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EN

(1) Text with EEA relevance

I

(Information)

COMMISSION

Euro exchange rates [1]

20 September 2006

(2006/C 227/01)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,2676	SIT	Slovenian tolar	239,59
JPY	Japanese yen	148,70	SKK	Slovak koruna	37,465
DKK	Danish krone	7,4605	TRY	Turkish lira	1,8686
GBP	Pound sterling	0,67310	AUD	Australian dollar	1,6844
SEK	Swedish krona	9,2168	CAD	Canadian dollar	1,4299
CHF	Swiss franc	1,5875	HKD	Hong Kong dollar	9,8691
ISK	Iceland króna	89,17	NZD	New Zealand dollar	1,9273
NOK	Norwegian krone	8,2790	SGD	Singapore dollar	2,0104
BGN	Bulgarian lev	1,9558	KRW	South Korean won	1 205,30
CYP	Cyprus pound	0,5767	ZAR	South African rand	9,3749
CZK	Czech koruna	28,437	CNY	Chinese yuan renminbi	10,0476
EEK	Estonian kroon	15,6466	HRK	Croatian kuna	7,4350
HUF	Hungarian forint	273,47	IDR	Indonesian rupiah	11 620,72
LTL	Lithuanian litas	3,4528	MYR	Malaysian ringgit	4,665
LVL	Latvian lats	0,6960	PHP	Philippine peso	63,570
MTL	Maltese lira	0,4293	RUB	Russian rouble	33,9600
PLN	Polish zloty	3,9483	THB	Thai baht	47,824
RON	Romanian leu	3,5317			

[1] *Source:* reference exchange rate published by the ECB.

Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment

(2006/C 227/02)

(Text with EEA relevance)

Aid No	XE 19/05		
Member State	Belgium		
Region	Flanders — the Flemish Region		
Title of aid scheme or name of company receiving individual aid	Recognition and funding of integration enterprises		
Legal basis	Besluit van de Vlaamse regering van 15 juli 2005 betreffende de erkenning en financiering van de invoegbedrijven		
Annual expenditure planned or overall amount of individual aid granted to the company	Annual overall amount	EUR 4,8 m	
	Loans guaranteed		
Maximum aid intensity	In conformity with Articles 4(2)-(5), 5 and 6 of the Regulation	Yes Combination of Art. 4 — 7,5 % or 15 % with Art. 5 — 50 %	
Date of implementation	1.7.2005		
Duration of scheme or individual aid award	Until 30.6.2007		
Objective of aid	Art. 4 Creation of employment	Yes	
	Art. 5 Recruitment of disadvantaged and disabled workers	Yes	
	— under 50 and 12 months out of work, max upper secondary education	Art. 2f),viii	
	— over 50 and 6 months out of work max upper secondary education	Art. 2f),vii	
	— eligible for income support for 6 months max upper secondary education	Art. 2f),ii-iii-v-vi-ix-x	
	— disabled and 6 months out of work	Art. 2g),i	
	— young jobseekers between 16 and 18 years of age following vocational training part-time	Art.2f),i	
	Art. 6 Employment of disabled workers	No	
Economic sectors concerned	– All Community sectors [1] eligible for employment aid	Yes	
	– All manufacturing [1]	Yes	
	– All services [1]	Yes	
	– Other		
Name and address of the granting authority	Name: Ministerie van de Vlaamse Gemeenschap Departement EWBL Administratie Werkgelegenheid Afdeling Tewerkstelling		
	Address: Markiesstraat 1 B-1000 Brussels		

Other information	If co-financed by Community funds, please add: 'The aid scheme is co-financed under (reference).' Not applicable.		
Aid subject to prior notification to the Commission	The measure excludes the granting of aid or must be notified to the Commission pursuant to Article 9 of the Regulation		No

(1) With the exception of the shipbuilding sector and of other sectors subject to special rules in regulations and directives governing all state aid within the sector.

Aid No	XE 5/06		
Member State	Poland		
Region	Miasto Gniezno		
Title of aid scheme or name of company receiving individual aid	State aid scheme to promote job creation for companies employing more than ten workers — Gniezno		
Legal basis	Uchwała nr XL/404/2005 Rady Miasta Gniezna z dnia 2 września 2005 r.		
Annual expenditure planned or overall amount of individual aid granted to the company	Annual overall amount	EUR 0,25m	
	Loans guaranteed		
Maximum aid intensity	In conformity with Articles 4(2)-(5), 5 and 6 of the Regulation	Yes	
Date of implementation	18.10.2005		
Duration of scheme or individual aid award	31.12.2006		
Objective of aid	Article 4 Creation of employment	Yes	
	Article 5 Recruitment of disadvantaged and disabled workers		
	Article 6 Employment of disabled workers		
Economic sectors concerned	- All Community sectors (1) eligible for employment aid	No	
	- All manufacturing (1)	Yes	
	- All services (1)	No	
	- Other	Yes	
Name and address of the granting authority	Name: The granting authorities are Gniezno Town Council as the decision-making authority and the Mayor of Gniezno as the tax authority.		
	Address: Urząd Miejski w Gnieźnie, ul. Lecha 6 PL-62-200 Gniezno		
Aid subject to prior notification to the Commission	In conformity with Article 9 of the Regulation	Yes	

(1) With the exception of the shipbuilding sector and other sectors which are the subject of special rules in regulations and directives governing all state aid within the sector.

Aid No	XE 9/2006		
Member State:	Cyprus		
Region	All regions		
Title of aid scheme	Scheme for payment of social insurance both to employers and to employees with disabilities.		
Legal basis	Απόφαση του Υπουργικού Συμβουλίου με αρ 62.534 και ημερομηνία 25.8.2003.		
Annual expenditure planned	Annual overall amount	EUR 0,55 million	
	Loans guaranteed		
Maximum aid intensity	In conformity with Articles 4(2)-(5), 5 and 6 of the Regulation	Yes: 20 % of annual salary of employee	
Date of implementation	16.12.2005		
Duration of scheme	Until 31.12.2006.		
Objective of aid	Art. 4: Creation of employment		
	Art. 5: Recruitment of disadvantaged and disabled workers	Yes	
	Art. 6: Employment of disabled workers	Yes	
Economic sectors concerned	- All Community sectors [1] eligible for employment aid	Yes	
Name and address of the granting authority	Name: Τμήμα Εργασίας του Υπουργείου Εργασίας και Κοινωνικών Ασφαλίσεων [Labour Department of the Ministry of Labour and Social Insurance]		
	Address: CY-Nicosia, 1480		
Other information	Scheme to be 50 % co-financed by the EU's European Social Fund		
Aid subject to prior notification to the Commission	In conformity with Article 9 of the Regulation		No (It is not expected that there will be any cases that need to be notified)

[1] With the exception of the shipbuilding sector and other sectors which are the subject of special rules in regulations and directives governing all state aid within the sector.

Aid No	XE 10/2006		
Member State:	Cyprus		
Region	All regions		
Title of aid scheme	Scheme to provide incentives for the recruitment of people with severe disabilities in the private sector.		
Legal basis	Απόφαση του Υπουργικού Συμβουλίου με αρ. 62.534 και ημερομηνία 25.8.2005.		
Annual expenditure planned	Annual overall amount	EUR 0,21 million	
	Loans guaranteed		
Maximum aid intensity	In conformity with Articles 4(2)-(5), 5 and 6 of the Regulation	Yes: 50 % of annual salary of employee	

Date of implementation	16.12.2005		
Duration of scheme	Until 31.12.2006.		
Objective of aid	Art. 4: Creation of employment		
	Art. 5: Recruitment of disadvantaged and disabled workers	Yes	
	Art. 6: Employment of disabled workers	Yes	
Economic sectors concerned	- All Community sectors [1] eligible for employment aid	Yes	
Name and address of the granting authority	Name: Τμήμα Εργασίας του Υπουργείου Εργασίας και Κοινωνικών Ασφαλίσεων [Labour Department of the Ministry of Labour and Social Insurance]		
	Address: CY-Nicosia, 1480		
Other information	Scheme to be 50 % co-financed by the EU's European Social Fund		
Aid subject to prior notification to the Commission	In conformity with Article 9 of the Regulation		No (It is not expected that there will be any cases that need to be notified)

[1] With the exception of the shipbuilding sector and other sectors which are the subject of special rules in regulations and directives governing all state aid within the sector.

Publication of a list of measures considered by the Commission as existing aid, within the meaning of Article 88 (1) of the EC Treaty, upon accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union.

(2006/C 227/03)

(Text with EEA relevance)

(1) In 2003 and 2004, in accordance with the procedure provided for in Annex IV, Chapter 3, paragraph (1)(c) (under Article 22) of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union ('Accession Treaty'), new Member States submitted to the Commission those measures that they wished to be regarded as existing aid within the meaning of Article 88(1) of the EC Treaty but which were not provided for expressly in the Accession Treaty.

(2) This procedure covered State aid measures to all sectors with the exception of the transport sector and of agricultural activities linked to the production, processing or marketing of products listed in Annex I to the EC Treaty, for which separate provisions applied.

(3) The Commission has now published the complete list of measures which it accepted as existing aid within the meaning of Article 88(1) and under the procedure mentioned in point (1) above, on the following internet address: http://ec.europa.eu/comm/competition/state_aid/register/.

Measures in the fisheries sector are published on the following internet address: http://ec.europa.eu/fisheries/legislation/state_aid_en.htm.

(4) The publication referred to in point (3) covers exclusively those measures which were considered as existing aid under the interim procedure for existing aid [1]. Some measures were accepted by the Commission as existing aid and already published in the *Official Journal of the European Union* [2]. These are also included in this publication.

(5) The new Member States concerned were informed about the relevant Commission decisions by means of letters from the relevant Commissioners.

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[1] The following measures are excluded: those on which the Commission opened the formal investigation procedure, those considered not to be applicable after accession or not entering into effect before accession, those which were not considered to constitute state aid, those which the Commission considered to be only partially existing aid and partially not applicable after accession.

[2] OJ C 88, 8.4.2004, p. 2; OJ C 87, 11.4.2006, p. 2 (CZ45/2004).

Acknowledgement receipt of complaint No 2006/4524 — SG(06)A/4107

(2006/C 227/04)

1. The European Commission has registered a complaint about the procedure to set up a public-private company in the City of Valencia, Spain, under No 2006/4524 SG(06)A/4107.
2. It has received several hundred copies of this complaint. It publishes this acknowledgment of receipt in the *Official Journal of the European Communities* and on the Europa website (http://ec.europa.eu/community_law/complaints/receipt/index_en.htm) to keep those concerned informed while saving administrative resources.
3. The Commission will examine the complaint in light of the applicable Community legislation. The complainants will be informed of the results of its investigation and of any follow-up action decided by the Commission through the same means.
4. The Commission will endeavour to take a decision on the case within twelve months of the complaint's date of registration (opening of infringement proceedings or closing without further action).
5. The Commission will protect the complainants' rights by not revealing their identity in its eventual contacts with the authorities of the member state complained of. However, the complainants can authorise the Commission expressly to reveal their identity in any such contacts, if they so wish.

Lifting by France of public service obligations on scheduled air services operated on the Aubagne — Marseille, Carcassonne — Paris, La Rochelle — Paris, Montbéliard — Paris, Montpellier — Nantes, Pau — Madrid, Pau — Nantes, Reims — Clermont-Ferrand, Rennes — Lille and Toulon — Lyon routes

(2006/C 227/05)

(Text with EEA relevance)

France has decided to lift the public service obligations imposed on scheduled air services operated between:

1. Aubagne and Marseille, published in *Official Journal of the European Communities* C 350, 30 December 1995.
2. Carcassonne and Paris, published in *Official Journal of the European Communities* C 227, 1 September 1995, amended on 29 December 1995 (*Official Journal of the European Communities* C 349), 14 June 1997 (*Official Journal of the European Communities* C 180) and 20 November 2003 (*Official Journal of the European Union* C 279).
3. La Rochelle and Paris, published in *Official Journal of the European Communities* C 18, 22 January 2002.
4. Montbéliard and Paris, published in *Official Journal of the European Communities* C 350, 30 December 1995.
5. Montpellier and Nantes, published in *Official Journal of the European Communities* C 123, 26 April 1996.
6. Pau and Madrid, published in *Official Journal of the European Communities* C 240, 15 September 1995.
7. Pau and Nantes, published in *Official Journal of the European Communities* C 188, 28 June 1996.
8. Reims and Clermont-Ferrand, published in *Official Journal of the European Communities* C 72, 6 March 2001.
9. Rennes and Lille, published in *Official Journal of the European Communities* C 151, 25 May 1996.
10. Toulon and Lyon, published in *Official Journal of the European Union* C 22, 27 January 2004.

Non-opposition to a notified concentration

(Case COMP/M.4333 — NIBC/NPM/DELI UNIVERSAL)

(2006/C 227/06)

(Text with EEA relevance)

On 30 August 2006, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No. 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— from the Europa competition website (http://ec.europa.eu/comm/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,

— in electronic form on the EUR-Lex website under document number 32006M4333. EUR-Lex is the on-line access to European law. (http://ec.europa.eu/eur-lex/lex)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA Surveillance Authority Notice on cooperation within the EFTA Network of Competition Authorities

(2006/C 227/07)

A. The present notice is issued pursuant to the rules of the Agreement on the European Economic Area (hereafter the 'EEA Agreement') and the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (hereafter the 'Surveillance and Court Agreement').

B. The European Commission (hereafter the 'Commission') has issued a notice on cooperation within the Network of Competition Authorities ([1]). This non-binding act contains principles and rules which the Commission follows in the field of competition. It also explains the ways in which cooperation within the Network of Competition Authorities within the EU is envisaged to take place.

C. The EFTA Surveillance Authority considers the above-mentioned act to be EEA relevant. In order to maintain equal conditions of competition and to ensure a uniform application of the EEA competition rules throughout the European Economic Area, the EFTA Surveillance Authority adopts the present notice under the power conferred upon it by Article 5(2)(b) of the Surveillance and Court Agreement. The Authority intends to follow the principles and rules laid down in this notice when applying the relevant EEA rules to a particular case ([2]).

D. In particular, the purpose of this notice is to spell out how the EFTA Surveillance Authority intends to cooperate with the competition authorities of the EFTA States ([3]) in the application of Articles 53 and 54 of the EEA Agreement in individual cases and how cooperation in the EFTA network of competition authorities is envisaged to take place.

E. The present Notice replaces the EFTA Surveillance Authority's Notice on cooperation between national competition authorities and the EFTA Surveillance Authority in handling cases falling within the scope of Articles 53 and 54 of the EEA Agreement ([4]).

F. The present notice applies to cases where the Authority is the competent surveillance authority under Article 56 of the EEA Agreement.

1. INTRODUCTION

1. Chapter II of Protocol 4 to the Surveillance and Court Agreement on general procedural rules implementing Articles 53 and 54 of the EEA Agreement (hereafter 'Chapter II') ([5]) creates a system in which

([1]) OJ C 101, 27.4.2004, p. 43.

([2]) The competence to handle individual cases falling under Articles 53 and 54 of the EEA Agreement is divided between the EFTA Surveillance Authority and the Commission according to the rules laid down in Article 56 of the EEA Agreement. Only one of the surveillance authorities is competent to handle any given case.

([3]) It is noted that according to Article 41 of Chapter II of Protocol 4 to the Surveillance and Court Agreement, Liechtenstein is not obliged to designate a competition authority. Until Liechtenstein takes the decision to empower a national authority to apply Articles 53 and 54 of the EEA Agreement, the Liechtenstein Office of National Economy will take part in the EFTA Competition Network. This office does not have the power to apply Articles 53 and 54 of the EEA Agreement and cannot assist another EFTA NCA in order to collect information on its behalf or carry out fact-finding measures for another EFTA NCA.

([4]) OJ C 307, 26.10.2000, p. 6 and EEA Supplement to the OJ No 61, 21.12.2000, p. 5.

([5]) Following the entry into force of the Agreement amending Protocol 4 to the Agreement of the EFTA States on the establishment of a Surveillance Authority and a Court of Justice of 24 September 2004, Chapter II of Protocol 4 of the Surveillance and Court Agreement will to a large extent reflect in the EFTA pillar Council Regulation (EC) No 1/2003 (OJ L 1, 4.1.2003, p. 1).

the EFTA Surveillance Authority and the EFTA States' competition authorities (hereafter the 'NCAs') ([6]) can apply Article 53 and Article 54 of the EEA Agreement. Together the NCAs and the Authority form a network of public authorities: they act in the public interest and cooperate closely in order to protect competition. The network is a forum for discussion and cooperation in the application and enforcement of EEA competition policy. It provides a framework for the cooperation of EFTA competition authorities in cases where Articles 53 and 54 of the EEA Agreement are applied and is the basis for the creation and maintenance of a common competition culture in the EFTA States. The network is called 'EFTA Competition Network'.

2. The structure of the NCAs varies between EFTA States. In one EFTA State, one body investigates cases and takes decisions. In another EFTA State, the functions are divided between two bodies, one which is in charge of the investigation of the case and another, a college, which is responsible for deciding the case. Moreover, in one national system, certain types of sanctions may only be imposed by a court. Subject to the general principle of effectiveness, Article 40 of Chapter II allows EFTA States to choose the body or bodies which will be designated as national competition authorities and to allocate functions between them. Under general principles of EEA law, in particular Article 3 of the EEA Agreement, EFTA States are under an obligation to set up a sanctioning system providing for sanctions which are effective, proportionate and dissuasive for infringements of EEA law ([7]) ([8]). The enforcement systems of the EFTA States differ but the EFTA NCAs by signing a statement in the form of the Annex to this Notice recognise the standards of each other's systems as a basis for cooperation.

3. The network formed by the competition authorities should ensure both an efficient division of work and an effective and consistent application of EEA competition rules. Chapter II sets out the main principles of the functioning of the network. This notice presents the details of the system.

4. Consultations and exchanges within the network are matters between public enforcers and do not alter any rights or obligations arising from EEA or national law for companies. Each competition authority remains fully responsible for ensuring due process in the cases it deals with.

2. DIVISION OF WORK IN THE EFTA PILLAR

2.1. Principles of allocation

5. Chapter II is based on a system in which all competition authorities have the power to apply Articles 53 or 54 of the EEA Agreement and are responsible for an efficient division of work within the EFTA pillar with respect to those cases where an investigation is deemed to be necessary. At the same time each network member retains full discretion in deciding whether or not to investigate a case. Under this system, cases will be dealt with by:

   — a single NCA, possibly with the assistance of another EFTA NCA; or

   — several EFTA NCAs acting in parallel; or

   — the EFTA Surveillance Authority.

6. In most instances the authority that receives a complaint or starts an ex-officio procedure ([9]) will remain in charge of the case. Re-allocation of a case would only be envisaged at the outset of a

([6]) In this notice, the EFTA Surveillance Authority and the NCAs are collectively referred to as 'the competition authorities'.

([7]) Cf. ECJ Case 68/88 Commission v. Greece [1989] ECR 2965 (recitals 23 to 25). Article 6 of the EEA Agreement provides that, without prejudice to future developments of case-law, the provisions of the EEA Agreement, in so far as they are identical in substance to corresponding rules of the Treaty establishing the European 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. As regards relevant rulings by the Court of Justice given after the date of signature of the EEA Agreement, it follows from Article 3(2) of the Surveillance and Court Agreement that the EFTA Surveillance Authority and the EFTA Court shall pay due account to the principles laid down by these rulings.

([8]) As mentioned in footnote 3, Liechtenstein is under no obligation to designate a competition authority.

([9]) In this Notice the term 'procedure' is used for investigations and/or formal proceedings for the adoption of a decision pursuant to the Chapter II conducted by an NCA or the EFTA Surveillance Authority, as the case may be.

procedure (see paragraph 18 below) where either that authority considered that it was not well placed to act or where other authorities also considered themselves well placed to act (see paragraphs 8 to 14 below).

7. Where re-allocation is found to be necessary for an effective protection of competition and of the EEA interest, network members will endeavour to re-allocate cases to a single well placed competition authority as often as possible ([10]). In any event, re-allocation should be a quick and efficient process and not hold up ongoing investigations.

8. An authority can be considered to be well placed to deal with a case if the following three cumulative conditions are met:

(1) the agreement or practice has substantial direct actual or foreseeable effects on competition within its territory, is implemented within or originates from its territory;

(2) the authority is able to effectively bring to an end the entire infringement i.e. it can adopt a cease and desist order the effect of which will be sufficient to bring an end to the infringement and it can, where appropriate, sanction the infringement adequately;

(3) it can gather, possibly with the assistance of other authorities, the evidence required to prove the infringement.

9. The above criteria indicate that a material link between the infringement and the territory of an EFTA State must exist in order for that EFTA State's competition authority to be considered well placed. It can be expected that in most cases the authorities of those EFTA States where competition is substantially affected by an infringement will be well placed provided they are capable of effectively bringing the infringement to an end through either single or parallel action unless the EFTA Surveillance Authority is better placed to act (see below paragraph 15).

10. It follows that a single NCA is usually well placed to deal with agreements or practices that substantially affect competition mainly within its territory.

Example 1: *Undertakings situated in EFTA State A are involved in a price fixing cartel on products that are mainly sold in EFTA State A.*
The NCA in A is well placed to deal with the case.

11. Furthermore single action of an NCA might also be appropriate where, although more than one NCA can be regarded as well placed, the action of a single NCA is sufficient to bring the entire infringement to an end.

Example 2: *Two undertakings have set up a joint venture in EFTA State A. The joint venture provides services in EFTA States A and B and gives rise to a competition problem. A cease and desist order is considered to be sufficient to deal with the case effectively because it can bring an end to the entire infringement. Evidence is located mainly at the offices of the joint venture in EFTA State A.*
The NCAs in A and B are both well placed to deal with the case but single action by the NCA in A would be sufficient and more efficient than single action by NCA in B or parallel action by both NCAs.

([10]) Recital 18 of Regulation 1/2003 states that 'to ensure that cases are dealt with by the most appropriate authorities within the network, a general provision should be laid down allowing a competition authority to suspend or close a case on the ground that another authority is dealing with it or has already dealt with it, the objective being that each case should be handled by a single authority. This provision should not prevent the Commission from rejecting a complaint for lack of Community interest, as the case-law of the Court of Justice of the European Communities has acknowledged it may do, even if no other competition authority has indicated its intention of dealing with the case.' Like Regulation 1/2003, Chapter II provides for the possibility for a competition authority to suspend or close a case on the ground that another authority is dealing with it or has already dealt with it. In line with recital 18 of Regulation 1/2003 as quoted above, the EFTA Surveillance Authority is of the opinion that it may reject a complaint for lack of any sufficiently strong interest under the EEA Agreement and that this is possible even if no other competition authority has indicated its intention of dealing with the case.

12. Parallel action by several NCAs may be appropriate where an agreement or practice has substantial effects on competition mainly in their respective territories and the action of only one NCA would not be sufficient to bring the entire infringement to an end and/or to sanction it adequately.

> Example 3: *Two undertakings agree on a market sharing agreement, restricting the activity of the company located in EFTA State A to EFTA State A and the activity of the company located in EFTA State B to EFTA State B.*
> *The NCAs in A and B are well placed to deal with the case in parallel, each one for its respective territory.*

13. The authorities dealing with a case in parallel action will endeavour to coordinate their action to the extent possible. To that effect, they may find it useful to designate one of them as a lead authority and to delegate tasks to the lead authority such as for example the coordination of investigative measures, while each authority remains responsible for conducting its own proceedings.

14. The EFTA Surveillance Authority is also well placed if one or several agreement(s) or practice(s), including networks of similar agreements or practices, have effects on competition in two or more EFTA States (cross-border markets covering two or more EFTA States or several national markets).

15. Moreover, the EFTA Surveillance Authority is particularly well placed to deal with a case if it is closely linked to other EEA provisions which may be exclusively or more effectively applied by the Authority, if the EEA interest requires the adoption of an Authority decision to develop EEA competition policy when a new competition issue arises or to ensure effective enforcement.

2.2. **Mechanisms of cooperation for the purpose of case allocation and assistance**

2.2.1. *Information at the beginning of the procedure (Article 11 of Chapter II)*

16. In order to detect multiple procedures and to ensure that cases are dealt with by a well placed competition authority, the members of the network have to be informed at an early stage of the cases pending before the various competition authorities ([11]). If a case is to be re-allocated, it is indeed in the best interest both of the network and of the undertakings concerned that the re-allocation takes place quickly.

17. Chapter II creates a mechanism for the competition authorities to inform each other in order to ensure an efficient and quick re-allocation of cases. Article 11(3) of Chapter II lays down an obligation for NCAs to inform the EFTA Surveillance Authority when acting under Article 53 or 54 of the EEA Agreement before or without delay after commencing the first formal investigative measure ([12]). It also states that the information may be made available to other NCAs. The NCAs also intend to make any information exchanged pursuant to Article 11 available and easily accessible to all network members. The rationale of Article 11(3) of Chapter II is to allow the network to detect multiple procedures and address possible case re-allocation issues as soon as an authority starts investigating a case. Information should therefore be provided to NCAs and the Authority before or just after any step similar to the measures of investigation that can be undertaken by the Authority under Articles 18 to 21 of Chapter II. The Authority has an equivalent obligation to inform NCAs under Article 11(2) of Chapter II. Network members will inform each other of pending cases by means of a standard form containing limited details of the case, such as the authority dealing with the case, the product, territories and parties concerned, the alleged infringement, the suspected duration of the infringement and the origin of the case. They will also provide each other with updates when a relevant change occurs.

([11]) For cases initiated following a leniency application see paragraphs 37 *et subseq*.

([12]) Information submitted according to Article 11(3) of Chapter II will also be forwarded to the Commission in accordance with the Authority's obligations under Article 2(2) of Protocol 23 to the EEA Agreement.

18. Where case re-allocation issues arise, they should be resolved swiftly, normally within a period of two months starting from the date of the first information sent to the network pursuant to Article 11 of Chapter II. During this period, competition authorities will endeavour to reach an agreement on a possible re-allocation and, where relevant, on the modalities for parallel action.

19. In general, the competition authority or authorities that is/are dealing with a case at the end of the re-allocation period should continue to deal with the case until the completion of the proceedings. Re-allocation of a case after the initial allocation period of two months should only occur where the facts known about the case change materially during the course of the proceedings.

2.2.2. *Suspension or termination of proceedings (Article 13 of Chapter II)*

20. If the same agreement or practice is brought before several competition authorities, be it because they have received a complaint or have opened a procedure on their own initiative, Article 13 of Chapter II provides a legal basis for suspending proceedings or rejecting a complaint on the grounds that another authority is dealing with the case or has dealt with the case. In Article 13 of Chapter II, 'dealing with the case' does not merely mean that a complaint has been lodged with another authority. It means that the other authority is investigating or has investigated the case on its own behalf.

21. Article 13 of Chapter II applies when another authority has dealt or is dealing with the competition issue raised by the complainant, even if the authority in question has acted or acts on the basis of a complaint lodged by a different complainant or as a result of an ex-officio procedure. This implies that Article 13 of Chapter II can be invoked when the agreement or practice involves the same infringement(s) on the same relevant geographic and product markets.

22. An NCA may suspend or close its proceedings but it has no obligation to do so. Article 13 of Chapter II leaves scope for appreciation of the peculiarities of each individual case. This flexibility is important: if a complaint was rejected by an authority following an investigation of the substance of the case, another authority may not want to re-examine the case. On the other hand, if a complaint was rejected for other reasons (e.g. the authority was unable to collect the evidence necessary to prove the infringement), another authority may wish to carry out its own investigation and deal with the case. This flexibility is also reflected, for pending cases, in the choice open to each NCA as to whether it closes or suspends its proceedings. An authority may be unwilling to close a case before the outcome of another authority's proceedings is clear. The ability to suspend its proceedings allows the authority to retain its ability to decide at a later point whether or not to terminate its proceedings. Such flexibility also facilitates consistent application of the rules.

23. Where an authority closes or suspends proceedings because another authority is dealing with the case, it may transfer — in accordance with Article 12 of Chapter II — the information provided by the complainant to the authority which is to deal with the case.

24. Article 13 of Chapter II can also be applied to part of a complaint or to part of the proceedings in a case. It may be that only part of a complaint or of an ex-officio procedure overlaps with a case already dealt or being dealt with by another competition authority. In that case, the competition authority to which the complaint is brought is entitled to reject part of the complaint on the basis of Article 13 of Chapter II and to deal with the rest of the complaint in an appropriate manner. The same principle applies to the termination of proceedings.

25. Article 13 of Chapter II is not the only legal basis for suspending or closing ex officio proceedings or rejecting complaints. NCAs may also be able to do so according to their national procedural law. The EFTA Surveillance Authority may also reject a complaint for lack of any sufficiently strong interest under the EEA Agreement or other reasons pertaining to the nature of the complaint ([13]).

2.2.3. *Exchange and use of confidential information (Article 12 of Chapter II)*

26. A key element of the functioning of the network is the power of all the competition authorities to exchange and use information (including documents, statements and digital information) which has been collected by them for the purpose of applying Article 53 or Article 54 of the EEA Agreement. This power is a precondition for efficient and effective allocation and handling of cases.

([13]) See EFTA Surveillance Authority notice on complaints, not yet published.

27. Article 12 of Chapter II states that 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. This means that exchanges of information may not only take place between an NCA and the Authority but also between and amongst NCAs. Article 12 of Chapter II should take precedence over any contrary law of an EFTA State. The question whether information was gathered in a legal manner by the transmitting authority is governed on the basis of the law applicable to this authority. When transmitting information the transmitting authority may inform the receiving authority whether the gathering of the information was contested or could still be contested.

28. The exchange and use of information contains in particular the following safeguards for undertakings and individuals.

(a) First, Article 28 of Chapter II states that '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 (…) shall not disclose information acquired or exchanged by them pursuant to Protocol 4 to the Surveillance and Court Agreement or Article 58 of the EEA Agreement and Protocol 23 thereto which is of the kind covered by the obligation of professional secrecy'. However, the legitimate interest of undertakings in the protection of their business secrets may not prejudice the disclosure of information necessary to prove an infringement of Articles 53 and 54 of the EEA Agreement. The term 'professional secrecy' used in Article 28 of Chapter II is an EEA law concept and includes in particular business secrets and other confidential information. This will create a common minimum level of protection throughout the EEA ([14]).

(b) The second safeguard given to undertakings relates to the use of information which has been exchanged within the network. Under Article 12(2) of Chapter II, information so exchanged can only be used in evidence for the application of Articles 53 and 54 of the EEA Agreement and for the subject matter for which it was collected ([15]). According to Article 12(2) of Chapter II, the information exchanged may also be used for the purpose of applying national competition law in parallel in the same case. This is, however, only possible if the application of national law does not lead to an outcome as regards the finding of an infringement different from that under Articles 53 and 54 of the EEA Agreement.

(c) The third safeguard given by Chapter II relates to sanctions on individuals on the basis of information exchanged pursuant to Article 12(1). Chapter II only provides for sanctions on undertakings for violations of Articles 53 and 54 of the EEA Agreement. Some national laws also provide for sanctions on individuals in connection with violations of Articles 53 and 54 of the EEA Agreement. Individuals normally enjoy more extensive rights of defence (e.g. a right to remain silent compared to undertakings which may only refuse to answer questions which would lead them to admit that they have committed an infringement ([16])). Article 12(3) of Chapter II ensures that information collected from undertakings cannot be used in a way which would circumvent the higher protection of individuals. This provision precludes sanctions being imposed on individuals on the basis of information exchanged pursuant to Chapter II if the laws of the transmitting and the receiving authorities do not provide for sanctions of a similar kind in respect of individuals, unless the rights of the individual concerned as regards the collection of evidence have been respected by the transmitting authority to the same standard as they are guaranteed by the receiving authority. The qualification of the sanctions by national law ('administrative' or 'criminal') is not relevant for the purpose of applying Article 12(3) of Chapter II. Chapter II intends to create a distinction between sanctions which result in custody and other types of sanctions such as fines on individuals

([14]) Article 10(2) of Protocol 23 to the EEA Agreement ensures that information exchanged pursuant to that Protocol is also covered by the obligation on professional secrecy.
([15]) See Case 85/87 Dow Benelux, [1989] ECR 3137 (recitals 17-20).
([16]) See Case 374/87 Orkem [1989] ECR 3283 and Case T-112/98 Mannesmannröhren-Werke AG [2001] ECR II-729.

and other personal sanctions. If both the legal system of the transmitting and that of the receiving authority provide for sanctions of a similar kind (e.g. in both EFTA States, fines can be imposed on a member of the staff of an undertaking who has been involved in the violation of Article 53 or 54 of the EEA Agreement), information exchanged pursuant to Article 12 of Chapter II can be used by the receiving authority. In that case, procedural safeguards in both systems are considered to be equivalent. If on the other hand, both legal systems do not provide for sanctions of a similar kind, the information can only be used if the same level of protection of the rights of the individual has been respected in the case at hand (see Article 12(3) of Chapter II). In that latter case however, custodial sanctions can only be imposed where both the transmitting and the receiving authority have the power to impose such a sanction.

2.2.4. *Investigations (Article 22 of Chapter II)*

29. Chapter II provides that an NCA may ask another NCA for assistance in order to collect information on its behalf. An NCA can ask another NCA to carry out fact-finding measures on its behalf. Article 12 of Chapter II empowers the assisting NCA to transmit the information it has collected to the requesting NCA. Any exchange between or amongst NCAs and use in evidence by the requesting NCA of such information shall be carried out in accordance with Article 12 of Chapter II. Where an NCA acts on behalf of another NCA, it acts pursuant to its own rules of procedure, and under its own powers of investigation.

30. Under Article 22(2) of Chapter II, the EFTA Surveillance Authority can ask an NCA to carry out an inspection on its behalf. The Authority can either adopt a decision pursuant to Article 20(4) of Chapter II or simply issue a request to the NCA. The NCA officials will exercise their powers in accordance with their national law. The agents of the Authority may assist the NCA during the inspection.

2.3. **Position of undertakings**

2.3.1. *General*

31. All network members will endeavour to make the allocation of cases a quick and efficient process. Given the fact that Chapter II has created a system in which both the EFTA Surveillance Authority and the EFTA NCAs have the power to apply Articles 53 and 54 of the EEA Agreement, the allocation of cases between members of the network constitutes a mere division of labour where some authorities abstain from acting. The allocation of cases therefore does not create individual rights for the companies involved in or affected by an infringement to have the case dealt with by a particular authority.

32. If a case is re-allocated to a given competition authority, it is because the application of the allocation criteria set out above led to the conclusion that this authority is well placed to deal with the case by single or parallel action. The competition authority to which the case is re-allocated would have been in a position, in any event, to commence an *ex officio* procedure against the infringement.

33. Furthermore, all competition authorities apply EEA competition law and Chapter II sets out mechanisms to ensure that the rules are applied in a consistent way.

34. If a case is re-allocated within the network, the undertakings concerned and the complainant(s) are informed as soon as possible by the competition authorities involved.

2.3.2. *Position of complainants*

35. If a complaint is lodged with the EFTA Surveillance Authority pursuant to Article 7 of Chapter II and if the Authority does not investigate the complaint or prohibit the agreement or practice complained of, the complainant has a right to obtain a decision rejecting his complaint. This is without prejudice to Article 7(3) of Chapter III of Protocol 4 to the Surveillance and Court Agreement ([17]). The rights of complainants who lodge a complaint with an NCA are governed by the applicable national law.

([17]) Following the entry into force of the Agreement amending Protocol 4 to the Agreement of the EFTA States on the establishment of a Surveillance Authority and a Court of Justice of 3 December 2004 on 1 July 2005, Chapter III of Protocol 4 to the Surveillance and Court Agreement reflects Commission Regulation (EC) No 773/2004 of 7 April 2004, OJ L 123, 27.4.2004, p. 18-24,

36. In addition, Article 13 of Chapter II gives all NCAs the possibility of suspending or rejecting a complaint on the ground that another competition authority is dealing or has dealt with the same case. That provision also allows the EFTA Surveillance Authority to reject a complaint on the ground that a competition authority of an EFTA State is dealing or has dealt with the case. Article 12 of Chapter II allows the transfer of information between competition authorities within the network subject to the safeguards provided in that Article (see paragraph 27 above).

2.3.3. *Position of applicants claiming the benefit of a leniency programme*

37. The EFTA Surveillance Authority considers ([18]) that it is in the EEA interest to grant favourable treatment to undertakings which co-operate with it in the investigation of cartel infringements. Two of the EFTA States have also adopted leniency programmes ([19]) relating to cartel investigations. The aim of these leniency programmes is to facilitate the detection by competition authorities of cartel activity and also thereby to act as a deterrent to participation in unlawful cartels.

38. In the absence of an EFTA-wide system of fully harmonised leniency programmes, an application for leniency to a given authority is not to be considered as an application for leniency to any other authority. It is therefore in the interest of the applicant to apply for leniency to all competition authorities which have competence to apply Article 53 of the EEA Agreement in the territory which is affected by the infringement and which may be considered well placed to act against the infringement in question ([20]). In view of the importance of timing in most existing leniency programmes, applicants will also need to consider whether it would be appropriate to file leniency applications with the relevant authorities simultaneously. It is for the applicant to take the steps which it considers appropriate to protect its position with respect to possible proceedings by these authorities.

39. The use and transmission of information obtained as a result of a leniency programme is regulated in Article 11 B of Chapter II. The network members will encourage leniency applicants to give consent to the transmission to another authority of information voluntarily submitted by the leniency applicants and other information as referred to in Article 11 B(2) of Chapter II, in particular as regards disclosure to authorities in respect of which it would be open to the applicant to obtain lenient treatment.

3. **CONSISTENT APPLICATION OF EEA COMPETITION RULES** ([21])

3.1. **Mechanism of cooperation (Article 11(4) and (5) of Chapter II)**

40. Chapter II pursues the objective that Articles 53 and 54 of the EEA Agreement are applied in a consistent manner throughout the EEA. In this respect NCAs will respect the convergence rule contained in Article 3(2) of Chapter II. In line with Article 16(2) they cannot — when ruling on agreements, decisions and practices under Article 53 or Article 54 of the EEA Agreement which are already the subject of an EFTA Surveillance Authority decision — take decisions, which would run counter to the decisions adopted by the Authority. The Authority has the ultimate ([22]) but not the sole responsibility for developing policy and safeguarding consistency when it comes to the application of EEA competition law.

([18]) OJ C 10, 16.1.2003, p. 13 and EEA Supplement to the OJ No 3, 16.1.2003, p. 1 (Notice on immunity from fines and reduction of fines in cartel cases)

([19]) In this Notice, the term 'leniency programme' is used to describe all programmes (including the EFTA Surveillance Authority's programme) which offer either full immunity or a significant reduction in the penalties which would otherwise have been imposed on a participant in a cartel, in exchange for the freely volunteered disclosure of information on the cartel which satisfies specific criteria prior to or during the investigative stage of the case. The term does not cover reductions in the penalty granted for other reasons. The EFTA Surveillance Authority will publish on its website a list of those authorities that operate a leniency programme.

([20]) See paragraphs 8 to 15 above.

([21]) Article 15 of Chapter II empowers NCAs and the EFTA Surveillance Authority to submit written and, with the permission of the Court, oral submissions in court proceedings for the application of Articles 53 and 54 of the EEA Agreement. This is a very important tool for ensuring consistent application of EEA rules. In exercising this power NCAs and the Authority will cooperate closely.

([22]) This ultimate responsibility for developing policy and safeguarding consistency when it comes to the application of EEA competition law is shared with the Commission in accordance with the rules on attribution of competence in Article 56 of the EEA Agreement.

41. According to Article 11(4) of Chapter II, no later than 30 days before the adoption of a decision applying Articles 53 or 54 of the EEA Agreement and requiring that an infringement be brought to an end, accepting commitments or withdrawing the benefit of a block-exemption regulation, NCAs shall inform the EFTA Surveillance Authority. They have to send to the Authority, at the latest 30 days before the adoption of the decision, a summary of the case, the envisaged decision or, in the absence thereof, any other document indicating the proposed course of action.

42. As under Article 11(3) of Chapter II, the obligation is to inform the EFTA Surveillance Authority, but the information may be shared by the NCA informing the Authority with the other members of the network.

43. Where an NCA has informed the EFTA Surveillance Authority pursuant to Article 11(4) of Chapter II and the 30 days deadline has expired, the decision can be adopted as long as the Authority has not initiated proceedings. The Authority may make written observations on the case before the adoption of the decision by the NCA. The NCA and the Authority will make the appropriate efforts to ensure the consistent application of EEA law (cf. paragraph 3 above).

44. If special circumstances require that a national decision is taken in less than 30 days following the transmission of information pursuant to Article 11(4) of Chapter II, the NCA concerned may ask the EFTA Surveillance Authority for a swifter reaction. The Authority will endeavour to react as quickly as possible.

45. Other types of decisions, i.e. decisions rejecting complaints, decisions closing an *ex officio* procedure or decisions ordering interim measures, can also be important from a competition policy point of view, and the network members may have an interest in informing each other about them and possibly discussing them. NCAs can therefore on the basis of Article 11(5) of Chapter II inform the EFTA Surveillance Authority and thereby inform the network of any other case in which EEA competition law is applied.

46. All members of the network should inform each other about the closure of their procedures which have been notified to the network pursuant to Article 11(2) and (3) of Chapter II.

3.2. **The initiation of proceedings by the EFTA Surveillance Authority under Article 11(6) of Chapter II**

47. The EFTA Surveillance Authority is entrusted by Article 55(1) of the EEA Agreement with the task of ensuring the application of the principles laid down in Articles 53 and 54 of the EEA Agreement, and is responsible for defining and implementing the orientation of EEA competition policy ([23]) ([24]). Subject to Article 56 of the EEA Agreement, it can adopt individual decisions under Articles 53 and 54 of the EEA Agreement at any time.

48. Article 11(6) of Chapter II states that the initiation by the EFTA Surveillance Authority of proceedings for the adoption of a decision under Chapter II should relieve all NCAs of their competence to apply Articles 53 and 54 of the EEA Agreement. This means that once the Authority has opened proceedings, NCAs should not act under the same legal basis against the same agreement(s) or practice(s) by the same undertaking(s) on the same relevant geographic and product market.

49. The initiation of proceedings by the EFTA Surveillance Authority is a formal act ([25]) by which the Authority indicates its intention to adopt a decision under Section III of Chapter II. It can occur at any stage of the investigation of the case by the EFTA Authority. The mere fact that the Authority has received a complaint is not in itself sufficient to relieve NCAs of their competence.

([23]) These tasks are shared with the Commission in accordance with the rules of competence in Article 56 of the EEA Agreement.

([24]) See Case C-344/98 Masterfoods Ltd [2000] ECR I-11369.

([25]) The Court of Justice of the European Communities has defined that concept in the case 48/72 — SA Brasserie de Haecht, [1973] ECR 77: 'the initiation of a procedure within the meaning of Article 9 of Regulation No 17 implies an authoritative act of the Commission, evidencing its intention of taking a decision.'

50. Two situations can arise. First, where the EFTA Surveillance Authority is the first competition authority to initiate proceedings in a case for the adoption of a decision under Chapter II, national competition authorities should no longer deal with the case. Article 11(6) of Chapter II provides that once the Authority has initiated proceedings, the NCAs should no longer start their own procedure with a view to applying Articles 53 and 54 of the EEA Agreement to the same agreement(s) or practice(s) by the same undertaking(s) on the same relevant geographic and product market.

51. The second situation is where one or more NCAs have informed the network pursuant to Article 11(3) of Chapter II that they are acting on a given case. During the initial allocation period (indicative time period of two months, see paragraph 18 above), the EFTA Surveillance Authority can initiate proceedings with the effects of Article 11(6) of Chapter II after having consulted the authorities concerned. After the allocation phase, the Authority will in principle only apply Article 11(6) of Chapter II if one of the following situations arises:

(a) Network members envisage conflicting decisions in the same case.

(b) Network members envisage a decision which is obviously in conflict with consolidated case law; the standards defined in the judgements of the Community courts and the EFTA Court, in previous decisions by the EFTA Surveillance Authority ([26]), and Commission regulations as incorporated into the EEA Agreement, should serve as a yardstick; concerning the assessment of the facts (e.g. market definition), only a significant divergence will trigger an intervention of the Authority;

(c) Network member(s) is (are) unduly drawing out proceedings in the case;

(d) There is a need to adopt an EFTA Surveillance Authority decision to define the principles of EEA competition law in particular when a similar competition issue arises in several EFTA States or to ensure effective enforcement;

(e) The NCA(s) concerned do not object.

52. If an NCA is already acting on a case, the EFTA Surveillance Authority will explain the reasons for the application of Article 11(6) of Chapter II in writing to the NCA concerned and to the other members of the network.

53. The EFTA Surveillance Authority will announce to the network its intention of applying Article 11(6) of Chapter II in due time, so that Network members will have the possibility of asking for a meeting of the Advisory Committee on the matter before the Authority initiates proceedings.

54. The EFTA Surveillance Authority will normally not — and to the extent that EEA interest is not at stake — adopt a decision which is in conflict with a decision of an NCA after proper information pursuant to both Article 11(3) and (4) of Chapter II has taken place and the Authority has not made use of Article 11(6) of Chapter II.

4. THE ROLE AND THE FUNCTIONING OF THE ADVISORY COMMITTEE IN THE NEW SYSTEM

55. The Advisory Committee is the forum where experts from the various competition authorities discuss individual cases and general issues of EEA competition law ([27]).

4.1. **Scope of the consultation**

4.1.1. *Decisions of the EFTA Surveillance Authority*

56. The Advisory Committee is consulted prior to the EFTA Surveillance Authority taking any decision pursuant to Articles 7, 8, 9, 10, 23, 24(2) or 29(1) of Chapter II. The Authority must take the utmost account of the opinion of the Advisory Committee and inform the Committee of the manner in which its opinion has been taken into account.

([26]) The previous decisions by the Commission should also be taken into account by the competition authorities.

([27]) In accordance with Article 14(2) of Chapter II, where horizontal issues such as guidelines and recommendations are being discussed, EFTA States can appoint an additional representative competent in competition matters and who does not necessarily belong to the competition authority.

57. For decisions adopting interim measures, the Advisory Committee is consulted following a swifter and lighter procedure, on the basis of a short explanatory note and the operative part of the decision.

4.1.2. *Decisions of NCAs*

58. It is in the interest of the network that important cases dealt with by NCAs under Articles 53 and 54 of the EEA Agreement can be discussed in the Advisory Committee. Chapter II enables the EFTA Surveillance Authority to put a given case being dealt with by an NCA on the agenda of the Advisory Committee. Discussion can be requested by the Authority or by any EFTA State. In either case, the Authority will put the case on the agenda after having informed the NCA(s) concerned. This discussion in the Advisory Committee will not lead to a formal opinion.

59. In important cases, the Advisory Committee could also serve as a forum for the discussion of case allocation. In particular, where the EFTA Surveillance Authority intends to apply Article 11(6) of Chapter II after the initial allocation period, the case can be discussed in the Advisory Committee before the Authority initiates proceedings. The Advisory Committee may issue an informal statement on the matter.

4.1.3. *Implementing measures, recommendations, guidelines and other notices (Article 33 of Chapter II)*

60. The Advisory Committee will be consulted on draft EFTA Surveillance recommendations regarding the disapplication of acts for the application of Article 53(3) of the EEA Agreement as provided for in Annex XIV to the EEA Agreement ([28]).

61. Beside recommendations, the EFTA Surveillance Authority may also adopt notices and guidelines. These more flexible tools are very useful for explaining and announcing the Authority's policy, and for explaining its interpretation of the competition rules. The Advisory Committee will also be consulted on these notices and guidelines.

4.2. **Procedure**

4.2.1. *Normal procedure*

62. For consultation on EFTA Surveillance Authority draft decisions, the meeting of the Advisory Committee takes place at the earliest 14 days after the invitation to the meeting is sent by the Authority. The Authority attaches to the invitation a summary of the case, a list of the most important documents, i.e. the documents needed to assess the case, and a draft decision. The Advisory Committee gives an opinion on the Authority draft decision. At the request of one or several members, the opinion shall be reasoned.

63. Chapter II allows for the possibility of the EFTA States agreeing upon a shorter period of time between the sending of the invitation and the meeting.

4.2.2. *Written procedure*

64. Chapter II provides for the possibility of a written consultation procedure. If no EFTA State objects, the EFTA Surveillance Authority can consult the EFTA States by sending the documents to them and setting a deadline within which they can comment on the draft. This deadline would not normally be shorter than 14 days, except for decisions on interim measures pursuant to Article 8 of Chapter II. Where an EFTA State requests that a meeting takes place, the EFTA Surveillance Authority will arrange for such a meeting.

4.3. **Publication of the opinion of the Advisory Committee**

65. The Advisory Committee can recommend the publication of its opinion. In that event, the EFTA Surveillance Authority will carry out such publication simultaneously with the decision, taking into account the legitimate interest of undertakings in the protection of their business secrets.

([28]) See e.g. points 2 and 4b of Annex XIV to the EEA Agreement, as amended by EEA Joint Committee Decision 29/2004, OJ L 127, 29.4.2004, p. 137, EEA Supplement No 22, 29.4.2004, p. 16. (Amending Annex XIV (Competition) to the EEA Agreement — Addition to adaptations to Commission Regulation (EC) 2790/1999 and Commission Regulation (EC) No 1400/2002).

5. FINAL REMARKS

66. This Notice is without prejudice to any interpretation of the applicable EEA Agreement and regulatory provisions by the Community Courts and the EFTA Court.

67. This Notice will be the subject of periodic review carried out jointly by the NCAs and the EFTA Surveillance Authority. On the basis of the experience acquired, it will be reviewed no later than at the end of the third year after its adoption.

68. This notice replaces the EFTA Surveillance Authority notice on cooperation between national competition authorities and the EFTA Surveillance Authority in handling cases falling within the scope of Articles 53 and 54 of the EEA Agreement published in 2000 ([29]).

6. STATEMENT BY OTHER NETWORK MEMBERS

69. The principles set out in this notice will also be abided by those EFTA States' competition authorities which have signed a statement in the form of the Annex to this Notice. In this statement they acknowledge the principles of this notice and declare that they will abide by them. A list of these authorities is published on the website of the EFTA Surveillance Authority. It will be updated if appropriate.

([29]) OJ C 307, 26.10.2000, p. 6 and EEA Supplement to the OJ No 61, 21.12.2000, p. 5.

ANNEX

STATEMENT REGARDING THE EFTA SURVEILLANCE AUTHORITY NOTICE ON COOPERATION WITHIN THE NETWORK OF COMPETITION AUTHORITIES

In order to cooperate closely with a view to protecting competition within the EEA in the interest of consumers, the undersigned competition authority:

(1) Acknowledges the principles set out in the EFTA Surveillance Authority Notice on Cooperation within the Network of Competition Authorities; and
(2) Declares that it will abide by those principles in any case in which it is acting or may act and to which those principles apply.

(place), (date)