

IV. Protocol 5 to the ESA/Court Agreement on the Statute of the EFTA Court

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Article 1

The EFTA Court established by Article 27 of this Agreement shall be constituted and function in accordance with the provisions of this Agreement and of this Statute.

PART I JUDGES

Article 2

Before taking up his duties each Judge shall, in open court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 3¹

Article 4

The Judges may not hold any political or administrative office.

They may not engage in any occupation, whether gainful or not, unless exemption is granted by the Governments of the EFTA States acting by common accord.

When taking up their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Any doubt on this point shall be settled by decision of the Court.

Article 5

Apart from normal replacement, or death, the duties of a Judge shall end when he resigns.

¹ Article 3 deleted by the Adjusting Agreement on 29 December 1994.

Where a Judge resigns, his letter of resignation shall be addressed to the President of the Court for transmission to the Governments of the EFTA States. Upon this notification a vacancy shall arise on the bench.

Save where Article 6 applies, a Judge shall continue to hold office until his successor takes up his duties.

Article 6

A Judge may be deprived of his office or of his right to a pension or other benefits in its stead only if, in the unanimous opinion of the Court in plenary, he no longer fulfils the requisite conditions or meets the obligations arising from his office. The Judge concerned shall not take part in any such deliberations.

The Registrar of the Court shall notify such a decision to the Governments of the EFTA States.

Article 7

A Judge who is to replace a member of the Court whose term of office has not expired shall be appointed for the remainder of his predecessor's term.

PART II ORGANIZATION

Article 8

Decisions of the Court shall be taken by a majority of the Judges sitting in the deliberations and in accordance with conditions laid down in the rules of procedure.

Article 9

The Court shall appoint its Registrar and lay down the rules governing his service.

Article 10

The Registrar shall take an oath before the Court to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 11²

The Court determines the extent to which the Registrar shall attend the Court, and shall arrange for replacement of the Registrar on occasions when he is prevented from attending the Court.

Article 12

Officials and other servants shall be attached to the Court to enable it to function. They shall be responsible to the Registrar under the authority of the President.

Article 13

The Judges and the Registrar shall be required to reside at the place where the Court has its seat.

Article 14

The Court shall remain permanently in session. The duration of the judicial vacations shall be determined by the Court with due regard to the needs of its business.

Article 15

No Judge may take part in the disposal of a case in which he has previously taken part as agent or adviser or has acted for one of the parties, or in which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity.

If, for some special reason, any Judge considers that he should not take part in the judgment or examination of a particular case, he shall so inform the President of the Court. If, for some reason, the President considers that any Judge should not sit in a particular case, he shall notify him accordingly.

Any difficulty arising as to the application of this Article shall be settled according to the fourth paragraph of Article 30 of this Agreement.³

If according to this Article a Judge shall not take part in a particular case, a person to replace him shall be chosen in accordance with Article 30, fourth paragraph, of the

² Amended by the Decision of the Committee of representatives of the Contracting Parties to the ESA/Court Agreement of 10 August 1996.

³ Paragraph replaced by the Adjusting Agreement on 29 December 1994.

Agreement, among those persons on the list who have been nominated by the Government which has nominated the regular Judge who is to be replaced.⁴

A party may not apply for a change in the composition of the Court on the grounds of either nationality of a Judge or the absence from the Court of a Judge of the nationality of that party.

Article 16

Rules governing the languages of the Court shall be laid down in the rules of procedure of the Court.

PART III PROCEDURE

Article 17⁵

The EFTA States, the EFTA Surveillance Authority, the Union and the European Commission shall be represented before the Court by an agent appointed for each case; the agent may be assisted by an adviser or by a lawyer.

Other parties must be represented by a lawyer.

Only a lawyer authorized to practice before a court of a Contracting Party to the EEA Agreement may represent or assist a party before the Court.

Such agents, advisers and lawyers shall, when they appear before the Court, enjoy the rights and immunities necessary to the independent exercise of their duties, under conditions laid down in the rules of procedure of the Court.

As regards such advisers and lawyers who appear before it, the Court shall have the powers normally accorded to courts of law, in accordance with the rules of procedure of the Court.

⁴ Paragraph inserted by the Decision of the Committee of representatives of the Contracting Parties to the ESA/Court Agreement of 10 August 1996.

⁵ Amended by the Decision of the Committee of representatives of the Contracting Parties to the ESA/Court Agreement of 10 August 1996 and by a Decision of the ESA/Court Committee No 11/2010 of 8 December 2010.

Article 18

The procedure before the Court shall consist of two parts: written and oral.

The written procedure shall consist of the communication to the parties of applications, statements of case, defences and observations, and of replies, if any, as well as of all papers and documents in support or of certified copies of them.

Communications shall be made by the Registrar in the order and within the time laid down in the rules of procedure of the Court.

The oral procedure shall consist of the reading of the report presented by a Judge acting as Rapporteur, the hearing by the Court of agents, advisers and lawyers, as well as the hearing, if any, of witnesses and experts.

Article 19⁶

A case shall be brought before the Court by a written application addressed to the Registrar. The application shall contain the applicant's name and permanent address and the description of the signatory, the name of the party or names of the parties against whom the application is made, the subject matter of the dispute, the form of order sought and a brief statement of the pleas in law on which the application is based.

The application shall be accompanied, where appropriate, by the measure the annulment of which is sought or by any other relevant documents. If the documents are not submitted with the application, the Registrar shall ask the party concerned to produce them within a reasonable period, but in that event the rights of the party shall not lapse even if such documents are produced after the time-limit for bringing proceedings.

⁶ Amended by the Decision of the Committee of representatives of the Contracting Parties to the ESA/Court Agreement of 10 August 1996.

Article 20⁷

The Registrar shall notify the Governments of the EFTA States, the EFTA Surveillance Authority, the Union and the European Commission of any case pending before the Court. Within two months of this notification, the EFTA States, the EFTA Surveillance Authority, the Union and the European Commission shall be entitled to submit statements of case or written observations to the Court.

Article 21

The Court may require the parties to produce all documents and to supply all information which the Court considers desirable. Formal note shall be taken of any refusal.

The Court may also require the EFTA States not being parties to the case to supply all information which the Court considers necessary for the proceedings.

Article 22

The Court may at any time entrust any individual, body, authority, committee or other organization it chooses with the task of giving an expert opinion.

Article 23

Witnesses may be heard in accordance with the rules of procedure of the Court.

Article 24

Witnesses and experts may be heard on oath taken in accordance with the rules of procedure of the Court or in the manner laid down by the law of the country of the witness or expert.

Article 25

The Court may order that a witness or expert be heard by the judicial authority of his place of permanent residence.

The order shall be sent for implementation to the competent judicial authority under conditions laid down in the rules of procedure of the Court. The documents drawn up

⁷ Amended by the Decision of the Committee of representatives of the Contracting Parties to the ESA/Court Agreement of 26 March 1999 and by a Decision of the ESA/Court Committee No 11/2010 of 8 December 2010.

in compliance with the letters rogatory shall be returned to the Court under the same conditions.

The Court shall defray the expenses, without prejudice to the right to charge them, where appropriate, to the parties.

Article 26

An EFTA State shall treat any defaulting witness or any violation of an oath by a witness or expert in the same manner as if the offence had been committed before one of its courts with jurisdiction in civil proceedings. At the instance of the Court, the EFTA State concerned shall prosecute the offender before its competent court.

Article 27

The hearing in court shall be public, unless the Court, of its own motion or on application by the parties, decides otherwise for serious reasons.

Article 28

During the hearings the Court may examine the experts, the witnesses and the parties themselves. The latter, however, may address the Court only through their representatives.

Article 29⁸

Minutes shall be made of each hearing and signed by the President and the Registrar or a Judge designated to provide for the minutes.

Article 30

The case list shall be established by the President.

Article 31

The deliberations of the Court shall be and shall remain secret.

⁸ Amended by the Decision of the Committee of representatives of the Contracting Parties to the ESA/Court Agreement of 10 August 1996.

Article 32

Judgments shall state the reasons on which they are based. They shall contain the names of the Judges who took part in the deliberations.

Article 33

Judgments shall be signed by the President and the Registrar. They shall be read in open court.

Article 34

The Court shall adjudicate upon costs.

Article 35

The President of the Court may, by way of summary procedure, which may, in so far as necessary, differ from some of the rules contained in this Agreement and which shall be laid down in the rules of procedure, adjudicate upon applications to suspend execution as provided for in Article 40 of this Agreement, or to prescribe interim measures in pursuance of Article 41 of this Agreement, or to suspend enforcement in accordance with Article 110, fourth paragraph, of the EEA Agreement.

Should the President be prevented from attending, his place shall be taken by another Judge in accordance with the rules of procedure.

The ruling of the President or of the Judge replacing him shall be provisional and shall in no way prejudice the decision of the Court on the substance of the case.

Article 36⁹

Any EFTA State, the EFTA Surveillance Authority, the Union and the European Commission may intervene in cases before the Court.

The same right shall be open to any person establishing an interest in the result of any case submitted to the Court, save in cases between EFTA States or between EFTA States and the EFTA Surveillance Authority.

An application to intervene shall be limited to supporting the form of order sought by one of the parties.

⁹ Amended by the Decision of the Committee of representatives of the Contracting Parties to the ESA/Court Agreement of 10 August 1996 and by a Decision of the ESA/Court Committee No 11/2010 of 8 December 2010.

Article 37

Where the defending party, after having been duly summoned, fails to file written submissions in defence, judgment shall be given against that party by default. An objection may be lodged against the judgment within one month of it being notified. The objection shall not have the effect of staying enforcement of the judgment by default unless the Court decides otherwise.

Article 38

EFTA States, and any other natural or legal persons may, in cases and under conditions to be determined by the rules of procedure, institute third-party proceedings to contest a judgment rendered without their being heard, where the judgment is prejudicial to their rights.

Article 39

If the meaning or scope of a judgment is in doubt, the Court shall construe it on application by any party establishing an interest therein or by the EFTA Surveillance Authority.

Article 40

An application for revision of a judgment may be made to the Court only on discovery of a fact which is of such nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision.

The revision shall be opened by a judgment of the Court expressly recording the existence of a new fact, recognizing that it is of such a character as to lay the case open to revision and declaring the application admissible on this ground.

No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 41

Periods of grace based on considerations of distance shall be determined by the rules of procedure of the Court.

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

Article 42

Proceedings against the EFTA Surveillance Authority in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court or if prior to such proceedings an application is made by the aggrieved party to the EFTA Surveillance Authority. In the latter event the proceedings must 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.

PART IV
GENERAL PROVISIONS

Article 43

The rules of procedure of the Court shall contain, apart from the provisions contemplated by this Statute, any other provisions necessary for applying and, where required, supplementing it.

Article 44

The Governments of the EFTA States may, on a proposal from or after hearing the Court, by common accord amend this Statute.

