

**AGREEMENT AMENDING PROTOCOL 3 TO THE AGREEMENT
BETWEEN THE EFTA STATES ON THE ESTABLISHMENT OF A
SURVEILLANCE AUTHORITY AND A COURT OF JUSTICE**

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

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

Having consulted the EFTA Surveillance Authority,

Having regard to Council Regulation (EU) No 734/2013 of 22 July 2013 amending Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty,

Having regard to Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification),

Having regard to the Decision No xx of the EEA Joint Committee of xx amending Protocol 26 (State Aid) to the EEA Agreement,

Whereas, therefore, Protocol 3 to the Surveillance and Court Agreement should be amended,

HAVE AGREED AS FOLLOWS:

Article 1

Part II of Protocol 3 to the Surveillance and Court Agreement shall be replaced by the text as specified in the Annex to this Agreement.

Article 2

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

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

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

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

3. This Agreement shall enter into force on the day all instruments of acceptance have been deposited by the EFTA States, or on the day the corresponding Decision of the EEA Joint Committee amending Protocol 26 to the EEA Agreement enters into force, whichever date is the later.

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

Done at Brussels, xx.

.....
FOR THE REPUBLIC OF ICELAND

.....
FOR THE PRINCIPALITY OF
LIECHTENSTEIN

.....
FOR THE KINGDOM OF NORWAY

Annex
to
AGREEMENT AMENDING PROTOCOL 3 TO THE AGREEMENT
BETWEEN THE EFTA STATES ON THE ESTABLISHMENT OF A
SURVEILLANCE AUTHORITY AND A COURT OF JUSTICE

The text of Part II of Protocol 3 to the Surveillance and Court Agreement shall be replaced by the following:

‘PART II

IMPLEMENTING PROVISIONS

CHAPTER I

PROCEDURAL RULES FOR THE IMPLEMENTATION OF

ARTICLE 1 IN PART I

SECTION I

GENERAL

Article 1

Definitions

For the purpose of this Chapter:

- (a) 'aid' shall mean any measure fulfilling all the criteria laid down in Article 61(1) of the EEA Agreement;
- (b) 'existing aid' shall mean:
 - (i) all aid which existed prior to the entry into force of the EEA Agreement in the respective EFTA States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the EEA Agreement;

- (ii) authorised aid, that is to say, aid schemes and individual aid which have been authorised by the EFTA Surveillance Authority or, by common accord as laid down in Part I, Article 1 (2) subparagraph 3, by the EFTA States.
- (iii) aid which is deemed to have been authorised pursuant to Article 4(6) of this Chapter as set out in the Agreement between the EFTA States amending Protocol 3 to the Surveillance and Court Agreement of 10 December 2001, or to Article 4(6) of this Chapter or prior to this the Agreement between the EFTA States amending Protocol 3 to the Surveillance and Court Agreement of 10 December 2001 Chapter but in accordance with this procedure;
- (iv) aid which is deemed to be existing aid pursuant to Article 1~~7~~⁵ of this Chapter;
- (v) aid which is deemed to be an existing aid because it can be established that at the time it was put into effect it did not constitute an aid, and subsequently became an aid due to the evolution of the European Economic Area and without having been altered by the EFTA State. Where certain measures become aid following the liberalisation of an activity by EEA law, such measures shall not be considered as existing aid after the date fixed for liberalisation;
- (c) 'new aid' shall mean all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid;
- (d) 'aid scheme' shall mean any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount;
- (e) 'individual aid' shall mean aid that is not awarded on the basis of an aid scheme and notifiable awards of aid on the basis of an aid scheme;
- (f) 'unlawful aid' shall mean new aid put into effect in contravention of Article 1(3) in Part I;
- (g) 'misuse of aid' shall mean aid used by the beneficiary in contravention of a decision taken pursuant to Article 4(3) or Article 7(3) or (4) of this Chapter as set out in the Agreement between the EFTA States amending Protocol 3 to the Surveillance and Court Agreement of 10 December 2001, or Article 4(3) or Article 7(3) or (4) of Regulation (EC) No 659/1999 or Article 4(3) or Article 9(3) or (4) of this Regulation; Chapter, or prior to this Chapter but in accordance with the Agreement amending Protocol 3 as signed on 10 December 2001.
- (h) 'interested party' shall mean any State being a Contracting Party to the EEA Agreement and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings and trade associations.

SECTION II

PROCEDURE REGARDING NOTIFIED AID

Article 2

Notification of new aid

1. Save as otherwise provided in this Protocol or relevant provisions of the EEA Agreement, any plans to grant new aid shall be notified to the EFTA Surveillance Authority in sufficient time by the EFTA State concerned. The EFTA Surveillance Authority shall inform the EFTA State concerned without delay of the receipt of a notification.
2. In a notification, the EFTA State concerned shall provide all necessary information in order to enable the EFTA Surveillance Authority to take a decision pursuant to Articles 4 and 7 of this Chapter (hereinafter referred to as 'complete notification').

Article 3

Standstill clause

Aid notifiable pursuant to Article 2(1) of this Chapter shall not be put into effect before the EFTA Surveillance Authority has taken, or is deemed to have taken, a decision authorising such aid.

Article 4

Preliminary examination of the notification and decisions of the EFTA Surveillance Authority

1. The EFTA Surveillance Authority shall examine the notification as soon as it is received. Without prejudice to Article 108 of this Chapter, the EFTA Surveillance Authority shall take a decision pursuant to paragraphs 2, 3 or 4 of this Article.
2. Where the EFTA Surveillance Authority, after a preliminary examination, finds that the notified measure does not constitute aid, it shall record that finding by way of a decision.
3. Where the EFTA Surveillance Authority, after a preliminary examination, finds that no doubts are raised as to the compatibility with the functioning of the EEA Agreement of a notified measure, in so far as it falls within the scope of Article 61(1) of the EEA Agreement, it shall decide that the measure is compatible with the functioning of the EEA Agreement (hereinafter referred to as a 'decision not to raise objections'). The decision shall specify which exception under the EEA Agreement has been applied.
4. Where the EFTA Surveillance Authority, after a preliminary examination, finds that doubts are raised as to the compatibility with the functioning of the EEA Agreement of a notified measure, it shall decide to initiate proceedings pursuant to Article 1(2) in Part I (hereinafter referred to as a 'decision to initiate the formal investigation procedure').
5. The decisions referred to in paragraphs 2, 3 and 4 shall be taken within two months. That period shall begin on the day following the receipt of a complete notification. The notification will be considered as complete if, within two months from its receipt, or from the receipt of any additional information requested, the EFTA Surveillance Authority does not request any further information. The period can be extended with the consent of both the EFTA Surveillance Authority and the EFTA State concerned. Where appropriate, the EFTA Surveillance Authority may fix shorter time limits.
6. Where the EFTA Surveillance Authority has not taken a decision in accordance with paragraphs 2, 3 or 4 within the period laid down in paragraph 5, the aid shall be deemed to have been authorised by the EFTA Surveillance Authority. The EFTA State concerned may thereupon implement the measures in question after giving the EFTA Surveillance Authority prior notice thereof, unless the EFTA Surveillance Authority takes a decision pursuant to this Article within a period of 15 working days following receipt of the notice.

Article 5

Request for information made to the notifying Member State

1. Where the EFTA Surveillance Authority considers that information provided by the EFTA State concerned with regard to a measure notified pursuant to Article 2 of this Chapter is incomplete, it shall request all necessary additional information. Where an EFTA State responds to such a request, the EFTA Surveillance Authority shall inform the EFTA State of the receipt of the response.
2. Where the EFTA State concerned does not provide the information requested within the period prescribed by the EFTA Surveillance Authority or provides incomplete information, the EFTA Surveillance Authority shall send a reminder, allowing an appropriate additional period within which the information shall be provided.
3. The notification shall be deemed to be withdrawn if the requested information is not provided within the prescribed period, unless before the expiry of that period, either the period has been extended with the consent of both the EFTA Surveillance Authority and the EFTA State concerned, or the EFTA State concerned, in a duly reasoned statement, informs the EFTA Surveillance Authority that it considers the notification to be complete because the additional information requested is not available or has already been provided. In that case, the period referred to in Article 4(5) of this Chapter shall begin on the day

following receipt of the statement. If the notification is deemed to be withdrawn, the EFTA Surveillance Authority shall inform the EFTA State thereof.

Article 6

Formal investigation procedure

1. The decision to initiate the formal investigation procedure shall summarise the relevant issues of fact and law, shall include a preliminary assessment of the EFTA Surveillance Authority as to the aid character of the proposed measure and shall set out the doubts as to its compatibility with the functioning of the EEA Agreement. The decision shall call upon the EFTA State concerned and upon other interested parties to submit comments within a prescribed period which shall normally not exceed one month. In duly justified cases, the EFTA Surveillance Authority may extend the prescribed period.
2. The comments received shall be submitted to the EFTA State concerned. If an interested party so requests, on grounds of potential damage, its identity shall be withheld from the EFTA State concerned. The EFTA State concerned may reply to the comments submitted within a prescribed period which shall normally not exceed one month. In duly justified cases, the EFTA Surveillance Authority may extend the prescribed period.

Article 76a

Request for information made to other sources

1. After the initiation of the formal investigation procedure provided for in Article 6, in particular as regards technically complex cases subject to substantive assessment, the EFTA Surveillance Authority may, if the information provided by an EFTA State concerned during the course of the preliminary investigation is not sufficient, request any other EFTA State, an undertaking or an association of undertakings to provide all market information necessary to enable the EFTA Surveillance Authority to complete its assessment of the measure at stake taking due account of the principle of proportionality, in particular for small and medium-sized enterprises.
2. The EFTA Surveillance Authority may request information only:
 - (a) if it is limited to formal investigation procedures that have been identified by the EFTA Surveillance Authority as being ineffective to date; and
 - (b) in so far as aid beneficiaries are concerned, if the EFTA State concerned agrees to the request.
3. The undertakings or associations of undertakings providing information following a request by the EFTA Surveillance Authority for market information based on paragraphs 6 and 7 shall submit their answer simultaneously to the EFTA Surveillance Authority and to the EFTA State concerned, to the extent that the documents provided do not include information that is confidential vis-à-vis that EFTA State.

The EFTA Surveillance Authority shall steer and monitor the information transmission between the EFTA States, undertakings or associations of undertakings concerned, and verify the purported confidentiality of the information transmitted.
4. The EFTA Surveillance Authority shall request only information that is at the disposal of the EFTA State, undertaking or association of undertakings concerned by the request.
5. EFTA States shall provide the information on the basis of a simple request and within a time limit prescribed by the EFTA Surveillance Authority which should normally not exceed one month. Where an EFTA State does not provide the information requested within that period or provides incomplete information, the EFTA Surveillance Authority shall send a reminder.
6. The EFTA Surveillance Authority may, by simple request, require an undertaking or an association of undertakings to provide information. Where the EFTA Surveillance Authority sends a simple request for information to an undertaking or an association of undertakings, it shall state the legal basis and the purpose of the request, specify what information is required and prescribe a proportionate time limit within which the information is to be provided. It shall also refer to the fines provided for in Article ~~86b~~(1) for supplying incorrect or misleading information.

7. The EFTA Surveillance Authority may, by decision, require an undertaking or an association of undertakings to provide information. Where the EFTA Surveillance Authority, by decision, requires an undertaking or an association of undertakings to supply information, it shall state the legal basis, the purpose of the request, specify what information is required and prescribe a proportionate time limit within which the information is to be provided. It shall also indicate the fines provided for in Article ~~86b~~(1) and shall indicate the periodic penalties payments provided for in Article ~~86b~~(2), as appropriate. In addition, it shall indicate the right of the undertaking or association of undertakings to have the decision reviewed by the EFTA Court.
8. When issuing a request under paragraph 1 or 6, or adopting a decision under paragraph 7, the EFTA Surveillance Authority shall also simultaneously provide the EFTA State concerned with a copy thereof. The EFTA Surveillance Authority shall indicate the criteria by which it selected the recipients of the request or decision.
9. The owners of the undertakings or their representatives, or, in the case of legal persons, companies, firms or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply on their behalf the information requested or required. Persons duly authorised to act may supply the information on behalf of their clients. The latter shall nevertheless be held fully responsible if the information supplied is incorrect, incomplete or misleading.

Article ~~86b~~

Fines and periodic penalty payments

1. The EFTA Surveillance Authority may, if deemed necessary and proportionate, ~~formulate a recommendation to an EFTA State to~~ impose by decision on undertakings or associations of undertakings fines not exceeding 1 % of their total turnover in the preceding business year where they, intentionally or through gross negligence:
 - (a) supply incorrect or misleading information in response to a request made pursuant to Article ~~76a~~(6);
 - (b) supply incorrect, incomplete or misleading information in response to a decision adopted pursuant to Article ~~76a~~(7), or do not supply the information within the prescribed time limit.
2. The EFTA Surveillance Authority may, by decision, ~~formulate a recommendation to an EFTA State to~~ impose on undertakings or associations of undertakings periodic penalty payments where an undertaking or association of undertakings fails to supply complete and correct information as requested by the EFTA Surveillance Authority by decision adopted pursuant to Article ~~76a~~(7). The periodic penalty payments shall not exceed 5 % of the average daily turnover of the undertaking or association concerned in the preceding business year for each working day of delay, calculated from the date established in the decision, until it supplies complete and correct information as requested or required by the EFTA Surveillance Authority.
3. In fixing the amount of the fine or periodic penalty payment, regard shall be had to the nature, gravity and duration of the infringement, taking due account of the principles of proportionality and appropriateness, in particular for small and medium-sized enterprises.
4. Where the undertakings or associations of undertakings have satisfied the obligation which the periodic penalty payment was intended to enforce, the EFTA Surveillance Authority may ~~formulate a recommendation to an EFTA State to~~ reduce the definitive amount of the periodic penalty payment compared to that under the original decision imposing periodic penalty payments. The EFTA Surveillance Authority may also ~~formulate a recommendation to an EFTA State to~~ waive any periodic penalty payment.
5. Before ~~formulating a recommendation to an EFTA State~~ adopting any decision in accordance with paragraphs 1 or 2, the EFTA Surveillance Authority shall set a final deadline of two weeks to receive the missing market information from the undertakings or associations of undertakings concerned and also give them the opportunity of making known their views.
- ~~66.~~ When the EFTA Surveillance Authority formulates a recommendation to an EFTA State to impose fines or periodic penalty payments, the EFTA State will within 30 days take a decision based on the recommendation. Recommendations by the EFTA Surveillance Authority pursuant to Article ~~6b~~(1) and (2) shall state the reasons on which they are based. The EFTA Court shall have unlimited jurisdiction

within the meaning of Article 35 of the Surveillance and Court Agreement to review fines or periodic penalty payments imposed by the EFTA Surveillance Authority. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

Article 97

Decisions of the EFTA Surveillance Authority to close the formal investigation procedure

1. Without prejudice to Article 108 of this Chapter, the formal investigation procedure shall be closed by means of a decision as provided for in paragraphs 2 to 5 of this Article.
2. Where the EFTA Surveillance Authority finds that, where appropriate following modification by the EFTA State concerned, the notified measure does not constitute aid, it shall record that finding by way of a decision.
3. Where the EFTA Surveillance Authority finds that, where appropriate following modification by the EFTA State concerned, the doubts as to the compatibility of the notified measure with the functioning of the EEA Agreement have been removed, it shall decide that the aid is compatible with the functioning of the EEA Agreement (hereinafter referred to as a 'positive decision'). That decision shall specify which exception under the EEA Agreement has been applied.
4. The EFTA Surveillance Authority may attach to a positive decision conditions subject to which an aid may be considered compatible with the functioning of the EEA Agreement and may lay down obligations to enable compliance with the decision to be monitored (hereinafter referred to as a 'conditional decision').
5. Where the EFTA Surveillance Authority finds that the notified aid is not compatible with the functioning of the EEA Agreement, it shall decide that the aid shall not be put into effect (hereinafter referred to as a 'negative decision').
6. Decisions taken pursuant to paragraphs 2, 3, 4 and 5 shall be taken as soon as the doubts referred to in Article 4(4) of this Chapter have been removed. The EFTA Surveillance Authority shall as far as possible endeavour to adopt a decision within a period of 18 months from the opening of the procedure. This time limit may be extended by common agreement between the EFTA Surveillance Authority and the EFTA State concerned.
7. Once the time limit referred to in paragraph 6 has expired, and should the EFTA State concerned so request, the EFTA Surveillance Authority shall, within two months, take a decision on the basis of the information available to it. If appropriate, where the information provided is not sufficient to establish compatibility, the EFTA Surveillance Authority shall take a negative decision.
8. Before adopting any decision in accordance with paragraphs 2 to 5, the EFTA Surveillance Authority shall give the EFTA State concerned the opportunity of making known its views, within a time-limit that shall not normally exceed one month, on the information received by the EFTA Surveillance Authority and provided to the EFTA State concerned pursuant to Article 76a(3).
9. The EFTA Surveillance Authority shall not use confidential information provided by respondents, which cannot be aggregated or otherwise be anonymised, in any decision taken in accordance with paragraphs 2 to 5, unless it has obtained their agreement to disclose that information to the EFTA State concerned. The EFTA Surveillance Authority may take a reasoned decision, which shall be notified to the undertaking or association of undertakings concerned, finding that information provided by a respondent and marked as confidential is not protected, and setting a date after which the information will be disclosed. That period shall not be less than one month.
10. The EFTA Surveillance Authority shall take due account of the legitimate interests of undertakings in the protection of their business secrets and other confidential information. An undertaking or an association of undertakings providing information pursuant to Article 76a, and which is not a beneficiary of the State aid measure in question, may request, on grounds of potential damage, that its identity be withheld from the EFTA State concerned.²

Article 108

Withdrawal of notification

1. The EFTA State concerned may withdraw the notification within the meaning of Article 2 of this Chapter in due time before the EFTA Surveillance Authority has taken a decision pursuant to Article 4 or 97 of this Chapter.
2. In cases where the EFTA Surveillance Authority initiated the formal investigation procedure, the EFTA Surveillance Authority shall close that procedure.

Article 119

Revocation of a decision

The EFTA Surveillance Authority may revoke a decision taken pursuant to Article 4(2) or (3), or Article 97(2), (3), (4) of this Chapter, after having given the EFTA State concerned the opportunity to submit its comments, where the decision was based on incorrect information provided during the procedure which was a determining factor for the decision. Before revoking a decision and taking a new decision, the EFTA Surveillance Authority shall open the formal investigation procedure pursuant to Article 4(4). Articles 6, 97 and 120, Article 134(1), Articles 153, 164 and 175 of this Chapter shall apply *mutatis mutandis*.

SECTION III

PROCEDURE REGARDING UNLAWFUL AID

Article 12~~0~~

Examination, request for information and information injunction

~~1. Where the EFTA Surveillance Authority has in its possession information from whatever source regarding alleged unlawful aid, it shall examine that information without delay.~~

~~2. If necessary, it shall request information from the EFTA State concerned. Article 2(2) and Article 5(1) and (2) of this Chapter shall apply *mutatis mutandis*.~~

~~1. Without prejudice to Article 24, the EFTA Surveillance Authority may on its own initiative examine information regarding alleged unlawful aid from whatever source.~~

~~The EFTA Surveillance Authority shall examine without undue delay any complaint submitted by any interested party in accordance with Article 24(2) and shall ensure that the EFTA State concerned is kept fully and regularly informed of the progress and outcome of the examination.~~

~~2. If necessary, the EFTA Surveillance Authority shall request information from the EFTA State concerned. Article 2(2) and Article 5(1) and (2) shall apply *mutatis mutandis*.~~

~~After the initiation of the formal investigation procedure, the EFTA Surveillance Authority may also request information from any other EFTA State, from an undertaking, or association of undertakings in accordance with Article 7 and 8, which shall apply *mutatis mutandis*.~~

3. Where, despite a reminder pursuant to Article 5(2) of this Chapter, the EFTA State concerned does not provide the information requested within the period prescribed by the EFTA Surveillance Authority, or where it provides incomplete information, the EFTA Surveillance Authority shall by decision require the information to be provided (hereinafter referred to as an 'information injunction'). The decision shall specify what information is required and prescribe an appropriate period within which it is to be supplied.

Article 13~~1~~

Injunction to suspend or provisionally recover aid

1. The EFTA Surveillance Authority may, after giving the EFTA State concerned the opportunity to submit its comments, adopt a decision requiring the EFTA State to suspend any unlawful aid until the EFTA Surveillance Authority has taken a decision on the compatibility of the aid with the functioning of the EEA Agreement (hereinafter referred to as a 'suspension injunction').

2. The EFTA Surveillance Authority may, after giving the EFTA State concerned the opportunity to submit its comments, adopt a decision requiring the EFTA State provisionally to recover any unlawful aid until the EFTA Surveillance Authority has taken a decision on the compatibility of the aid with the functioning of the EEA Agreement (hereinafter referred to as a 'recovery injunction'), if all the following criteria are fulfilled:

(a) according to an established practice there are no doubts about the aid character of the measure concerned;

(b) there is an urgency to act;

(c) there is a serious risk of substantial and irreparable damage to a competitor.

Recovery shall be effected in accordance with the procedure set out in Article 16(2) and (3) of this Chapter. After the aid has been effectively recovered, the EFTA Surveillance Authority shall take a decision within the time limits applicable to notified aid.

The EFTA Surveillance Authority may authorise the EFTA State to couple the refunding of the aid with the payment of rescue aid to the firm concerned.

The provisions of this paragraph shall be applicable only to unlawful aid implemented after the entry into force of ~~this Chapter or prior to this Chapter but in accordance with the Agreement between the EFTA States amending Protocol 3 to the Surveillance and Court Agreement of 10 December 2001, amending Protocol 3 as signed on 10 December 2001.~~

Article 14~~2~~

Non-compliance with an injunction decision

If the EFTA State fails to comply with a suspension injunction or a recovery injunction, the EFTA Surveillance Authority shall be entitled, while carrying out the examination on the substance of the matter on the basis of the information available, to refer the matter to the EFTA Court direct and apply for a declaration that the failure to comply constitutes an infringement of the EEA Agreement.

Article 15~~3~~

Decisions of the EFTA Surveillance Authority

1. The examination of possible unlawful aid shall result in a decision pursuant to Article 4(2), (3) or (4) of this Chapter. In the case of decisions to initiate the formal investigation procedure, proceedings shall be closed by means of a decision pursuant to Article 9~~7~~ of this Chapter. If an EFTA State fails to comply with an information injunction, that decision shall be taken on the basis of the information available.
2. In cases of possible unlawful aid and without prejudice to Article 13~~1~~(2), the EFTA Surveillance Authority shall not be bound by the time-limit set out in Articles 4(5), 9~~7~~(6) and 9~~7~~(7) of this Chapter.
3. Article 11~~9~~ of this Chapter shall apply *mutatis mutandis*.

Article 16~~4~~

Recovery of aid

1. Where negative decisions are taken in cases of unlawful aid, the EFTA Surveillance Authority shall decide that the EFTA State concerned shall take all necessary measures to recover the aid from the beneficiary (hereinafter referred to as a 'recovery decision'). The EFTA Surveillance Authority shall not require recovery of the aid if this would be contrary to a general principle of EEA law.
2. The aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the EFTA Surveillance Authority. Interest shall be payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery.
3. Without prejudice to any order of the EFTA Court pursuant to Article 40 of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice, recovery shall be effected without delay and in accordance with the procedures under the national law of the EFTA State concerned, provided that they allow the immediate and effective execution of the EFTA Surveillance Authority's decision. To this effect and in the event of a procedure before national courts, the EFTA States concerned shall take all necessary steps which are available in their respective legal systems, including provisional measures, without prejudice to EEA law.

SECTION IV

LIMITATION PERIODS

Article 17~~5~~

Limitation period for the recovery of aid

1. The powers of the EFTA Surveillance Authority to recover aid shall be subject to a limitation period of ten years.
2. The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme. Any action taken by the EFTA Surveillance Authority or by an EFTA State, acting at the request of the EFTA Surveillance Authority, with regard to the unlawful aid shall interrupt the limitation period. Each interruption shall start time running afresh. The limitation period shall be suspended for as long as the decision of the EFTA Surveillance Authority is the subject of proceedings pending before the EFTA Court.
3. Any aid with regard to which the limitation period has expired, shall be deemed to be existing aid.

Article 1815a

Limitation period for the imposition of fines and periodic penalty payments

1. The powers conferred on the EFTA Surveillance Authority by Article 86b shall be subject to a limitation period of three years.
2. The period provided for in paragraph 1 shall start on the day on which the infringement referred to in Article 86b is committed. However, in the case of continuing or repeated infringements, the period shall begin on the day on which the infringement ceases.
3. Any action taken by the EFTA Surveillance Authority for the purpose of the investigation or proceedings in respect of an infringement referred to in Article 86b shall interrupt the limitation period for the imposition of fines or periodic penalty payments, with effect from the date on which the action is notified to the undertaking or association of undertakings concerned.
4. After each interruption, the limitation period shall start running afresh. However, the limitation period shall expire at the latest on the day on which a period of six years has elapsed without the EFTA Surveillance Authority having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which the limitation period is suspended in accordance with paragraph 5 of this Article.
5. The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of the EFTA Surveillance Authority is the subject of proceedings pending before the EFTA Court.

Article 1915b

Limitation period for the enforcement of fines and periodic penalty payments

1. The powers of the EFTA States-Surveillance Authority to enforce decisions adopted pursuant to Article 86b shall be subject to a limitation period of five years.
2. The period provided for in paragraph 1 shall start on the day on which the decision taken pursuant to Article 86b becomes final.
3. The limitation period provided for in paragraph 1 shall be interrupted:
 - (a) by notification of a decision modifying the original amount of the fine or periodic penalty payment or refusing an application for modification;
 - (b) by any action of an EFTA State, acting at the request of the EFTA Surveillance Authority, or of the EFTA Surveillance Authority, intended to enforce payment of the fine or periodic penalty payment.
4. After each interruption, the limitation period shall start running afresh.
5. The limitation period provided for in paragraph 1 shall be suspended for so long as:
 - (a) the respondent is allowed time to pay;

- (b) the enforcement of payment is suspended pursuant to a decision of the EFTA Court.

SECTION IV

PROCEDURE REGARDING MISUSE OF AID

Article ~~20~~6

Misuse of aid

Without prejudice to Article ~~28~~3 of this Chapter, the EFTA Surveillance Authority may in cases of misuse of aid open the formal investigation procedure pursuant to Article 4(4) of this Chapter. Articles ~~6 to, 7, 9, 11 and 12, Article 13(1) and Articles 14 to 17 -and 10, Article 11(1), Articles 12, 13, 14 and 15-~~ of this Chapter shall apply *mutatis mutandis*.

SECTION VI

PROCEDURE REGARDING EXISTING AID SCHEMES

Article ~~21~~7

Cooperation pursuant to Article 1(1) in Part I

1. The EFTA Surveillance Authority shall obtain from the EFTA State concerned all necessary information for the review, in cooperation with the EFTA State, of existing aid schemes pursuant to Article 1(1) in Part I.
2. Where the EFTA Surveillance Authority considers that an existing aid scheme is not, or is no longer, compatible with the functioning of the EEA Agreement, it shall inform the EFTA State concerned of its preliminary view and give the EFTA State concerned the opportunity to submit its comments within a period of one month. In duly justified cases, the EFTA Surveillance Authority may extend this period.

Article ~~22~~8

Proposal for appropriate measures

Where the EFTA Surveillance Authority, in the light of the information submitted by the EFTA State pursuant to Article ~~21~~7 of this Chapter, concludes that the existing aid scheme is not, or is no longer, compatible with the functioning of the EEA Agreement, it shall issue a recommendation proposing appropriate measures to the EFTA State concerned. The recommendation may propose, in particular:

- (a) substantive amendment of the aid scheme; ~~or,~~
~~or~~
- (b) introduction of procedural requirements; ~~or,~~
~~or~~
- (c) abolition of the aid scheme.

Article ~~23~~9

Legal consequences of a proposal for appropriate measures

1. Where the EFTA State concerned accepts the proposed measures and informs the EFTA Surveillance Authority thereof, the EFTA Surveillance Authority shall record that finding and inform the EFTA State thereof. The EFTA State shall be bound by its acceptance to implement the appropriate measures.

2. Where the EFTA State concerned does not accept the proposed measures and the EFTA Surveillance Authority, having taken into account the arguments of the EFTA State concerned, still considers that those measures are necessary, it shall initiate proceedings pursuant to Article 4(4) of this Chapter. Articles 6, ~~97~~ and ~~119~~ of this Chapter shall apply *mutatis mutandis*.

SECTION VII

INTERESTED PARTIES

Article ~~240~~

Rights of interested parties

1. Any interested party may submit comments pursuant to Article 6 of this Chapter following an EFTA Surveillance Authority decision to initiate the formal investigation procedure. Any interested party which has submitted such comments and any beneficiary of individual aid shall be sent a copy of the decision taken by the EFTA Surveillance Authority pursuant to Article ~~97~~ of this Chapter.
2. Any interested party may submit a complaint to inform the EFTA Surveillance Authority of any alleged unlawful aid or any alleged misuse of aid. To that effect, the interested party shall duly complete a form that has been defined in an implementing provision referred to in Article ~~33~~ and shall provide the mandatory information requested therein.

Where the EFTA Surveillance Authority considers that the interested party does not comply with the compulsory complaint form, or that the facts and points of law put forward by the interested party do not provide sufficient grounds to show, on the basis of a prima facie examination, the existence of unlawful aid or misuse of aid, it shall inform the interested party thereof and call upon it to submit comments within a prescribed period which shall not normally exceed one month. If the interested party fails to make known its views within the prescribed period, the complaint shall be deemed to have been withdrawn. The EFTA Surveillance Authority shall inform the EFTA State concerned when a complaint has been deemed to have been withdrawn.

3. At its request, any interested party shall obtain a copy of any decision pursuant to Articles 4 and ~~97~~, Article ~~120~~(3) and Article ~~131~~ of this Chapter.

SECTION VIII

INVESTIGATIONS INTO SECTORS OF THE ECONOMY AND INTO AID INSTRUMENTS MONITORING

Article ~~2520a~~

Annual reports Investigations into sectors of the economy and into aid instruments

1. Where the information available substantiates a reasonable suspicion that State aid measures in a particular sector or based on a particular aid instrument may materially restrict or distort competition within the internal market in several EFTA States, or that existing aid measures in a particular sector in several EFTA States are not, or no longer, compatible with the internal market, the EFTA Surveillance Authority may conduct an inquiry across various EFTA States into the sector of the economy or the use of the aid instrument concerned. In the course of that inquiry, the EFTA Surveillance Authority may request the EFTA States and/or the undertakings or associations of undertakings concerned to supply the necessary information for the application of Articles 61(+) and ~~62~~ of the EEA Agreement and Article ~~1~~ in Part I, taking due account of the principle of proportionality.

The EFTA Surveillance Authority shall state the reasons for the inquiry and for the choice of addressees in all requests for information sent under this Article.

The EFTA Surveillance Authority shall publish a report on the results of its inquiry into particular sectors of the economy or particular aid instruments across various EFTA States and shall invite the EFTA States and any undertakings or associations of undertakings concerned to submit comments.

2. Information obtained from sector inquiries may be used in the framework of procedures under [Part II of this Protocol](#).

3. Articles 5, [76a](#) and [86b](#) shall apply mutatis mutandis.'

SECTION [IXVII](#)

MONITORING

Article ~~261~~

Annual reports

1. EFTA States shall submit to the EFTA Surveillance Authority annual reports on all existing aid schemes with regard to which no specific reporting obligations have been imposed in a conditional decision pursuant to Article [97\(4\)](#) of this Chapter.
2. Where, despite a reminder, the EFTA State concerned fails to submit an annual report, the EFTA Surveillance Authority may proceed in accordance with Article [2218](#) of this Chapter with regard to the aid scheme concerned.

Article ~~272~~

On-site monitoring

1. Where the EFTA Surveillance Authority has serious doubts as to whether decisions not to raise objections, positive decisions or conditional decisions with regard to individual aid are being complied with, the EFTA State concerned, after having been given the opportunity to submit its comments, shall allow the EFTA Surveillance Authority to undertake on-site monitoring visits.
2. The officials authorised by the EFTA Surveillance Authority shall be empowered, in order to verify compliance with the decision concerned:
 - (a) to enter any premises and land of the undertaking concerned;
 - (b) to ask for oral explanations on the spot;
 - (c) to examine books and other business records and take, or demand, copies.

The EFTA Surveillance Authority may be assisted if necessary by independent experts.

3. The EFTA Surveillance Authority shall inform the EFTA State concerned, in good time and in writing, of the on-site monitoring visit and of the identities of the authorised officials and experts. If the EFTA State has duly justified objections to the EFTA Surveillance Authority's choice of experts, the experts shall be appointed in common agreement with the EFTA State. The officials of the EFTA Surveillance Authority and the experts authorised to carry out the on-site monitoring shall produce an authorisation in writing specifying the subject-matter and purpose of the visit.
4. Officials authorised by the EFTA State in whose territory the monitoring visit is to be made may be present at the monitoring visit.
5. The EFTA Surveillance Authority shall provide the EFTA State with a copy of any report produced as a result of the monitoring visit.

6. Where an undertaking opposes a monitoring visit ordered by an EFTA Surveillance Authority decision pursuant to this Article, the EFTA State concerned shall afford the necessary assistance to the officials and experts authorised by the EFTA Surveillance Authority to enable them to carry out the monitoring visit. ~~To this end the EFTA States shall, after consulting the EFTA Surveillance Authority, take the necessary measures within eighteen months after the entry into force of this Chapter.~~

Article 283

Non-compliance with decisions and judgements

1. Where the EFTA State concerned does not comply with conditional or negative decisions, in particular in cases referred to in Article 16 of this Chapter, the EFTA Surveillance Authority may refer the matter to the EFTA Court ~~directly~~ in accordance with Article 1(2) in Part I.
2. If the EFTA Surveillance Authority considers that the EFTA State concerned has not complied with a judgment of the EFTA Court, the EFTA Surveillance Authority may ~~refer~~ ~~to the EFTA Court directly~~ ~~in accordance with Articles 1(2) in Part I, 31 and 33 of the Surveillance and Court Agreement.~~ ~~refer~~ ~~pursue~~ the matter ~~to the EFTA Court directly~~ in accordance with Articles ~~1(2) in Part I, 31 and 33 of the Surveillance and Court Agreement.~~

SECTION X

COOPERATION WITH NATIONAL COURTS

Article 2923a

Cooperation with national courts

1. For the application of Article 61(1) ~~of the EEA Agreement~~ and ~~Article 1 in Part I-62 of the EEA Agreement~~, the courts of the EFTA States may ask the EFTA Surveillance Authority to transmit to them information in its possession or its opinion on questions concerning the application of State aid rules.
2. Where the coherent application of Article 61(1) and Article 62 of the EEA Agreement so requires, the EFTA Surveillance Authority, acting on its own initiative, may submit written observations to the courts of the EFTA States that are responsible for applying the State aid rules. It may, with the permission of the court in question, also make oral observations.

The EFTA Surveillance Authority shall inform the EFTA State concerned of its intention to submit observations before formally doing so.

For the exclusive purpose of preparing its observations, the EFTA Surveillance Authority may request the relevant court of the EFTA State to transmit documents at the disposal of the court, necessary for the EFTA Surveillance Authority's assessment of the matter.'

SECTION VIII-XI

COMMON PROVISIONS

Article 3024

Professional secrecy

The EFTA Surveillance Authority and the EFTA States, their officials and other servants, including independent experts appointed by the EFTA Surveillance Authority, shall not disclose information which they have acquired through the application of this Chapter and which is covered by the obligation of professional secrecy.

Article 3125

Addressee of decisions

1. The decisions taken pursuant to Article 7(7), Article 8(1) and (2), and Article 9(9) shall be addressed to the undertaking or association of undertakings concerned. The EFTA Surveillance Authority ~~or the EFTA State~~ shall notify the decision to the addressee without delay and shall give the addressee the opportunity to indicate to the EFTA Surveillance Authority ~~or the EFTA State~~ which information it considers to be covered by the obligation of professional secrecy.
2. All other decisions of the EFTA Surveillance Authority taken pursuant to Sections II, III, V, VI and IX shall be addressed to the EFTA State concerned. The EFTA Surveillance Authority shall notify them to the EFTA State concerned without delay and shall give that EFTA State the opportunity to indicate to the EFTA Surveillance Authority which information it considers to be covered by the obligation of professional secrecy.

Article 3226

Publication of decisions

1. The EFTA Surveillance Authority shall publish in the EEA Section of and the EEA Supplement to the Official Journal of the European Communities a summary notice of the decisions which it takes pursuant to Article 4(2) and (3) and Article ~~2248~~ in conjunction with Article ~~2349~~(1) of this Chapter. The summary notice shall state that a copy of the decision may be obtained in the authentic language version or versions.
2. The EFTA Surveillance Authority shall publish in the EEA Section of and the EEA Supplement to the Official Journal of the European Communities the decisions which it takes pursuant to Article 4(4) of this Chapter in their authentic language version. In the Official Journal published in languages other than the authentic language version, the authentic language version will be accompanied by a meaningful summary in the language of that Official Journal.
3. The EFTA Surveillance Authority shall publish in the EEA Section of and the EEA Supplement to the Official Journal of the European Communities the decisions which it takes pursuant to Article ~~7-8(1) and (2)~~ and Article 9 of this Chapter.
4. In cases where Article 4(6) or Article 108(2) of this Chapter applies, a short notice shall be published in the EEA Section of and the EEA Supplement to the Official Journal of the European Communities.
5. The EFTA States, acting unanimously, may decide to publish decisions pursuant to the third subparagraph of Article 1(2) in Part I in the EEA Section of and the EEA Supplement to the Official Journal of the European Communities.'

Article 33~~27~~

Implementing provisions

The EFTA Surveillance Authority, acting in accordance with the procedure laid down in Article 29, shall have the power to adopt implementing provisions concerning:

- (a) the form, content and other details of notifications;
- (b) the form, content and other details of annual reports;
- (c) the form, content and other details of complaints submitted in accordance with Article 120(1) and Article 240(2);
- (d) details of time-limits and the calculation of time-limits; and
- (e) the interest rate referred to in Article 164(2).⁷

Article 34

Consultation of the Advisory Committee

1. The advisory committee set up by the Agreement between the EFTA States amending Protocol 3 to the Surveillance and Court Agreement of 10 December 2001 shall assist the EFTA Surveillance Authority in adopting implementing provisions pursuant to Article 33 of this Chapter. The committee shall have as Chairman a representative of the EFTA Surveillance Authority and shall consist of representatives appointed by each EFTA State.
2. Before adopting any implementing provision pursuant to Article 33~~27~~ of this Chapter the EFTA Surveillance Authority shall consult the Advisory Committee, ~~which shall have as Chairman a representative of the EFTA Surveillance Authority and shall consist of representatives appointed by each EFTA State.~~
3. Consultation of the Committee shall take place at a meeting called by the EFTA Surveillance Authority. The drafts and documents to be examined shall be annexed to the notification. The meeting shall take place no earlier than two months after notification has been sent. This period may be reduced in the case of urgency.
4. The EFTA Surveillance Authority shall submit to the Committee a draft of the measures to be taken. The Committee may examine, and give an opinion on, all questions concerning the draft, within a time-limit which the chairman may lay down according to the urgency of the matter.

Article 28

Advisory Committee

~~An advisory committee shall assist the EFTA Surveillance Authority in adopting implementing provisions pursuant to Article 27 of this Chapter. The committee shall have as Chairman a representative of the EFTA Surveillance Authority and shall consist of representatives appointed by each EFTA State.~~

Article 34

Consultation of the Committee

1. ~~The EFTA Surveillance Authority shall consult the Committee before adopting any implementing provision pursuant to Article 27 of this Chapter.~~
2. ~~Consultation of the Committee shall take place at a meeting called by the EFTA Surveillance Authority. The drafts and documents to be examined shall be annexed to the notification. The meeting shall take place no earlier than two months after notification has been sent. This period may be reduced in the case of urgency.~~

3. ~~The EFTA Surveillance Authority shall submit to the Committee a draft of the measures to be taken. The Committee may examine, and give an opinion on, all questions concerning the draft, within a time-limit which the chairman may lay down according to the urgency of the matter.~~