ANNEX XIV

COMPETITION

TABLE OF CONTENTS

A. Merger Control
B. Vertical Agreements and Concerted Practices
C. Technology Transfer Agreements
D. Specialization and Research Development Agreements
E. and F. (deleted)
G. Transport
H. Information and Communication Technologies
I. Coal and Steel
J. Insurance Sector

Acts of which the EC Commission and the EFTA Surveillance Authority Shall Take Due Account

List provided for in Article 60

INTRODUCTION

When the acts referred to in this Annex contain notions or refer to procedures which are specific to the Community legal order, such as

- preambles;
- the addresses of the Community acts;
- references to territories or languages of the EC;
- references to rights and obligations of EC Member States, their public entities, undertakings or individuals in relation to each other; and
- references to information and notification procedures;

Protocol 1 on horizontal adaptations shall apply, unless otherwise provided for in this Annex.

SECTORAL ADAPTATIONS

Unless otherwise provided for, the provisions of this Annex shall, for the purposes of the present Agreement, be read with the following adaptations:

I. the term "Commission" shall read "competent surveillance authority";

II. the term "common market" shall read "the territory covered by the EEA Agreement";

III. the term "trade between Member States" shall read "trade between Contracting Parties";

IV. the term "the Commission and the authorities of the Member States" shall read "the EC Commission, the EFTA Surveillance Authority, the authorities of the EC Member States and of the EFTA States";

V. References to Articles of the Treaty establishing the European Economic Community (EEC) or the Treaty establishing the European Coal and Steel Community (ECSC) shall be read as references to the EEA Agreement (EEA) as follows:
Article 85 (EEC) - Article 53 (EEA),
Article 86 (EEC) - Article 54 (EEA),
Article 90 (EEC) - Article 59 (EEA),
Article 66 (ECSC) - Article 2 of Protocol 25 to the EEA Agreement,
Article 80 (ECSC) - Article 3 of Protocol 25 to the EEA Agreement.

VI. the term "this Regulation" shall read "this Act";

VII. the term "the competition rules of the Treaty" shall read "the competition rules of the EEA Agreement";

VIII. the term "High Authority" shall read "competent surveillance authority".

Without prejudice to the rules on control of concentrations, the term "competent surveillance authority" as referred to in the rules below shall read "the surveillance authority which is competent to decide on a case in accordance with Article 56 of the EEA Agreement".

ACTS REFERRED TO

A. MERGER CONTROL


The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a)[2] In Article 1 (1), the phrase “or the corresponding provisions in Protocol 21 and Protocol 24 to the EEA Agreement” shall be inserted after the words “Without prejudice to Article 4(5) and Article 22”;

furthermore, the term “Community dimension” shall read “Community or EFTA dimension”;

(b) In Article 1(2), the term “Community dimension” shall read “Community or EFTA dimension respectively”;

furthermore, the term “Community-wide turnover” shall read “Community-wide turnover or EFTA-wide turnover”;

in the last subparagraph, the term “Member State” shall read “EC Member State or EFTA State”;

(c) In Article 1(3), the “Community dimension” shall read “Community or EFTA dimension respectively”;

furthermore, the term “Community-wide turnover” shall read “Community-wide turnover or EFTA-wide turnover”;

in Article 1(3)(b) and (c), the term “Member States” shall read “EC Member States or in each of at least three EFTA States;


in the last subparagraph, the term “Member State” shall read “EC Member State or EFTA State”; 

(d) Article 1(4) and (5) shall not apply; 

(e) In Article 2(1), first subparagraph, the term “common market” shall read “functioning of the EEA Agreement”; 

(f) In Article 2(2), at the end, the term “common market” shall read “functioning of the EEA Agreement”; 

(g) In Article 2(3), at the end, the term “common market” shall read “functioning of the EEA Agreement”; 

(h) In Article 2(4), at the end, the term “common market” shall read “functioning of the EEA Agreement”; 

(i) In Article 3(5)(b), the term “Member State” shall read “EC Member State or EFTA State”; 

(j) In Article 4 (1), first subparagraph, the term “Community dimension” shall read “Community or EFTA dimension”; 

Furthermore, in the first sentence, the phrase “in accordance with Article 57 of the EEA Agreement” shall be inserted after the words “shall be notified to the Commission”; 

in Article 4(1), second subparagraph, the term “Community dimension” shall read “Community or EFTA dimension”; 

(k) In Article 5(1), the last subparagraph shall read: 

“Turnover, in the Community or in an EC Member State, shall comprise products sold and services provided to undertakings or consumers, in the Community or in that EC Member State as the case may be. The same shall apply as regards turnover in the territory of the EFTA States as a whole or in an EFTA State.”; 

(l) In Article 5(3)(a), the last subparagraph shall read: 

“The turnover of a credit or financial institution in the Community or in an EC Member State shall comprise the income items, as defined above, which are received by the branch or division of that institution established in the Community or the EC Member State in question as the case may be. The same shall apply as regards turnover of a credit or financial institution in the territory of the EFTA States as a whole or in an EFTA State.”; 

(m) In Article 5(3)(b), the last phrase “… gross premiums received from Community residents and from residents of one Member State respectively shall be taken into account.” shall read: 

“… gross premiums received from Community residents and from residents of one EC Member State respectively shall be taken into account. The same shall apply as regards gross premiums received from residents in the territory of the EFTA States as a whole and from residents in one EFTA State, respectively.”

B. VERTICAL AGREEMENTS AND CONCERTED PRACTICES[*]


The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

(a) In Article 6(1) the following words "or the corresponding provision in Article 29(1) of Chapter II of Part II of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice" shall be inserted after the words "pursuant to Article 29(1) of Regulation (EC) No 1/2003".

(b) In Article 6(2) the following words "or the corresponding provision in Article 29(2) of Chapter II of Part II of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice" shall be inserted after the words "Article 29(2) of Regulation (EC) No 1/2003".

(c) The following shall be added at the end of Article 7:

"Pursuant to the provisions of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the EFTA Surveillance Authority may by recommendation declare that, where parallel networks of similar vertical agreements cover more than 50% of a relevant market in the EFTA States, this Regulation shall not apply to vertical agreements containing specific restraints relating to that market.

A recommendation pursuant to paragraph 1 shall be addressed to the EFTA State or EFTA States comprising the relevant market in question. The Commission shall be informed of the issuance of such a recommendation.

Within three months from the issuance of a recommendation pursuant to paragraph 1, all EFTA States addressees shall notify the EFTA Surveillance Authority whether they accept the recommendation. If the three months deadline expires without a response, this shall be understood as an acceptance by the EFTA State not responding in time.

If an EFTA State addressee of the recommendation either accepts the recommendation or does not respond in time, a legal obligation under the Agreement to implement the recommendation within three months from its issuance shall be bestowed upon it.

If within the three months deadline, an EFTA State addressee notifies the EFTA Surveillance Authority that it does not accept its recommendation, the EFTA Surveillance Authority shall notify the Commission of this response. Should the Commission disagree with the position of the EFTA State in question, Article 92(2) of the Agreement shall apply.

The EFTA Surveillance Authority and the Commission shall exchange information and consult each other on the application of this provision.

Where parallel networks of similar vertical agreements cover more than 50% of a relevant market within the territory of the EEA Agreement, the two surveillance authorities can initiate cooperation with the aim of adopting separate measures. If the two surveillance authorities agree on a relevant market and the appropriateness of adopting a measure pursuant to this provision, the Commission shall adopt a regulation addressed to the EC Member States and the EFTA Surveillance Authority a recommendation of corresponding substance to the EFTA State or EFTA States comprising the relevant market in question."

3. [ ] {f}

4. [ ] {f}

4a. [ ] {f}


The provisions of the Regulation shall, for the purpose of the Agreement, be read with the following adaptation:

The following shall be added at the end of Article 6:

“Pursuant to the provisions of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the EFTA Surveillance Authority may by recommendation declare that, where parallel networks of similar vertical restraints cover more than 50% of a relevant market in the EFTA States, this Regulation shall not apply to vertical agreements containing specific restraints relating to that market.

A recommendation pursuant to paragraph 1 shall be addressed to the EFTA State or EFTA States comprising the relevant market in question. The Commission shall be informed of the issuance of such a recommendation.

Within three months from the issuance of a recommendation pursuant to paragraph 1, all EFTA States addressees shall notify the EFTA Surveillance Authority whether they accept the recommendation. If the three months deadline expires without a response, this shall be understood as an acceptance of the EFTA State not responding timely.

If an EFTA State addressee of the recommendation either accepts the recommendation or does not respond in time, a legal obligation under the Agreement to implement the recommendation within three months from its issuance shall be bestowed upon it.

If within the three months deadline, an EFTA State addressee notifies the EFTA Surveillance Authority that it does not accept its recommendation, the EFTA Surveillance Authority shall notify the Commission of this response. Should the Commission disagree with the position of the EFTA State in question, Article 92(2) of the Agreement shall apply.

The EFTA Surveillance Authority and the Commission shall exchange information and consult each other in the application of this provision.

Where parallel networks of similar vertical restraints cover more than 50% of a relevant market within the territory of the EEA Agreement, the two surveillance authorities can initiate cooperation with the aim of adopting separate measures. If the two surveillance authorities agree on a relevant market and the appropriateness of adopting a measure pursuant to this provision, the Commission shall adopt a regulation addressed to the EU Member States and the EFTA Surveillance Authority a recommendation of corresponding substance to the EFTA State or EFTA States comprising of the relevant market in question.

C. TECHNOLOGY TRANSFER AGREEMENTS\(^{[10]}\)


\(^{[1]}\) Point deleted by Decision 130/2004 (OJ L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42), e.i.f. 19.5.2005.


\(^{[6]}\) Indent and words “, as amended by:” added by Decision No 292/2023 (OJ L, 2024/1146, 16.5.2024 and EEA Supplement No 42, 16.5.2024, p. 75), e.i.f. 28.10.2023.


The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

(a) In Article 6(1) the following words shall be inserted “or the corresponding provision in Article 29(1) of Chapter II of Part I of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.” after the words “pursuant to Article 29(1) of Regulation (EC) No 1/2003”.

(b) In Article 6(2) the following words shall be inserted “or the corresponding provision in Article 29(2) of Chapter II of Part I of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.” after the words “pursuant to Article 29(2) of Regulation (EC) No 1/2003”.

(c) The following shall be added at the end of Article 7:

“Pursuant to the provisions of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the EFTA Surveillance Authority may by recommendation declare that, where parallel networks of similar technology transfer agreements cover more than 50% of a relevant market in the EFTA States, this Regulation shall not apply to technology transfer agreements containing specific restraints relating to that market.

A recommendation pursuant to paragraph 1 shall be addressed to the EFTA State or EFTA States comprising the relevant market in question. The Commission shall be informed of the issuance of such a recommendation.

Within three months from the issuance of a recommendation pursuant to paragraph 1, all EFTA States addressees shall notify the EFTA Surveillance Authority whether they accept the recommendation. If the three months deadline expires without a response, this shall be understood as an acceptance by the EFTA State not responding in time.

If an EFTA State addressee of the recommendation either accepts the recommendation or does not respond in time, a legal obligation under the Agreement to implement the recommendation within three months from its issuance shall be bestowed upon it.

If within the three months deadline, an EFTA State addressee notifies the EFTA Surveillance Authority that it does not accept its recommendation, the EFTA Surveillance Authority shall notify the Commission of this response. Should the Commission disagree with the position of the EFTA State in question, Article 92(2) of the Agreement shall apply.

The EFTA Surveillance Authority and the Commission shall exchange information and consult each other on the application of this provision.

Where parallel networks of similar technology transfer agreements cover more than 50% of a relevant market within the territory of the EEA Agreement, the two surveillance authorities can initiate cooperation with the aim of adopting separate measures. If the two surveillance authorities agree on a relevant market and the appropriateness of adopting a measure pursuant to this provision, the Commission shall adopt a regulation addressed to the EC Member States and the EFTA Surveillance Authority a recommendation of corresponding substance to the EFTA State or EFTA States comprising the relevant market in question.”

D. SPECIALIZATION AND RESEARCH AND DEVELOPMENT AGREEMENTS


The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

a) In Article 6(1) and (2) the words “or the corresponding provision in Article 29(1) of Chapter II of Part II of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice,” shall be inserted after the words “pursuant to Article 29(1) of Regulation (EC) No 1/2003”.

b) In Article 7 the words “or the corresponding provision in Article 29(2) of Chapter II of Part II of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice,” shall be inserted after the words “conditions of Article 29(2) of Regulation (EC) No 1/2003”.

7. 


The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

a) In Article 10(1) and (2) the words “or the corresponding provision in Article 29(1) of Chapter II of Part II of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice,” shall be inserted after the words “pursuant to Article 29(1) of Regulation (EC) No 1/2003”.

b) In Article 11 the words “or the corresponding provision in Article 29(2) of Chapter II of Part II of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice,” shall be inserted after the words “conditions of Article 29(2) of Regulation (EC) No 1/2003”.

E. [ ]

8. [ ]

F. [ ]

9. [ ]

G. TRANSPORT

10. 


The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptation:

In Article 1 the words “Community ports” shall read “ports in the territory covered by the EEA Agreement”.

11d. [ ] [25]

11e. [ ] [28]

H. INFORMATION AND COMMUNICATION TECHNOLOGIES [27]

13.\[29\]


The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptation:

In Article 7(2), the words “competition rules of the EC Treaty” shall read “the competition rules of the EEA Agreement”.

**I. COAL AND STEEL**


The provisions of the Decision shall, for the purposes of the Agreement, be read with the following adaptation:

Article 4 shall not apply.

15. 367 D 7025: High Authority Decision No 25/67 of 22 June 1967 laying down in implementation of Article 66 (3) of the Treaty a regulation concerning exemption from prior authorization (OJ No 154, 14.7.1967, p. 11), as amended by:


\{31\}


The provisions of the Decision shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 1 (2), the phrase "and within the EFTA States" shall be inserted after "... within the Community";

(b) in the heading of Article 2, the phrase "the scope of the Treaty" shall read "the scope of Protocol 25 to the EEA Agreement";

(c) in the heading of Article 3, the phrase "the scope of the Treaty" shall read "the scope of Protocol 25 to the EEA Agreement";

(d) Article 11 shall not apply.


J. INSURANCE SECTOR (32)

15a. [ ] (33)


ACTS OF WHICH THE EC COMMISSION AND THE EFTA SURVEILLANCE AUTHORITY SHALL TAKE DUE ACCOUNT

In the application of Articles 53 to 60 of the Agreement and the provisions referred to in this Annex, the EC Commission and the EFTA Surveillance Authority shall take due account of the principles and rules contained in the following acts: (35)

**Control of concentrations**

16. [ ] (36)
17. [ ] (37)

**Exclusive dealing agreements**

18. [ ] (38)
19. [ ] (39)

**Other**

20. [ ] (40)
21. [ ] (41)

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(35) In accordance with Section General Paragraph II, corresponding Acts to the Acts adopted by the EC Commission after 31 July 1991 to complement or replace the Acts adopted before 31 July 1991 that were initially listed under this heading are adopted by the EFTA Surveillance Authority in order to maintain equal conditions of competition but are not included in this Annex. Footnote added by Decision No 67/2021 (OJ L, 2024/00057, 11.1.2024 and EEA Supplement No 3, 11.1.2024, p. 113), c.f. 6.2.2021.


22. [ ]


24. [ ]


General (*“*)

I. The above acts were adopted by the EC Commission up to 31 July 1991. Upon entry into force of the Agreement, corresponding acts are to be adopted by the EFTA Surveillance Authority under Articles 5 (2) (b) and 25 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. They are to be published in accordance with the exchange of letters on publication of EEA relevant information.

II. As regards EEA relevant acts adopted by the EC Commission after 31 July 1991, the EFTA Surveillance Authority, in accordance with the powers vested in it under the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, is to adopt, after consultations with the EC Commission, corresponding acts in order to maintain equal conditions of competition. The acts adopted by the Commission will not be integrated into this Annex but a reference to their publication in the Official Journal of the European Communities will be made in the EEA Supplement to the Official Journal. The corresponding acts adopted by the EFTA Surveillance Authority are to be published in the EEA Supplement to, and the EEA Section of, the Official Journal. (*“*) In the application of Articles 53 to 60 of the Agreement and the provisions referred to in this Annex, the EC Commission and the EFTA Surveillance Authority shall take account of the principles and rules contained in these acts.

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