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(Acts whose publication is not obligatory)

EUROPEAN ECONOMIC AREA

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

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

Having regard to the European Economic Area Agreement,

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

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

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

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

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

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

HAVE DECIDED to conclude the following Agreement:

PART I

Article 1

For the purposes of this Agreement:

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

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

Article 2

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

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

Article 3

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

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

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

PART II

THE EFTA SURVEILLANCE AUTHORITY

Article 4

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

Article 5

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

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

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

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

Article 6

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

Article 7

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

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

Article 8

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

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

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

Article 9

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

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

Article 10

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

Article 11

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

Article 12

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

Article 13

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

Article 14

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

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

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

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

Article 15

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

The Rules of Procedure shall determine the quorum.

Article 16

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

Article 17

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

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

Article 18

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

Article 19

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

Article 20

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

Article 21

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

PART III

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

Article 22

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

Article 23

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

Article 24

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

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

Article 25

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

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

Article 26

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

PART IV
THE EFTA COURT

Article 27

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

Article 28

The EFTA Court shall consist of seven judges.

Article 29

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

Article 30

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

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

Retiring Judges shall be eligible for reappointment.

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

Article 31

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

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

Article 32

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

Article 33

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

Article 34

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

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

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

Article 35

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

Article 36

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

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

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

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

Article 37

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

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

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

Article 38

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

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

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

Article 39

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

Article 40

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

Article 41

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

PART V

GENERAL AND FINAL PROVISIONS

Article 42

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

Article 43

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

Article 44

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

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

Article 45

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

Article 46

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

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

Article 47

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

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

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

Article 48

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

Article 49

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

Article 50

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

Article 51

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

Article 52

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

Article 53

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

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

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

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

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

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

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

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

For the Republic of Austria

For the Republic of Finland

For the Republic of Iceland

For the Principality of Liechtenstein

For the Kingdom of Norway

For the Kingdom of Sweden

For the Swiss Confederation