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PROTOCOL 3

ON THE FUNCTIONS AND POWERS OF THE EFTA SURVEILLANCE AUTHORITY IN THE FIELD OF STATE AID¹

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¹ Protocol 3 to the Surveillance and Court Agreement, as amended by Agreement amending Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, 10 December 2001. The amendments were put into force as from 28 August 2003.

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PART I - GENERAL RULES

Article 1

1. The EFTA Surveillance Authority shall, in cooperation with the EFTA States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the EEA Agreement.

2. If, after giving notice to the parties concerned to submit their comments, the EFTA Surveillance Authority finds that aid granted by an EFTA State or through EFTA State resources is not compatible with the functioning of the EEA Agreement having regard to Article 61 of the EEA Agreement, or that such aid is being misused, it shall decide that the EFTA State concerned shall abolish or alter such aid within a period of time to be determined by the Authority.

If the EFTA State concerned does not comply with this decision within the prescribed time, the EFTA Surveillance Authority or any other interested EFTA State may, in derogation from Articles 31 and 32 of this Agreement, refer the matter to the EFTA Court directly.

On application by an EFTA State, the EFTA States may, by common accord, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the functioning of the EEA Agreement, in derogation from the provisions of Article 61 of the EEA Agreement, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the EFTA Surveillance Authority has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the EFTA States shall have the effect of suspending that procedure until the EFTA States, by common accord, have made their attitude known.

If, however, the EFTA States have not made their attitude known within three months of the said application being made, the EFTA Surveillance Authority shall give its decision on the case.

3. The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the functioning of the EEA Agreement having regard to Article 61 of the EEA Agreement, it shall without delay initiate the procedure provided for in paragraph 2. The State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

Article 2

Without prejudice to special procedural rules laid down in this Protocol and in the EEA Agreement for certain sectors, the implementing provisions referred to in Part II of this Protocol shall apply to aid in all sectors.

PART II - IMPLEMENTING PROVISIONS

CHAPTER I

PROCEDURAL RULES FOR THE IMPLEMENTATION OF ARTICLE 1 IN PART I OF THIS PROTOCOL

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 or prior to this Chapter but in accordance with this procedure;
 - (iv) aid which is deemed to be existing aid pursuant to Article 15 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;
- (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 8 of this Chapter, the EFTA Surveillance Authority shall take a decision pursuant to paragraphs 2, 3 or 4.
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

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 7

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

1. Without prejudice to Article 8 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.

Article 8

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 7 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 9

Revocation of a decision

The EFTA Surveillance Authority may revoke a decision taken pursuant to Article 4(2) or (3), or Article 7(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, 7 and 10, Article 11(1), Articles 13, 14 and 15 of this Chapter shall apply *mutatis mutandis*.

SECTION III - PROCEDURE REGARDING UNLAWFUL AID

Article 10

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*.
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 11

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 the following criteria are fulfilled:
 - according to an established practice there are no doubts about the aid character of the measure concerned
 - and
 - there is an urgency to act
 - and
 - 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 14(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.

Article 12

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 13

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 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 11(2), the EFTA Surveillance Authority shall not be bound by the time-limit set out in Articles 4(5), 7(6) and 7(7) of this Chapter.
3. Article 9 of this Chapter shall apply *mutatis mutandis*.

Article 14

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.

Article 15

Limitation period

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.

SECTION IV - PROCEDURE REGARDING MISUSE OF AID

Article 16

Misuse of aid

Without prejudice to Article 23 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, 7, 9 and 10, Article 11(1), Articles 12, 13, 14 and 15 of this Chapter shall apply *mutatis mutandis*.

SECTION V - PROCEDURE REGARDING EXISTING AID SCHEMES

Article 17

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 18

Proposal for appropriate measures

Where the EFTA Surveillance Authority, in the light of the information submitted by the EFTA State pursuant to Article 17 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

(b) introduction of procedural requirements,

or

(c) abolition of the aid scheme.

Article 19

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, 7 and 9 of this Chapter shall apply *mutatis mutandis*.

SECTION VI - INTERESTED PARTIES

Article 20

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 7 of this Chapter.

2. Any interested party may inform the EFTA Surveillance Authority of any alleged unlawful aid and any alleged misuse of aid. Where the EFTA Surveillance Authority considers that on the basis of the information in its possession there are insufficient grounds for taking a view on the case, it shall inform the interested party thereof. Where the EFTA

Surveillance Authority takes a decision on a case concerning the subject matter of the information supplied, it shall send a copy of that decision to the interested party.

3. At its request, any interested party shall obtain a copy of any decision pursuant to Articles 4 and 7, Article 10(3) and Article 11 of this Chapter.

SECTION VII - MONITORING

Article 21

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 7(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 18 of this Chapter with regard to the aid scheme concerned.

Article 22

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 23

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 14, the EFTA Surveillance Authority may refer the matter to the EFTA Court direct 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 the matter to the EFTA Court direct in accordance with Article 1(2) in Part I.

SECTION VIII - COMMON PROVISIONS

Article 24

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 25

Addressee of decisions

Decisions taken pursuant to Sections II, III, IV, V and VII shall be addressed to the EFTA State concerned. The EFTA Surveillance Authority shall notify them to the EFTA State concerned without delay and give the latter the opportunity to indicate the EFTA Surveillance Authority which information it considers to be covered by the obligation of professional secrecy.

Article 26

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 18 in conjunction with

Article 19(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 of this Chapter.

4. In cases where Article 4(6) or Article 8(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 27

Implementing provisions

The EFTA Surveillance Authority, acting in accordance with the procedure laid down in Article 29 of this Chapter, shall have the power to adopt implementing provisions concerning the form, content and other details of notifications, the form, content and other details of annual reports, details of time-limits and the calculation of time-limits, and the interest rate referred to in Article 14(2) of this Chapter.

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 29

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.

PART III - TRANSPORT

Article 1

1. An advisory committee shall assist the EFTA Surveillance Authority in its examination of aid granted for transport by rail, road and inland waterway. The committee shall have as Chairman a representative of the EFTA Surveillance Authority and shall consist of representatives appointed by each EFTA State. Not less than ten days' notice of meetings of the committee shall be given and such notice shall include details of the agenda. This period may be reduced for urgent cases.

2. The committee may examine, and give an opinion on, all questions concerning the operation of the provisions of the EEA Agreement on the granting of aid in the transport sector.

3. The committee shall be kept informed of the nature and amount of aid granted to transport undertakings and, generally, of all relevant details concerning such aid, as soon as the latter is notified to the EFTA Surveillance Authority in accordance with the provisions laid down in Annex XIII, section I (iv), to the EEA Agreement governing the granting of aid in the transport sector.

PART IV -COAL AND STEEL

Article 1²

1. In order to assess the compatibility with the functioning of the EEA Agreement of state aid measures falling under the act referred to in point 1a of Annex XV to the EEA Agreement, the rules laid down in Article 1 in Part I of this Protocol shall be further specified, as follows:

2. The notification of plans to grant aid under Article 4 of the act referred to in paragraph 1, in which the EFTA State paying the aid is not identical to that in whose territory the closure would take place, shall be submitted to the EFTA Surveillance Authority jointly by both EFTA States.

² Article inserted by the Agreement amending Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice of 27 March 1998, subsequently amended by the Agreement amending Protocols 2 and 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice of 21 March 1994 and further replaced by the Agreement amending Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice of 6 March 1998.

The notification of aid plans falling under the act referred to in paragraph 1, must be lodged with the EFTA Surveillance Authority at the latest by 31 December 2001.

3. The EFTA Surveillance Authority shall be informed, in sufficient time for it to submit its comments, and by 31 December 2001 at the latest, of any plans for transfers of State resources by EFTA States, regional or local authorities or other bodies to steel undertakings in the form of acquisition of shareholdings, provisions of capital, loan guaranties, indemnities or similar financing.

The EFTA Surveillance Authority shall determine whether the financial transfers involve aid elements within the meaning of Article 1(2) of the act referred to in paragraph 1 and, if so, shall examine whether they are compatible with the functioning of the EEA Agreement under the provisions of Articles 2 to 5 of the aforementioned act.

4. The EFTA Surveillance Authority shall seek the views of the EFTA States on plans for closure aid and on other major aid proposals notified to it before adopting a position on them. It shall inform the EFTA States of the decisions it has adopted on aid proposals, specifying the form and volume of the aid.

5. The planned measures falling within paragraph 2 or 3 may be put into effect only with the approval of and subject to any conditions laid down by the EFTA Surveillance Authority.

The EFTA Surveillance Authority may, after giving the EFTA State concerned the opportunity to submit its comments, adopt a decision under Article 1(2), subparagraph 1 in Part I of this Protocol requiring the EFTA State to suspend the disbursement of any financial means until approval is given by the EFTA Surveillance Authority. Article 1(2) in Part I of this Protocol shall continue to apply in the event of an EFTA State's failing to comply with that decision.

The EFTA Surveillance Authority may, after giving the EFTA State concerned the opportunity to submit its comments, adopt a decision under Article 1(2), subparagraph 1 in Part I of this Protocol requiring the EFTA State to recover provisionally any financial means disbursed in breach of the first subparagraph of this paragraph and Article 61(1) of the EEA Agreement. Repayment shall be made in accordance with the procedures and provisions of domestic law of the EFTA State concerned, together with interest at the rate used as reference rate in the assessment of regional aid schemes running from the date of disbursement. Article 1(2) in Part I of this Protocol shall continue to apply in the event of an EFTA State's failing to comply with that decision.

6. If the EFTA Surveillance Authority considers that a certain financial measure may represent State aid within the meaning of Article 1 of the act referred to in paragraph 1 or doubts whether a certain aid is compatible with the provisions of the act referred to in paragraph 1, it shall inform the EFTA State concerned and give notice to the interested parties and other EFTA States to submit their comments. If, after having received the comments and after having given the EFTA State concerned the opportunity to respond, the EFTA Surveillance Authority finds that the measure in question is an aid incompatible with the provisions of the act referred to in paragraph 1, it shall take a decision not later than three months after receiving the information needed to assess the proposed measure. Article

1(2) in Part I of this Protocol shall apply in the event of an EFTA State's failing to comply with that decision.

7. If the EFTA Surveillance Authority fails to initiate the procedure provided for in paragraph 6, or otherwise to make its position known within two months of receiving full notification of a proposal, the planned measures may be put into effect provided that the EFTA State first informs the EFTA Surveillance Authority of its intention to do so. Where the EFTA Surveillance Authority seeks the views of EFTA States under paragraph 4, the abovementioned period shall be three months.