

ANNEX II

**NEW CHAPTER OF THE STATE AID GUIDELINES
APPLICABLE RULES FOR THE ASSESSMENT OF UNLAWFUL STATE AID**

A number of instruments approved by the EFTA Surveillance Authority (hereinafter 'The Authority') over the years contain a provision to the effect that unlawful State aid, i.e. aid put into effect in contravention of Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement ⁽¹⁾, shall be assessed in accordance with the texts in force at the time when the aid was granted. This is, for example, the case for the Chapter of the Authority's State Aid Guidelines on State aid for environmental protection.

For the purpose of transparency and legal certainty, the Authority informs the EFTA States and third parties that it has decided to continue to apply the same rule in respect of all instruments indicating how the Authority will exercise its discretion in order to assess the compatibility of State aid with the functioning of the EEA Agreement. Therefore, the Authority shall always assess the compatibility of unlawful State aid with the functioning of the EEA Agreement in accordance with the substantive criteria set out in any instrument in force at the time when the aid was granted.

This is without prejudice to the more specific rules contained in the Chapter of the Authority's State Aid Guidelines on State aid for rescuing and restructuring firms in difficulty.

This is without prejudice to the interpretation of Acts in the field of State aid, incorporated into the EEA Agreement.

⁽¹⁾ Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, referred to as the Surveillance and Court Agreement.
