APPENDIX I

THE EUROPEAN ECONOMIC AREA

1. Introduction. In January 1994 the Treaty between the Community and its member states on the one part and the European Free Trade Association (EFTA) states of Iceland, Liechtenstein¹, Norway, Austria, Finland and Sweden on the other establishing the European Economic Area (EEA) entered into force². With the accession of Austria, Finland and Sweden to the European Union in January 1995 changes to the EEA Treaty will be necessary but are, at the time of writing, still awaiting agreement. Since Switzerland, the seventh EFTA state, opted to stay out of the EEA, in what follows ‘EFTA states’ refers to those EFTA states party to the EEA Treaty.

2. The purpose and nature of the EEA. The purpose of the EEA is 'to promote a continuous and balanced strengthening of trade and economic relations between the Contracting Parties with equal conditions of competition, and the respect of the same rules, with a view to creating a homogenous European Economic Area...'⁴.

The EEA is not otherwise defined in the Treaty, and its nature is difficult to define. It is a sophisticated free trade area, but includes also provisions on free movement of persons, services and capital, with a view to economic integration less profound than that of the Community but deeper than that of the EFTA. Its institutions are not competent to legislate in the same way as the Community institutions under the EC Treaty. The EEA Treaty implies no cession of sovereignty.

3. The institutions of the EEA. The EEA Treaty creates an EEA Council, an EEA Joint Committee, an EEA Parliamentary Committee and an EEA Consultative Committee. The EEA Council comprises the members of the European Council plus one member from the government of each of the EFTA states⁵. Its function is, for the EEA, broadly similar to that of the European Council for the Community. The EEA Joint Committee consists of a representative from each of the contracting states, and acts by agreement between the Community representatives on the one hand and those of the

¹ Owing to the closeness of its economic ties with Switzerland, the Protocol of March 1993 which amended the EEA Treaty to recognise the refusal of Switzerland to take part (OJ L1, 3.1.94, p 572) also recognised a temporary, special status for Liechtenstein.
² For the text see OJ L1, 3.1.94, p 3.
³ See para 300 above.
⁴ EEA Treaty, art 1.
EFTA states, speaking with one voice, on the other\(^1\). Its purpose is to ensure the effective implementation and operation of the EEA Treaty\(^2\), to which end it is granted the power to adopt binding acts\(^3\) and significant powers of dispute settlement\(^4\). The EEA Joint Parliamentary Committee consists of members drawn equally from the European Parliament and members of the parliaments of the EFTA states\(^5\), with the task of contributing, through dialogue and debate, to a better understanding between the Community and EFTA of the issues covered by the Treaty\(^6\). The EEA Consultative Committee has functions broadly similar to those of the Community’s Economic and Social Committee\(^7\). The EEA Treaty also required the establishment of the EFTA Surveillance Authority and the EFTA Court. All decisions of these authorities are published in the Official Journal of the Community.

4. The EFTA Surveillance Authority. The EEA Treaty required the EFTA states to create an independent surveillance authority, the EFTA Surveillance Authority\(^8\), which came into being on 1 January 1994\(^9\). It consists of five members, chosen upon grounds of general competence and whose independence is beyond doubt\(^10\). They are appointed by the common accord of the EFTA governments for a four-year renewable term\(^11\), and are wholly independent in the performance of their duties\(^12\). It is assisted by an executive secretariat, five directorates, a legal service and administration\(^13\). Its task is to ensure on the part of the EFTA states the fulfilment of the obligations arising under the EEA Treaty\(^14\). It therefore co-operates closely with the Commission, which performs a similar task on the Community side\(^15\). Like the Commission, the EFTA Surveillance Authority is competent to adopt binding measures which impose pecuniary sanctions and are enforceable by civil process\(^16\).

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1 EEA Treaty, art 93. Procedures for adopting a common Community position within the EEA Council and Joint Committee are laid down in an EC regulation; see Regulation 2894/94, OJ L305, 30.11.94, p 6.
2 EEA Treaty, art 92.
3 Ibid, art 7.
4 Ibid, art 111.
5 Ibid, art 95(1) and Protocol 36.
6 Ibid, art 95(3).
7 Ibid, art 96.
8 Ibid, art 108(1).
10 EFTA Surveillance Agreement, art 7.
12 Ibid, art 8.
13 Rules of Procedure of the EFTA Surveillance Authority, art 2.
16 Ibid, art 110.
5. The EFTA Court. The EEA Agreement also required the EFTA states to create an EFTA Court, which was created with effect from 1 January 1994. It consists of five judges appointed for a six-year renewable term. It sits only in plenary session, although it could request the EFTA states to permit it to establish chambers. There are no Advocates-General. The sole working language is English except where the Court directs otherwise and where national courts refer questions for interpretative opinions. Its seat is in Geneva.

6. The jurisdiction of the EFTA Court. The forms of process before the EFTA Court fall into five categories:
   (a) Infringement proceedings raised by the EFTA Surveillance Authority against an EFTA state, analogous to article 169 of the EC Treaty.
   (b) Settlement of disputes between EFTA states relating to the EEA, analogous to article 170 of the EC Treaty.
   (c) Actions to annul a decision of the EFTA Surveillance Authority, analogous to articles 173 and 174(1) of the EC Treaty. The first such action was raised in April 1994.
   (d) Actions against the EFTA Surveillance Authority for failure to act, analogous to article 175 of the EC Treaty.
   (e) Advisory opinions to national courts of EFTA states. But it is important to note that there are significant differences between this procedure and article 177 of the EC Treaty. First, because the EEA Treaty does not require the transfer of legislative authority to any EEA institution, advisory opinions of the EFTA Court are, unlike preliminary rulings from the Court of Justice, non-binding. Second, an advisory opinion may be sought only upon the interpretation of the EEA Treaty, and not upon the interpretation or validity of acts of the institutions. Further, there is no obligation to seek an advisory opinion, even for courts of last instance, and national rules may restrict access to the procedure to courts of last instance. The first request for an advisory opinion, from a Finnish customs appeal committee, was lodged in April 1994 and decided in December 1994.

1 Ibid, art 108(2).
2 EFTA Surveillance Agreement; the Statute of the Court is contained in Protocol 5. For the Rules of Procedure see OJ L278, 27.10.94, p 1; [1994] 1 CMLR 832.
3 See para 6 of this Appendix.
4 EFTA Surveillance Agreement, art 31.
5 Ibid, art 32.
6 Ibid, art 36.
7 Case E-2/94 Scottish Salmon Growers Association v EFTA Surveillance Authority (pending).
8 EFTA Surveillance Agreement, art 37.
9 Ibid, art 34.
10 EEA Treaty, Protocol 35.
11 Only Austria adopted such a rule.
7. Relationship between the Court of Justice and the EFTA Court. The original EEA Treaty envisaged an EEA Court of Justice, comprised of judges drawn from the Court of Justice and the EFTA member states, to which the entire EEA - both the Community and EFTA - would be subject. This mechanism was declared by the Court of Justice to be incompatible with the EEC Treaty (as it then was)\(^1\), and the amended text of the Treaty provides for no EEA Court and no direct co-operation between the Court of Justice and the EFTA Court. However, a judgment of the Court of Justice is binding upon the EFTA Court in so far as it addresses a Community rule which is identical in substance to an EEA provision and was decided prior to the signature of the EEA Treaty\(^2\). A judgment delivered after that date must be given ‘due consideration’ by the EFTA Court\(^3\). The contracting states have power to agree to request from the Court of Justice a ruling on the interpretation of a provision of the EEA Treaty identical in substance to an EC provision\(^4\), and an EFTA state can permit its national courts to seek from the Court of Justice an advisory opinion on the interpretation of such a provision\(^5\). However, there would be political difficulties in activating the latter jurisdiction, and no EFTA state has done so. In the interests of harmonious interpretation of the Treaty the EEA Joint Committee is obliged to keep the developments of the case law of the Court of Justice and the EFTA Court under constant review\(^6\) and to establish a system for the exchange of information between them\(^7\).

8. Substantive rules of the EEA. In order to create the ‘homogeneous European Economic Area’ the EEA Treaty establishes a regime governing the free movement of goods, persons, services and capital, most of which is drawn verbatim from the equivalent rules of the EC Treaty. The rules on the free movement of goods\(^8\) therefore abolished customs duties upon imports and exports and all charges having equivalent effect, quantitative restrictions upon imports and exports and all measures having equivalent effect\(^9\) and discriminatory taxation. The major difference between the Community and the EEA is that these rules apply generally only to products originating in the territory of the contracting states\(^10\). The EEA therefore constitutes a (very sophisticated) free trade area, and not a customs union. The rules also apply only to certain named agricultural products\(^11\). The provisions on the

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2 EEA Treaty, art 6. In this manner the *acquis communautaire* (as at the signature of the EEA Treaty) became part of the law of the EEA.
3 EFTA Surveillance Agreement, art 3(2).
4 EEA Treaty, art 111(3).
5 Ibid, art 107 and Protocol 34.
6 Ibid, art 105.
7 Ibid, art 106.
8 Ibid, arts 8-27.
9 Subject to considerations identical to those of art 36; see EEA Treaty, art 13.
11 Ibid, art 8(3)(b) and Protocol 3.
free movement of persons and services\(^1\) are essentially identical to those of the EC Treaty, whilst those on the free movement of capital\(^2\) are similar to those in force within the Community prior to 1988\(^3\).

9. The EEA and competition law. Article 53 of the EEA Treaty is identical \textit{mutatis mutandis} to article 85 of the EC Treaty, prohibiting restrictive practices 'between Contracting Parties' which distort competition 'within the territory covered by [the EEA] Agreement'. The block exemptions adopted by the Commission and existing prior to signing of the Treaty apply to article 53\(^4\). Article 54 of the EEA Treaty is identical to article 86 of the EC Treaty except that it applies to a dominant undertaking 'within the territory covered by this Agreement' in so far as it may affect trade 'between Contracting Parties'. Restrictive practices and potentially abusive conduct within the Community but with wider effects are therefore to be assessed in the light of articles 85 and 86 of the EC Treaty \textit{and} of articles 53 and 54 of the EEA Treaty. The Merger Regulation applies, the thresholds intact but turnover criteria to include that in the territories of the EFTA states, to a concentration 'with a Community or EFTA dimension'\(^5\). The Treaty provides further rules governing public undertakings and state aids analogous to articles 90 and 92–94 of the EC Treaty\(^6\).

10. Enforcement of the competition rules. The competition rules of the EEA Treaty are enforced by the Commission within the territory of the Community and by the EFTA Surveillance Authority within the territory of the EFTA states, in which it enjoys 'equivalent powers to those of the EC Commission, at the time of the signature of the Agreement, for the application of the competition rules of the [EEC] Treaty'\(^7\). The EFTA Surveillance Authority has established its own competition Directorate, with its seat in Brussels. The two institutions are required to co-operate closely\(^8\), and the Treaty provides rules governing which of them ought to be competent to determine situations which fall within the territorial jurisdiction of both\(^9\). Parties wishing to notify a restrictive agreement are required to determine which of the two is, by virtue of these rules, the 'competent surveillance

\(^1\) EEA Treaty, arts 28-39. \\
\(^2\) Ibid, arts 40-45. \\
\(^3\) See para 220 above. \\
\(^4\) EEA Treaty, art 60 and Annex XIV. So, all the block exemptions enumerated in para 245 above apply except the block exemption in the insurance sector and the block exemption on computer reservation systems in air transport. Annex XIV also directs enforcement authorities to 'take due account' of the various Commission Notices on the block exemptions and on other matters. \\
\(^5\) EEA Treaty, art 57 and Annex XIV. \\
\(^6\) Ibid, arts 59 and 61-64. On state aids see the Surveillance Authority's (extensive) Procedural and Substantive Rules in the Field of State Aid, [1994] 2 CMLR 7. \\
\(^7\) EEA Treaty, Protocol 21, art 1; for the detail see EFTA Surveillance Agreement, Protocol 4. \\
\(^8\) EEA Treaty, art 58 and Protocols 23 and 24. \\
\(^9\) Ibid, art 56.
authority'; if the wrong authority has been notified, it is required to transfer the case 'without delay' to the other. A decision of the EFTA Surveillance Authority is subject to judicial review by the EFTA Court. As articles 53 and 54 are identical mutatis mutandis to articles 85 and 86 of the EC Treaty and therefore ought to be interpreted in the same manner, they ought to have direct effect within the territory of the EEA and so be enforceable in national courts.

2 See para 6 of this Appendix.
3 EEA Treaty, art 6.
APPENDIX II
GUIDE TO COMMUNITY SOURCES AND MATERIALS

(1) PRIMARY MATERIALS

The Treaties

The Treaties and other primary sources of European Union and Community law are indicated in the text at para 124. The Treaties themselves are available in a number of editions, of which the most authoritative are those published by the Office for Official Publications of the European Communities, L-2985 Luxembourg. The Treaty on European Union, the EC Treaty and many other important texts are published by the Office in a very useful compendium, European Union: Selected Instruments taken from the Treaties, Book I, Volume 1.

Basic Community Laws (ed Rudden & Wyatt, 5th edn, OUP, 1994) and EEC Legislation (ed Foster, 5th edn, Blackstone's, 1994) are abridged student editions which also include some of the most important legislation adopted by the Community institutions. Other primary sources of Community law may be found in collections published by the Office for Official Publications.

Legislation

Official Journal of the European Communities

The Official Journal is the official gazette of the Community, containing the legislation and a wide range of other important texts adopted by the Community institutions. It is produced daily in two series, the ‘L’ series (legislation) and the ‘C’ series (communications in French, information and notices in English). Each contains a section for decisions of the EEA and EFTA institutions, which are consolidated in an EEA Supplement. There is also a Supplement which reproduces notices and other information on public procurement contracts (see text, para 195). The Official Journal is published in all eleven Community languages.

The English language Official Journal is cited ‘OJ’. But since English was not an official language of the Community prior to 1973, the original pre-1973 Official Journals are usually cited ‘JO’ (Journal officiel). All Community laws still in force at the time of British and Irish accession were consolidated in an English language Special Edition of the Official Journal (‘S Edn’). It is nevertheless sometimes necessary to go back to the original texts.

A Community act is formally cited by the type of instrument (Regulation, Directive, Decision, Recommendation, Opinion); its number and year of promulgation; and the number, date, and page reference in the Official Journal.
Appendix II: Guide to Community Sources and Materials


Encyclopedia of European Community Law

The Encyclopedia (ed KR Simmonds), produced by Sweet & Maxwell and W Green & Son, is published in three series: United Kingdom sources, primary sources and legislation of the Community institutions. It is a substantial consolidation of most Community law and legislation (it excludes most of the agricultural legislation) in loose-leaf form, classified by subject matter, with commentary, and updated regularly.

Guide to Legislation

Abstracting and indexing guides to Community legislation are published periodically by the Community as an adjunct to the Official Journal (Directory of Community Legislation in Force and other Acts of the Community Institutions), by Butterworths (European Community Legislation: Current Status), by Europe Data (EC-Index or Ellis) and by the TMC Asser Institute in the Hague (Guide to EC Legislation). Some of the more important legislative acts, decisions and draft legislation in the field of competition law are now reproduced in CMLR (see below). A most useful compendium of legislation in the competition field is Jones, Van der Woude and Lewis, EC Competition Law Handbook (see below).

Law Reports

European Court Reports

The European Court Reports (‘ECR’) are the official reports of the European Court of Justice. They contain all judgments of the Court of Justice and the Court of First Instance in chronological order of the date of judgment. ECR is in two parts: reports of judgments of the Court of Justice (Part I) and reports of judgments of the Court of First Instance (Part II). Since January 1994 judgments of the Court in staff cases (see text, para 104) are reported in ECR only if they are of general interest or establish principles of law; otherwise they are reported separately as Reports of European Community Staff Cases (ECR-SC).
Until 1994, with the exception of 1985 and 1986, the report of a case in ECR contained the Judge Rapporteur’s Report for the Hearing (prior to 1985 as the ‘Facts and Issues’ part of the report), the opinion of the Advocate-General and the judgment of the Court. The Report for the Hearing is no longer published except in exceptional cases where the Court so directs, but it can be obtained directly from the Court in the language of the case.

Judgments of the Court of Justice and the Court of First Instance are normally cited in English by reference to case number (which is assigned sequentially by the Registrar), the names of the parties and the page reference in ECR. So: Cases C-6 & 9/90 Francovich and Bonifaci v Italy [1991] ECR I-5357; Case T-24/90 Automec v Commission [1992] ECR II-2223 (the ‘I’ and ‘II’ indicating Parts I and II of the ECR). Citation in other languages varies with their traditions, but usually includes the date of judgment. Since judgments are published in ECR in strict chronological order, it is not difficult to trace the report of a case from its date.

ECR are published in all eleven Community languages and since 1973 have been printed in such a way that the pagination is the same for all languages. For many years the French version of ECR (Recueil de la Jurisprudence de la Cour de Justice et de la Tribunal de Premier Instance – Recueil for short) was available many months – often more than a year – before other language versions. Since January 1994 the time lag has been sharply reduced, but at the cost of delaying publication of ECR in English and other languages for 1992 and 1993. Judgments in ECR-SC are in the language of the case only, although summaries are provided in each of the other languages.

Copies of individual judgments and opinions of Advocates-General can be obtained promptly and at reasonable price directly from the Court. It is also possible to receive copies of all judgments and opinions as issued in one or more languages. The Court also publishes a very useful weekly summary of its judgments, called Proceedings of the Court of Justice and the Court of First Instance. Information can be obtained from The Information Service, Court of Justice of the European Communities, L-2925 Luxembourg.

Common Market Law Reports

A most helpful series of reports is the Common Market Law Reports (‘CMLR’), produced by the European Law Centre in London. CMLR contains not only reports of selected judgments of the Court of Justice but also selected decisions of national courts (primarily but not exclusively British) in which the application of Community law is considered. CMLR is now issued weekly and in five volumes per year, the fourth and fifth (the Antitrust Supplement) specialising in competition matters. Judgments from CMLR are usually cited in normal English fashion, for example Cases C-6 & 9/90 Francovich and Bonifaci v Italy [1993] 2 CMLR 66. Care should be taken to note where CMLR has made its own translation of a judgment or opinion (especially prior to 1973 when all translations into English were unofficial); where possible, ECR (or, until publication of ECR, the text issued by the Court) should be consulted for the authentic text or approved translation.
Other Sources

Judgments of the Court of Justice appear from time to time in a number of other reports. From 1995 the All England Law Reports publish a separate series of reports of selected judgments of the Court (All ER (European Cases)) in ten parts per year. The Industrial Relations Law Reports ('IRLR') frequently report very promptly judgments of the Court in employment law matters. The standard British reports of British court judgments following a preliminary ruling under article 177 invariably include a report of that ruling. All judgments of the Court are also available on CELEX and LEXIS databases.

Other Primary Materials

Annual Reports and the Bulletin

The Commission publishes an annual report on the activities of the Communities and developments over the preceding year in policy formulation and legislative programmes. It also publishes a monthly bulletin ('Bull EC'). Some important documents are issued as Supplements to the Bulletin.

Reports on Competition Policy

The Commission also publishes an annual Report on Competition Policy. This includes a survey of relevant case law of the Court of Justice and the Court of First Instance and decisions of the Commission. It also contains a number of important policy statements by the Commission as to how it will apply the competition rules of the Treaty.

Parliamentary Papers

The proceedings of the Parliament are published in the C series of the Official Journal. Reports of the various committees of the Parliament, some of them excellent, are published from time to time by the Parliament itself.

(2) SELECTED SECONDARY SOURCES

(This list is far from comprehensive and aims only to point the way to the next step in a search. It includes only recent or updated texts, omitting good but dated works, for materials in Community law enjoy a brief shelf-life. For the linguistically adroit, there are several very valuable encyclopaedias and similar works in other Community languages not mentioned here.)
KR Simmonds (ed) Encyclopedia of European Community Law (Sweet & Maxwell); see above.

C Jones, M van der Woude and X Lewis EC Competition Law Handbook (Sweet & Maxwell). This handbook, updated annually, contains all documents and case references necessary for a competition practitioner’s daily work.

D Vaughan (ed) Law of the European Communities (Butterworths); first published in 1986 as a two-volume treatise on Community law (also published as volumes 51 and 52 of Halsbury’s Laws of England (4th edn)); since 1990 published in loose-leaf, updated form.


LN Brown and T Kennedy The Court of Justice of the European Communities (Sweet & Maxwell, 4th edn, 1994).

CS Kerse Antitrust Procedure (Sweet & Maxwell, 3rd edn, 1994).

KPE Lasok The European Court of Justice: Practice and Procedure (Butterworths, 2nd edn, 1994).


D Wyatt and A Dashwood European Community Law (Sweet & Maxwell, 3rd edn, 1993).

The leading specialist journals published in English are:

Common Market Law Review (CMLRev) (Europa Instituut of the University of Leiden);

European Law Review (ELRev) (European Law Centre);

Legal Issues of European Integration (LIEI) (Deventer); and

Yearbook of European Law (YEL) (Oxford University Press).

Important articles in English also appear in Cahiers de Droit Européen (CDE) (Emile Bruylant).

The Reports of the House of Lords Select Committee on the European Communities, with important documents not otherwise available reproduced as appendices, are known throughout the Community as ‘Red Books’ and are greatly respected.
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