surveillance Authority has taken objection. The EFTA Surveillance Authority shall base its decisions only on objections on which the parties concerned have been able to comment. Complainants shall be associated closely with the proceedings.
2. The rights of defence of the parties concerned shall be fully respected in the proceedings. They shall be entitled to have access to the EFTA Surveillance Authority's file, subject to the legitimate interest of undertakings in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the EFTA Surveillance Authority or the competition authorities of the EFTA States. In particular, the right of access shall not extend to correspondence between the EFTA Surveillance Authority and the competition authorities of the EFTA States, or between the latter, including documents drawn up pursuant to Articles 11 and

14. Nothing in this paragraph shall prevent the EFTA Surveillance Authority from disclosing and using information necessary to prove an infringement.

3. If the EFTA Surveillance Authority considers it necessary, it 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. The competition authorities of the EFTA States may also ask the EFTA Surveillance Authority to hear other natural or legal persons.

4. Where the EFTA Surveillance Authority intends to adopt a decision pursuant to Article 9 or Article 10, it shall publish a concise summary of the case and the main content of the commitments or of the proposed course of action. Interested third parties may submit their observations within a time limit which is fixed by the EFTA Surveillance Authority in its publication and which may not be less than one month. Publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

## *Article 28*

### **Professional secrecy**

1. Without prejudice to Article 9 of Protocol 23 to the EEA Agreement and Articles 12 and 15 of this Chapter, information collected pursuant to Articles 17 to 22 or of Article 58 of the EEA Agreement and Protocol 23 thereto, shall be used only for the purpose for which it was acquired.

2. Without prejudice to the exchange and to the use of information foreseen in Articles 11, 12, 14, 15 and 27, the EFTA Surveillance Authority and the competition authorities of the EFTA States, their officials, servants and other persons working under the supervision of these authorities as well as officials and civil servants of other authorities of the EFTA States shall not disclose information acquired or exchanged by them pursuant to this Chapter or Article 58 of the EEA Agreement and Protocol 23 thereto and of the kind covered by the obligation of professional secrecy. This obligation also applies to all representatives and experts of EFTA States attending meetings of the Advisory Committee pursuant to Article 14.

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 14(8) and in the hearing pursuant to Article 8(2) of Chapter IV.

SECTION IX  
**EXEMPTION ACTS**

*Article 29*

**Withdrawal in individual cases**

1. Where it follows from acts incorporated into Annex XIV of the EEA Agreement that Article 53(1) of the EEA Agreement is inapplicable to certain categories of agreements, decisions by associations of undertakings or concerted practices, the EFTA Surveillance Authority may, acting on its own initiative or on a complaint, withdraw the benefit of such an exemption act when it finds that in any particular case an agreement, decision or concerted practice to which the exemption act applies has certain effects which are incompatible with Article 53(3) of the EEA Agreement.
  
2. Where, in any particular case, agreements, decisions by associations of undertakings or concerted practices to which an act referred to in paragraph 1 applies have effects which are incompatible with Article 53(3) of the EEA Agreement in the territory of an EFTA State, or in a part thereof, which has all the characteristics of a distinct geographic market, the competition authority of that EFTA State may withdraw the benefit of the act in question in respect of that territory.

SECTION X  
**GENERAL PROVISIONS**

*Article 30*

**Publication of decisions**

1. The EFTA Surveillance Authority shall publish the decisions, which it takes pursuant to Articles 7 to 10, 23 and 24.
  
2. The publication shall state the names of the parties and the main content of the decision, including any penalties imposed. It shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

*Article 31*

**Review by the EFTA Court**

The EFTA Court shall have unlimited jurisdiction 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 32*

**Exclusions**

This Chapter shall not apply to:

- (a) international tramp vessel services as defined in Article 1(3)(a) of the act referred to in point 11 of Article 3 of Protocol 21 to the EEA Agreement (Regulation (EEC) No 4056/86);
- (b) a maritime transport service that takes place exclusively between ports in one and the same EFTA State as foreseen in Article 1(2) of the act referred to in point 11 of Article 3 of Protocol 21 to the EEA Agreement (Regulation (EEC) No 4056/86);
- (c) air transport between airports in the territory covered by the EEA Agreement and third countries.

*Article 33*

**Implementing provisions**

1. The EFTA Surveillance Authority shall be authorised to take such measures as may be appropriate in order to apply this Chapter. The measures may concern, *inter alia*:

- (a) the form, content and other details of complaints lodged pursuant to Article 7 and the procedure for rejecting complaints;
- (b) the practical arrangements for the exchange of information and consultations provided for in Article 11;
- (c) the practical arrangements for the hearings provided for in Article 27.

2. Before the adoption of any measures pursuant to paragraph 1, the EFTA Surveillance Authority shall publish a draft thereof and invite all interested parties to submit their comments within the time-limit it lays down, which may not be less than one month. Before publishing a draft measure and before adopting it, the EFTA Surveillance

Authority shall consult the Advisory Committee on Restrictive Practices and Dominant Positions.

## SECTION XI

### **TRANSITIONAL AND SPECIAL PROVISIONS**

#### *Article 34*

#### **References to former Articles and Chapters**

For the purposes of this Section, references to former Articles and Chapters shall be understood as references to the Articles and Chapters as they applied before the entry into force of the Agreement amending Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice signed on 24 September 2004.

#### *Article 35*

#### **Transitional provisions**

1. Applications made to the EFTA Surveillance Authority under former Article 2 of Chapter II of Part I, notifications made under former Articles 4 and 5 of that Chapter and the corresponding applications and notifications made under former Chapter VI of Part II, Chapter IX of Part II and Chapter XI of Part II shall lapse.
2. Procedural steps taken under former Chapter II of Part I and Chapters VI, IX and XI of Part II shall continue to have effect for the purposes of applying this Chapter.

#### *Article 36*

#### **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)**

The following provision continues to apply to decisions adopted pursuant to Article 5 of the act referred to in point 10 of Annex XIV (Regulation (EEC) No 1017/68) until the date of expiration of those decisions:

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 37*

**Duration and revocation of decisions applying Article 53(3) of the EEA Agreement to maritime transport (Regulation (EEC) No 4056/86)**

The following provision continues to apply to decisions applying Article 53(3) of the EEA Agreement to maritime transport according to former Chapter IX of Part II until the date of expiration of those decisions:

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 38*

**Duration and revocation of decisions applying Article 53(3) of the EEA Agreement in the air transport sector (Regulation (EEC) No 3975/87)**

The following provision continues to apply to decisions applying Article 53(3) of the EEA Agreement to air transport services according to former Chapter XI of Part II until the date of expiration of those decisions:

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 39*

### **Duration and revocation of decisions applying Article 53(3) of the EEA Agreement (Regulation 17/62)**

The following provision continues to apply to decisions applying Article 53(3) of the EEA Agreement according to former Chapter II of Part I until the date of expiration of those decisions:

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 40*

### **Designation of competition authorities of EFTA States**

1. The EFTA States shall designate the competition authority or authorities responsible for the application of Articles 53 and 54 of the EEA Agreement in such a way that the

provisions of Chapter II of this Protocol are effectively complied with. The authorities designated may include courts.

2. When enforcement of EEA competition law is entrusted to national administrative and judicial authorities, the EFTA States may allocate different powers and functions to those different national authorities, whether administrative or judicial.

3. The effects of Article 11(6) apply to the authorities designated by the EFTA States including courts that exercise functions regarding the preparation and the adoption of the types of decisions foreseen in Article 5. The effects of Article 11(6) do not extend to courts insofar as they act as review courts in respect of the types of decisions foreseen in Article 5.

4. Notwithstanding paragraph 3, in the EFTA States where, for the adoption of certain types of decisions foreseen in Article 5, an authority brings an action before a judicial authority that is separate and different from the prosecuting authority and provided that the terms of this paragraph are complied with, the effects of Article 11(6) shall be limited to the authority prosecuting the case which should withdraw its claim before the judicial authority when the EFTA Surveillance Authority opens proceedings and this withdrawal shall facilitate that national proceedings be brought effectively to an end.

#### *Article 41*

### **Reservation for Liechtenstein**

The Principality of Liechtenstein is not obliged to designate a competition authority or other authorities responsible for the application of Articles 53 and 54 of the EEA Agreement. When the Principality of Liechtenstein empowers a competition authority or another authority to apply Articles 53 and 54 of the EEA Agreement, it shall inform the other EFTA States and the EFTA Surveillance Authority thereof.

#### *Article 42*

### **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 regarding the application of Article 53(3) of the EEA Agreement to certain categories of agreements, decisions or concerted practices.'

## Article 2

The Table of Contents to Protocol 4 to the Surveillance and Court Agreement shall be amended as follows:

1. In Part I, the text of Chapter II shall be replaced by “General procedural rules implementing Articles 53 and 54 of the EEA Agreement (cf. Regulation (EC) No 1/2003)”.
2. In Part II, the text of Chapters VI and IX shall be deleted.

## Article 3

The text of Chapter VI of Protocol 4 to the Surveillance and Court Agreement shall be deleted.

## Article 4

The text of Chapter IX of Protocol 4 to the Surveillance and Court Agreement shall be deleted.

## Article 5

Articles 3 to 19 of Chapter XI of Protocol 4 to the Surveillance and Court Agreement shall be deleted.

## Article 6

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

Before the end of a period of six months from its entry into force, this Agreement shall be drawn up and authenticated in German, Icelandic and Norwegian.

2. This Agreement shall be deposited with the Government of Norway which shall notify all other EFTA States.

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

3. This Agreement shall enter into force on the day Decision No 130/2004 of the EEA Joint Committee of 24 September 2004 enters into force or on the day all instruments of acceptance have been deposited by the EFTA States, whichever day is the later.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised thereto, have signed this Agreement.

Done at Brussels, 24 September 2004.

.....  
FOR THE REPUBLIC OF ICELAND

.....  
FOR THE PRINCIPALITY OF  
LIECHTENSTEIN

.....  
FOR THE KINGDOM OF NORWAY