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II

(Non-legislative acts)

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2021/800**of 17 May 2021****amending Decision 2011/163/EU on the approval of plans submitted by third countries in accordance with Article 29 of Council Directive 96/23/EC***(notified under document C(2021) 3291)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC ⁽¹⁾, and in particular the fourth subparagraph of Article 29(1) and Article 29(2) thereof,

Whereas:

- (1) Article 29(1) of Directive 96/23/EC requires that third countries from which Member States are authorised to import animals and animal products covered by that Directive submit residue monitoring plans providing required guarantees ('the plans'). These guarantees must have an effect at least equivalent to those provided for in that Directive and must, in particular, meet the requirements of Article 4 of that Directive and specify the particulars laid down in Article 7 of that Directive and meet the requirements of Article 11(2) of Directive 96/22/EC. The plans should cover at least the groups of residues and substances listed in Annex I to the Directive 96/23.
- (2) Commission Decision 2011/163/EU ⁽²⁾ approves the plans submitted by certain third countries concerning animals and animal products, which are listed in the Annex to that Decision.
- (3) Animal casings may contain residues of pharmacologically active substances. Such residues have been found in casings imported into the Union and reported in the Rapid Alert System for Food and Feed since 2015 from some third countries and have concerned prohibited substances with an antimicrobial activity. Those residues may be present in casings due to the administration of antimicrobials to prevent their bacterial spoilage. Therefore, the Commission should ensure the chemical safety of casings by requiring that animal casings enter into the Union only from third countries listed in the Annex to Decision 2011/163/EU, which have provided the required guarantees for this commodity in their approved residue monitoring plans. Article 2(1) of Decision 2011/163/EU should be amended accordingly.

⁽¹⁾ OJ L 125, 23.5.1996, p. 10.

⁽²⁾ Commission Decision 2011/163/EU of 16 March 2011 on the approval of plans submitted by third countries in accordance with Article 29 of Council Directive 96/23/EC (OJ L 70, 17.3.2011, p. 40).

- (4) Third countries authorised for the entry into the Union of certain meat products and treated stomachs, bladders and intestines for human consumption in accordance with Regulation (EU) 2017/625 ⁽³⁾ are listed in Commission Implementing Regulation (EU) 2021/404 ⁽⁴⁾. Third countries authorised for the entry into the Union of certain meat products in accordance with Regulation (EU) 2016/429 ⁽⁵⁾ are listed in Commission Implementing Regulation (EU) 2021/405 ⁽⁶⁾.
- (5) In order to minimise trade disruptions, all of the third countries currently authorised for entry into the Union of meat products in Implementing Regulations (EU) 2021/404 and (EU) 2021/405 and which are already listed in the Annex to Decision 2011/163/EU should also be listed for in that Annex for animal casings, as they have already provided sufficient guarantees related to the residues surveillance. In addition, with casings, the risk arises not from the treatment of the animal but from adulteration of the product to prevent bacterial spoilage.
- (6) In addition, those third countries, which have successfully completed the questionnaire related to animal and public health with a view to be included in Implementing Regulations (EU) 2021/404 and (EU) 2021/405, should also be listed for casings in the Annex to Decision 2011/163/EU, provided that they have submitted to the Commission a specific residues monitoring plan for animal casings and that plan has been approved by the Commission.
- (7) A definitive list of countries complying with the requirements of Directive 96/23/EC, related to the absence of prohibited substances with an antimicrobial activity in casings, will be established by the Commission after the full evaluation of the residue monitoring plans presented by all third countries exporting casings to the Union, and before the end of the transitional period expiring on 20 October 2021.
- (8) While Australia has no approved residues monitoring plan for eggs, it has provided guarantees to use only eggs, originating either from Member States or from third countries which are approved to export such products to the Union, to be included in composite products to be exported to the EU. An entry for Australia regarding eggs with the appropriate footnote should therefore be added to the list.
- (9) While India has no approved residues monitoring plan for poultry products and dairy products, it has provided guarantees to use only dairy products, originating either from Member States or from third countries, which are approved to export such products to the Union, to be included in composite products to be exported to the EU. An entry for India regarding dairy products with the appropriate footnote should therefore be added to the list.
- (10) While New Zealand has no approved residues monitoring plan for porcine species, poultry products, eggs and rabbit, it has provided guarantees to use only pork products, poultry products, eggs and rabbit, to be included in composite products to be exported to the EU, originating either from Member States or from third countries, which are approved to export such products to the Union. An entry for New Zealand regarding porcine species, poultry products, eggs and rabbit with the appropriate footnote should therefore be added to the list.

⁽³⁾ Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (OJ L 95, 7.4.2017, p. 1).

⁽⁴⁾ Commission Implementing Regulation (EU) 2021/404 of 24 March 2021 laying down the lists of third countries, territories or zones thereof from which the entry into the Union of animals, germinal products and products of animal origin is permitted in accordance with Regulation (EU) 2016/429 of the European Parliament and the Council (OJ L 114, 31.3.2021, p. 1).

⁽⁵⁾ Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') (OJ L 84, 31.3.2016, p. 1).

⁽⁶⁾ Commission Implementing Regulation (EU) 2021/405 of 24 March 2021 laying down the lists of third countries or regions thereof authorised for the entry into the Union of certain animals and goods intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council (OJ L 114, 31.3.2021, p. 118).

- (11) While Philippines has no approved residues monitoring plan for dairy products, and eggs, it has provided guarantees to use only dairy products and eggs, originating either from Member States or from third countries, which are approved to export such products to the Union, to be included in composite products to be exported to the EU. An entry for Philippines regarding dairy products, and eggs with the appropriate footnote should therefore be added to the list.
- (12) While Singapore has no approved residues monitoring plan for eggs, it has provided guarantees to use only eggs originating either from Member States or from third countries, which are approved to export such products to the Union, to be included in composite products to be exported to the EU. An entry for Singapore regarding eggs with the appropriate footnote should therefore be added to the list.
- (13) While Thailand has no approved residues monitoring plan for bovine species, porcine species, dairy products, and eggs, it has provided guarantees to use only bovine, dairy products, and eggs, originating either from Member States or from third countries, which are approved to export such products to the Union, to be included in composite products to be exported to the EU. An entry for Thailand regarding bovine species, dairy products, and eggs with the appropriate footnote should therefore be added to the list.
- (14) While South Korea has no approved residues monitoring plan for dairy products, eggs, and honey, it has provided guarantees to use only dairy products, eggs, and honey, originating either from Member States or from third countries, which are approved to export such products to the Union, to be included in composite products to be exported to the EU. An entry for South Korea regarding dairy products, eggs, and honey with the appropriate footnote should therefore be added to the list.
- (15) Decision 2011/163/EU should therefore be amended accordingly.
- (16) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of this Decision, the definitions laid down in Article 2 of Commission Delegated Regulation (EU) 2020/692 ⁽⁷⁾ apply.

Article 2

Article 2(1) of Decision 2011/163/EU is replaced by the following:

‘1. With the exception of raw material used for the production of casings, third countries using raw material imported from other third countries approved for production of food of animal origin in accordance with this Decision or from Member States to be exported to the Union and which are unable to provide a residue monitoring plan equivalent to that required by Article 7 of Directive 96/23/EC for such raw material shall complement the plan with the following statement: “The competent authority of [third country] ensures that animal products for human consumption exported to the European Union, in particular products produced from raw material imported into [third country], shall only come from establishments listed in accordance with Article 5 of Commission Delegated Regulation (EU) 2019/625 ^(*) and having reliable procedures in place to guarantee that raw material of animal origin used in such food originates only from Member States of the European Union or third countries listed for the respective raw material in the Annex to Decision 2011/163/EU without a restrictive footnote as provided for in Article 2(2) of the Decision.”.

For the production of casings intended for export to the Union, third countries may use raw material imported from other third countries, which are authorised for the entry into the Union of fresh meat, or of certain meat products and treated stomachs, bladders and intestines in Implementing Regulations (EU) 2021/404 and (EU) 2021/405.

⁽⁷⁾ Commission Delegated Regulation (EU) 2020/692 of 30 January 2020 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules entry into the Union, and the movement and handling after entry of consignments of certain animals, germinal products and products of animal origin (OJ L 174, 3.6.2020, p. 379).

The third country intending to export casings to the Union shall be listed in Implementing Regulations (EU) 2021/404 and (EU) 2021/405 for casings, as well as in the Annex to Decision 2011/163/EU (for casings). In addition, the establishments from which the casings are to be exported to the Union shall be listed in accordance with Article 5 of Delegated Regulation (EU) 2019/625.

(*) Commission Delegated Regulation (EU) 2019/625 of 4 March 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of certain animals and goods intended for human consumption (OJ L 131, 17.5.2019, p. 18).'

Article 3

The Annex to Decision 2011/163/EU is replaced by the text set out in the Annex to this Decision.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 17 May 2021.

For the Commission
Stella KYRIAKIDES
Member of the Commission

ANNEX

'ANNEX

Code ISO2	Country ⁽¹⁾	Bovine	Ovine/ caprine	Porcine	Equine	Poultry	Aqua- culture	Milk	Eggs	Rabbit	Wild game	Farmed game	Honey	Casings
AD	Andorra	X	X	X ⁽⁴⁾	X								X	
AE	United Arab Emirates						X ⁽⁴⁾	X ⁽²⁾						
AL	Albania		X				X ⁽⁹⁾		X					X
AM	Armenia						X						X	
AR	Argentina	X	X		X	X	X	X	X	X	X	X	X	X
AU	Australia	X	X		X		X	X	X ^{4bis}		X	X	X	X
BA	Bosnia and Herzegovina	X	X	X		X	X ⁽⁹⁾	X	X				X	
BD	Bangladesh						X							
BF	Burkina Faso												X	
BJ	Benin												X	
BN	Brunei						X							
BR	Brazil	X			X	X	X						X	X
BW	Botswana	X												
BY	Belarus				X ⁽³⁾		X	X	X				X	X
BZ	Belize						X							
CA	Canada	X	X	X	X	X	X	X	X	X	X	X	X	X
CH	Switzerland	X	X	X	X	X	X	X	X	X	X	X	X	X
CL	Chile	X	X	X		X	X	X			X		X	X
CM	Cameroon												X	
CN	China					X	X		X	X			X	X
CO	Colombia						X	X	X ⁽⁴⁾					X
CR	Costa Rica						X							

Code ISO2	Country ⁽¹⁾	Bovine	Ovine/caprine	Porcine	Equine	Poultry	Aqua-culture	Milk	Eggs	Rabbit	Wild game	Farmed game	Honey	Casings
CU	Cuba						X						X	
DO	Dominican Republic												X	
EC	Ecuador						X							
ET	Ethiopia												X	
FK	Falkland Islands	X	X ⁽¹³⁾				X ⁽⁹⁾							
FO	Faroes						X ⁽⁹⁾							
GB	Great Britain	X	X	X	X	X	X	X	X	X	X	X	X	X
GE	Georgia												X	
GG	Guernsey	X						X						
GH	Ghana												X	
GL	Greenland		X									X		
GT	Guatemala						X ⁽¹¹⁾						X	
HN	Honduras						X							
ID	Indonesia						X							
IL	Israel ⁽⁷⁾					X	X	X	X				X	
IM	Isle of Man	X	X	X			X	X					X	
IN	India					X ^{4bis}	X	X ^{4bis}	X				X	X
IR	Iran						X ⁽¹¹⁾							X
JE	Jersey	X						X						
JM	Jamaica												X	
JP	Japan	X		X		X	X	X	X					X
KE	Kenya						X							
KR	South Korea					X	X	X ^{4bis}	X ^{4bis}				X ^{4bis}	
LBN	Lebanon													X

Code ISO2	Country ⁽¹⁾	Bovine	Ovine/caprine	Porcine	Equine	Poultry	Aqua-culture	Milk	Eggs	Rabbit	Wild game	Farmed game	Honey	Casings
LK	Sri Lanka						X							
MA	Morocco					X	X ⁽⁹⁾							X
MD	Moldova					X	X ⁽⁹⁾	X	X				X	
ME	Montenegro	X	X ⁽¹³⁾	X		X	X ⁽⁹⁾	X	X				X	
MG	Madagascar						X						X	
MK	North Macedonia	X	X	X		X	X	X	X		X		X	
MM	Myanmar						X						X	
MU	Mauritius						X						X ⁽⁴⁾	
MX	Mexico						X		X				X	X
MY	Malaysia					X ⁽⁴⁾	X							
MZ	Mozambique						X ⁽¹¹⁾							
NA	Namibia	X	X ⁽¹³⁾								X			
NC	New Caledonia						X ⁽¹¹⁾					X	X	
NI	Nicaragua						X ⁽¹¹⁾						X	
NG	Nigeria						X ⁽¹¹⁾							
NZ	New Zealand	X	X	X ^{4bis}	X	X ^{4bis}	X	X	X ^{4bis}	X ^{4bis}	X	X	X	X
OM	Oman						X ⁽⁹⁾							
PA	Panama						X							
PK	Pakistan													X
PE	Peru						X							
PH	Philippines						X	X ^{4bis}	X ^{4bis}					
PM	Saint Pierre and Miquelon					X								
PN	Pitcairn Islands												X	
PY	Paraguay	X												X

Code ISO2	Country ⁽¹⁾	Bovine	Ovine/caprine	Porcine	Equine	Poultry	Aqua-culture	Milk	Eggs	Rabbit	Wild game	Farmed game	Honey	Casings
RS	Serbia ⁽⁵⁾	X	X	X	X ⁽³⁾	X	X	X	X		X		X	X
RU	Russia	X	X	X		X		X	X			X ⁽⁶⁾	X	X
RW	Rwanda												X	
SA	Saudi Arabia						X							
SG	Singapore	X ⁽⁴⁾	X ⁽⁴⁾	X ⁽⁴⁾	X ⁽⁸⁾	X ⁽⁴⁾	X	X ⁽⁴⁾	X ^{4bis}		X ⁽⁸⁾	X ⁽⁸⁾		
SL	Sierra Leone												X	
SM	San Marino	X		X ⁽⁴⁾				X					X	
SV	El Salvador												X	
SZ	Eswatini	X												
TG	Togo												X	
TH	Thailand	X ^{4bis}		X ^{4bis}		X	X	X ^{4bis}	X ^{4bis}				X	
TN	Tunisia						X ⁽⁹⁾				X			X
TR	Turkey					X	X	X	X				X	X
TW	Taiwan						X		X				X	
TZ	Tanzania						X ⁽¹¹⁾						X	
UA	Ukraine	X		X		X	X ⁽⁹⁾	X	X	X			X	X
UG	Uganda						X						X	
US	United States	X	X ⁽¹²⁾	X		X	X	X	X	X	X	X	X	X
UY	Uruguay	X	X		X		X	X			X		X	X
VE	Venezuela						X							
VN	Vietnam						X						X	
XK	Kosovo ⁽¹⁴⁾					X ⁽⁴⁾								
ZA	South Africa										X	X ⁽¹⁰⁾		
ZM	Zambia												X	

⁽¹⁾ The table contains a list of countries and territories. It is not limited to countries recognised by the EU.

⁽²⁾ Camel milk only.

⁽³⁾ Export to the Union of live equidae for slaughter (food producing animals only).

⁽⁴⁾ Third countries using only raw material either from Member States or from other third countries approved for imports of such raw material to the Union, in accordance with Article 2.

^{4bis} Third countries using only raw material either from Member States or from other third countries approved for imports of such raw material to the Union, in accordance with Article 2, with the purpose to be used only for the preparation of composite products to be exported to the EU.

⁽⁵⁾ Not including Kosovo.

⁽⁶⁾ Reindeer only.

⁽⁷⁾ Hereafter understood as the State of Israel, excluding the territories under Israeli administration since June 1967, namely the Golan Heights, the Gaza Strip, East Jerusalem and the rest of the West Bank.

⁽⁸⁾ Only for commodities of fresh meat originating from New Zealand, destined to the Union and being unloaded, reloaded and transited with or without storage through Singapore.

⁽⁹⁾ Excluding crustaceans.

⁽¹⁰⁾ Ratites only.

⁽¹¹⁾ Excluding finfish.

⁽¹²⁾ Caprine species only.

⁽¹³⁾ Ovine species only.

⁽¹⁴⁾ This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.'

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2021/801

of 18 May 2021

on the tax treatment of losses during the COVID-19 crisis

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) The COVID-19 outbreak has prompted unprecedented action at national and Union level to support the EU economy and facilitate its recovery. The majority of short-term crisis response measures seek to ensure that businesses have sufficient cash flow.
- (2) Small and Medium sized Enterprises (SMEs) ⁽¹⁾ in particular have been badly hit by the public health measures as they are often less able to absorb or finance losses than larger companies. SMEs are also more likely to be operating in business sectors that have had to close due to public health measures such as hotels, restaurants, cafés and bars.
- (3) Many jurisdictions have acted quickly to relieve the immediate tax burden on businesses with appropriate support measures, a considerable part of which has been subject to Union State aid rules, in particular the new State Aid Temporary Framework ⁽²⁾. While the most common type of tax measure to enhance business cash flow has been the deferral of tax payments, changes to loss-offset provisions have also been an important tax policy tool.
- (4) The Member States usually permit three main ways of treating losses for tax purposes. Losses can normally be (a) used in the current accounting period in which they arise so that no tax is due in that period. In addition, excess losses can either be: (b) carried forward and set against the next available future profits to reduce tax liability; or, in some Member States; (c) carried back and set against total profits in the preceding tax year or up to a number of preceding years to generate a refund of tax previously paid.
- (5) As a policy measure, loss carry forward is less useful to immediately help struggling businesses, because the taxpayer will only get the liquidity benefit when they are profitable again and liable to tax. Losses from previous years can be used in the current accounting period but this would not free up any liquidity unless a taxpayer is profit making. Loss carry back is much more valuable to businesses affected by the crisis because it results in a refund of taxes paid in previous tax years and provides additional liquidity to companies. It would, in particular, benefit SMEs.
- (6) Loss carry back has the advantage of benefitting only the businesses that were profitable in the years before the pandemic, which means that it would support healthy businesses as a matter of principle. In practice, only businesses that were making a profit and paying taxes in the years prior to 2020 will be able to offset their 2020 and 2021 losses against those taxes. This ensures that the measure is targeted at businesses suffering as a direct result of the pandemic and public money is not spent trying to help private businesses that are failing for reasons unrelated to the crisis.

⁽¹⁾ For a definition of an SME see Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

⁽²⁾ Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91 I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112 I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

- (7) To ensure a targeted measure, the Member States that decide to allow carry back for more than one year, should restrict this to businesses that were not loss-making in the previous years. Therefore, if a loss carry back is allowed for two or three years, this should be for businesses that were not loss-making in 2019, 2018, or 2017.
- (8) The cost of such measures would mainly be a question of timing: the businesses get the money now when they most urgently need it, and they will not have to wait until they would be able to use their losses against future tax liability. The Member States will forgo tax revenue now, but they will receive tax revenue in the future from businesses that have remained afloat and will return to profitability. In addition, utilising loss carry backs will reduce existing loss carry forwards in future periods, which further mitigates the impact on tax revenues.
- (9) Some Member States have already introduced or announced measures allowing loss carry back for the 2020 tax year, which will allow taxpayers to carry back their 2020 tax losses against profits earned in previous fiscal years.
- (10) However, Member States usually operate divergent rules for the treatment of losses, which often creates an uneven playing field.
- (11) This recommendation to Member States on the domestic treatment of losses, drawing on best practice, could help level the playing field for companies across the Union.
- (12) This recommendation should apply for fiscal years 2020 and 2021, in order to help businesses during the COVID-19 crisis.
- (13) Member States should allow loss carry back for businesses to at least the previous fiscal year, i.e. until 2019. However, in order to enable taxpayers to utilise the full amount of their losses against taxes previously paid, the Member States may extend the carry back for up to the previous three years, i.e. until 2017. Smaller sized firms with lower profits can particularly benefit from this extended carry back period of up to three years.
- (14) The measure should be limited to prevent excessive impacts on national budgets. A limit of EUR 3 million per loss-making fiscal year would provide valuable support for smaller companies in particular, while also ensuring that all taxpayers benefit to some extent.
- (15) The Commission recalls that where Member States introduce measures fulfilling the conditions to constitute State aid that is not exempt from the obligation of notification, they must notify such measures to the Commission in line with the procedures generally applicable to State aid,

HAS ADOPTED THIS RECOMMENDATION

1. SUBJECT MATTER AND SCOPE

With the aim to benefit businesses in the light of the economic situation caused by the COVID-19 pandemic, this Recommendation sets out a coordinated approach towards the treatment of losses for businesses incurred in fiscal years 2020 and 2021.

2. THE TAX TREATMENT OF LOSSES

Given the exceptional economic circumstances in the years 2020 and 2021, as a result of the COVID-19 pandemic, Member States should allow loss carry back for businesses to at least the previous fiscal year, i.e. at least 2019.

Member States may extend that period to allow loss carry back up to the previous three years, thus allowing companies to set off their losses referring to fiscal years 2020 and 2021 against already taxed profits in the fiscal years 2019, 2018, and 2017.

Member States should allow businesses to immediately claim the carry back of losses which they estimate to incur in fiscal year 2021, without the need for waiting until the end of the year.

3. LIMITATIONS

In order to limit the impact on national budgets, Member States should limit the amount of losses to be carried back. EUR 3 million per loss-making fiscal year should be the maximum amount for the loss carry back.

If Member States allow the loss carry back up to 2017, eligible businesses should not have incurred losses in any of fiscal years 2019, 2018 and 2017.

4. FOLLOW-UP

Member States are requested to inform the Commission about the measures taken further to the present Recommendation, as well as on any changes made to such measures.

Member States are invited to discuss with the Commission their plans for providing loss carry back for businesses.

5. ADDRESSEES

This recommendation is addressed to the Member States.

Done at Brussels, 18 May 2021.

For the Commission
Paolo GENTILONI
Member of the Commission

III

(Other acts)

EUROPEAN ECONOMIC AREA

RULES OF PROCEDURE OF THE EFTA COURT

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THE EFTA COURT,

Having regard to the Agreement on the European Economic Area, and in particular Article 108(2) thereof,

Having regard to the competences conferred on the Court by the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular its Article 43(2), and Article 43 of Protocol 5 to that Agreement (Statute of the Court),

Having regard to the approval given by the Governments of the EFTA States,

ADOPTS THE FOLLOWING RULES OF PROCEDURE:

INTRODUCTORY PROVISIONS

Article 1

Definitions

1. In these Rules:

- (a) 'EEA Agreement' means the main part of the Agreement on the European Economic Area, its Protocols and Annexes as well as the acts referred to therein;
- (b) 'SCA' means the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, its Protocols and Annexes;
- (c) 'Statute' means Protocol 5 to the SCA on the Statute of the EFTA Court;
- (d) 'EFTA State' means a Member of the European Free Trade Association which is a Party to the EEA Agreement and to the SCA;
- (e) 'EU Member State' means a Member State of the European Union which is a Party to the EEA Agreement;
- (f) 'interested persons' means the States and institutions authorised, pursuant to Article 20 of the Statute, to submit statements of case or observations to the Court;
- (g) 'party' and 'parties', unless otherwise specified, means any party to the proceedings, including interveners;
- (h) 'main party' and 'main parties' means the applicant or the defendant or both of them, as the case may be;
- (i) 'ad hoc Judge' refers to a person replacing a Judge chosen from a list established by common accord by the Governments of the EFTA States as set down in the fourth paragraph of Article 30 SCA. Such person shall be selected from those persons on the list who were nominated by the Government that nominated the regular Judge who is to be replaced.

2. All references to the masculine shall be understood as referring to all genders as appropriate.

Article 2

Purpose

These Rules implement and supplement, insofar as necessary, the relevant provisions of the EEA Agreement, the SCA, and the Statute.

TITLE I

ORGANISATION OF THE COURT

CHAPTER 1

Judges*Article 3***Commencement of a Judge's term of office**

The term of office of a Judge shall begin on the date laid down in his instrument of appointment. In the absence of any provisions regarding the date, the term shall begin on the date of the instrument.

*Article 4***Taking of the oath**

Before taking up his duties, a Judge shall, in accordance with Article 2 of the Statute, at the first public sitting of the Court which he attends after his appointment, take the following oath or, in the alternative, make the following solemn declaration:

'I [swear/solemnly promise] that I will perform my duties impartially and conscientiously; I [swear/solemnly promise] that I will preserve the secrecy of the deliberations of the EFTA Court.'

*Article 5***Solemn undertaking**

Immediately after taking the oath, a Judge shall, in accordance with Article 4 of the Statute, sign a declaration by which he solemnly undertakes that, both during and after his term of office, he will respect the obligations arising therefrom, and in particular the duty to behave with integrity and discretion as regards the acceptance, after he has ceased to hold office, of certain appointments or benefits.

*Article 6***Depriving a Judge of his office**

1. Where the Court is called upon, pursuant to Article 6 of the Statute, to decide whether a Judge no longer fulfils the requisite conditions or no longer meets the obligations arising from his office, the President shall invite the Judge concerned to make representations to the Court, in closed session and in the absence of the Registrar.
2. The Court shall give a decision in the absence of the Registrar. The Judge concerned shall not take part in the deliberations.

*Article 7***Order of seniority**

1. The seniority of Judges shall be calculated according to the date on which they took up their duties.
2. Where there is equal seniority in office, the order of seniority shall be determined by age.

3. Judges whose terms of office are renewed shall retain their former seniority.
4. Judges chosen from the list provided for in the fourth paragraph of Article 30 SCA shall rank after the regular Judges. If two or more such Judges are acting in the same case, their internal rank shall be determined by age.

CHAPTER 2

Presidency

Article 8

Election of the President

1. The Judges shall, in accordance with the third paragraph of Article 30 SCA, elect one of their number as President for a term of three years.
2. If the office of the President falls vacant before the normal date of expiry of the term thereof, the Court shall elect a successor for the remainder of the term.
3. The elections provided for in this Article shall be by secret ballot. If a Judge obtains an absolute majority, he shall be elected. If no Judge obtains an absolute majority, a second ballot shall be held and the Judge obtaining the most votes shall be elected. Where two or more Judges obtain an equal number of votes the oldest of them shall be deemed elected.
4. The name of the President elected in accordance with this Article shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.

Article 9

Responsibilities of the President

1. The President shall represent the Court.
2. The President shall direct the judicial business and the administration of the Court. He shall preside at hearings, deliberations, and administrative meetings.
3. The President shall ensure the proper functioning of the Court.

Article 10

Where the President is prevented from acting

When the President is prevented from acting or when the office of president is vacant, the functions of President shall be exercised by one of the other Judges, according to the order of seniority laid down in Article 7.

CHAPTER 3

Registry

Article 11

Appointment of the Registrar

1. The Court shall appoint the Registrar.
2. When the post of Registrar is vacant, persons interested in the position shall be invited by public advertisement to submit their applications within a period of not less than three weeks, accompanied by full details, including their age, nationality, university degrees, knowledge of languages, present and past occupations, and judicial and international experience.

3. The appointment shall be made following the procedure laid down in Article 8(3).
4. The Registrar shall be appointed for a term of three years. He may be reappointed. The Court may decide to renew the term of office of the incumbent Registrar without availing itself of the procedure laid down in paragraph 2 of this Article.
5. The Registrar shall take the oath set out in Article 4 and sign the declaration provided for in Article 5.
6. The Registrar may be deprived of his office only if he no longer fulfils the requisite conditions or no longer meets the obligations arising from his office. The Court shall take its decision after giving the Registrar an opportunity to make representations.
7. If the office of Registrar falls vacant before the normal date of expiry of the term thereof, the Court shall appoint a new Registrar for a term of three years.
8. The name of the Registrar elected in accordance with this Article shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.

Article 12

Deputy Registrar

The Court may appoint a Deputy Registrar to assist the Registrar and to take his place if he is prevented from acting.

Article 13

Where the Registrar and Deputy Registrar are prevented from acting

Where the Registrar is prevented from acting and, if necessary, where the Deputy Registrar is so prevented, the President shall designate an official to carry out the duties of Registrar.

Article 14

Responsibilities of the Registrar

1. The Registrar shall be responsible, under the authority of the President, for the acceptance, transmission, and custody of all documents and for effecting service as provided for by these Rules.
2. The Registrar shall assist the Judges in all their official functions.
3. The Registrar shall have custody of the seals and shall be responsible for the records. He shall be in charge of the publications of the Court and, in particular, the EFTA Court Reports, and of the publication on the internet of documents concerning the Court.
4. He shall be responsible, under the authority of the President, for the management of the staff and the administration of the Court, and for its financial management and its accounts, including the preparation and implementation of the budget.
5. Instructions to the Registrar shall be adopted by the Court acting on a proposal from the President.
6. Unless provided otherwise in these Rules, the Registrar shall attend the sittings of the Court.

*Article 15***Keeping of the register**

1. There shall be kept in the Registry, under the responsibility of the Registrar, a register in which all pleadings and supporting items and documents lodged shall be entered in the order in which they are submitted.
2. When a document has been registered, the Registrar shall make a note to that effect on the original and, if a party so requests, on any copy submitted for the purpose.
3. Entries in the register and the notes provided for in the preceding paragraph shall be authentic.
4. Rules for the keeping of the register shall be prescribed by the Instructions to the Registrar referred to in Article 14(5).
5. A notice shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union* indicating the date of registration of an application initiating proceedings, the names of the parties, the form of order sought by the applicant and a summary of the pleas in law and of the main supporting arguments or, as the case may be, the date of lodging of a request for an advisory opinion, the identity of the referring court or tribunal, the parties to the main proceedings and the questions referred to the Court.

*Article 16***Consultation of the register and of judgments and orders**

1. Anyone may consult the register at the Registry and obtain copies or extracts, including certified copies of judgments and orders, on payment of a charge on a scale fixed by the Court on a proposal from the Registrar.
2. The parties to a case may, subject to Articles 59 and 60, on payment of the appropriate charge, as fixed according to the preceding paragraph, obtain certified copies of procedural documents and authenticated copies of orders and judgments.
3. No third party, private or public, may have access to the file in a case without the express authorisation of the President, once the parties have been heard. Such authorisation may be granted, in whole or in part, only upon written request accompanied by a detailed explanation of the third party's legitimate interest in having access to the file.
4. Rules concerning access to the Court's historical archives may be laid down by the Court.

*Article 17***Authorisation to provide registry functions**

Following the approval of the EFTA States, the Court may provide registry functions to judicial bodies of an international nature.

*CHAPTER 4****Officials and other servants****Article 18***Appointment**

1. The officials and other servants of the Court shall be appointed in accordance with the provisions of the Staff Regulations for the EFTA Court.

2. Before taking up his duties, an official or other servant shall take the following oath or, in the alternative, make the following solemn declaration, before the President, in the presence of the Registrar:

'I [swear/solemnly promise] that I will perform loyally, discreetly and conscientiously the duties assigned to me by the EFTA Court.'

Article 19

Organisation

The organisation of the Court shall be laid down, and may be modified, by the Court.

CHAPTER 5

The working of the court

Article 20

Calendar of judicial business

1. The judicial year shall begin on 1 January and end on 31 December of each calendar year.
2. The judicial vacations shall be determined by the Court.
3. In a case of urgency, the President may convene the Judges during the judicial vacations.
4. The Court shall observe the official holidays of the place in which it has its seat.
5. The Court may, in proper circumstances, grant leave of absence to any Judge.
6. The dates of the judicial vacations and the list of official holidays shall be published annually in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.

Article 21

Designation of the Judge-Rapporteur

1. As soon as possible after the document initiating proceedings has been lodged, the President shall designate a Judge to act as Rapporteur in the case.
2. The President shall take the necessary steps to designate another Judge to act as Rapporteur if the designated Judge-Rapporteur is prevented from acting.

Article 22

Withdrawal and excusing of a Judge

1. Where a Judge considers, in accordance with the first and second paragraphs of Article 15 of the Statute, that he should not take part in the disposal of a case, he shall so inform the President, who shall exempt him from sitting.
2. Where the President considers that a Judge should not, in accordance with the first and second paragraphs of Article 15 of the Statute, take part in the disposal of a case, he shall notify the Judge concerned and shall hear that Judge before giving his decision.
3. In accordance with the third paragraph of Article 15 of the Statute, any difficulty arising as to the application of this Article shall be settled according to the fourth paragraph of Article 30 SCA.

4. Where pursuant to this Article a Judge is withdrawn or excused from sitting, an ad hoc Judge shall be chosen to replace him, in accordance with the fourth paragraph of Article 30 SCA.

Article 23

Where a Judge is prevented from acting

If the Court is not complete as a result of a Judge's being prevented from acting, an ad hoc Judge shall be chosen to replace him, in accordance with the fourth paragraph of Article 30 SCA.

Article 24

Hearings

1. The dates and times of the hearings of the Court shall be fixed by the President.
2. The Court may choose to hold sittings in a place other than that in which the Court has its seat.

Article 25

Drawing-up of minutes

1. Where the Court sits in the presence of the Registrar, the Registrar shall, if necessary, draw up minutes, which shall be signed by the President and by the Registrar.
2. Where the Court sits without the Registrar being present, the President shall, if necessary, instruct the most junior Judge, according to the order of seniority laid down in Article 7, to draw up minutes, which shall be signed by that Judge and by the President.

Article 26

Deliberations

1. When a hearing has taken place, only those Judges who participated in that hearing shall take part in the deliberations.
2. Every Judge taking part in the deliberations shall state his opinion and the reasons for it.
3. The conclusions reached by the majority of the Judges after final discussion shall determine the decision of the Court.
4. The deliberations of the Court shall be and shall remain secret.
5. If the deliberations of the Court concern questions of its own administration, the Registrar shall be present, unless the Court decides to the contrary.

Article 27

Decisions of the Court - quorum

1. Decisions of the Court shall be valid only when all the Judges have participated in the deliberations.
2. If, as a result of a Judge's being prevented from acting, exempted from acting, or withdrawn so that the Court is incomplete, an ad hoc Judge shall be chosen to replace that Judge, in accordance with the fourth paragraph of Article 30 SCA.
3. Decisions of the Court on administrative matters may be adopted with two Judges present. In such cases, the President shall have a casting vote.

*Article 28***Annual Report**

1. The Court shall publish its reports, orders, judgments, and other judicial decisions on its website.
2. The Court may decide to issue its Annual Report electronically.

*CHAPTER 6***Languages***Article 29***Language of the Court**

1. The language of the Court shall be English. This shall apply to the whole procedure including deliberations, decisions, and minutes of the Court.
2. English shall be used in the written and the oral part of the procedure, unless otherwise provided in these Rules.
3. Without prejudice to Article 30, all supporting documents submitted to the Court shall be in English or be accompanied by a translation into English, unless the Court decides otherwise.
4. In the case of lengthy documents, translations may be confined to extracts. However, the Court may, of its own motion or at the request of a party, at any time call for a complete or fuller translation.
5. The Court may, at the request of a party or intervener other than an interested party, allow this party or intervener to address and be addressed by the Court in an official language of an EFTA State or of the European Union in the oral part of the procedure. The Court shall arrange for interpretation to and from English. Such a request shall be submitted at least three weeks in advance of the oral part of the procedure.

*Article 30***Advisory opinion procedure**

1. Where a request for an advisory opinion is referred to the Court in accordance with Article 34 SCA, the referring court or tribunal is entitled to make its request in the language in which the case is dealt with before that court or tribunal. The Court shall arrange for translation into English.
2. The referring court or tribunal and the parties to the dispute before it may submit documents to the Court in the language in which the case is dealt with before that court or tribunal. Such documents shall be translated into English to the extent that it is found necessary by the Court. The Court shall arrange for the translation.
3. The Court shall arrange for translation of the report for the hearing in order to also make it available in the language in which the case is dealt with before the referring court or tribunal.
4. Parties to the dispute before the referring court or tribunal are entitled orally to address and be addressed by the Court in the language in which the case is dealt with before that court or tribunal. The Court shall arrange for interpretation to and from English. A party wishing to use such a language shall inform the Registrar at least three weeks in advance of the oral part of the procedure.
5. The judgment of the Court shall be given in English and in the language in which the request was made. The judgment shall be authentic in these languages.

*Article 31***Witnesses**

Where a witness or expert states that he is unable to express himself adequately in English, the Court may authorise him to give his evidence in another language. The Court shall arrange for interpretation. Such a request shall normally be submitted at least three weeks in advance of the oral part of the procedure.

*Article 32***Publications of the Court**

Publications of the Court shall be issued in English, German, Icelandic, or Norwegian.

TITLE II

COMMON PROCEDURAL PROVISIONS

CHAPTER 1

Rights and obligations of agents, advisers and lawyers*Article 33***Privileges, immunities and facilities**

1. Agents, advisers and lawyers who appear before the Court or before any judicial authority to which the Court has addressed letters rogatory, shall enjoy immunity in respect of words spoken or written by them concerning the case or the parties.
2. Agents, advisers and lawyers shall also enjoy the following privileges and facilities:
 - (a) any papers and documents relating to the proceedings shall be exempt from both search and seizure. In the event of a dispute, the customs officials or police may seal those papers and documents; they shall then be immediately forwarded to the Court for inspection in the presence of the Registrar and of the person concerned;
 - (b) agents, advisers and lawyers shall be entitled to such allocation of foreign currency as may be necessary for the performance of their duties;
 - (c) agents, advisers and lawyers shall be entitled to travel in the course of duty without hindrance.

*Article 34***Status of the parties' representatives**

1. In order to qualify for the privileges, immunities and facilities specified in Article 33, persons entitled to them shall furnish proof of their status as follows:
 - (a) agents shall produce an official document issued by the party for whom they act, who shall immediately serve a copy thereof on the Registrar;
 - (b) lawyers shall produce a certificate that they are authorised to practise before a court of a State that is a party to the EEA Agreement, and, where the party whom they represent is a legal person governed by private law, an authority to act issued by that person;
 - (c) advisers shall produce an authority to act issued by the party whom they are assisting.
2. The Registrar shall provide them with a certificate, if required. The validity of this certificate shall be limited to a specified period, which may be extended or curtailed according to the duration of the proceedings.

*Article 35***Waiver of immunity**

1. The privileges, immunities and facilities specified in Article 33 are granted exclusively in the interests of the proper conduct of proceedings.
2. The Court may waive immunity where it considers that the proper conduct of proceedings will not be hindered thereby.

*Article 36***Exclusion from the proceedings**

1. If the Court or the President considers that the conduct of an agent, adviser or lawyer before the Court, the President, a Judge or the Registrar is incompatible with the dignity of the Court or with the requirements of the proper administration of justice, or that such agent, adviser or lawyer is using his rights for purposes other than those for which they were granted, it shall inform the person concerned. If the Court informs the competent authorities to whom the person concerned is answerable, a copy of the letter sent to those authorities shall be forwarded to the person concerned.
2. On the same grounds, the Court may at any time, having heard the person concerned, decide to exclude an agent, adviser or lawyer from the proceedings by reasoned order. That order shall have immediate effect.
3. Where an agent, adviser or lawyer is excluded from the proceedings, the proceedings shall be suspended for a period fixed by the President in order to allow the party concerned to appoint another agent, adviser or lawyer.
4. Decisions taken under this Article may be rescinded.

*CHAPTER 2***Notification and service***Article 37***Notification of requests for advisory opinions**

In cases governed by Article 34 SCA, the court or tribunal of an EFTA State that suspends its proceedings and refers a case to the Court shall notify the Court of its decision. The decision shall then be notified by the Registrar to the parties and interested persons, accompanied by a translation into English of the request.

*Article 38***Methods of service**

1. Documents may be served on a person by post, in accordance with paragraph 2, by e-EFTACourt, in accordance with paragraph 3, or by any other technical means of communication, in accordance with paragraphs 4 and 5.
2. Where these Rules require that a document be served on a person, the Registrar shall ensure that service is effected at that person's address for service either by the dispatch of a copy of the document by registered post with a form for acknowledgement of receipt or by personal delivery of the copy against a receipt. The Registrar shall prepare and certify the copies of documents to be served, save where the parties themselves supply the copies in accordance with Article 54(3).
3. The Court may, by decision, determine the criteria for a pleading to be served by electronic or other technical means. That decision shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*, and shall be included in Annex I to these Rules.

4. Where the addressee has agreed that service is to be effected on him by any other technical means of communication, any procedural document, including a judgment or order of the Court, may be served by the transmission of a copy of the document by such means. Where a document is to be served on a person by such technical means, service is effected on the day on which the Court transmitted the document to the person concerned via the agreed technical means.

5. Where, for technical reasons or on account of the nature or size of the document, service of the document in accordance with paragraph 4 is impossible or impracticable, the document shall be served, if the addressee has not specified an address for service, at his address in accordance with the procedures laid down in paragraph 2 of this Article. The addressee shall be so informed by technical means of communication. Service shall then be deemed to have been effected on the addressee by registered post on the 10th day following the lodging of the registered letter at the post office of the place in which the Court has its seat, unless it is shown by the acknowledgement of receipt that the letter was received on a different date or the addressee informs the Registrar, within three weeks of being informed by technical means of communication, that the document to be served has not reached him.

CHAPTER 3

Time-Limits

Article 39

Calculation of time-limits

1. Any procedural time-limit prescribed by the EEA Agreement, the SCA, the Statute, or these Rules shall be calculated as follows:

- (a) where a time-limit expressed in days, weeks, months or years is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the time-limit in question;
- (b) a time-limit expressed in weeks shall end with the expiry of whichever day in the last week is the same day of the week as the day during which the event or action from which the time-limit is to be calculated occurred or took place;
- (c) a time-limit expressed in months or in years shall end with the expiry of whichever day in the last month or year falls on the same date as the day during which the event or action from which the time-limit is to be calculated occurred or took place. If, in a time-limit expressed in months or in years, the day on which it should expire does not occur in the last month, the time-limit shall end with the expiry of the last day of that month;
- (d) where a time-limit is expressed in months and days, it shall first be calculated in whole months, then in days;
- (e) time-limits shall include the official holidays referred to in Article 20, Saturdays, and Sundays;
- (f) time-limits shall not be suspended during the judicial vacations referred to in Article 20.

2. If the time-limit would otherwise end on a Saturday, Sunday, or an official holiday, it shall be extended until the end of the first following working day.

Article 40

Proceedings against a measure adopted by the EFTA Surveillance Authority

The time-limit allowed for initiating proceedings against a measure adopted by the EFTA Surveillance Authority shall run from the day following the receipt by the person concerned of notification of the measure or, where the measure is published, from the end of the fourteenth day after publication thereof in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.

*Article 41***Distance**

Any time-limit prescribed by the EEA Agreement, the SCA, the Statute, or these Rules may not be extended on considerations of distance alone.

*Article 42***Setting and extension of time-limits**

1. Any time-limit prescribed pursuant to these Rules may be extended by whoever prescribed it.
2. The President may delegate to the Registrar power of signature for the purposes of fixing certain time-limits which, pursuant to these Rules, it falls to him to prescribe, or of extending such time-limits.
3. A procedural document lodged at the Registry after expiry of the time-limit set by the President or by the Registrar pursuant to these Rules may be accepted only pursuant to a decision of the President to that effect.

*Article 43***Force majeure**

No right shall be prejudiced in consequence of the expiry of a time-limit if the party concerned proves the existence of unforeseeable circumstances or of force majeure.

*CHAPTER 4****Different procedures for dealing with cases****Article 44***Procedures for dealing with cases**

1. Without prejudice to the special provisions laid down in the Statute or in these Rules, the procedure before the Court shall consist of a written part and an oral part.
2. Without prejudice to the provisions contained in paragraphs 3 to 5, the Court shall deal with the cases before it in the order in which they become ready for examination. Where the preparatory inquiries in several cases are completed simultaneously, the order in which they are to be dealt with shall be determined by the dates of entry in the register of the applications initiating them respectively.
3. The President may in special circumstances decide that a case be given priority over others.
4. A request for an advisory opinion may be dealt with under an expedited procedure in accordance with the conditions provided for in Chapter 2 of Title III.
5. A direct action may be dealt with under an expedited procedure in accordance with the conditions provided for in Chapter 5 of Title IV.

*Article 45***Anonymity and omission of certain information vis-à-vis the public**

On a reasoned application by a party, made by a separate document, or of his own motion, the President may, after hearing the Judge-Rapporteur, decide to omit the name of a party to the dispute or of other persons mentioned in connection with the proceedings, or certain information, from those documents relating to a case to which the public has access, if there are legitimate reasons for keeping the identity of a person or the information confidential.

*Article 46***Joinder**

1. The Court may, at any time, after giving the parties an opportunity to express their views, order that two or more cases of the same type concerning the same subject-matter shall, on account of the connection between them, be joined for the purposes of the written or the oral part of the procedure or of the decision which closes the proceedings. The cases may subsequently be disjoined.
2. All the parties to the joined cases may examine the files in the cases concerned at the Registry. The President may, however, on application by a party, order that certain confidential information from the case-file be excluded from that consultation.
3. Without prejudice to paragraph 2, procedural documents included in the files of the cases concerned by the joinder shall be served on the parties to the joined cases, provided that the representatives of those parties request it and have agreed to the method of service referred to in Article 38(3).

*Article 47***Stay of proceedings**

1. Proceedings may be stayed:
 - (a) at the request of a main party with the agreement of the other main party; or
 - (b) where the proper administration of justice so requires.
2. The decision to stay proceedings shall be taken by the President after hearing the Judge-Rapporteur and, save in the case of advisory opinions, the parties.
3. The proceedings may be resumed by decision of the President adopted following the same procedure laid down in paragraph 2, unless the decision to stay fixes the length of the stay.
4. The decisions referred to in paragraphs 2 and 3 shall be served on the parties and interested persons.
5. The stay of proceedings shall take effect on the date indicated in the decision to stay or, in the absence of such indication, on the date of that decision.
6. During the period in which proceedings are stayed, all procedural time-limits shall be suspended.
7. A decision ordering that the proceedings be resumed before the end of the stay, or as referred to in paragraph 8, shall be taken in accordance with the procedure laid down in paragraph 2.
8. Where the decision to stay does not fix the length of stay, it shall end on the date indicated in the decision to resume the proceedings or, in the absence of such indication, on the date of the latter decision.
9. From the date of resumption of proceedings following a stay, any suspended procedural time-limits shall be replaced by new time-limits set by the President and time shall begin to run from the date of that resumption.

*Article 48***Deferment of the determination of a case**

The President may in special circumstances, after hearing the parties, either on his own initiative or at the request of one of the parties, defer a case to be dealt with at a later date. On a joint application by the parties, the President may likewise order that a case be deferred.

CHAPTER 5

Legal aid

Article 49

Legal aid

1. Any party who, because of his economic situation, is wholly or in part unable to meet the costs of the proceedings before the Court may at any time apply for legal aid. The economic situation of the applicant shall be assessed, taking into account objective factors such as income, capital, and family circumstances.
2. Legal aid shall cover, in whole or in part, the costs involved in legal assistance and representation by a lawyer in proceedings before the Court. The Court shall be responsible for these costs in accordance with Article 52.

Article 50

Application for legal aid

1. The application shall be accompanied by all information and supporting documents making it possible to assess the applicant's financial situation, such as a certificate issued by a competent national authority attesting to his financial situation.
2. The application for legal aid need not be made through a lawyer.
3. In advisory opinion proceedings, if the applicant has already obtained legal aid before the referring court or tribunal, he shall produce the decision of that court or tribunal and specify what is covered by the sums already granted.
4. In direct actions, an application for legal aid may be made before the action has been brought or while it is pending. If the application is made before the action has been brought, the applicant must briefly state the subject-matter of the proposed action, the facts of the case, and the arguments in support of the action. The application must be accompanied by supporting documents in that regard.

The introduction of an application for legal aid shall, for the person who made it, suspend the time-limit prescribed for the bringing of an action until the date of service of the order making a decision on that application or, in the cases referred to in Article 51(4), of the order designating the lawyer instructed to represent the applicant.

Legal aid shall be refused if the action in respect of which the application is made appears to be manifestly inadmissible or manifestly unfounded.

The Court shall invite the other party to submit its written observations unless it is already apparent from the information produced that the conditions laid down in Article 49(1) have not been satisfied or that the preceding subparagraph shall apply.

Article 51

Decision on the application for legal aid

1. The President shall assign the application for legal aid, as soon as it is lodged, to a Judge-Rapporteur, who shall put forward, promptly, a proposal regarding the action to be taken.
2. The decision to grant legal aid, in full or in part, or to refuse it shall be taken by the Court on a proposal from the Judge-Rapporteur.
3. The Court shall give its decision by way of order. Where the application for legal aid is refused in whole or in part, the order shall state the reasons for that refusal.

4. Any order granting legal aid may designate a lawyer to represent the person concerned if that lawyer has been proposed by the applicant in the application for legal aid and has agreed to represent the applicant before the Court.
5. If the applicant has not indicated his choice of lawyer, or if the Court considers that his choice is unacceptable, the Registrar shall send a copy of the order and of the application for legal aid to the authority named in Annex II as being the competent authority of the EFTA State concerned.
6. The lawyer instructed to represent the applicant shall be designated by way of order, having regard to the suggestions made by the applicant or to the suggestions made by the authority referred to in paragraph 5, as the case may be.
7. An order granting legal aid may specify an amount to be paid to the lawyer instructed to represent the person concerned or fix a limit which the lawyer's disbursements and fees may not, in principle, exceed. It may provide for a contribution to be made by the person concerned to the costs referred to in Article 52(1), having regard to his economic situation.

Article 52

Advances and responsibility for costs

1. Where legal aid is granted, the Court shall be responsible, where applicable within the limits set by it, for costs involved in the assistance and representation of the applicant before the Court. At the request of the applicant or his representative, an advance on those costs may be paid.
2. In direct actions, where, by virtue of the decision closing the proceedings, the recipient of legal aid has to bear his own costs, the President shall by way of reasoned order fix the lawyer's disbursements and fees which are to be paid by the Court. He may refer the matter to the Court.

Where, in the decision closing the proceedings, the Court has ordered another party to pay the costs of the recipient of legal aid, that other party shall be required to refund to the Court any sums advanced by way of legal aid.

The Registrar shall take steps to obtain the recovery of the sums referred to in the preceding subparagraph from the party ordered to pay them.

Where the recipient of the aid is unsuccessful, the Court may, in ruling as to costs in the decision closing the proceedings, if equity so requires, order that one or more parties should bear their own costs or that those costs should be borne, in whole or in part, by the Court by way of legal aid.

Article 53

Withdrawal of legal aid

If the circumstances which led to the grant of legal aid alter during the proceedings, the Court may, of its own motion or on request, withdraw that legal aid, having heard the person concerned. An order withdrawing legal aid shall contain a statement of reasons.

CHAPTER 6

Written procedure

Article 54

Lodging of pleadings

1. Pleadings may be lodged in paper form, in accordance with paragraphs 2 to 7, or by e-EFTACourt, in accordance with paragraph 8.

2. The original of every pleading must bear the signature of the party's agent or lawyer, or, in the case of observations submitted in the context of advisory opinion proceedings, that of the party to the main proceedings or his representative, if the national rules of procedure applicable to those main proceedings so permit.
3. The original, accompanied by all annexes referred to therein, shall be lodged together with five copies for the Court and, in the case of proceedings other than advisory opinion proceedings, a copy for every other party to the proceedings. Copies shall be certified by the party lodging them.
4. All pleadings shall bear a date. In the calculation of procedural time-limits, only the date of lodging the original pleadings at the Registry shall be taken into account.
5. To every pleading there shall be annexed a file containing the items and documents relied on in support of it, together with a schedule listing them.
6. Where in view of the length of an item or document only extracts from it are annexed to the pleadings, the whole item or document or a full copy of it shall be lodged at the Registry.
7. By way of derogation from the second sentence of paragraph 4, the date on which a copy of the signed original of a pleading, including the schedule of items and documents referred to in paragraph 5, is received at the Registry by any technical means of communication available to the Court shall be deemed to be the date of lodging for the purposes of compliance with procedural time-limits, provided that the signed original of the pleading, accompanied by the annexes and copies referred to in paragraph 3, is lodged at the Registry no later than 10 days thereafter.
8. The Court may by decision determine the criteria for a pleading sent to the Registry by electronic or other technical means to be deemed to be the original of that document. That decision shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*, and shall be included in Annex I to these Rules.

CHAPTER 7

Preliminary report

Article 55

Preliminary report

1. When the written part of the procedure is closed, the President shall fix a date on which the Judge-Rapporteur is to present his preliminary report to the Court.
2. The preliminary report shall contain proposals as to whether particular measures of organisation of procedure, measures of inquiry or, where appropriate, requests to the referring court or tribunal for clarification should be undertaken. It shall also contain the Judge-Rapporteur's proposals, if any, as to whether to dispense with a hearing.
3. The Court shall decide what action to take on the proposals of the Judge-Rapporteur.

CHAPTER 8

Measures of organisation of procedure and measures of inquiry*Article 56***Measures of organisation of procedure and measures of inquiry**

1. At any stage of the proceedings, the Court may prescribe any measure of organisation of procedure or any measure of inquiry referred to in the following Articles, or order that a previous inquiry be repeated or expanded.
2. The measures of organisation of procedure or any measure of inquiry, which the Court has ordered, may be conducted by the Court itself, or be assigned to the Judge-Rapporteur.

*Article 57***Measures of organisation of procedure**

1. The purpose of measures of organisation of procedure shall be to ensure that cases are prepared for hearing, procedures carried out, and disputes resolved under the best possible conditions.
2. Measures of organisation of procedure shall, in particular, have as their purpose:
 - (a) to ensure the efficient conduct of the written and the oral part of the procedure and facilitate the taking of evidence;
 - (b) to determine the points on which the parties must present further argument or which call for measures of inquiry;
 - (c) to clarify the forms of order sought by the parties, their pleas in law and arguments and the points at issue between them;
 - (d) to facilitate the amicable settlement of disputes.
3. Measures of organisation of procedure may, in particular, consist of:
 - (a) putting questions to the parties;
 - (b) inviting the parties to make written or oral submissions on certain aspects of the proceedings;
 - (c) asking the parties or third parties for information or particulars;
 - (d) asking the parties to produce documents or any papers relating to the case;
 - (e) summoning the parties' agents, advisers, lawyers or the parties in person to meetings.
4. Each party may, at any stage of the procedure, propose the adoption or modification of measures of organisation of procedure. Such proposal shall be made by way of a separate document or be made in a separate section of the pleading in question. In such cases, the other parties shall be heard before the measures concerned are prescribed.
5. Where the procedural circumstances so require, the Registrar shall inform the parties of the measures envisaged by the Court and shall give them an opportunity to submit comments orally or in writing.

*Article 58***Measures of inquiry**

1. The Court shall prescribe the measures of inquiry that it considers appropriate by means of an order setting out the facts to be proved. The order shall be served on the parties.

2. Before the Court decides on the measures of inquiry referred to in paragraph 3(c) to (e), the Registrar shall inform the parties of the measures envisaged by the Court and shall give them an opportunity to make comments orally or in writing.
3. Without prejudice to Articles 21 and 22 of the Statute, the following measures of inquiry may be adopted:
 - (a) the personal appearance of the parties;
 - (b) a request for information and production of documents;
 - (c) oral testimony;
 - (d) the commissioning of an expert's report;
 - (e) an inspection of the place or thing in question.
4. Evidence may be submitted in rebuttal and previous evidence may be amplified.
5. The parties shall be entitled to attend the measures of inquiry.

Article 59

Treatment of confidential information and material

1. Where it is necessary for the Court to examine, on the basis of the matters of law and of fact relied on by a party, the confidentiality, vis-à-vis other parties, of certain information or material produced before the Court following a measure of inquiry referred to in Article 58 that may be relevant in order for the Court to rule in a case, that information or material shall not be communicated to the other parties at the stage of such examination.
2. Where the Court concludes in the examination provided for in paragraph 1 that certain information or material produced before it is relevant in order for it to rule in the case and is confidential vis-à-vis other parties, it shall weigh that confidentiality against the requirements linked to the right to effective judicial protection, particularly observance of the adversarial principle.
3. After weighing up the matters referred to in paragraph 2, the Court may decide to bring the confidential information or material to the attention of the other parties, making its disclosure subject, if necessary, to the giving of specific undertakings, or it may decide not to communicate such information or material, specifying, by reasoned order, the procedures enabling the other parties, to the greatest extent possible, to make their views known, including ordering the production of a non-confidential version or a non-confidential summary of the information or material, containing the essential content thereof.

Article 60

Documents to which access has been denied by the EFTA Surveillance Authority

Where a document to which access has been denied by the EFTA Surveillance Authority has been produced before the Court in proceedings relating to the legality of that denial, that document shall not be communicated to the other parties.

CHAPTER 9

Summoning and examination of witnesses and experts

Article 61

Oral testimony

1. The Court may, either of its own motion or at the request of a party, order that certain facts be proved by a witness. A request by a party for the examination of a witness shall state precisely about what facts and for what reasons the witness should be examined. The Court shall rule by reasoned order on the request.

2. Witnesses shall be summoned by an order of the Court containing the following information:
 - (a) the name and address of the witness;
 - (b) an indication of the facts about which the witness is to be examined;
 - (c) where appropriate, particulars of the arrangements made by the Court for reimbursement of expenses incurred by the witness.
3. The order shall be served on the parties and the witnesses.

Article 62

Examination of witnesses

1. After the identity of the witness has been established, the President shall inform him that he will be required to vouch for the truth of his evidence in the manner laid down in these Rules and that any violation by him of this requirement constitutes an offence under Article 26 of the Statute.
2. The witness shall, before giving his evidence, take the following oath or, in the alternative, make the following solemn declaration:

'I [swear/solemnly promise] that I will tell the truth, the whole truth and nothing but the truth.'

The Court may, after hearing the parties, exempt a witness from taking the oath or making the solemn declaration.

3. The witness shall give his evidence to the Court, the parties having been given notice to attend. After the witness has given his main evidence, the President, at the request of a party or of his own motion, and the other Judges, may put questions to him. Subject to the control of the President, questions may be put to witnesses by the representatives of the parties.

Article 63

Expert's report

1. The Court may order that an expert's report be obtained. The order appointing the expert shall define his task and set a time-limit within which he is to submit his report.
2. The expert shall receive a copy of the order, together with all the documents necessary for carrying out his task. He shall be under the supervision of the Judge-Rapporteur, who may be present during his investigation and who shall be kept informed of his progress in carrying out his task.
3. At the request of the expert, the Court may order the examination of witnesses. Their examination shall be carried out in accordance with Article 62.
4. The expert may give his opinion only on points which have been expressly referred to him.
5. After the expert has submitted his report and that report has been served on the parties, the Court may order that the expert be examined. The parties shall be given notice to attend the examination. The President, at the request of one of the parties or on his own motion, and the other Judges, may put questions to the expert. Subject to the control of the President, questions may be put to the expert by the representatives of the parties.
6. The expert shall, after submitting his report, take the following oath or, in the alternative, make the following solemn declaration, before the Court:

'I [swear/solemnly promise] that I have conscientiously and impartially carried out my task.'

The Court may, after hearing the parties, exempt the expert from taking the oath or making the solemn declaration.

*Article 64***Duties of witnesses and experts**

1. A witness who has been duly summoned shall obey the summons and attend for examination, unless he proffers a valid excuse to the Court.
2. The Court may, in accordance with Article 26 of the Statute, decide to report to the competent authority of the EFTA State referred to in Annex II any defaulting witness or any case of perjury on the part of a witness or expert. The Registrar shall be responsible for communicating the decision of the Court. The decision shall set out the facts and circumstances on which the report is based.

*Article 65***Objection to a witness or expert**

1. If one of the parties objects to a witness or to an expert on the ground that he is not a competent or proper person to act as a witness or expert or for any other reason, or if a witness or expert refuses to give evidence, to take the oath or to make a solemn affirmation equivalent thereto, the matter shall be resolved by the Court.
2. An objection to a witness or to an expert shall be raised within two weeks after service of the order summoning the witness or appointing the expert. The statement of objection must set out the grounds of objection and indicate the nature of any evidence offered.

*Article 66***Witnesses' and experts' costs**

1. Witnesses and experts shall be entitled to reimbursement of their travel and subsistence expenses.
2. Where the Court orders the examination of witnesses or an expert's report, it may request the parties or one of them to lodge security for the witnesses' costs or the costs of the expert's report.
3. The Court shall advance the funds necessary in connection with the examination of any witness or the commissioning of an expert's report which the Court requested of its own motion.
4. Witnesses shall be entitled to compensation for loss of earnings, and experts to fees for their services. The Court shall pay witnesses and experts these sums after they have carried out their respective duties or tasks.

*Article 67***Minutes of inquiry hearings**

1. The Registrar or a Judge designated by the President shall draw up minutes of every inquiry hearing. The minutes shall be signed by the President or by the Judge-Rapporteur responsible for conducting the examination of the witness or expert, and by the Registrar or the Judge designated to draw up the minutes. Before the minutes are thus signed, witnesses shall be given an opportunity to check the content of the minutes and to sign them.
2. The minutes shall constitute an official record.

*Article 68***Letters rogatory**

1. The Court may, on application by a party or of its own motion, issue letters rogatory for the examination of witnesses or experts.

2. Letters rogatory shall be issued in the form of an order, which shall contain the surname, forenames, description and address of the witness or expert, set out the facts on which the witness or expert is to be examined, name the parties, their agents, lawyers or advisers, indicate their addresses for service and briefly describe the subject-matter of the proceedings.

Notice of the order shall be served on the parties by the Registrar.

3. The Registrar shall send the order to the competent authority of the EFTA State referred to in Annex II in whose territory the witness or expert is to be examined.

Where necessary, the order shall be accompanied by a translation into the official language or languages of the State to which it is addressed.

The authority named pursuant to the first subparagraph shall pass on the order to the judicial authority which is competent according to its national law.

The competent judicial authority shall give effect to the letters rogatory in accordance with its national law. After implementation, the competent judicial authority shall transmit to the authority named pursuant to the first subparagraph the order embodying the letters rogatory, any documents arising from the implementation, and a detailed statement of costs. These documents shall be sent to the Registrar.

The Registrar shall be responsible for the translation of the documents into English.

4. The Court shall defray the expenses occasioned by the letters rogatory without prejudice to the right to charge them, where appropriate, to the parties.

CHAPTER 10

Oral part of the procedure

Article 69

Opening date

The President shall fix the opening date of the oral part of the procedure once all measures of organisation of procedure or measures of inquiry instituted during the written procedure, if any, have been completed.

Article 70

Dispensing with the oral part of the procedure

The Court may, acting on a report from the Judge-Rapporteur, with the express consent of the parties, decide to dispense with the oral part of the procedure.

Article 71

Report for the hearing

Before the oral part of the procedure, a report for the hearing from the Judge-Rapporteur shall be communicated to the parties and interested persons.

Article 72

Absence of the parties from the hearing

1. Where a party informs the Court that he will not be present at the hearing or where the Court finds at the hearing that a party who has been duly given notice to attend is absent without excuse, the hearing shall proceed in the absence of the party concerned.

2. Where the main parties indicate to the Court that they will not be present at the hearing, the President shall decide whether the oral part of the procedure may be closed.

Article 73

Joint hearing

If the similarities between two or more cases of the same type so permit, the Court may decide to hold a joint hearing of those cases.

Article 74

Conduct of oral proceedings

Oral proceedings shall be directed by the President, who shall be responsible for the proper conduct of the hearing.

Article 75

Cases heard in camera

1. For serious reasons, the Court may decide to hear a case *in camera*, in accordance with Article 27 of the Statute. This may also apply to cases referred for an advisory opinion, upon request of the referring court or tribunal.
2. The request by a party for a case to be heard *in camera* must include reasons and specify whether it concerns all or part of the hearing. Where a party makes such a request, the Court shall decide upon it after hearing the parties.
3. The oral proceedings in cases heard *in camera* shall not be published.

Article 76

Addressing the Court

Unless Article 91(3) applies, a party may address the Court only through his agent, adviser or lawyer.

Article 77

Closing of the oral part of the procedure

After the parties and interested persons have presented oral arguments, the President shall declare the oral part of the procedure closed.

Article 78

Opening or reopening of the oral part of the procedure

The Court may at any time order the opening or reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons.

Article 79

Minutes of the hearing

1. The Registrar or a Judge designated by the President shall draw up minutes of every hearing in accordance with Article 25.

2. The minutes shall contain the date and place of the hearing, the names of the Judges and the Registrar present, the reference to the case, the names of the parties, the names and descriptions of the parties' agents, advisers and lawyers, an indication of any documents lodged by the parties in the course of the hearing, and the decisions of the Court or the President, given at the hearing.
3. The minutes shall be signed by the President and by the Registrar or the Judge designated to draw up the minutes. They shall constitute an official record.
4. The parties and interested persons may inspect the minutes at the Registry and obtain copies at their own expense.

CHAPTER 11

Judgments and orders

Article 80

Information on the date of delivery of judgments

The parties and interested persons shall be informed of the date of delivery of a judgment.

Article 81

Content of a judgment

A judgment shall contain:

- (a) a statement that it is the judgment of the Court;
- (b) the date of delivery;
- (c) the names of the President and of the Judges who took part in the deliberations, with an indication as to the name of the Judge-Rapporteur;
- (d) the name of the Registrar;
- (e) a description of the parties or of the interested persons who participated in the proceedings;
- (f) the names of their representatives;
- (g) in the case of direct actions, a statement of the forms of order sought by the parties;
- (h) where applicable, the date of the hearing;
- (i) a summary of the facts;
- (j) a summary of the pleadings of the parties;
- (k) the grounds for the decision;
- (l) the operative part of the judgment, including, where appropriate, the decision as to costs.

Article 82

Delivery and service of a judgment

1. The judgment shall be delivered in open court; the parties shall be given notice to attend to hear it.
2. The original of the judgment, signed by the President, by the Judges who took part in the deliberations and by the Registrar, shall be sealed and deposited at the Registry; certified copies of the judgment shall be served on the parties and, where applicable, the referring court or tribunal, and the interested persons.
3. The Registrar and the President shall record on the original of the judgment the date on which it was delivered.

*Article 83***Content of an order**

1. An order shall contain:
 - (a) a statement that it is the order of the Court or of the President, as the case may be;
 - (b) the date of its adoption;
 - (c) an indication as to the legal basis of the order;
 - (d) the names of the President and, where applicable, the Judges who took part in the deliberations, with an indication as to the name of the Judge-Rapporteur;
 - (e) the name of the Registrar;
 - (f) a description of the parties or of the parties to the main proceedings;
 - (g) the names of their representatives;
 - (h) the operative part of the order, including, where appropriate, the decision as to costs.
2. Where, in accordance with these Rules, an order must be reasoned, it shall in addition contain:
 - (a) in the case of direct actions, a statement of the forms of order sought by the parties;
 - (b) a summary of the facts;
 - (c) a summary of the pleadings;
 - (d) the grounds for the decision.

*Article 84***Signature and service of an order**

The original of the order, signed by the President and by the Registrar, shall be sealed and deposited at the Registry; certified copies of the order shall be served on the parties and, where applicable, the referring court or tribunal, and the interested persons.

*Article 85***Binding nature of judgments and orders**

1. A judgment shall be binding from the date of its delivery.
2. An order shall be binding from the date of its service.

*Article 86***Notice**

A notice containing the date and the operative part of the judgment or order of the Court which closes the proceedings shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.

*Article 87***Rectification of judgments and orders**

1. Without prejudice to the provisions relating to the interpretation of judgments, the Court may, of its own motion, or at the request of a party or interested person made within two weeks after the delivery of a judgment or service of the order, rectify clerical mistakes, errors in calculation, and obvious inaccuracies affecting judgments and orders.
2. The requests and applications for rectification shall be assigned to the Judge-Rapporteur who was responsible for the case to which the request or application relates. The President shall take the necessary steps to designate another Judge to act as Rapporteur if the designated Judge-Rapporteur is prevented from acting.

3. Where the request for rectification concerns the operative part or one of the grounds constituting the necessary support for the operative part, the parties, whom the Registrar shall duly inform, may submit written observations within a time-limit prescribed by the President.
4. The Court shall take its decision in closed session.
5. The original of the rectification order shall be annexed to the original of the rectified decision. A note of this order shall be made in the margin of the original of the rectified decision.

TITLE III

ADVISORY OPINION PROCEDURE

CHAPTER 1

General provisions

Article 88

Content of the request for an advisory opinion

1. The request for an advisory opinion shall be accompanied by a summary of the case before the national court or tribunal, including a description of the facts of the case as well as a presentation of the provisions of national law at issue and, where appropriate, the relevant national case law necessary to enable the Court to assess the question to which a reply is sought.
2. The request shall be accompanied by a statement of the reasons which prompted the referring court or tribunal to seek the advisory opinion, and of the relationship between the provisions of EEA law and the national legislation applicable to the main proceedings.

Article 89

Anonymity

1. Where anonymity has been granted by the referring court or tribunal, the Court shall respect that anonymity in the proceedings pending before it.
2. At the request of the referring court or tribunal, at the duly reasoned request of a party to the main proceedings or of his own motion, the President may also, if he considers it necessary, and after hearing the Judge-Rapporteur, render anonymous one or more persons or entities concerned by the case.

Article 90

Participation in advisory opinion proceedings

1. Within two months of the notification by the Registrar under Article 37, the parties to the main proceedings and interested persons shall be entitled to submit statements of case or written observations to the Court.
2. Non-participation in the written procedure does not preclude participation in the oral part of the procedure.

*Article 91***Parties to the main proceedings**

1. The parties to the main proceedings are those who are determined as such by the referring court or tribunal in accordance with national rules of procedure.
2. Where the referring court or tribunal informs the Court that a new party has been admitted to the main proceedings, when the proceedings before the Court are already pending, that party must accept the case as he finds it at the time when the Court was so informed. That party shall receive a copy of every pleading already served on the parties to the main proceedings and interested persons.
3. As regards the representation and attendance of the parties to the main proceedings, the Court shall take account of the rules of procedure in force before the court or tribunal which introduced the request. In the event of any doubt as to whether a person may under national law represent a party to the main proceedings, the Court may obtain information from the referring court or tribunal on the rules of procedure applicable.

*Article 92***Translation and service of the request for an advisory opinion**

Pursuant to Article 37, requests for an advisory opinion shall be served in the original version, accompanied by an English translation.

*Article 93***Reply by reasoned order**

Where a question referred to the Court for an advisory opinion is manifestly identical to a question on which the Court has already ruled or given an opinion, the Court may at any time, on a proposal from the Judge-Rapporteur, after asking for clarification pursuant to Article 95 from the court or tribunal which referred the question to it and hearing any observations submitted by the parties to the main proceedings and interested persons, give its decision by reasoned order in which reference is made to its previous judgment or opinion.

*Article 94***Circumstances in which the Court remains seised**

1. The Court shall remain seised of a request for an advisory opinion for as long as it is not withdrawn by the court or tribunal which made that request to the Court. The withdrawal of a request may be taken into account until notice of the date of delivery of the judgment has been served on the interested persons.
2. However, the Court may at any time declare that the conditions of its jurisdiction are no longer fulfilled.

*Article 95***Request for clarification**

1. Without prejudice to the measures of organisation of procedure and measures of inquiry provided for in these Rules, the Court may request clarification from the referring court or tribunal within a time-limit prescribed by the Court.
2. The reply of the referring court or tribunal to that request shall be served on the parties to the main proceedings and interested persons.

*Article 96***Costs of the advisory opinion proceedings**

It shall be for the referring court or tribunal to decide as to the costs of the advisory opinion proceedings.

*Article 97***Interpretation of advisory opinions**

1. Article 138 relating to the interpretation of judgments and orders shall not apply to decisions given in reply to a request for an advisory opinion.
2. It shall be for the national courts or tribunals to assess whether they consider that sufficient guidance is given by an advisory opinion, or whether it appears to them that a further request to the Court is required.

*CHAPTER 2****Expedited procedure****Article 98***Expedited procedure**

1. At the request of the national court or, exceptionally, of his own motion, the President, after hearing the Judge-Rapporteur, may decide to apply an expedited procedure derogating from the provisions of these Rules to a request for an advisory opinion, where the circumstances referred to establish that a ruling on the question put to the Court is a matter of urgency.
2. In that event, the President may immediately fix the date for the hearing, which shall be notified to the parties to the main proceedings and interested persons when the request for an advisory opinion is served.
3. The parties to the main proceedings and interested persons may lodge statements of case or written observations within a period prescribed by the President, which shall not be less than 15 days. The President may request that they restrict the matters addressed in their statement of case or written observations to the essential points of law raised by the question referred.
4. The statements of case or written observations, if any, shall be notified to the parties to the main proceedings and interested persons prior to the hearing.
5. The President may decide to dispense with the report for the hearing, or to dispense with the translation of the report for the hearing.

*Article 99***Lodging and service of pleadings**

1. Article 54 applies to the lodging of pleadings. In derogation from Article 54(7), the date on which a copy of the signed original of statements of case or written observations, including the schedule of documents referred to in Article 54(5), is received at the Registry by any technical means of communication available to the Court shall be deemed to be the date of submission for the purposes of compliance with the time-limits for taking steps in proceedings, provided that the signed original of the statements of case or written observations, accompanied by the annexes and copies referred to in Article 54(3), is lodged at the Registry no later than five days thereafter.
2. Where Article 98 requires that a document be served on or communicated to a person, such service or communication may be effected by transmission of a copy of the document by any technical means of communication available to the Court and the addressee.

TITLE IV

DIRECT ACTIONS

CHAPTER 1

Representation of the parties*Article 100***Obligation to be represented**

1. A party may be represented only by his agent or lawyer.
2. Agents and lawyers must lodge at the Registry an official document or an authority to act issued by the party whom they represent.
3. The lawyer acting for a party must also lodge at the Registry a certificate that he is authorised to practise before a court of an EFTA State or of an EU Member State.

CHAPTER 2

Written procedure*Article 101***Content of the application**

1. An application of the kind referred to in Article 19 of the Statute shall state:
 - (a) the name and address of the applicant;
 - (b) the name of the party against whom the application is made;
 - (c) the subject-matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law;
 - (d) the form of order sought by the applicant;
 - (e) where appropriate, any evidence produced or offered in support.
2. An application made by a legal person governed by private law shall be accompanied by:
 - (a) the instrument or instruments constituting or regulating that legal person or a recent extract from the register of companies, firms or associations or any other proof of its existence in law;
 - (b) proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorised for that purpose.

*Article 102***Information relating to service**

1. For the purpose of the proceedings, the application shall state an address for service. It shall indicate the name of the person who is authorised and has expressed willingness to accept service.
2. In addition to, or instead of, specifying an address for service as referred to in paragraph 1, the application may state that the lawyer or agent agrees that service is to be effected on him by e-EFTACourt or any other technical means of communication.

3. If the application does not comply with the requirements referred to in paragraphs 1 and 2, all service on the party concerned for the purpose of the proceedings shall be effected, for so long as the defect has not been cured, by registered letter addressed to the agent or lawyer of that party. By way of derogation from Article 38, service shall then be deemed to be duly effected by the lodging of the registered letter at the post office of the place in which the Court has its seat.

Article 103

Annexes to the application

1. The application shall be accompanied, where appropriate, by the documents specified in the second paragraph of Article 19 of the Statute.
2. The application shall, in the circumstances referred to in Article 37 SCA, be accompanied by documentary evidence of the date on which the EFTA Surveillance Authority was, in accordance with that Article, requested to act.

Article 104

Modification of the application

1. Where a decision of the EFTA Surveillance Authority, the annulment of which is sought, is replaced or amended by another decision of the EFTA Surveillance Authority with the same subject-matter, the applicant may, before the oral part of the procedure is closed, or before the decision of the Court to rule without an oral part of the procedure, modify the application to take account of that new factor.
2. The modification of the application must be made by a separate document within the time-limit laid down in the third paragraph of Article 36 SCA within which the annulment of the decision of the EFTA Surveillance Authority justifying the modification of the application may be sought.
3. The statement of modification shall contain:
 - (a) the modified form of order sought;
 - (b) where appropriate, the modified pleas in law and arguments;
 - (c) where appropriate, the evidence produced and offered in connection with the modification of the form of order sought.
4. The statement of modification must be accompanied by the decision of the EFTA Surveillance Authority justifying the modification of the application. If that decision is not produced, the Registrar shall prescribe a reasonable time-limit within which the applicant shall produce it. If the applicant fails to produce the decision within the time-limit prescribed, the Court shall decide whether the non-compliance with that requirement renders the statement modifying the application inadmissible.
5. Without prejudice to the decision to be taken by the Court on the admissibility of the statement modifying the application, the President shall prescribe a time-limit within which the defendant may respond to the statement of modification.
6. The President shall, where appropriate, prescribe a time-limit within which any interveners may supplement their statements in intervention in the light of the statement modifying the application and the statement in response. Those statements shall be served simultaneously on the interveners for that purpose.

Article 105

Failure to produce the required documents

If the documents referred to in Articles 100, 101(2) and 103 are not lodged, the Registrar shall prescribe a reasonable time-limit within which the party concerned is to produce them. If the party concerned fails to produce the required documents within the time-limit prescribed, the Court shall, after hearing the Judge-Rapporteur, decide whether the non-compliance with that procedural requirement renders the application or written pleading formally inadmissible.

*Article 106***Service of the application**

1. The application shall be served on the defendant in the form of a certified copy sent by registered post with a form for acknowledgement of receipt or by personal delivery of the copy against a receipt. Where the defendant has previously agreed to applications being served by e-EFTACourt or any other technical means of communication, service of the application may be effected accordingly.
2. In cases where Article 105 applies, service shall be effected as soon as the application has been put in order or the Court has declared it admissible notwithstanding the failure to observe the requirements set out in Articles 100, 101(2) and 103.

*Article 107***Defence**

1. Within two months after service on him of the application, the defendant shall lodge a defence, stating:
 - (a) the name and address of the defendant;
 - (b) the pleas in law and arguments relied on;
 - (c) the form of order sought by the defendant;
 - (d) where appropriate, any evidence produced or offered.
2. Article 102 shall apply to the defence.
3. The time-limit laid down in paragraph 1 may exceptionally be extended by the President at the duly reasoned request of the defendant.

*Article 108***Reply and rejoinder**

1. The application initiating proceedings and the defence may be supplemented by a reply from the applicant and, if so, by a rejoinder from the defendant.
2. The President shall prescribe the time-limits within which these pleadings are to be produced. He may specify the matters to which the reply or the rejoinder should relate.

*Article 109***Adversarial procedure**

1. The Court shall take into consideration only those documents which have been made available to the lawyers and agents of the parties and on which they have been given an opportunity of expressing their views, subject to the provisions of Articles 46(2), 59, 60 and 115(1).
2. Without prejudice to Articles 42(3) and 111, the Court may reject any document submitted after the written part of the procedure has been closed.

CHAPTER 3

Pleas in law and evidence*Article 110***New pleas in law**

1. No new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.
2. Without prejudice to the decision to be taken on the admissibility of the plea in law, the President, on a proposal from the Judge-Rapporteur, may prescribe a time-limit within which the other party may respond to that plea.
3. The decision on the admissibility of the plea shall be reserved for the final judgment.

*Article 111***Evidence offered or produced**

1. Evidence produced or offered shall be submitted in the first exchange of pleadings. In the reply or the rejoinder a party may offer or produce further evidence in support of his arguments. The party must give reasons for any delay in submitting such evidence.
2. The parties may, exceptionally, offer or produce further evidence after the close of the written procedure. They must give reasons for any delay in submitting such evidence. The President, on a proposal from the Judge-Rapporteur, may prescribe a time-limit within which the other party may comment on such evidence.

CHAPTER 4

Intervention*Article 112***Object and effects of the intervention**

1. The intervention shall be limited to supporting, in whole or in part, the form of order sought by one of the parties. It shall not give rise to any right to request that a hearing be held.
2. The intervention shall be ancillary to the main proceedings. It shall become devoid of purpose if the case is removed from the register of the Court as a result of a party's discontinuance or withdrawal from the proceedings or of an agreement between the parties, or where the application is declared inadmissible.
3. The intervener must accept the case as he finds it at the time of his intervention.

*Article 113***Application to intervene**

1. An application to intervene must be submitted within six weeks of the publication of the notice referred to in Article 15(5).
2. Consideration may be given to an application to intervene which is made after the expiry of the time-limit prescribed in paragraph 1 but before the decision to open the oral part of the procedure provided for in Article 69 is rendered. In that event, if the President allows the intervention, the intervener may submit his observations during the hearing, if it takes place.

3. The application to intervene shall contain:
 - (a) a description of the case;
 - (b) a description of the main parties;
 - (c) the name and address of the intervener;
 - (d) the form of order sought, in support of which the intervener is applying for leave to intervene;
 - (e) a statement of the circumstances establishing the right to intervene, where the application is submitted pursuant to the second paragraph of Article 36 of the Statute.
4. The intervener shall be represented in accordance with Article 17 of the Statute.
5. Articles 100, 101(2), 102, 103 and 105 shall apply.

Article 114

Decision on applications to intervene

1. The application to intervene shall be served on the main parties. The President shall give the parties an opportunity to submit observations before deciding on the application. The President shall decide whether these are to be written or oral.
2. The President shall decide on the application by order or shall refer the application to the Court.

Article 115

Submission of statements in intervention

1. If an intervention, for which application has been made within the period of six weeks prescribed in Article 113(1), is allowed, the intervener shall receive a copy of every pleading served on the parties, provided that those parties have not, within 10 days after the service referred to in Article 114(1) has been effected, put forward observations on the application to intervene or identified secret or confidential items or documents which, if communicated to the intervener, the parties claim would be prejudicial to them.
2. The intervener may submit a statement in intervention within one month after communication of the pleadings referred to in paragraph 1. That time-limit may be extended by the President upon the duly reasoned request of the intervener.
3. The statement in intervention shall contain:
 - (a) the form of order sought by the intervener in support, in whole or in part, of the form of order sought by one of the parties;
 - (b) the pleas in law and arguments relied on by the intervener;
 - (c) where appropriate, any evidence offered or produced.
4. After the statement in intervention has been lodged, the President shall prescribe a time-limit within which the parties may reply to that statement.
5. Where the application to intervene is made after the expiry of the period of six weeks prescribed in Article 113(1), the intervener shall receive a copy of every pleading served on the parties as provided for in paragraph 1 or the Report for the Hearing and shall submit his observations during the oral part of the procedure.

CHAPTER 5

Expedited procedure*Article 116***Expedited procedure**

1. At the request of either party or on his own motion, the President may, having regard to the particular urgency and the circumstances of the case and after hearing the parties and the Judge-Rapporteur, decide to adjudicate the case pursuant to an expedited procedure.
2. The request for a case to be determined pursuant to an expedited procedure must be made by a separate document lodged at the same time as the application initiating proceedings or the defence, as the case may be. That request may state that certain pleas in law or arguments or certain passages of the application initiating the proceedings or the defence shall only be raised if the case is not decided under an expedited procedure, in particular by enclosing with the request an abbreviated version of the application initiating the proceedings and a schedule of annexes and only the annexes which are to be taken into consideration if the case is decided under an expedited procedure.

*Article 117***Written procedure**

1. By way of derogation from Article 107(1), where a case is to be decided under an expedited procedure, the period prescribed for the lodging of the defence shall be one month following the service of the decision of the President allowing the expedited procedure.
2. Under the expedited procedure, the application initiating proceedings and the defence may be supplemented by a reply and a rejoinder only if the President considers this to be necessary.
3. Interested persons may lodge statements of case or written observations within a period prescribed by the President, which shall not be less than 15 days. The President may request that such statements of case or written observations be restricted to the essential points of law raised by the main parties.
4. The decision of the President to adjudicate under an expedited procedure may prescribe conditions as to the volume and presentation of the pleadings of the parties, the subsequent conduct of the proceedings, or as to the pleas in law and arguments on which the Court will be called upon to decide.
5. The President may decide to dispense with the report for the hearing.
6. Article 54 applies to the lodging of pleadings. In derogation from Article 54(7), the date on which a copy of the signed original of a pleading, including the schedule of items and documents referred to in Article 54(5), is received at the Registry by any technical means of communication available to the Court shall be deemed to be the date of lodging for the purposes of compliance with procedural time-limits, provided that the signed original of the pleading, accompanied by the annexes and copies referred to in Article 54(3), is lodged at the Registry no later than five days thereafter.
7. If one of the parties does not comply with any one of the conditions referred to in paragraph 4, the decision to adjudicate under an expedited procedure may be revoked. The proceedings shall then continue in accordance with the ordinary procedure.

*Article 118***Intervention in the expedited procedure**

1. Without prejudice to the provisions contained in Chapter 4 of this Title, an application to intervene must be submitted within three weeks of the publication of the notice referred to in Article 15(5). The intervener may submit a statement in intervention within a period prescribed by the President which shall not be less than 15 days.

2. After the statement in intervention has been lodged, the President shall give the parties an opportunity to reply to that statement during the oral hearing.

Article 119

Oral part of the procedure

1. Once the defence has been submitted, the President shall fix a date for the hearing, which shall be communicated forthwith to the parties. The President may postpone the date of the hearing where it is necessary to undertake measures of inquiry or where measures of organisation of procedure so require.
2. Without prejudice to Articles 110 and 111, a party may supplement his arguments and offer or produce further evidence during the oral part of the procedure. The party must, however, give reasons for any delay in submitting such further arguments or evidence.

CHAPTER 6

Costs

Article 120

Decision as to costs

A decision as to costs shall be given in the judgment or order which closes the proceedings.

Article 121

General rules as to allocation of costs

1. The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.

Where there is more than one unsuccessful party, the Court shall decide how the costs are to be shared.

2. Where each party succeeds on some and fails on other pleas, or where the circumstances are exceptional, the Court may order that the costs shall be shared or that each party shall bear its own costs. However, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing its own costs, pay a proportion of the costs of the other party.
3. If equity so requires, the Court may decide that an unsuccessful party is to pay only a proportion of the costs of the other party in addition to bearing his own, or even that he is not to be ordered to pay any.
4. The Court may order a party, even if successful, to pay some or all of the costs, if this appears justified by the conduct of that party, including before the proceedings were brought, especially if he has made the opposite party incur costs which the Court holds to be unreasonable or vexatious.

Article 122

Costs of interveners

1. Interested persons, which intervene or submit observations in the proceedings, shall bear their own costs.
2. The Court may order an intervener other than those mentioned in paragraph 1 to bear his own costs.

*Article 123***Costs in the event of discontinuance or withdrawal**

1. A party who discontinues or withdraws from proceedings shall be ordered to pay the costs if they have been applied for in the other party's observations on the discontinuance. However, upon the request of the party who discontinues or withdraws from proceedings, the costs shall be borne by the other party if this appears justified by the conduct of that party.
2. Where the parties have come to an agreement on costs, the decision as to costs shall be in accordance with that agreement.
3. If costs are not claimed, the parties shall bear their own costs.

*Article 124***Costs where a case does not proceed to judgment**

Where a case does not proceed to judgment, the costs shall be at the discretion of the Court.

*Article 125***Costs of proceedings**

1. Proceedings before the Court shall be free of charge, except that:
 - (a) where a party has caused the Court to incur avoidable costs, the Court may order that party to refund them;
 - (b) where copying or translation work is carried out at the request of a party, the costs shall, in so far as the Registrar considers them excessive, be paid for by that party on the Registry's scale of charges referred to in Article 16(1).
2. Costs necessarily incurred by a party in enforcing a judgment or an order of the Court shall be refunded by the opposite party on the scale in force, or other legal methods in use, in the State where the enforcement takes place.

*Article 126***Recoverable costs**

Without prejudice to the preceding Article, the following shall be regarded as recoverable costs:

- (a) sums payable to witnesses and experts under Article 66;
- (b) expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers.

*Article 127***Dispute concerning the costs to be recovered**

1. If there is a dispute concerning the costs to be recovered, the Court shall, on application by the party concerned and after hearing the opposite party, make an order.
2. The parties may, for the purposes of enforcement, apply for an authenticated copy of the order.

*Article 128***Procedure for payment**

1. Sums due from the Court shall be paid in the currency of the country where the Court has its seat.
2. Where costs to be recovered have been incurred in a currency other than the euro or where the steps in respect of which payment is due were taken in a country of which the euro is not the currency, or where the costs to be recovered have been incurred in different currencies, the party concerned may elect the currency in which they are to be recovered. In all such cases, conversions of currency shall be made at the European Central Bank's official rates of exchange on the day of payment. In exceptional circumstances, the Court may limit that right of election.

TITLE V

SPECIAL FORMS OF PROCEDURE

CHAPTER 1

Assignment to the judge-rapporteur*Article 129***Assignment to the Judge-Rapporteur**

1. With the exception of applications referred to in Article 140, the requests and applications referred to in this Title and the request for rectification referred to in Article 87 shall be assigned to the Judge-Rapporteur who was responsible for the case to which the request or application relates.
2. If the Judge-Rapporteur is prevented from acting, the President shall assign the request or application concerned to another Judge.

CHAPTER 2

Settlement, discontinuance, cases that do not proceed to judgment and preliminary issues*Article 130***Amicable settlement**

1. If, before the Court has rendered its decision, the parties reach a settlement of their dispute and inform the Court of the abandonment of their claims, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Article 123, having regard to any proposals made by the parties on the matter.
2. This provision shall not apply to proceedings under Articles 36 and 37 SCA.

*Article 131***Discontinuance**

If the applicant informs the Court in writing or at the hearing that he wishes to discontinue the proceedings, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Article 123.

*Article 132***Cases that do not proceed to judgment**

1. Where it is clear that the Court has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible or manifestly lacking any foundation in law, the Court may, on a proposal from the Judge-Rapporteur, decide to rule by reasoned order without taking further steps in the proceedings.
2. The Court may at any time of its own motion, after hearing the parties, decide to rule by reasoned order on whether there exists any absolute bar to proceeding with a case or declare that the action has become devoid of purpose and that there is no longer any need to adjudicate on it.

*Article 133***Preliminary objections and issues**

1. A party applying to the Court for a decision on admissibility or other preliminary objection or issue not going to the substance of the case shall submit the application by a separate document.
2. The application must state the pleas of facts and law relied on and the form of order sought by the applicant. Any supporting items and documents must be annexed to it.
3. As soon as the application has been submitted, the President shall prescribe a time-limit within which the opposite party may submit in writing the arguments of fact and law relied on and the form of order which he seeks.
4. Unless the Court decides otherwise, the remainder of the proceedings on the application shall be oral.
5. The Court shall decide on the application as soon as possible or, where special circumstances so justify, reserve its decision until it rules on the substance of the case.
6. If the Court refuses the application or reserves its decision, the President shall prescribe new time-limits for the further steps in the proceedings.

*CHAPTER 3****Judgment by default****Article 134***Judgment by default**

1. If a defendant on whom an application initiating proceedings has been duly served fails to respond to the application in the proper form and within the time-limit prescribed, the applicant may, within a time-limit prescribed by the President, apply to the Court for judgment by default.
2. A defendant in default shall not intervene in the default procedure and, with the exception of the decision which closes the proceedings, no procedural document shall be served on him.
3. The Court shall give judgment in favour of the applicant in the judgment by default, unless it is clear that the Court has no jurisdiction to hear and determine the action or that the action is manifestly inadmissible or manifestly lacking any foundation in law.
4. A judgment by default shall be enforceable. The Court may, however, grant a stay of execution until the Court has given its decision on any application under Article 135 to set aside the judgment, or it may make execution subject to the provision of security of an amount and nature to be fixed in the light of the circumstances. This security shall be released if no such application is made or if the application fails.

*Article 135***Application to set aside a judgment by default**

1. Application may be made to set aside a judgment delivered by default.
2. The application to set aside the judgment must be made within one month from the date of service of the judgment and must be submitted in the form prescribed by Articles 101 to 103.
3. After the application has been served, the President shall prescribe a time-limit within which the other party may submit his written observations.
4. The proceedings shall be conducted in accordance with Articles 54 to 87.
5. The Court shall decide by way of a judgment which may not be set aside.
6. The original of this judgment shall be annexed to the original of the judgment by default. A note of the judgment on the application to set aside shall be made in the margin of the original of the judgment by default.

*CHAPTER 4****Requests and applications relating to judgments and orders****Article 136***Failure to adjudicate**

1. If the Court has failed to adjudicate on a specific head of claim or on costs, any party wishing to rely on that may, within a month after service of the decision, apply to the Court to supplement its decision.
2. The application shall be served on the opposite party and the President shall prescribe a time-limit within which that party may submit written observations.
3. After these observations have been submitted, the Court shall decide both on the admissibility and on the substance of the application.

*Article 137***Third-party proceedings**

1. Articles 101 to 103 shall apply to an application initiating third-party proceedings made pursuant to Article 38 of the Statute. In addition, such an application shall:
 - (a) specify the judgment or order contested;
 - (b) state how the contested decision is prejudicial to the rights of the third party;
 - (c) indicate the reasons for which the third party was unable to take part in the original case.
2. The application must be made against all the parties to the original case.
3. The application must be submitted within two months of publication of the decision in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.
4. The Court may, on application by the third party, order a stay of execution of the contested decision. The provisions of Chapter 5 of this Title shall apply.
5. The application shall be served on the parties, who may submit written observations within a time-limit prescribed by the President.
6. After giving the parties an opportunity to submit their observations, the Court shall decide on the application.

7. The contested decision shall be varied on the points on which the submissions of the third party are upheld.
8. The original of the judgment in the third-party proceedings shall be annexed to the original of the contested decision. A note of the judgment in the third-party proceedings shall be made in the margin of the original of the contested decision.

Article 138

Interpretation of judgments and orders

1. In accordance with Article 39 of the Statute, if the meaning or scope of a judgment or order is in doubt, the Court shall construe it on application by any party establishing an interest therein, or by the EFTA Surveillance Authority.
2. An application for interpretation must be made within two years after the date of delivery of the judgment or service of the order.
3. An application for interpretation shall be made in accordance with Articles 103 to 105. In addition it shall specify:
 - (a) the decision in question;
 - (b) the passages of which interpretation is sought.
4. The application must be made against all the parties to the case in which the decision of which interpretation is sought was given.
5. The Court shall give its decision in the form of a judgment after having given the parties an opportunity to submit their observations.
6. The original of the interpreting judgment shall be annexed to the original of the decision interpreted. A note of the interpreting judgment shall be made in the margin of the original of the decision interpreted.

Article 139

Revision

1. In accordance with Article 40 of the Statute, an application for revision of a decision of the Court may be made only on discovery of a fact which is of such a nature as to be a decisive factor and which, when the judgment was delivered or the order served, was unknown to the Court and to the party claiming the revision.
2. Without prejudice to the time-limit of 10 years prescribed in the third paragraph of Article 40 of the Statute, an application for revision shall be made within three months of the date on which the facts on which the application is founded came to the applicant's knowledge.
3. Articles 101 to 103 shall apply to an application for revision. In addition, such an application shall:
 - (a) specify the judgment or order contested;
 - (b) indicate the points on which the decision is contested;
 - (c) set out the facts on which the application is founded;
 - (d) indicate the nature of the evidence to show that there are facts justifying revision, and that the time-limits laid down in paragraph 2 have been observed.
4. The application for revision must be made against all parties to the case in which the contested decision was given.
5. Without prejudice to its decision on the substance, the Court shall give in the form of an order its decision on the admissibility of the application, having regard to the written observations of the parties.

6. If the Court declares the application admissible, it shall proceed to consider the substance of the application and shall give its decision in the form of a judgment in accordance with these Rules.
7. The original of the revising judgment shall be annexed to the original of the decision revised. A note of the revising judgment shall be made in the margin of the original of the decision revised.

CHAPTER 5

Suspension of operation or enforcement and other interim measures

Article 140

Application for suspension or for interim measures

1. An application to suspend the operation of any measure adopted by the EFTA Surveillance Authority, made pursuant to Article 40 SCA, shall be admissible only if the applicant has challenged that measure in an action before the Court.
2. An application for the adoption of an interim measure pursuant to Article 41 SCA shall be admissible only if it is made by a party to a case before the Court and relates to that case.
3. An application of a kind referred to in the preceding paragraphs shall state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measure applied for.
4. The application shall be made by a separate document and in accordance with the provisions of Articles 101 to 103.
5. The application shall be served on the opposite party, and the President shall prescribe a short time-limit within which that party may submit written or oral observations.
6. The President may adopt measures of organisation of procedure or order measures of inquiry.
7. The President may grant the application even before the observations of the opposite party have been submitted. This decision may be varied or cancelled even without any application being made by any party.

Article 141

Decision on the application

1. The President shall either decide on the application himself or refer it to the Court.
2. Where the application is referred to it, the Court shall give a decision without undue delay.

Article 142

Order for suspension of operation or for interim measures

1. The decision on the application shall take the form of a reasoned order. The order shall be served on the parties forthwith.
2. The execution of the order may be made conditional on the lodging by the applicant of security, of an amount and nature to be fixed in the light of the circumstances.
3. Unless the order fixes the date on which the interim measure is to lapse, the measure shall lapse when the judgment which closes the proceedings is delivered.

4. The order shall have only an interim effect, and shall be without prejudice to the decision of the Court on the substance of the case.

Article 143

Change in circumstances

On application by a party, the order may at any time be varied or cancelled on account of a change in circumstances.

Article 144

New application

Rejection of an application for an interim measure shall not bar the party who made it from making a further application on the basis of new facts.

Article 145

Suspension pursuant to Article 19 SCA

1. The provisions of this Chapter shall apply to applications to suspend the enforcement of a decision of the Court or of any measure adopted by the EFTA Surveillance Authority under Article 19 SCA.
2. The order granting the application shall fix, where appropriate, a date on which the interim measure is to lapse.

FINAL PROVISIONS

Article 146

Supplementary rules

After consultation with the Governments concerned, the Court may adopt supplementary rules concerning its practice in relation to:

- (a) letters rogatory;
- (b) applications for legal aid;
- (c) reports by the Court of defaulting witnesses or any case of perjury on the part of a witness or an expert delivered pursuant to Article 26 of the Statute.

Article 147

Implementing rules

The Court may issue practice directions or rules relating, in particular, to the preparations for and conduct of hearings before it and to the lodging of written pleadings or observations.

Article 148

Videoconferencing

The Court may determine, by decision, the criteria for its use of video communication and transmission.

*Article 149***Repeal**

These Rules replace the Rules of Procedure of the EFTA Court adopted on 4 January and 1 February 1994, as last amended on 16 May 2012.

*Article 150***Publication and entry into force**

1. These Rules, which are authentic in the English language, shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.
 2. These Rules shall be officially translated by the Court into German, Icelandic and Norwegian.
 3. These Rules shall enter into force on the first day of the third month following their publication.
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ANNEX I

DECISION OF THE COURT OF 12 DECEMBER 2016 ON THE LODGING AND SERVICE OF PROCEDURAL DOCUMENTS BY MEANS OF E-EFTACOURT (2017/C 73/09)**DECISION OF THE COURT
on the lodging and service of procedural documents by means of e-EFTACourt**

(2017/C 73/09)

THE COURT,

Having regard to the Rules of Procedure and, in particular, the second subparagraph of Article 32(5) thereof, ⁽¹⁾

Whereas:

[...] the Court may by decision determine the criteria for a procedural document sent to the Registry by electronic means to be deemed to be the original of that document. [...],

HAS DECIDED AS FOLLOWS:

Article 1

The information technology application known as ‘e-EFTACourt’, allows the lodging and service of procedural documents by electronic means under the conditions laid down by this Decision.

Article 2

Use of the application shall require a personal user identification and password.

Article 3

A procedural document lodged by means of e-EFTACourt shall be deemed to be the original of that document for the purposes of the first subparagraph of Article 32(1) of the Rules of Procedure ⁽²⁾ where the representative's user identification and password have been used to effect that lodgement. Such identification shall constitute the signature of the document concerned.

Article 4

A document lodged by means of e-EFTACourt must be accompanied by the Annexes referred to therein and a schedule listing such Annexes.

It shall not be necessary to lodge certified copies of a document lodged by means of e-EFTACourt or of any Annexes thereto.

Article 5

A procedural document shall be deemed to have been lodged for the purposes of Article 32(2) of the Rules of Procedure ⁽³⁾ at the time of the representative's validation of lodgement of that document.

⁽¹⁾ Article 54(8) of the current Rules of Procedure.

⁽²⁾ Article 54(2) of the current Rules of Procedure.

⁽³⁾ Article 54(4) of the current Rules of Procedure.

The relevant time shall be the time in the Grand Duchy of Luxembourg.

Article 6

Procedural documents, including judgments and orders, shall be served on the parties' representatives by means of e-EFTACourt where they have expressly accepted this method of service or, in the context of a case, where they have consented to this method of service by lodging a procedural document by means of e-EFTACourt.

Procedural documents shall also be served by means of e-EFTACourt on States which are parties to the Agreement on the European Economic Area, the EFTA Surveillance Authority and institutions, bodies, offices or agencies of the Union, insofar as they have accepted this method of service.

Article 7

The intended recipients of the documents served referred to in Article 6 shall be notified by email of any document served on them by means of e-EFTACourt.

A procedural document shall be served at the time when the intended recipient (representative or his assistant) requests access to that document. In the absence of any request for access, the document shall be deemed to have been served on the expiry of the seventh day following the day on which the notification email was sent.

Where a party is represented by more than one agent or lawyer, the time to be taken into account in the reckoning of time-limits shall be the time when the first request for access was made.

The relevant time shall be the time in the Grand Duchy of Luxembourg.

Article 8

The Registrar shall draw up the conditions of use of e-EFTACourt and ensure that they are observed. Any use of e-EFTACourt contrary to those conditions may result in the deactivation of the account concerned.

The Court shall take the necessary steps to protect e-EFTACourt from any abuse or malicious use.

Users shall be notified by email of any action taken pursuant to this Article that prevents them from using their account.

Article 9

This decision shall enter into force on the day following its publication in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.

Luxembourg, 12 December 2016.

ANNEX II

List of national authorities referred to in Articles 51(5), 64(2) and 68(3):

ICELAND

The Ministry of Justice

LIECHTENSTEIN

The Ministry of Justice

NORWAY

The Royal Ministry of Justice and Public Security

EFTA SURVEILLANCE AUTHORITY**RULES OF PROCEDURE**

Adopted 7 January 1994 ⁽¹⁾

Recast 19 December 2017 ⁽²⁾

Amended 11 February 2020 ⁽³⁾

Amended 3 February 2021 ⁽⁴⁾

THE ORGANISATION OF THE EFTA SURVEILLANCE AUTHORITY*Article 1***College**

The Members of the EFTA Surveillance Authority shall act collectively in accordance with the present rules and, in so acting, constitute the College.

The functioning of the Authority shall be governed by the principle of collegiality, based on the equal participation of the College Members in the adoption of decisions. Decisions shall be the subject of collective deliberation and all the College Members shall bear collective responsibility for all decisions adopted.

The protocol order of the College shall be headed by the President, followed by the Members according to their length of service. Members with equal length of service shall take precedence according to age.

*Article 2***President**

The President shall represent the Authority as a whole publicly while respecting the principle of collegiality.

The President shall oversee the administration of the Authority and is empowered to enter into contracts and otherwise bind the Authority to enable it to function, without however impinging on the powers and functions referred to in Article 7 of these Rules.

The President shall keep College apprised of his/her general approach as well as of individual issues of concern to other College Members. He/she shall act with due regard to views expressed by other College Members and in conformity with guidelines, policies and procedures laid down by College in accordance with Article 16.

*Article 3***Portfolios**

The College shall assign to each Member responsibility for the preparation and implementation of its decisions in particular fields ('portfolios'). Members shall regularly report on and make proposals to College concerning enforcement policy in the fields for which they have responsibility and shall lead the Authority's public communication in those fields.

Portfolios shall be assigned by consensus upon the appointment of one or more new College Members. The assignment shall be re-examined at least every two years, or upon the request of a College Member. If no consensus is reached, the assignment shall remain unchanged, Members retaining their existing portfolios or taking over those assigned to their predecessor (the College Member whose appointment was previously proposed by the Government of the same EFTA State).

⁽¹⁾ Doc No186989.

⁽²⁾ College Decision No 217/17/COL.

⁽³⁾ College Decision No 007/20/COL.

⁽⁴⁾ College Decision No 004/21/COL.

Article 4

Departments

In the performance of its functions, the College shall be assisted by four departments, namely Internal Market Affairs, Competition & State Aid, Legal & Executive Affairs and Administration. The departments shall work in close co-operation.

Each of the departments shall be headed by a Director, who shall be appointed by and accountable to the College as a whole for the actions of his/her department. Directors shall manage their departments in accordance with any policies, procedures and guidelines laid down by the College and shall report to the College regularly as requested. Where responsibility for the preparation and implementation of decisions has been assigned to a particular College Member, the Director concerned shall take his/her instructions from that Member.

Before submitting a proposal for a decision to the College, the department preparing the proposal shall consult all other departments which are concerned in the matter. The Director of Legal & Executive Affairs shall be consulted on proposals for legal instruments and measures which may have legal implications. The Director of Administration shall be consulted on proposals which may affect the administration of the Authority, in particular through human resources management or budgetary implications. Any disagreement between departments shall be recorded when submitting the proposal to the College.

The College may set up interdepartmental working groups and other structures to deal with particular matters. It shall appoint the chairperson of any such group and determine the mandate and method of operation of the group.

Article 5

Deputising

If the President is prevented from exercising his/her functions, they shall be exercised, during the first six months of the year, by the second most senior Member in the protocol order and, during the second six months of the year, by the third most senior Member. This shall include the exercise of the functions incumbent upon the President in his/her capacity as College Member.

If a College Member is prevented from exercising his/her functions, they shall be exercised by the next following Member in the protocol order or, in the case of the most junior Member, by the immediately preceding Member, able to exercise his/her functions.

If a Director is prevented from exercising his/her functions, they shall be exercised by subordinate officials in the order laid down by the Director. Directors shall inform the Director of Legal & Executive Affairs of the order applicable.

Article 6

Recusal of College Members

Without prejudice to Article 9(3) SCA, if a College Member considers that, in order to ensure that the independence of the Authority remains beyond doubt, it would be opportune for him/her not to take part in the deliberations or decisions in all or part of a particular matter, he/she may recuse him/herself.

The College Member shall in that event inform the Director of Legal & Executive Affairs of his/her decision. The Director of Legal & Executive Affairs shall forthwith inform the other College Members as well as any members of staff concerned, and shall take all necessary measures to ensure that the College Member having recused him/herself is no longer involved in the matter concerned.

If the College Member recusing him/herself considers it in the interests of the Authority or the proper exercise of the powers and functions referred to in Article 7 of these Rules that he/she be replaced by an *ad hoc* College Member for the purposes of the matter, he/she shall propose to the other College Members that they replace him/her in accordance with Article 9(3) SCA.

DECISIONS OF THE EFTA SURVEILLANCE AUTHORITY*Article 7***Types of Decision**

The powers and functions conferred on the Authority by the EEA Agreement and the SCA, in particular Article 5 SCA, are vested in the College.

In the exercise of those powers and functions, the Authority shall take decisions:

- (a) at meetings of the College in accordance with Articles 8-11;
- (b) by written procedure in accordance with Article 12;
- (c) by delegation in accordance with Article 13.

The same applies in respect of the powers and functions conferred on the Authority by the Agreement on the withdrawal of the United Kingdom from the EEA Agreement and the SCA, in particular Article 2 of Protocol 9 SCA.

*Article 8***College Meetings**

Meetings of the College shall be convened by the President. The College shall, as a general rule, meet once a week. Additional meetings shall be held whenever necessary.

The President shall take the chair at meetings.

Two Members present shall constitute a quorum. For a decision to be adopted, at least two votes in favour of the decision shall be required.

*Article 9***College Meeting Agenda**

The President shall issue a draft agenda for each meeting. Any item put forward by a Member for inclusion shall be placed on the draft agenda. Likewise, any item that is still pending more than six months after approval by the Director of Legal & Executive Affairs shall be placed on the draft agenda for the first meeting of every month thereafter.

Unless otherwise decided, the draft agenda and the necessary working documents shall be distributed to the Members at least three working days before the day of the meeting. The draft agenda shall be and shall remain confidential.

If requested by a Member, the discussion of an item on the draft agenda shall once be deferred by one meeting, unless the deferment would, due to binding time limits, prevent the College from taking an effective decision on the matter.

The College may decide unanimously, with the express agreement of any College Member unable to be present, to remove an item from the draft agenda, or to discuss and decide a matter which is not on the draft agenda or in respect of which the necessary working documents have been distributed after the stipulated time limit.

The College, having before it the draft agenda and any requests for amendments thereto, shall approve the agenda at the meeting.

*Article 10***Attendance at College Meetings**

Meetings of the College shall not be public. Deliberations shall be and shall remain confidential.

The Director of Legal & Executive Affairs shall attend all meetings. The Directors of departments responsible for preparing draft decisions included in the draft agenda shall, and other Directors may, attend meetings unless College decides otherwise.

The President may, on his/her own initiative or at the request of a Member, invite certain officials of the Authority to attend the whole or part of a meeting and to speak.

When the Authority is required to, or has committed itself to, allowing representatives from another institution, agency or other body to be present at College meetings where certain types of decision are adopted, that institution, agency or other body shall be invited to be represented at any such meeting or the relevant part thereof.

The College may invite any other person to attend the whole or part of a meeting and to speak.

Article 11

Minutes of College Meetings

Minutes shall be taken of all meetings of the College.

The minutes shall be based on the agenda as approved at the beginning of the meeting and record the substantive decisions in respect of the items on the agenda, i.e. normally whether a proposal has been adopted, rejected or deferred, as well as any items taken note of.

The minutes shall be authenticated by the signature of the President and counter-signed by the Director of Legal & Executive Affairs.

Article 12

Decisions by Written Procedure

On the proposal of a Member, the College may take a decision by means of a written procedure. Any Member may, in the course of the written procedure, request that the proposal be discussed at a College meeting. In such case, the matter shall be placed on the draft agenda of the next College meeting.

The text of the proposed decision shall be distributed to all Members indicating a proposed date for adoption.

The proposal shall be deemed to be agreed to by the College on the proposed date provided, either

- the proposed date is at least three working days after the distribution of the proposal, it is established that the distribution is known to all College Members, at least two College Members have expressed their approval of the proposal, and no request has been made that the proposal be discussed at a College meeting, or
- all College Members have expressed their approval.

The decision shall be recorded in the minutes of the next College meeting.

Article 13

Delegated Decisions

Subject to the principle of collegiate responsibility being respected in full, the College may empower a College Member to take, in its name and subject to its control, clearly circumscribed decisions in the fields for which they have been assigned responsibility pursuant to Article 3 and to adopt the definitive text of a decision the substance of which has been determined by the College.

During periods when a sufficient number of College Members to constitute a quorum are not on duty, one or more College Members may be authorised to take any urgent decision that may be required.

Officials may be empowered to take clearly circumscribed measures of management or administration.

Notwithstanding a delegation of decision-making powers, the College in any case retains the right to take any decision itself. Furthermore, the responsible College Member may decide not to exercise the powers delegated and may instead refer the adoption of the decision to the full College. Decisions identified by any College Member as being of particular importance or interest shall in any case be referred to the full College.

The Director of Legal & Executive Affairs shall regularly inform College of the decisions adopted under powers conferred by a delegation decision and cause them to be taken note of at a College Meeting.

Powers conferred in accordance with this article shall only be exercised with the approval of the Director of Legal & Executive Affairs and may not be sub-delegated, except to the extent expressly laid down in the delegation decision.

Article 14

Procedure

The Director of Legal & Executive Affairs shall assist the President in preparing the meetings of the College, in implementing the decision making procedures and in ensuring, where applicable, the communication and publication of decisions of the Authority.

To this end he/she shall ensure that the rules are complied with regarding preparation and submission of documents which the Members are to consider and shall, where applicable, take the necessary steps to ensure official notification of decisions of the Authority and their publication.

Article 15

Authentication

Legal instruments adopted by the College, at a meeting or by written procedure, shall be authenticated in the language or languages in which they are to be authentic by the signature of the President and the counter-signature of the Director of Legal & Executive Affairs.

Legal instruments adopted by delegation procedure shall be authenticated in the language or languages in which they are to be authentic by the signature of the Member empowered, and the counter-signature of the Director of Legal & Executive Affairs.

In the circumscribed instances where an official has been empowered to adopt legal instruments, these are authenticated by the simple signature of that official.

Electronic signatures shall be used wherever possible.

MANAGEMENT AND ADMINISTRATION

Article 16

Management and Administrative Decisions

Management and administrative decisions of the Authority concerning the appointment of officials, the conclusion of contracts and other matters not impinging on the powers and functions referred to in Article 7 of these Rules, shall be taken by the competent Director under the authority of the President and in accordance with policies, procedures and guidelines laid down by the College.

Any decisions regarding the management and administration of the Authority which are liable to have an impact on the ability of the Authority to exercise the powers and functions referred to in Article 7 of these Rules, such as the appointment of Directors, as well as any changes in the structure, resource allocation or respective responsibilities of the Authority's departments shall only be taken by College as a whole acting by consensus.

The Directors shall be accountable to College for their decisions and report to College as a whole as requested. The College shall, as necessary, lay down rules, guidelines, policies and procedures to give effect to these Rules of Procedure and to provide direction for the management and administration of the Authority as a whole.

The President shall convene Management Meetings at regular intervals at which Directors report to and receive guidance from College on the management and functioning of their departments.

Directors shall regularly consult the Director of Administration concerning the management of their departments regarding human resources, financial, information technology, security and other administrative matters.

FINAL PROVISIONS

Article 17

Entry into Force

These Rules of Procedure shall enter into force on 1 January 2018.

Article 18

Repeal

The Rules of Procedure of 7 January 1994, as amended, are repealed and replaced simultaneously to the entry into force of these Rules of Procedure.

All decisions adopted under previous Rules of Procedure shall remain unaffected.

Article 19

Publication

These Rules of Procedure, which are authentic in the English language, shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.

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