



JUDGMENT OF THE COURT

7 October 2026*

(Surrogacy – Free movement of persons – Article 1(2)(b) EEA – Freedom of movement for workers – Article 28 EEA – Concept of family member – Article 2(2) of Directive 2004/38/EC – Fundamental rights – Recognition of civil status)

In Case E-25/25,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Reykjavík District Court (*Héraðsdómur Reykjavíkur*), in the case between

AE, YM and TM

and

the Icelandic State and Registers Iceland (*Þjóðskrá Íslands*),

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann and Michael Reiertsen (Judge-Rapporteur), Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

- AE, YM and TM ('the plaintiffs'), represented by Stefán A. Svensson and Jóhannes Tómasson, advocates;
- the Icelandic State and Registers Iceland (*Þjóðskrá Íslands*) ('the defendants'), represented by Ásta Sóllilja Sigurbjörnsdóttir and Jóhanna Katrín Magnúsdóttir, acting as Agents;
- the Norwegian Government, represented by Lotte Tvedt, Bojana Stankovic and Jo Høvik, acting as Agents;

* Language of the request: Icelandic. Translations of national provisions are unofficial and based on those contained in the documents of the case.

- the German Government, represented by Johannes Möller and Ralf Kanitz, acting as Agents;
- the Hungarian Government, represented by Miklós Zoltán Fehér and Zsuzsanna Biró-Tóth, acting as Agents;
- the Spanish Government, represented by Paula Pérez Zapico and Andrea Gavela Llopis, acting as Agents;
- the EFTA Surveillance Authority ('ESA'), represented by Hildur Hjörvar, Sigrún Ingibjörg Gísladóttir and Melpo-Menie Joséphidès, acting as Agents; and
- the European Commission ('the Commission'), represented by Elisabetta Montaguti and Jonathan Tomkin, acting as Agents,

having heard oral argument on behalf of the plaintiffs, represented by Stefán A. Svensson and Jóhannes Tómasson; the defendants, represented by Ásta Sóllilja Sigurbjörnsdóttir; the Norwegian Government, represented by Lotte Tvedt; the German Government, represented by Ralf Kanitz; the Spanish Government, represented by Paula Pérez Zapico; the Netherlands Government, represented by Charlotte Schillemans, acting as Agent; ESA, represented by Hildur Hjörvar and Sigrún Ingibjörg Gísladóttir; and the Commission, represented by Jonathan Tomkin, at the hearing on 25 March 2026,

gives the following

JUDGMENT

I INTRODUCTION

- 1 The present request for an advisory opinion concerns the recognition of civil status in the context of surrogacy for the purposes of the exercise of the right to free movement of persons under EEA law. The main question is to what extent EEA States are required to recognise a legal parent-child relationship validly established in another EEA State.
- 2 The request has been made in proceedings between the plaintiffs and the defendants, in which the plaintiffs seek an annulment of the decision by Registers Iceland to refuse to register such a legal parent-child relationship in the national registry on the grounds that such a refusal infringes their right to free movement under EEA law.

II LEGAL BACKGROUND

EEA law

- 3 Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('SCA') reads, in extract:

The EFTA Court shall have jurisdiction to give advisory opinions on the interpretation of the EEA Agreement.

Where such a question is raised before any court or tribunal in an EFTA State, that court or tribunal may, if it considers it necessary to enable it to give judgment, request the EFTA Court to give such an opinion.

...

- 4 The fifth recital of the Agreement on the European Economic Area ('EEA' or 'EEA Agreement') reads:

DETERMINED to provide for the fullest possible realization of the free movement of goods, persons, services and capital within the whole European Economic Area, as well as for strengthened and broadened cooperation in flanking and horizontal policies;

- 5 Article 1 EEA reads, in extract:

1. The aim of this Agreement of association 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 homogeneous European Economic Area, hereinafter referred to as the EEA.

2. In order to attain the objectives set out in paragraph 1, the association shall entail, in accordance with the provisions of this Agreement:

...

(b) the free movement of persons;

...

- 6 Article 4 EEA reads:

Within the scope of application of this Agreement, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

- 7 Article 28 EEA reads, in extract:

1. Freedom of movement for workers shall be secured among EC Member States and EFTA States.

...

3. *It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:*

...

(b) to move freely within the territory of EC Member States and EFTA States for this purpose;

(c) to stay in the territory of an EC Member State or an EFTA State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of an EC Member State or an EFTA State after having been employed there.

...

8 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77; and Icelandic EEA Supplement 2014 No 54, p. 909) ('Directive 2004/38') was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 158/2007 of 7 December 2007 (OJ 2008 L 124, p. 20; and Icelandic EEA Supplement 2008 No 26, p. 17) ('JCD 158/2007'), and is referred to at point 1 of Annex V (Free movement of workers) and point 3 of Annex VIII (Right of establishment) to the EEA Agreement. Constitutional requirements were indicated by Iceland, Liechtenstein and Norway and fulfilled by 9 January 2009. The decision entered into force on 1 March 2009.

9 Article 2 of Directive 2004/38, entitled 'Definitions', reads, in extract:

For the purposes of this Directive:

...

2. *'family member' means:*

(a) the spouse;

(b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;

- (c) *the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);*
- (d) *the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);*

...

10 Article 3(1) of Directive 2004/38, entitled ‘Beneficiaries’, reads:

This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.

11 Article 7(1) of Directive 2004/38, entitled ‘Right of residence for more than three months’, reads:

All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

- (a) are workers or self-employed persons in the host Member State; or*
- (b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or*
- (c) — are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and*
 - have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or*
- (d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).*

12 Article 1(1) of JCD 158/2007 reads, in extract:

...

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

- (a) *The Directive shall apply, as appropriate, to the fields covered by this Annex.*
- (b) *The Agreement applies to nationals of the Contracting Parties. However, members of their family within the meaning of the Directive possessing third country nationality shall derive certain rights according to the Directive.*
- (c) *The words “Union citizen(s)” shall be replaced by the words “national(s) of EC Member States and EFTA States”.*
- (d) *In Article 24(1) the word “Treaty” shall read “Agreement” and the words “secondary law” shall read “secondary law incorporated in the Agreement”.*

13 The Joint Declaration by the Contracting Parties to JCD 158/2007 reads, in extract:

The concept of Union Citizenship as introduced by the Treaty of Maastricht (now Articles 17 seq. EC Treaty) has no equivalent in the EEA Agreement. The incorporation of Directive 2004/38/EC into the EEA Agreement shall be without prejudice to the evaluation of the EEA relevance of future EU legislation as well as future case law of the European Court of Justice based on the concept of Union Citizenship. The EEA Agreement does not provide a legal basis for political rights of EEA nationals.

...

14 Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1; Icelandic EEA Supplement 2012 No 54, p. 299) (‘Regulation 492/2011’) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 52/2012 of 30 March 2012 (OJ 2012 L 207, p. 32; Icelandic EEA Supplement 2012 No 43, p. 39) as point 2 of Annex V (Free movement of workers). Constitutional requirements were indicated by Norway and fulfilled by 14 December 2012. The decision entered into force on 1 February 2013.

15 Article 7 of Regulation 492/2011 reads, in extract:

1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

3. He shall also, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres.

...

National law

- 16 Article 1(1) of Act No 100/1952 on Icelandic Citizenship (*lög nr. 100/1952 um íslenskan ríkisborgararétt*) ('the Citizenship Act') reads, in extract:

A child acquires Icelandic citizenship at birth:

1. if its parent is an Icelandic citizen,

...

- 17 Article 2.a(1) of the Citizenship Act reads:

A child, under the age of 18, that is adopted by an Icelandic citizen acquires Icelandic citizenship on adoption if:

a. the authorisation to adopt is issued in Iceland,

b. the authorisation to adopt is issued abroad and is recognised by the Icelandic authorities as valid in Iceland in accordance with the Adoption Act.

- 18 Article 2.a(2) of the Citizenship Act reads:

If an Icelandic citizen residing abroad adopts a child under the age of 18 pursuant to a foreign adoption decision that is recognized by the Icelandic authorities, the adoptive parent may request confirmation of the adoption by the District Commissioner in order for it to have legal effect in Iceland in accordance with the Act on Adoption. Upon such confirmation by the District Commissioner, the child acquires Icelandic citizenship.

- 19 Article 1 of the Children Act No 76/2003 (*barnalög nr. 76/2003*) ('the Children Act') reads:

A child has the right to live, develop and enjoy protection, care and other rights in accordance with his or her age and maturity and without discrimination of any kind. It is prohibited to use any kind of violence or other degrading conduct against a child.

The best interests of the child shall always take precedence when decisions are made on the child's affairs.

A child has the right to express his/her views in all matters that concern him/her, and his/her views shall be duly taken into account in accordance with his/her age and maturity.

- 20 Article 2 of the Children Act reads:

The woman who gives birth to a child is its mother.

The husband of a child's mother shall be deemed the child's father if the child is born during their marriage. The same applies if the child is born so soon after the dissolution of their marriage that it is plausible that the child was conceived during their marriage. This does not apply, however, if the couple were separated from bed and board at the time of the child's conception or if the mother marries, or registers a partnership with, another man prior to the birth of the child.

If, after the birth of a child, the child's mother marries a man whom she has declared to be the child's father, that man shall then be deemed to be the child's father, providing that the paternity of the child has not been established at that time.

If the mother of a child and a man whom she has declared to be its father have registered their partnership in the population registry prior to the birth of the child, that man shall then be deemed to be the child's father. The same applies if the child's mother and a man whom she has declared to be its father register their partnership in the population registry at a later date, providing that the paternity of the child has not been established at that time.

21 Article 5 of the Children Act reads, in extract:

The man who births a child is its father. A person with a neutral gender registration who gives birth to a child shall be deemed to be that child's parent.

If a father, or parent pursuant to paragraph 1, is married or in a registered partnership at the time of the child's birth, the husband or male cohabiting partner shall likewise be deemed to be the child's father. The provisions of Article 2 apply in such circumstances, as the case may be.

If the spouse of the person giving birth to the child has changed their gender registration, then the spouse shall be deemed to be the child's mother or parent if the child is born during their marriage or registered partnership. A woman shall in that case be deemed to be the child's mother, and a person with neutral gender registration to be the child's parent. This is only applicable, however, if the original gender registration does not rule out a biological relationship between the child and the spouse. The provisions of Article 2 apply in such circumstances, as the case may be.

...

22 Article 6 of the Children Act reads, in extract:

The woman who gives birth to a child conceived by assisted reproduction shall be deemed to be its mother.

A woman who has given consent for her wife to undergo assisted reproduction treatment under the Artificial Fertilisation Act shall be deemed to be the mother of

a child conceived in this manner. The same shall apply if the women have registered their cohabitation in the population registry.

A man who has given consent for his wife to undergo assisted reproduction treatment under the Artificial Fertilisation Act shall be deemed to be the father of a child conceived in this manner. The same shall apply if the man and woman have registered their cohabitation in the population registry.

...

It is permissible to apply paragraphs 2 and 3 to situations where a child has been conceived by artificial fertilisation abroad. Registers Iceland shall assess the validity of submitted documentation, including inter alia whether the artificial fertilisation was permitted by the appropriate authorities or courts. Parents must fulfil the conditions of marriage or registered partnership established in paragraphs 2 and 3, as appropriate.

...

A man who donates sperm for the purpose of its use in assisted reproduction treatment performed on a person other than his wife or female cohabiting partner, cf. paragraph 3, or his surviving or former wife or female cohabiting partner, cf. paragraph 4, in accordance with the provisions of the Artificial Fertilisation Act, shall not be adjudged to be the father of a child conceived with his sperm.

A man who donates sperm for a purpose other than that set out in paragraph 8 shall be deemed to be the father of a child conceived with his sperm, unless the sperm was used without his knowledge or after his death.

...

23 Article 7 of the Children Act reads, in extract:

A child shall be entered into the population registry promptly after birth.

...

The child's mother, the child itself, a person who is registered as the child's father, or a person who considers themselves to be the child's father, may request a corrected registration of the child's paternity in accordance with this Act. ...

24 Article 29a of the Children Act reads, in extract:

If a parent who is not married and who has sole custody of their child enters into marriage with a person other than the child's other parent, the parent and the step-parent may enter into an agreement that custody of the child shall be joint. The same applies where a parent has entered into cohabitation with a person other than the

child's other parent, provided that the registered cohabitation in the National Registry has lasted uninterrupted for one year. ...

- 25 Article 2(1) of Act No 130/1999 on Adoption (lög nr. 130/1999 um ættleiðingar) ('the Adoption Act') reads:

A married couple or individuals who have been cohabiting for a period of at least five years shall jointly take part in the adoption process, as only these persons may jointly adopt children, subject to the exemptions provided in this Article.

- 26 Article 3(2) of the Adoption Act reads:

A person may not adopt their biological child unless the child has previously been adopted and the adoption by the biological parent is considered to improve the circumstances of the child.

- 27 Article 25 of the Adoption Act reads:

Upon adoption the adopted child acquires the same legal status in regard to the adoptive parents, their relatives and those having adoptive relations to them, as if it was the biological child of the adoptive parents, unless otherwise prescribed by law. As of the same time the pre-existing legal relationship between the child and its biological parents, other relatives and those having adoptive relationship to it, is terminated, unless otherwise prescribed by law.

In case one spouse adopts the child or adoptive child of the other spouse, then the child will acquire the same legal status as if it was the biological child of the married couple. The same applies if a person in cohabitation adopts the child of his or her cohabiting partner.

- 28 Article 37 of the Adoption Act reads:

A person who resides abroad may only adopt a child in accordance with this Act if the person, or his or her spouse, are Icelandic citizens and can for that reason not obtain an adoption permit in the country where he or she lives, provided that it may be assumed that an Icelandic adoption permit will be deemed valid where the person lives.

A District Commissioner may also grant permission for an application for an adoption permit to be processed in Iceland due to the applicants' special connection with the country.

The provisions of paragraphs 1 and 2 do not, however, apply to adoptions that take place in accordance with the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption.

- 29 Article 6 of Act No 160/1995 on Recognition and Enforcement of Foreign Decisions concerning Custody of Children, Return of Abducted Children etc. (lög nr. 160/1995

um viðurkenningu og fullnustu erlendra ákvarðana um forsjá barna, afhendingu brottnuminna barna o.fl.) ('the Recognition Act') reads:

A decision on custody of, place of residence of, or right of access to, a child taken in a state which is a member of the European Convention shall be recognized in Iceland. In response to an application, it shall be permitted to enforce such a decision in Iceland if it is permitted to enforce it in the state where it was taken (the State of origin).

If no decision under paragraph 1 which could be enforced in the State of origin had been taken at the time when the child was taken to another country, then any decision taken in a Contracting State at a later date shall be regarded as the equivalent of a decision under paragraph 1 if it states that the removal of the child was improper.

30 Article 7(1) of the Recognition Act reads, in extract:

An application for recognition or enforcement of a decision shall be rejected if:

1. it is manifestly not in conformity with the fundamental principles of the Icelandic legislation on the legal status of families and children,

...

31 Article 1 of Act No 140/2019 on the Registration of Individuals (*lög nr. 140/2019 um skráningu einstaklinga*) ('the Registration Act') reads:

The purpose of this Act is to ensure that a reliable registry of individuals is maintained and that the registration is accurate, so that it creates a basis for certain rights and certain obligations of individuals. A further objective is that the information recorded in the population registry be based on the best data available at any given time.

32 Article 2 of the Registration Act reads, in extract:

...

The registration of individuals shall be maintained in the population registry. The population registry contains basic information on individuals that is necessary for the functioning of the State and the municipalities.

The following individuals shall be registered in the population registry:

1. Those who have or have had their domicile in Iceland.

2. Icelandic nationals born abroad.

3. Children born in Iceland.

33 Article 3 of the Registration Act reads:

The Minister shall exercise administrative responsibility under this Act.

Registers Iceland is responsible for the population registry and related registers, sees to the operation and development of the population registry databases and information systems, and handles the registration of individuals into the registry.

34 Article 9 of the Registration Act reads, in extract:

Registers Iceland handles the registration of individuals into the population registry and the issuance to them of a personal identification number.

Applications are made to Registers Iceland for registration into the population registry on the basis of an individual's automatic right to Icelandic citizenship, and for the registration of nationals of states covered by the EEA Agreement or the Convention establishing the European Free Trade Association (EFTA), cf. Section XI of the Act on Foreign Nationals. The same applies to other comparable agreements to which the Icelandic State becomes a party, such as agreements with states that opt to stand outside the Agreement on the European Economic Area.

...

35 Article 1(7) of Act No 55/1996 on Artificial Fertilisation and the Use of Human Gametes and Embryos for Stem-Cell Research (*lög nr. 55/1996 um tæknifrjóvgun og notkun kynfrumna og fósturvísa manna til stofnfrumurannsókna*) ('the Artificial Fertilisation Act') reads:

Surrogacy: Artificial fertilisation performed on a woman who intends to carry a child for another woman, and has agreed before the pregnancy to give up the child immediately after the birth.

36 Article 5(4) of the Artificial Fertilisation Act reads:

Surrogacy is prohibited.

37 Article 17 of the Artificial Fertilisation Act reads, in extract:

Violations of this Act or of rules issued under its authority are punishable by fines or imprisonment for up to three months.

...

Complicity in such a violation shall entail the same penalties, unless more severe penalties apply under other legislation.

EU law

- 38 Article 7 of the Charter of Fundamental Rights of the European Union (OJ 2012 C 326, p. 391) ('the Charter'), entitled 'Respect for private and family life', reads:

Everyone has the right to respect for his or her private and family life, home and communications.

- 39 Article 24 of the Charter, entitled 'The rights of the child', reads:

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

International law

- 40 The Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR') was adopted by the Council of Europe on 4 November 1950 and entered into force on 3 September 1953, in accordance with Article 59 thereof. Iceland, Liechtenstein and Norway signed the convention on 4 November 1950, 23 November 1978 and 4 November 1950 respectively. Iceland, Liechtenstein and Norway ratified or acceded to the convention on 29 June 1953, 8 September 1982 and 15 January 1952 respectively.

- 41 Article 8 ECHR, entitled 'Right to respect for private and family life', reads:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

- 42 The United Nations Convention on the Rights of the Child ('UNCRC') was adopted by the UN General Assembly by way of Resolution 44/25 on 20 November 1989 and entered into force on 2 September 1990, in accordance with Article 49 thereof. Iceland, Liechtenstein and Norway signed the convention on 26 January 1990, 30 September 1990 and 26 January 1990 respectively. Iceland, Liechtenstein and Norway ratified or

acceded to the convention on 28 October 1992, 22 December 1995 and 8 January 1991 respectively.

43 Article 2 UNCRC reads:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

44 Article 3(1) UNCRC reads:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

45 Article 7 UNCRC reads:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

46 Article 8 UNCRC reads:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

47 Article 16 UNCRC reads:

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

48 Article 21 UNCRC reads:

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

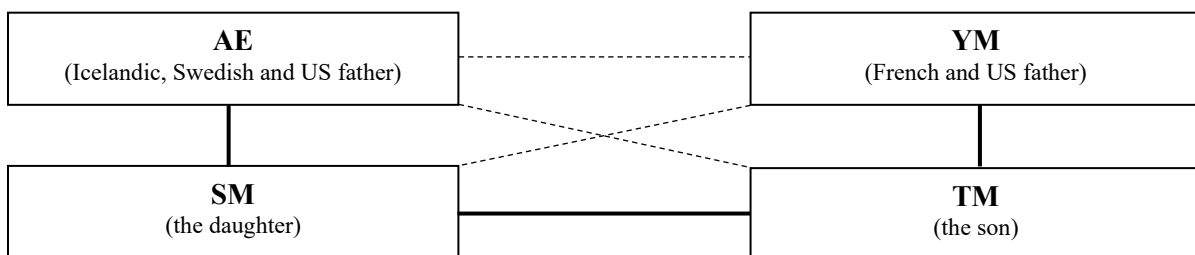
49 The Nordic Convention containing certain Provisions of Private International Law regarding Marriage, Adoption and Guardianship ('Nordic Convention on Family Law') was adopted by Denmark, Finland, Iceland, Norway and Sweden on 6 February 1931. The ratifications were deposited at Stockholm on 22 December 1931 by all the Contracting Parties, and the convention entered into force on 1 January 1932, in accordance with Article 23 thereof.

50 Article 11 of the Nordic Convention on Family Law reads, in unofficial English translation:

If a person who is a national of one of the Contracting States and is resident in such State wishes to adopt a national of one of the States, the application shall be made in the State where the adoptive parent is resident.

III FACTS AND PROCEDURE

- 51 Plaintiffs AE and YM are a married couple. AE is a national of Iceland, Sweden and the United States, and YM is a national of France and the United States. Presently, they reside in Sweden with their children. While they were residents of the United States, they sought out an assisted reproduction centre in that country for the purpose of having embryos prepared through the intermediacy of an unidentified egg donor, which was subsequently carried out. They then sought out an institute in the same country which acts as an intermediary to find surrogate mothers. Contracts were entered into with two women, whereby each undertook separately to carry one of the children. The contracts provided that the surrogate mothers relinquished any claim to a parental relationship with the children. Both eggs came from the same egg donor; one was fertilised with semen from plaintiff AE and the other with semen from plaintiff YM.
- 52 Both children were born in 2024 – SM in February and plaintiff TM in April. SM was conceived with AE’s semen and TM with YM’s semen. Before the children were born, more precisely in January 2024, a superior court in the State of California had ruled that plaintiffs AE and YM were the children’s only legal fathers, and that they had full custody of plaintiff TM. Concerning him, that court also ruled that the surrogate mother was not his legal parent and had no rights or responsibilities vis-a-vis him. The ruling further ordered that a birth certificate be issued accordingly.
- 53 After the children were born, plaintiffs AE and YM petitioned Swedish courts for confirmation of their paternity. By district court rulings in that country, the aforementioned rulings from the United States were confirmed. It appears from the request that both children have acquired Swedish citizenship. At the hearing, in response to questions from the Bench, the plaintiffs responded that TM has American and Swedish nationality, and an application for French nationality is pending. Thus, all family members are EEA nationals. The family’s biological and legal relationships under Swedish law may be illustrated as follows:



- 54 On 25 June 2024, the plaintiffs submitted to Registers Iceland a request for the children to be registered along with an application for citizenship on their behalf. By the contested decision of Registers Iceland, of which the plaintiffs were informed by a letter dated 19 August 2024, the request for the registration of plaintiff TM as the son of plaintiff AE was rejected on the grounds that the ruling of the United States court ran directly counter to the rules on a child’s maternity laid down in the Children Act and to

the prohibition of surrogacy in Article 5(4) of the Artificial Fertilisation Act, which carries criminal sanctions. As to this determination, Article 6(1) of the Children Act, cf. Article 2(1) of the same Act, was further cited to the effect that the woman who gives birth to a child conceived by assisted reproduction shall alone be deemed to be its mother at its birth. Pursuant to Article 5(4) of the Artificial Fertilisation Act, surrogacy is prohibited, cf. also the provision on criminal sanctions in Article 17 of the Act. On this point, reference was also made to the judgment of the Supreme Court of Iceland of 30 March 2017 in Case No 367/2016. Furthermore, Registers Iceland rejected the registration of TM as YM's son. In that connection, reference was made to the fact that YM was a national of France and did not satisfy the conditions for registration in Iceland's population registry, cf. Article 2 of the Registration Act.

- 55 By the same letter, Registers Iceland explained its refusal of the plaintiffs' citizenship application for TM. In that connection the letter cited the provisions of Article 1(1) of the Citizenship Act to the effect that a child acquires Icelandic citizenship at birth in two instances, i.e. if its parent is an Icelandic citizen, or if its parent has died and was at that time an Icelandic national. As to which persons are to be deemed parents within the meaning of this provision, this is addressed in the explanatory memorandum accompanying Act No 61/2018 Amending the Act on Icelandic Citizenship, which states that: 'Concerning a child's parentage, the provisions of the Children Act shall apply as appropriate.' Since the documentation submitted was insufficient for TM to be deemed AE's son within the meaning of the Children Act because of the unequivocal prohibition on surrogacy, the statutory conditions were not considered to be fulfilled and consequently the authority was unable to grant him Icelandic citizenship.
- 56 Registers Iceland approved the application for registration of paternity and citizenship for SM on 17 October 2024, after the results of DNA testing had been made available.
- 57 Following the refusal by Registers Iceland, plaintiff AE sent a query to the Office of the District Commissioner of Greater Reykjavík, asking whether confirmation of a foreign adoption could be obtained, cf. Article 2.a(2) of the Citizenship Act. The reply of 20 September 2024 from that Office stated that it did not appear that the children had been adopted. On that basis, there were no grounds for the Commissioner to confirm an adoption so as to give it validity in Iceland and legal effects under the Adoption Act. Plaintiff AE subsequently asked the Office about the possibility of the plaintiffs adopting their own children in Iceland to satisfy the requirements of Registers Iceland, even though the family resided in Sweden. The Office's reply dated the 23rd of the same month indicated that an answer could not be given in advance as to whether this would be possible or not, since the Commissioner's decisions on adoptions were taken after a thorough case by case investigation. However, obstacles would clearly stand in the way of such an arrangement given that the general rule is that a person who resides abroad may only adopt a child pursuant to Icelandic law if that person, or the person's spouse, are Icelandic nationals and are for that reason unable to obtain authorisation to adopt in the country of residence. Based on the circumstances stated by the plaintiffs, the request concerned the adoption of a child of whom the plaintiffs already consider themselves to be the parents. Reference was furthermore made to the prohibition of surrogacy under Icelandic law.

- 58 Against this background, Reykjavík District Court decided to refer the following questions to the Court for an advisory opinion:

A. If the administrative authorities of EEA State A refuse to register in that State's population registry as a party's child an individual who is registered as the child of the party in question in another EEA state (State B), where the family resides, does such refusal constitute an infringement of, or obstacle to, the right of the residents of the EEA States to move and reside freely, and the right to free movement of workers, cf., inter alia, Articles 4 and 28 of the EEA Agreement and the provisions of Directive No 2004/38/EC and Regulation No 492/2011?

B. Does Article 2(2) of Directive No 2004/38/EC entail that EEA States must recognise under their national law a familial relationship that enjoys legal recognition in another EEA State?

IV ARGUMENTS SUBMITTED TO THE COURT

Plaintiffs

- 59 The plaintiffs submit, in their written observations, that it is settled case-law that, where an EEA national creates or strengthens family life during a genuine residence in another EEA State, the effectiveness of the right to free movement requires that the family life may continue when the EEA national returns to the State of origin. The fact that no parallel to Article 21 TFEU exists in EEA law is immaterial in this regard.
- 60 The plaintiffs object to the defendant's claim that the contested restriction is of a purely hypothetical nature. They have already exercised their right to free movement by residing, working and establishing family ties in Sweden, and they spend regular and extended periods in Iceland, during which the Icelandic father is frequently present in Iceland alone with one or both children. In its judgment of 25 November 2025 in *Trojan*, C-713/23, EU:C:2025:917, the European Court of Justice ('ECJ') required an EEA State to recognise the marriage between two EEA nationals although those nationals had not yet moved back to the State of origin.
- 61 The plaintiffs observe that Iceland's refusal to recognise the son as the Icelandic father's child gives rise to immediate and concrete inconvenience for the exercise of their right to free movement and puts them in a situation where the Icelandic father would have to apply for adoption to obtain recognition of their family ties in Iceland. The plaintiffs argue, principally, that this fact, in and of itself, constitutes a clear restriction on their right to free movement and infringes Articles 4 and 28 EEA, Articles 2, 4 and 5 of Directive 2004/38 and Regulation 492/2011. In the alternative, the plaintiffs argue that, considering the relevant provisions of the Icelandic Adoption Act and their communications with the Office of the District Commissioner, it is not clear whether the Icelandic father would be able to successfully adopt the son in Iceland.

- 62 At the hearing, moreover, the plaintiffs argued that there is a difference between domicile registration pursuant to point 9 of Article 4(1) of the Registration Act and registration of the parent-child relationship as such in the national registry, either by birth or by adoption. Although rights under public law such as education, health care, social services, the ability to relocate and guardianship could be ensured with the former arrangement, the child would still risk foregoing other rights such as inheritance in the absence of a will, citizenship, voting rights and, potentially, certain rights towards both parents. If the parents were to divorce, moreover, there would be considerable uncertainty as regards the child's and the Icelandic father's status and rights in relation to each other.
- 63 On the basis of the above, the plaintiffs submit that prompt and effective alternatives for securing recognition of the parent-child relationship are not available. The legal uncertainty deters the family from moving to Iceland by creating serious obstacles in regulating their family life, thereby infringing EEA law. Such a restriction on the right to free movement cannot be justified on grounds of public policy, public security or public health. The plaintiffs refer in particular to case-law under Article 8 ECHR, where the European Court of Human Rights ('ECtHR') has held that, while States may wish to deter their nationals from going abroad to take advantage of methods of assisted reproduction that are prohibited on their own territory, the effects of non-recognition of the legal relationship between children thus conceived and the intended parents affect the children themselves and their right to establish their identity.

Defendants

- 64 The defendants submit, in their written observations, that the facts in the main proceedings do not fall within the scope of EEA law and invite the Court to dismiss the case as inadmissible. First, any alleged restriction on the plaintiffs' right to free movement is of a purely hypothetical nature. The family is currently residing in the EEA State where the parent-child relationship has been established and is thereby not exercising, or realistically intending to exercise, their right to free movement in Iceland. Second, the applications for registration in the national registry and citizenship fall outside the scope of EEA law.
- 65 With regard to the questions referred, the defendants submit that Article 2(2) of Directive 2004/38 merely defines the personal scope of residence rights and does not impose a duty of mutual recognition of family law rights. Similarly, Regulation 492/2011 governs workers' rights of residence and access to education. Population registers, nationality and family law, by contrast, fall within the competence of the EEA States, subject to the caveat that national measures must not give rise to unjustified restrictions on freedom of movement. With regard to the latter, the defendants submit that a refusal by an EEA State to pre-emptively register a family relationship in its population registry before the individual has actually moved to that EEA State is not liable to hinder the effective exercise of free movement.
- 66 In the alternative, the defendants submit that any potential restriction can be justified by reference to overriding considerations of public policy. EEA States enjoy a wide

margin of discretion in issues of fundamental ethical and social considerations, which includes the objective of deterring citizens from pursuing surrogacy arrangements. In its judgment of 14 December 2021 in *Pancharevo*, C-490/20, EU:C:2021:1008, the ECJ clarified that any obligation to recognise family relationships arising under Directive 2004/38 is strictly functional and instrumental, extending only to what is necessary to ensure the effective exercise of the child's right to free movement and residence. The ECJ did not establish any obligation of full civil-status recognition, nor did it require registration of parenthood in national population registries or assimilation of foreign civil status into domestic family law systems. The decisive criterion is whether the child and the family can exercise their free movement rights in a practical and effective manner. This is in line with the position of the ECtHR, which has emphasised that States enjoy a margin of appreciation as to the form of recognition provided that the procedure is practical and effective, accessible and sufficiently prompt.

- 67 The defendants further observe that functional recognition of the legal parent-child relationship has in fact been ensured in the present case, since the child enjoys lawful residence, identity documents, access to healthcare and education and effective family unity in the current State of residence. If the family were to move to Iceland, the family would be registered in the National Registry under the same family identification number, pursuant to point 9 of Article 4(1) of the Registration Act, on the basis that they live together as a family unit. The custody of the children would be registered on the basis of the documentation submitted, assessed in accordance with Article 18 of the Registration Act, as could further be confirmed pursuant to Article 29a of the Children Act, which provides for the recognition of custody rights of step-parents and cohabiting parents. As a result, the family would enjoy effective family unity and full access to healthcare, education, interaction with public authorities and the ability for the parents to travel with the children either individually or jointly. At the hearing, moreover, the defendants argued that, in the event of a divorce, both parents would have custody over the children, and that a new custody arrangement could be decided upon as in any other situation.
- 68 The defendants thus submit that the custody the parents exercise in Sweden would continue to be recognised in Iceland. The son, however, would not automatically be registered as an Icelandic citizen which has implications for inheritance. Thus, if the family were to settle permanently in Iceland and wish their estate to be governed by Icelandic law, adoption may be advisable. According to the defendants, adoption remains available both in the situation where the family resides in Iceland or abroad. While the general rule is that the applicant must reside in Iceland to apply in Iceland, the District Commissioner may authorise an application for adoption to be handled in Iceland for applicants outside of Iceland where the persons concerned have a special connection to the country. In the present case, however, no formal application for adoption or comparable legal recognition has been submitted to the competent authorities.

Norwegian Government

- 69 The Norwegian Government submits, in its written observations, that the Court may dismiss the case as inadmissible. First, the refusal by the defendants to register the son as the child of both fathers and to grant Icelandic nationality does not infringe the right to free movement under Articles 4 and 28 EEA, Directive 2004/38 or Regulation 492/2011 because any alleged restriction on free movement is of a purely hypothetical nature. Second, it is not necessary to determine whether the son is the Icelandic father's 'direct descendant' because the son is at any rate both an EEA national himself and the 'direct descendant' of the other parent thereby making the second question irrelevant to the main action from which it arises.
- 70 With regard to the first question referred, the Norwegian Government submits that the refusal by Registers Iceland does not constitute a restriction on free movement under Articles 4 and 28 EEA, Directive 2004/38 or Regulation 492/2011. Lack of registration of the family relationship is neither a prerequisite for entry or residence and the family would be duly registered if they were to move to Iceland. Family law, parentage and citizenship are not harmonised and thus remain within the competence of the EEA States. According to the ECJ's judgment in *Trojan*, C-713/23, cited above, paragraph 51, EEA law only requires an EEA State to recognise a family relationship in the event that 'a refusal is liable to cause serious inconvenience for those citizens at administrative, professional and private level'. Such inconvenience has not been demonstrated in the case at hand. In the alternative, any potential restriction can be justified. In this regard, EEA States enjoy a wide margin of discretion in issues with diverging moral and cultural views.
- 71 With regard to the second question referred, the Norwegian Government submits that a court ruling in an EEA State recognising a court ruling from a third country declaring parenthood is not sufficient for a child to be considered a 'direct descendant' under Article 2(2)(c) of Directive 2004/38. The situation described is not comparable to the situation where a birth certificate from an EEA State actually exists, as was the case in *Pancharevo*, C-490/20, cited above.

German Government

- 72 The German Government submits, in its written observations, that a refusal to register parental rights is not 'liable to cause serious inconvenience for those citizens at administrative, professional and private levels', in accordance with the ECJ's judgment in *Trojan*, C-713/23, cited above, paragraph 51. All of the plaintiffs are EEA nationals and enjoy rights of residence and free movement in their own right. Importantly, other options seem to exist under Icelandic law for recognising the existing family ties. The refusal to register therefore only affects the possibility of the acquisition of Icelandic nationality, the competence for which lies with the EEA States.
- 73 In the alternative, should a restriction be found, the German Government submits that it can be justified by reference to overriding reasons of public policy and national identity of EEA States. EEA States enjoy a wide margin of discretion in issues with

diverging moral and cultural views, such as the legality of surrogacy arrangements. Family law is a particularly sensitive area and is expressive of the national identity of EEA States, and it is the practice of many countries to not automatically recognise the intended parents in surrogacy cases. Although EEA States cannot decide whether to recognise existing family ties, they can decide on how to recognise them. In this regard, it is sufficient to provide for recognition by way of adoption.

- 74 The German Government observes that the facts in *Pancharevo*, C-490/20, cited above, must be distinguished from the case at hand. First, the family life has been established in a third country, to which the principle of mutual trust does not apply. Second, the ECJ expressly based its ruling on Articles 20 and 21 TFEU and Articles 7, 9, 24 and 45 of the Charter, whereas the present case concerns the free movement of workers under Article 28 EEA to which the particularly far-reaching functional logic of Union citizenship cannot be transferred.
- 75 At the hearing, moreover, the German Government argued that the son does not qualify as a ‘direct descendant’ of the Icelandic father within the meaning of Article 2(2)(c) of Directive 2004/38. Such recognition would exceed the wording and purpose of that provision in circumstances where there is no biological connection between the child and the intended parent and the only basis for recognition originates in a third country decision that has merely been recognised by another EEA State. The question is, in any event, irrelevant as the son is the French father’s biological child and therefore already holds a derived right.

Hungarian Government

- 76 The Hungarian Government submits, in its written observations, that neither rules for parenthood nor recognition and enforcement of decisions concerning parental rights have been harmonised by EEA law. To require Iceland to recognise the Swedish decision establishing parental rights within Sweden would run counter to the principle of *l’exequatur sur l’exequatur ne vaut* (prohibition on recognition of recognition), a general principle of private international law which applies in the areas covered by EEA law.
- 77 With regard to the questions referred, the Hungarian Government submits that any restriction can be justified by reference to public policy and the national identities of the EEA States. EEA States enjoy a wide margin of discretion in sensitive areas such as surrogacy, although account must be had of the child’s right to recognition of his or her origin and identity. The solution offered by Hungarian law to establish the parent-child status is adoption, which is also preferred by the ECtHR.

Netherlands Government

- 78 The Netherlands Government argued at the hearing that Article 2(2)(c) of Directive 2004/38 requires EEA States to recognise, for the purposes of free movement, both parental-child relationships established by biological ties and ties established by legal decisions followed by custody, access and/or regular contact and interaction,

irrespective of whether such parentage could have been constituted under the law of the home State. While Iceland is not required to alter its own approach to regulating family law for domestic law purposes, it is inherent in the derived rights of family members under EEA law that Iceland cannot refuse to accept the consequences of the parenthood recognised in another EEA State for the purposes of ensuring the effective exercise of free movement rights.

- 79 The Netherlands Government further observed that Directive 2004/38 does not require the EEA States to formally register the specific relationship under their national law, as long as the exercise of rights under that directive is guaranteed. Notably, this includes a right of residence and equal treatment to nationals. The ECJ has, however, stated that an obligation to formally register the specific relationship may arise whenever national authorities normally require registration, and there are no other means provided under the law of that EEA State to ensure the full enjoyment of free movement rights. Such registration should then reflect the child's parentage as was legally recognised in the official document from the EEA State where he or she resided.
- 80 With regard to justification, the Netherlands Government emphasised that the concept of public policy is strictly limited; that Articles 7 and 24 of the Charter must be observed; and that strict policies on surrogacy are liable to have an indirectly discriminatory effect on LGBTQ+ families.

Spanish Government

- 81 The Spanish Government submits, in its written observations, that Directive 2004/38 is not intended to govern the residence of a Union citizen in the Member State of which he or she is a national, although that directive could apply, by analogy, to the plaintiffs in the case at hand in line with the Court's case-law on home State restrictions. With regard to Regulation 492/2011 and Article 28 EEA, the Spanish Government submits that it cannot be inferred from the information provided by the referring court whether the plaintiffs are covered by the scope of those provisions.
- 82 With regard to the first question referred, the Spanish Government submits that no genuine restriction on free movement arises since the family life the plaintiffs created or strengthened in Sweden would be registered and recognised if they transferred their residence to Iceland, for example by way of adoption. With regard to the second question referred, the Spanish Government submits that Article 2(2) of Directive 2004/38 is immaterial since it only governs the right to residence.
- 83 The Spanish Government further submits that the right to free movement does not require EEA States to recognise parentage under national civil law, to register such parentage, or to grant nationality. Matters of parentage and nationality remain within national competences, and EEA law cannot require recognition of foreign judicial decisions establishing parentage where this would circumvent a lawful national ban on surrogacy or undermine national identity.

- 84 At the hearing, moreover, the Spanish Government argued that the alleged restriction on free movement is of a purely hypothetical nature. The claim that if Iceland permits adoption the policy would be inconsistent, must further be deemed unfounded. Requiring intended parents to establish parentage through procedures such as adoption enables national authorities to make an individual assessment of whether human dignity has been observed.

ESA

- 85 ESA submits, in its written observations, that the plaintiffs are EEA nationals who have exercised their right to free movement. It is established case-law that the right to free movement can be invoked against the home State of an EEA national.
- 86 With regard to the second question referred, ESA submits that the concept of ‘direct descendant’ in Article 2(2)(c) of Directive 2004/38 must be given an autonomous interpretation. The ECJ’s findings in *Pancharevo*, C-490/20, cited above, apply *mutatis mutandis* to the case at hand insofar as *Pancharevo* concerned the duty to recognise existing family ties for the purposes of pursuing free movement rights, regardless of whether the EEA State itself allows for same-sex parentage. While the ECJ did not establish an obligation on the home State to draw up a birth certificate of its own, it did find that the home State was required to issue a passport or identity card for the child and to recognise the birth certificate issued by the host State which enabled the child to exercise its free movement rights with each of its parents. The ECJ further held that this obligation does not undermine the national identity or pose a threat to the public policy of that EEA State. ESA thus considers that the second question should be answered in such a way that EEA States are obliged to recognise a child who is officially recognised and registered as the child of an EEA national by the competent authorities of another EEA State as a ‘direct descendant’ for the purposes of Article 2(2)(c) of Directive 2004/38.
- 87 With regard to the first question referred, ESA submits that it is for each EEA State to lay down the conditions for acquisition and loss of nationality. EEA law does not as such prescribe that personhood or parentage are to be registered in a particular manner. Nonetheless, in order for the right to free movement to be effective, the child needs to be able to travel with each of its parents. This requires the Icelandic father to be able to demonstrate that he has parental rights over the child and the authority to take decisions that concern the child. For an Icelandic national or residents of Iceland, ESA understands that this authority would normally follow from the registration of parentage or of custody in the national registry. ESA therefore considers that the absence of such registration may be liable to cause inconvenience at administrative, professional and private levels. Therefore, where registration is the only means possible to recognise parent-child family ties for the purposes of enabling the enjoyment of free movement without hindrance, ESA submits that an EEA State is obliged to register such family ties which have been officially recognised and registered in another EEA State where necessary for the enjoyment of free movement rights. Such registration should reflect the child’s parentage as established in the official document from the State of residence that permits free movement rights with each of his or her parents.

Commission

- 88 With regard to the second question referred, the Commission submits that Article 28 EEA, read in conjunction with Article 2(2)(c) of Directive 2004/38, requires EEA States to recognise, for the purposes of free movement, both parental-child relationships established by biological ties and ties established by legal decisions followed by custody, access and/or regular contact and interaction irrespective of whether such parentage could have been constituted under the law of the home State. In its judgment in *Pancharevo*, C-490/20, cited above, the ECJ clarified that the minor child of a same-sex couple, whose status has been established by their host State during a stay in accordance with Directive 2004/38, must be regarded by all EEA States as being a ‘direct descendant’ within the meaning of Article 2(2)(c). While Iceland is not required to alter its own approach to regulating family law for domestic law purposes, Iceland cannot refuse to accept the consequences of the parenthood recognised in another EEA State for the purposes of ensuring the effective exercise of free movement rights.
- 89 With regard to the first question referred, the Commission submits that the corollary of the duty to recognise individuals as family members is a duty to accept the civil status documents issued by one EEA State without any particular formalities. Thus, with respect to the present case, the Commission maintains that all EEA States, including Iceland, are required to allow the plaintiffs to enter and reside, and enforce their rights arising under EEA law, as parent and child, on the basis of the existing registration of the parenthood relationship in Sweden. Nonetheless, the EEA States are under no obligation to provide a birth certificate. The judgment in *Pancharevo*, C-490/20, cited above, must be distinguished from the case at hand on the basis that it is not apparent from the request that registration in Iceland is in fact the only means of recognition of the relationship of parenthood for the effective exercise of rights under EEA law. Specifically, Iceland maintains that if the plaintiffs came to reside in Iceland, they would then be allowed to be registered in the population register.
- 90 At the hearing, however, the Commission observed that, in the light of the other parties’ submissions, it would appear that no sufficient alternative means have been put in place in order to ensure recognition of the parent-child relationship under Icelandic law, and that a situation in which the family is put in a legal limbo because they are forced to move to Iceland in order for the Icelandic father to adopt the child for the purposes of recognition would constitute a restriction on the right to freedom of movement.
- 91 Reference is made to the written observations published on the Court’s website for a fuller account of the arguments and proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

V ANSWER OF THE COURT

Admissibility

- 92 Article 34 SCA provides that any court or tribunal in an EFTA State may refer questions on the interpretation of the EEA Agreement to the Court if it considers an advisory opinion necessary to enable it to give judgment. The purpose of Article 34 SCA is to establish cooperation between the Court and the national courts and tribunals. It is intended to be a means of ensuring a homogenous interpretation of EEA law and to provide assistance to the courts and tribunals in the EFTA States in cases in which they have to apply provisions of EEA law (see the judgment of 12 February 2026 in *Plörer*, E-9/25, paragraph 41 and case-law cited).
- 93 It is settled case-law that questions concerning the interpretation of EEA law referred by a national court, in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may only refuse to rule on a question referred by a national court where it is obvious that the interpretation of EEA law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions referred (see the judgment in *Plörer*, E-9/25, cited above, paragraph 42 and case-law cited).
- 94 The main proceedings concern the validity of a decision by Registers Iceland, whereby the request of the plaintiffs for TM to be registered as the child of AE and YM was refused, as well as an application by the same parties for Icelandic citizenship for TM. In light of the information contained in the request, it appears that those applications were made outside the context of the plaintiffs having direct plans to move to Iceland to take up residence there. At the hearing, however, the plaintiffs explained that they had in fact been considering moving to Iceland and had made those intentions clear to the Icelandic authorities, which was clear, inter alia, from their correspondence with Registers Iceland, due to the prohibition of surrogacy under Icelandic law, and the links maintained by the plaintiffs to Iceland.
- 95 Against that background the interpretation of Directive 2004/38, Regulation 492/2011 and the main part of the EEA Agreement is relevant in order to determine whether the plaintiffs' effective right of free movement is impaired by the refusal by Registers Iceland to register the legal parent-child relationship. It is thus incumbent on the Court to give as complete and as useful a reply as possible. Any other conclusion would undermine the purpose of the judicial dialogue envisaged by Article 34 SCA and the presumption of relevance of the questions referred (see, *mutatis mutandis*, the judgment of 9 August 2024 in *X (Professional secrecy)*, E-10/23, paragraph 39).

Question B – concept of 'family member'

- 96 The Court finds it appropriate to examine the referring court's second question before examining the first question.

- 97 By its second question, the referring court seeks guidance on the extent to which Article 2(2) of Directive 2004/38 requires EEA States to recognise under national law a parent-child relationship that enjoys legal recognition in another EEA State.
- 98 The Court recalls that, under Article 1(2)(b) EEA, read in the light of the fifth recital thereof, the free movement of persons constitutes one of the fundamental freedoms of the internal market and forms part of the core of the EEA Agreement (see the judgment of 11 March 2025 in *AO and IM*, E-23/24, paragraph 58 and case-law cited).
- 99 The general right to move and reside freely within the EEA is not unconditional, however, but may be subject to the limitations and conditions imposed by the EEA Agreement and by the measures adopted to give it effect (see the judgment in *AO and IM*, E-23/24, cited above, paragraph 59 and case-law cited).
- 100 Directive 2004/38 establishes a gradual system as regards the right of residence in the host State which reproduces, in essence, the stages and conditions laid down in the various instruments of EEA law and case-law preceding that directive and culminates in the right of permanent residence (see the judgment in *AO and IM*, E-23/24, cited above, paragraph 60 and case-law cited).
- 101 Article 3(1) of Directive 2004/38 provides that Directive 2004/38 is to apply to all EEA nationals who move to or reside in an EEA State other than that of which they are a national, and to their family members, as defined in Article 2(2) of that directive, who accompany or join them, which include, inter alia, their ‘direct descendants’ who are under the age of 21 or are dependants (see the judgment of 2 July 2024 in *MH*, E-6/23, paragraph 38 and case-law cited; and compare the judgment of 26 March 2019 in *SM (Child placed under Algerian kafala)*, C-129/18, EU:C:2019:248, paragraphs 48 to 49 and case-law cited).
- 102 It follows from the need for a uniform application of EEA law and the principle of equality that Article 2(2) of Directive 2004/38 must be given an independent and uniform interpretation throughout the EEA, taking into consideration not only the usual meaning of its terms, but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, the judgment of 7 May 2025 in *TC and AA*, Joined Cases E-1/24 and E-7/24, paragraph 62 and case-law cited; and compare the judgment of 15 September 2022 in *Minister for Justice and Equality (Third-country national cousin of a Union citizen)*, C-22/21, EU:C:2022:683, paragraph 19 and case-law cited).
- 103 Although the concept of ‘direct descendant’ primarily focuses on the existence of a biological parent-child relationship, it is settled case-law that the aim of Directive 2004/38 is to facilitate the exercise of the primary and individual right to move and reside freely within the territory of the EEA States, and that one of the objectives of that directive is to strengthen that right. In view of those objectives, the provisions of Directive 2004/38, including Article 2(2) thereof, must be construed broadly (see, to that effect, the judgment in *AO and IM*, E-23/24, cited above, paragraph 69 and case-

law cited; and compare the judgment in *SM (Child placed under Algerian kafala)*, C-129/18, cited above, paragraph 53 and case-law cited).

- 104 Therefore, the concept of a ‘parent-child relationship’ covers any parent-child relationship, whether biological or legal. It follows that a person connected with another person through the existence of such a direct parent-child relationship must be regarded by all EEA States as being a ‘direct descendant’ under Article 2(2)(c) of Directive 2004/38, and, therefore, as being a ‘family member’ within the meaning of that directive for the purposes of the exercise of the primary right to free movement of persons and the secondary legislation relating thereto (see, to that effect, the judgment in *AO and IM*, E-23/24, cited above, paragraph 58; and compare, *mutatis mutandis*, the judgments in *SM (Child placed under Algerian kafala)*, C-129/18, cited above, paragraph 54, and in *Pancharevo*, C-490/20, cited above, paragraphs 67 and 68 and case-law cited).
- 105 The fact that the child in the present case was born through a surrogacy arrangement carried out in a third country cannot lead to a different conclusion.
- 106 The Court recalls that provisions of EEA law must be interpreted in the light of the fundamental rights which form an integral part of the general principles of EEA law whose observance the Court ensures. The provisions of the ECHR and the Charter, as well as the case-law of the ECtHR and the ECJ, are important sources for determining the scope of these fundamental rights. In that context, EEA States must, inter alia, make sure they do not rely on an interpretation of an act incorporated into the EEA Agreement which would be in conflict with those fundamental rights (see the judgment of 29 September 2026 in *Skatturinn*, E-28/25, paragraph 28 and case-law cited; and compare the judgment of 21 April 2026 in *Commission v Hungary (Valeurs de l’Union)*, C-769/22, EU:C:2026:326, paragraph 129 and case-law cited).
- 107 In the situation with which the main proceedings are concerned, the right to respect for private and family life in Article 8 ECHR and Article 7 of the Charter and the rights of the child guaranteed in UNCRC and Article 24 of the Charter are fundamental (compare, *mutatis mutandis*, the judgment in *Pancharevo*, C-490/20, cited above, paragraph 59).
- 108 It is apparent from the case-law of the ECtHR and the ECJ that the existence of ‘family life’ is a question of fact depending upon the real existence in practice of close personal ties, and that the mutual enjoyment by parent and child of each other’s company constitutes a fundamental element of family life (compare, *mutatis mutandis*, the judgment in *Pancharevo*, C-490/20, cited above, paragraph 61 and case-law cited).
- 109 In the context of surrogacy, the ECtHR has held that a general and absolute impossibility of obtaining recognition of the relationship between a child born through such an arrangement and the intended parent is incompatible with the child’s right to respect for its private life. While the child’s best interests include other fundamental components that do not necessarily weigh in favour of recognition of a legal parent-child relationship with the intended parent, such as protection against the risks of abuse which surrogacy arrangements entail, each situation must as a minimum be examined

in the light of the particular circumstances of the case (compare the ECtHR’s advisory opinion of 10 April 2019, Request No P16-2018-001, paragraphs 40 to 42 and case-law cited).

- 110 In the present case, the plaintiffs have submitted that such a case-by-case assessment has been carried out by Swedish courts, which concluded that the legal parent-child relationship should be recognised in the best interests of the child.
- 111 In those circumstances, subject to verification by the referring court, the relationship between the child concerned, TM, and each of the two persons with whom he leads a family life in the host State, AE and YM, who are mentioned as being his parents on the birth certificate recognised by that EEA State, is protected under EEA law.
- 112 In the light of the foregoing, the answer to the second question must therefore be that Article 2(2)(c) of Directive 2004/38 entails that EEA States must recognise, as a ‘direct descendant’ of an EEA national, a child whose parent-child relationship with that EEA national enjoys legal recognition in another EEA State for the purposes of the exercise of their primary right to free movement of persons and the secondary legislation relating thereto.

Question A – registration of the parent-child relationship

Preliminary remarks

- 113 By its first question, the referring court asks, in essence, whether a refusal to register a legal parent-child relationship in the national registry, in circumstances such as those in the main proceedings, infringes the free movement of persons under EEA law.
- 114 The Court recalls that proceedings under Article 34 SCA are based on a clear separation of functions between national courts or tribunals and the Court. Any assessment of the facts of the case is a matter for the national court or tribunal, which must assume responsibility for the subsequent judicial decision, and it is that court or tribunal which has the task of interpreting the provisions of national law at issue and ultimately determining their compatibility with EEA law. In the spirit of cooperation with national courts and tribunals, however, the Court may provide all the guidance that it deems necessary in order to give the national court or tribunal a useful answer (see the judgment of 20 November 2024 in *Bygg & Industri Norge*, E-2/24, paragraph 31 and case-law cited).
- 115 It is apparent from the information provided by the referring court that a child who is neither a resident nor a national of Iceland may be registered in the national civil registry only if one of its parents is an Icelandic national. In the context of the present case, therefore, the Court’s assessment will take the Icelandic father and his right to free movement vis-à-vis his State of origin, Iceland, as the point of departure. That assessment, however, does not exclude consideration of the fundamental freedoms and rights of the other family members concerned, all of whom are EEA nationals with an autonomous right to effective judicial protection under EEA law (see, to that effect, the

judgment in *X (Professional secrecy)*, E-10/23, cited above, paragraph 70 and case-law cited).

- 116 In this regard, particular account must be taken of the principle that the best interests of the child shall represent a primary consideration in all actions concerning children, as expressed in Article 24(2) of the Charter and Article 3 UNCRC. That principle affirms the fundamental nature of children's rights and forms part of the general principles of EEA law that must be recognised in accordance with EEA law (see the judgment of 12 December 2024 in *A v B (Moving with a child abroad)*, E-15/24, paragraph 53; and compare, to that effect, the judgment in *Commission v Hungary (Valeurs de l'Union)*, C-769/22, cited above, paragraph 143 and case-law cited).
- 117 Furthermore, since the Icelandic father is currently employed in Sweden, it is appropriate to examine the case at hand under Article 28 EEA, which gives specific expression to the primary right to free movement of persons within the EEA (see, to that effect, the judgment of 13 May 2020 in *Campbell*, E-4/19, paragraph 48 and case-law cited; and compare the judgments of 26 September 2024 in *Nord Vest Pro*, C-387/22, EU:C:2024:786, paragraph 32 and case-law cited, and of 29 April 2025 in *Commission v Malta*, C-181/23, EU:C:2025:283, paragraph 87 and case-law cited).

The existence of an obstacle to freedom of movement for workers

- 118 Article 28(1) EEA prohibits, in principle, any obstacle to freedom of movement for workers within the EEA. The provisions of the EEA Agreement on freedom of movement for persons are intended to facilitate the pursuit by EEA nationals of occupational activities of all kinds throughout the EEA, and preclude measures which might place EEA nationals at a disadvantage when they wish to pursue an activity as an employed person in the territory of another EEA State (see, to that effect, the judgment in *A v B (Moving with a child abroad)*, E-15/24, cited above, paragraph 40 and case-law cited; and compare the judgment of 27 November 2025 in *Kärntner Landesregierung (Promotion of a civil servant)*, C-356/24, EU:C:2025:926, paragraph 57 and case-law cited).
- 119 EEA nationals have in particular the right, which they derive directly from the EEA Agreement, to leave their State of origin to enter the territory of another EEA State and reside in that EEA State in order to pursue an activity there. Article 28 EEA thus precludes any national measure which is capable of hindering or rendering less attractive the exercise by EEA nationals of the fundamental freedom guaranteed by that article (see, to that effect, the judgment in *A v B (Moving with a child abroad)*, E-15/24, cited above, paragraph 40 and case-law cited; and compare the judgment in *Kärntner Landesregierung (Promotion d'un fonctionnaire)*, C-356/24, cited above, paragraph 58 and case-law cited).
- 120 It is settled case-law that the rights which EEA nationals enjoy, inter alia, under Article 28 EEA, include in particular the right to lead a normal family life together with their family members both in the host State and in the EEA State of which they are nationals when they return to that EEA State (see, to that effect, the judgment in *Campbell*,

E-4/19, cited above, paragraph 51 and case-law cited; and compare, to that effect, the judgment in *Trojan*, C-713/23, cited above, paragraph 43 and case-law cited).

- 121 As EEA law currently stands, however, a person's status, which is relevant to the rules on parentage and nationality, is a matter that falls within the competence of the EEA States. It is for the legislature of each EEA State to organise the national civil register, to set the conditions for the grant and loss of nationality, as well as to decide whether or not to allow surrogacy under their national law (see, to that effect, the judgment in *A v B (Moving with a child abroad)*, E-15/24, cited above, paragraph 60 and case-law cited; and compare, to that effect, the judgment in *Trojan*, C-713/23, cited above, paragraph 47).
- 122 When exercising those powers, the EEA States must nevertheless comply with applicable EEA law, in particular the provisions of the EEA Agreement giving every EEA national the right to move and reside within the territory of the EEA States, by recognising, for that purpose, the civil status of persons that has been established in another EEA State in accordance with the law of that other EEA State (see, to that effect, the judgment in *A v B (Moving with a child abroad)*, E-15/24, cited above, paragraph 60 and case-law cited; and compare the judgment in *Trojan*, C-713/23, cited above, paragraph 48).
- 123 In the circumstances of the present case, AE and YM sought recognition of a ruling by a superior court in the State of California (USA) by Swedish courts in order to confirm their paternity. The plaintiffs submit, in their written observations, that following an assessment by Swedish courts, inter alia, of the best interests of the child at issue, the Swedish district court confirmed the validity of the American judgment in Sweden and recognised AE and YM as the child's only legal parents. Accordingly, the legal parent-child relationship was lawfully recognised in Sweden pursuant to the procedures laid down for that purpose in that EEA State.
- 124 A refusal by the authorities of an EEA State of which an individual is a national to recognise a civil status which has been lawfully established pursuant to the procedures laid down for that purpose in another EEA State in which that EEA national has exercised his freedom to move and reside is likely to hinder the exercise of the right enshrined in Article 28 EEA, since such a refusal is liable to cause serious inconvenience for that national at administrative, professional and private levels (compare the judgment in *Trojan*, C-713/23, cited above, paragraph 51).
- 125 In that regard, it appears to be common ground between the parties to the main proceedings that a general and absolute refusal to recognise the civil status lawfully acquired pursuant to the procedures laid down for that purpose in another EEA State in which the plaintiffs have exercised their freedom to move and reside is likely to hinder the exercise of the right enshrined in Article 28 EEA. Indeed, such a measure would prevent them from pursuing that family life and at the same time benefitting from that legal status, which is certain and can be relied on against third parties, when moving to Iceland. Therefore, if that civil status is not recognised, there is a genuine risk that they will face serious obstacles in regulating their family life upon moving to Iceland, in so

far as they will be unable, in many aspects of everyday life – both in the public and in the private spheres – to rely on that civil status, even though that status has been lawfully established in Sweden (compare, *mutatis mutandis*, the judgment in *Trojan*, C-713/23, cited above, paragraphs 51 to 53 and case-law cited).

- 126 The parties disagree, however, as to whether Icelandic law provides sufficiently effective alternatives to registration of the legal parent-child relationship in the national registry that would ensure the family's right to lead a normal family life in Iceland. In particular, the defendants point to the fact that, under Icelandic law, the plaintiffs would be registered jointly at their shared domicile upon moving to Iceland, and that AE may, in any event, apply for adoption in order to obtain full recognition as TM's legal parent.
- 127 As regards the possibility of registering the plaintiffs at the same domicile under Icelandic law, the Court notes that the referring court stated in its request that it cannot be inferred that the family will enjoy the same legal status in Iceland as it does in Sweden, even if they were to move to Iceland.
- 128 The defendants further acknowledged at the hearing that this domicile registration would not confer full rights under Icelandic law, including rights relating to citizenship, inheritance, and other aspects connected to the child's identity.
- 129 The Court recalls in this respect that the status of family members forms the basis of numerous rights and obligations arising from both EEA and national law. Failure to recognise a family relationship established in another EEA State could create serious obstacles to family life in an individual's State of origin, such as uncertainties surrounding the child's right of residence and obstacles relating to custody and social security. A lack of full recognition of that status under national law would also have consequences in matrimonial and inheritance matters (compare, *mutatis mutandis*, the opinion of Advocate General Kokott of 15 April 2021 in *Pancharevo*, C-490/20, EU:C:2021:296, point 62).
- 130 Moreover, the effects of non-recognition are not limited to the parents alone, but affect the children themselves, whose right to respect for their private life will be substantially affected. In general terms, the non-recognition in domestic law of the relationship between the child and the intended parent is disadvantageous to the child, as it places him or her in a position of legal uncertainty regarding his or her identity within society. In particular, there is a risk that such children will be denied access to their intended parent's nationality which the legal parent-child relationship guarantees; it may be more difficult for them to remain in their intended parent's country of residence; their right to inherit under the intended parent's estate may be impaired; their continued relationship with him or her is placed at risk if the intended parents separate or the other intended parent dies; and they have no protection should their intended parent refuse to take care of them or cease doing so (compare the ECtHR's advisory opinion, Request No P16-2018-001, cited above, paragraphs 39 and 40).
- 131 The legal uncertainty surrounding these matters, which are fundamental to family life and therefore decisive for parents when determining their family's place of residence,

is in and of itself liable to make the exercise of free movement less attractive in circumstances such as those in the main proceedings.

- 132 That uncertainty becomes particularly acute in the event of divorce. A parent who is not fully recognised as the child’s legal parent under national law may, for instance, risk losing custody if a parental dispute is brought before domestic courts. It follows from the second subparagraph of Article 13(1) of Directive 2004/38, moreover, that the child itself might be required to meet the conditions in Article 7(1)(a) to (c) in order to move and reside together with each parent, rather than deriving a right of residence directly on the basis of the legal parent-child relationship under point (d) thereof. The child may also risk losing entitlement to equal treatment in other EEA States, as the concept of ‘member of the family’ under Article 7(2) of Regulation 492/2011 aligns with ‘family member’ under Article 2(2) of Directive 2004/38 (compare the judgment of 2 April 2020 in *Caisse pour l’avenir des enfants (Child of the spouse of a frontier worker)*, C-802/18, EU:C:2020:269, paragraph 51 and case-law cited).
- 133 Furthermore, as regards the possibility of adoption under Icelandic law, the Court observes that, until such a procedure is completed, the plaintiffs would still be deterred from exercising their right to freedom of movement whilst awaiting the outcome of the adoption procedure. While a prompt and effective adoption procedure may render any resulting delay proportionate in light of the objective pursued, the mere availability of adoption does not alter the conclusion that the contested measure constitutes, *prima facie*, a restriction on the Icelandic father’s freedom of movement under Article 28 EEA.
- 134 In the case at hand, moreover, the parties disagree as to whether adoption is in fact available while the plaintiffs still reside in Sweden. It is apparent from the information provided by the referring court that Icelandic authorities have already indicated that adoption may be difficult in such circumstances. Furthermore, as noted by ESA at the hearing, Article 11 of the Nordic Convention on Family Law provides that applications should, in principle, be submitted in the State of residence, that is, in the case at hand, Sweden. Yet, according to the plaintiffs, Swedish authorities have indicated that adoption is no longer available under Swedish law, since AE is already fully recognised there as TM’s legal parent.
- 135 In light of the foregoing, the Court concludes that a refusal by the authorities of an EEA State to register a legal parent-child relationship lawfully established by a migrant worker in another EEA State pursuant to the procedures laid down for that purpose in that EEA State constitutes an obstacle to the freedom of movement of workers. Such a measure must therefore be justified in order to comply with Article 28 EEA.

Justification

- 136 It is established case-law that a restriction on the free movement of persons, which, as in the case in the main proceedings, is independent of the nationality of the persons concerned, may be justified if it is based on objective public-interest considerations and if it is proportionate to a legitimate objective pursued by national law. Furthermore, where a measure of an EEA State which restricts a fundamental freedom guaranteed by

the EEA Agreement is justified by an overriding reason in the public interest recognised by EEA law, such a measure must comply with the fundamental rights which form part of the general principles of EEA law (see, to that effect, the judgments in *Bygg & Industri Norge*, E-2/24, cited above, paragraph 94 and case-law cited, and of 9 July 2014 in *Fred Olsen and Others*, Joined Cases E-3/13 and E-20/13, paragraphs 226 and 227 and case-law cited; and compare the judgment in *Trojan*, C-713/23, cited above, paragraph 55 and case-law cited).

- 137 It is for the competent national authorities, where they adopt a measure derogating from a fundamental freedom guaranteed by the EEA Agreement, to show in each individual case that the measure is suitable to attain the objective relied upon and does not go beyond what is necessary to attain it. Reasons invoked by an EEA State as justification must be accompanied by appropriate evidence or by an analysis of the suitability and necessity of the measure adopted by that EEA State and by specific evidence substantiating its arguments (see the judgment in *Bygg & Industri Norge*, E-2/24, cited above, paragraph 95 and case-law cited).
- 138 It appears from the information provided by the referring court that the plaintiffs' request to have the legal parent-child relationship established under Swedish law registered into the Icelandic civil register for the purpose of that parenthood being recognised in Iceland was refused on the ground that Icelandic law does not allow surrogacy as a matter of public policy.
- 139 The Court recalls that the concept of 'public policy' as justification for a derogation from a fundamental freedom must be interpreted strictly, with the result that its scope cannot be determined unilaterally by each EEA State without any control by the EEA institutions. It follows that public policy may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society (see, to that effect, the judgment in *MH*, E-6/23, cited above, paragraphs 64 and 65 and case-law cited; and compare, to that effect, the judgment in *Trojan*, C-713/23, cited above, paragraph 60 and case-law cited).
- 140 The Court is mindful of the fact that there is no consensus in the EEA on the recognition of civil status in the context of surrogacy either as to the relative importance of the interests at stake or as to the best means of protecting them. Nevertheless, the ECtHR has observed that where a particularly important facet of an individual's identity is at stake, such as when the legal-parent child relationship is concerned, the margin of appreciation allowed to the State is normally restricted. Furthermore, in the context of recognition of a legal parent-child relationship between children born through surrogacy and the intended parents, the issues at stake go beyond the question of the children's identity. Other essential aspects of their private life come into play where the matter concerns the environment in which they live and develop and the persons responsible for meeting their needs and ensuring their welfare (compare the ECtHR's advisory opinion, Request No P16-2018-001, cited above, paragraphs 43 to 45 and case-law cited).

- 141 Importantly, the obligation on the State of origin to recognise the civil status of persons that has been established between EEA nationals in another EEA State does not entail the obligation to provide for the recognition of surrogacy in its national law. It is confined to the obligation to guarantee the recognition of such civil statuses, established in the host State in accordance with the law of that EEA State, for the purpose of enabling such EEA nationals to exercise the rights they enjoy under EEA law. Thus, such an obligation of recognition does not pose a threat to the public policy of the State of origin (compare the judgment in *Trojan*, C-713/23, cited above, paragraphs 61 and 62 and case-law cited).
- 142 Furthermore, it is for an EEA State which does not authorise parenthood between non-biological parents and children born abroad through a surrogacy agreement to establish appropriate recognition procedures where such a legal parent-child relationship has been established between two EEA nationals when exercising their freedom of movement and residence in accordance with the law of the host State. The choice of the procedures for recognising these relationships comes within the discretion of the EEA States in the exercise of their competence, in relation to the rules on parenthood. The transcription of birth certificates in the civil register of those EEA States is thus only one of a number of possible procedures for such recognition. Those procedures must nevertheless not render impossible or excessively difficult the implementation of the rights conferred by EEA law (see, to that effect, the judgment in *TC and AA*, Joined Cases E-1/24 and E-7/24, cited above, paragraph 99 and case-law cited; and compare, *mutatis mutandis*, the judgment in *Trojan*, C-713/23, cited above, paragraphs 68 and 69).
- 143 It must be added that a national measure which is liable to obstruct the exercise of freedom of movement for persons may be justified only where such a measure is consistent with the fundamental rights guaranteed by the EEA Agreement. In the case at hand, this includes in particular the right to respect for private and family life (see, to that effect, the judgment in *Fred Olsen and Others*, Joined Cases E-3/13 and E-20/13, cited above, paragraphs 226 and 227 and case-law cited; and compare, to that effect, the judgment in *Trojan*, C-713/23, cited above, paragraph 63 and case-law cited).
- 144 In that regard, it is apparent from the case-law of the ECtHR that the right to respect for private life of a child born abroad through a surrogacy arrangement requires that domestic law provide a possibility of recognition of a legal parent-child relationship with the non-biological parent, designated in the birth certificate legally established abroad as the legal parent. While EEA States are not obliged to opt for registration of the details of the birth certificates legally established abroad, other means must serve the child's best interests in a suitable manner by producing similar effects. What is important is that, at the latest when, according to an assessment of the circumstances of each case, the relationship between the child and the intended parent has become a practical reality, an effective mechanism should exist enabling that relationship to be recognised (compare the ECtHR's advisory opinion, Request No P16-2018-001, cited above, paragraphs 49, 50, 53 and 54).

- 145 It is for the referring court to determine whether such alternative recognition procedures are in fact available to the plaintiffs in the main proceedings under Icelandic law.
- 146 In that regard, the Court observes that adoption may comply with the fundamental rights at issue, provided that the conditions which govern it are appropriate and the procedure enables a decision to be taken rapidly, so that the child is not kept for a lengthy period in a position of legal uncertainty as regards the relationship (compare the ECtHR's advisory opinion, Request No P16-2018-001, cited above, paragraph 54).
- 147 Furthermore, such a mechanism cannot disregard the fact that a legal parent-child relationship has already been lawfully established in the host State pursuant to the procedures laid down for that purpose in that EEA State. Entirely disregarding the legal parent-child relationship lawfully established in another EEA State would not be consistent with the requirement to recognise a civil status established in another EEA State (compare the judgment of 4 October 2024 in *Mirin*, C-4/23, EU:C:2024:845, paragraph 70).
- 148 Should the referring court conclude that AE cannot adopt TM while still residing in Sweden, registration of the parent-child relationship in the national civil registry would appear to be the only means of ensuring effective recognition. Requiring the plaintiffs to move to Iceland solely in order to verify that such recognition is not contrary to the child's best interests would constitute a severe interference with the plaintiffs' right to move and reside freely within the EEA. Such a requirement would therefore not satisfy the need for alternative recognition procedures to be 'prompt and effective'.
- 149 By contrast, if adoption remains possible notwithstanding the plaintiffs' residence in Sweden, the referring court must assess whether requiring the plaintiffs to undergo an adoption procedure, rather than allowing direct registration of the legal parent-child relationship, is proportionate in light of the objective pursued and whether that procedure can be implemented promptly and effectively in accordance with the child's best interests (see, to that effect, the judgment in *TC and AA*, Joined Cases E-1/24 and E-7/24, cited above, paragraph 82 and case-law cited; and compare point 2 of the operative part of the ECtHR's advisory opinion, Request No P16-2018-001, cited above).
- 150 The Court observes in this respect that it is apparent from the case-law of the ECtHR that the only objective capable of justifying an interference with the child's right to respect for private life is the need to protect the rights of the child (compare, to that effect, the ECtHR's advisory opinion, Request No P16-2018-001, cited above, paragraph 55). The defendants further confirmed at the hearing, in response to a question from the bench, that the purpose of requiring the family to undergo an adoption procedure in circumstances such as those in the main proceedings is to ensure that recognition of the legal parent-child relationship is in fact in the child's best interests. In this respect, the Court observes that the plaintiffs have submitted that Swedish courts have already conducted such an assessment and concluded that recognition of the legal parent-child relationship was in the child's best interests.

- 151 In that context, the Court is mindful of the fact that the child's best interests do not merely involve respect for his or her right to private life, but include protection against the risks of abuse which surrogacy arrangements may entail. Nevertheless, in view of the fact that the child's best interests also entail the legal identification of the persons responsible for raising him or her, meeting his or her needs and ensuring his or her welfare, as well as the possibility for the child to live and develop in a stable environment, each situation must as a minimum be examined in the light of the particular circumstances of the case (compare the ECtHR's advisory opinion, Request No P16-2018-001, cited above, paragraph 41 and case-law cited).
- 152 In the present case, such an assessment must necessarily take into account, *inter alia*, the biological ties within the family, the time elapsed, the family life already established, and the full recognition of the legal parent-child relationship by the Swedish authorities. It is for the referring court to consider whether such a case-by-case assessment can be adequately carried out within the framework of a registration procedure under Icelandic law, or whether it is necessary to require a separate adoption procedure in the best interests of the child. Moreover, the referring court must ensure that any such procedure can be implemented promptly and effectively in accordance with the child's best interests.
- 153 In the light of all the foregoing, the answer to the first question referred must be that Article 28 EEA requires the State of origin to register a legal parent-child relationship established by an EEA national under the laws of the host State in the exercise of the right to free movement as a worker where such registration is the only effective means of ensuring recognition of that relationship between the EEA national and the child upon their return to that EEA State.

VI COSTS

- 154 Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds,

THE COURT

in answer to the questions referred to it by the Reykjavík District Court hereby gives the following Advisory Opinion:

- 1. Article 2(2)(c) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States entails that an EEA State must recognise, as a ‘direct descendant’ of an EEA national, a child whose parent-child relationship with that EEA national enjoys legal recognition in another EEA State for the purposes of the exercise of their primary right of free movement of persons and the secondary legislation relating thereto.**
- 2. Article 28 EEA requires the State of origin to register a legal parent-child relationship established by an EEA national under the laws of the host State in the exercise of the right to free movement as a worker where such registration is the only effective means of ensuring recognition of that relationship between the EEA national and the child upon their return to that EEA State.**

Páll Hreinsson

Bernd Hammermann

Michael Reiertsen

Delivered in open court in Luxembourg on 7 October 2026.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President