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ANNEXES

ANNEX XII

FREE MOVEMENT OF CAPITAL

List provided for in Article 40

INTRODUCTION

When the act referred to in this Annex contains notions or refers to procedures which are specific to the Community legal order, such as

- preambles;
- the addressees of the Community acts;
- references to territories or languages of the EC;
- references to rights and obligations of EC Member States, their public entities, undertakings or individuals in relation to each other; and
- references to information and notification procedures;

Protocol 1 on horizontal adaptations shall apply, unless otherwise provided for in this Annex.

ACT REFERRED TO

1. **388 L 0361:** Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty ([OJ No L 178, 08.07.1988, p.5](#)).

The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptations:

- (a) the EFTA States shall notify the EEA Joint Committee of the measures referred to in Article 2 of the Directive, The Community shall notify the EEA Joint Committee of the measures taken by its Member States. Exchanges of information regarding such measures shall take place within the EEA Joint Committee;
- (b) for the application of measures as referred to in Article 3 of the Directive, the EFTA States shall follow the procedure as set out in Protocol 18. For cooperation between the Contracting Parties the joint procedures as set out in Article 45 of the Agreement shall apply;
- (c) any decisions the Community may take in accordance with Article 6(2) of the Directive, shall not be subject to the procedures of Chapter 2, Part VII of the Agreement. The Community shall inform the other Contracting Parties of such decisions. The restrictions for which an extension of the transition periods is granted may be upheld within the framework of this Agreement on the same terms as in the Community;
- (d) the EFTA States may continue to apply domestic legislation regulating foreign ownership and/or ownership by non-residents, existing on the date of entry into force of the EEA Agreement, subject to time limits and within the areas set out below:
 - up to 1 January 1995 for Iceland regarding short-term capital movement operations set out in Annex II to the Directive;
 - up to 1 January 1995 for Norway regarding acquisition of domestic securities and admission of domestic securities to a foreign capital market;
 - up to 1 January 1995 for Norway and Sweden, and up to 1 January 1996 for Finland, Iceland and Liechtenstein regarding direct investment on national territory;

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- up to 1 January 1998 for Switzerland regarding direct investment in professional real-estate business on national territory;
 - up to 1 January 1995 for Norway, up to 1 January 1996 for Austria, Finland and Iceland and up to 1 January 1998 for Liechtenstein and Switzerland regarding investments in real estate on national territory;
 - for Austria regarding direct investments in the sector of inland waterways, until equal access to EC waterways is obtained.
- (e) during transition periods, EFTA States shall not treat new and existing investments by companies or nationals of EC Member States or other EFTA States less favourably than under the legislation existing at the date of signature of the Agreement, without prejudice to the right of EFTA States to introduce legislation which is in conformity with the Agreement and in particular provisions concerning the purchase of secondary residences which correspond in their effect to legislation that has been upheld within the Community in accordance with Article 6(4) of the Directive;
- (f) the reference in the introductory part of Annex I of the Directive to Article 68(3) of the EEC Treaty shall be deemed to be to Article 42(2) of the Agreement;
- (g) notwithstanding Article 40 of the Agreement and the provisions of this Annex, Iceland may continue to apply restrictions existing on the date of signature of the Agreement on foreign ownership and/or ownership by non-residents in the sectors of fisheries and fish processing.

These restrictions shall not prevent investments by non-nationals or nationals who do not have legal domicile in Iceland in companies which are only indirectly engaged in fisheries or fish processing. However, national authorities shall have the right to oblige companies which have, wholly or partly, been acquired by non-nationals or nationals who do not have legal domicile in Iceland to divest themselves of any investments in fish-processing activities or fishing vessels;

- (h) notwithstanding Article 40 of the Agreement and the provisions of this Annex, Norway may continue to apply restrictions existing on the date of signature of the Agreement, on ownership by non-nationals of fishing vessels.

These restrictions shall not prevent investments by non-nationals in land-based fish processing or in companies which are only indirectly engaged in fishing operations. National authorities shall have the right to oblige companies which have been wholly or partly acquired by non-nationals to divest themselves of any investments in fishing vessels.