JUDGMENT OF THE COURT
19 February 2026*

(*Directive 2008/104/EC – Labour law – Temporary-work agencies – Homogeneity – Reciprocity – Applicability of the EEA Agreement to petroleum activities on the continental shelf of an EEA State – Seafarers*)

In Case E-6/25,

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 the Supreme Court of Norway (*Norges Høyesterett*), in the case between

Saga Subsea AS

and

Akselsen and Granlund,

THE COURT,

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

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

- Saga Subsea AS ("Saga Subsea"), represented by Thor Harald Eike, advocate;

- Øyvind Akselsen and Simen Granlund, represented by Bjørn Inge Waage and Edvard Bakke, advocates;

- the Norwegian Government, represented by Ida Thue, acting as Agent;

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

- the EFTA Surveillance Authority ("ESA"), represented by Ewa Gromnicka, Kyrre Isaksen and Melpo-Menie Joséphidès, acting as Agents; and

- the European Commission ("the Commission"), represented by Donatella Recchia and Freya van Schaik, acting as Agents,

having heard oral arguments of Saga Subsea, represented by Thor Harald Eike; Mr Akselsen and Mr Granlund, represented by Bjørn Inge Waage and Edvard Bakke; the Norwegian Government, represented by Ida Thue; ESA, represented by Ewa Gromnicka and Kyrre Isaksen; and the Commission, represented by Freya van Schaik and Corneliu Hödlmayr, acting as Agent, at the hearing on 10 September 2025,

gives the following

J U D G M E N T

I INTRODUCTION

1 This request for an advisory opinion concerns the question of whether Directive 2008/104/EC on temporary agency work applies to employees of a temporary-work agency, domiciled in Norway, during the period they are hired out for labour to a user undertaking, also domiciled in that EEA State, on board a vessel used in connection with petroleum activities on Norway's continental shelf.

2 The request has been made in proceedings before the Supreme Court of Norway between Saga Subsea and Mr Akselsen and Mr Granlund, plaintiffs before the first instance courts (collectively referred to as "the plaintiffs"), concerning claims for back payment of salary.

II LEGAL BACKGROUND

EEA law

3 The second, fourth and fifteenth recitals of the Agreement on the European Economic Area ("EEA" or "the EEA Agreement") read:

> *REAFFIRMING the high priority attached to the privileged relationship between the European Community, its Member States and the EFTA States, which is based on proximity, long-standing common values and European identity;*
>
> *CONSIDERING the objective of establishing a dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition and providing for the adequate means of enforcement including at the judicial level, and achieved on the basis of equality and reciprocity and*

of an overall balance of benefits, rights and obligations for the Contracting Parties;

WHEREAS, in full deference to the independence of the courts, the objective of the Contracting Parties is to arrive at, and maintain, a uniform interpretation and application of this Agreement and those provisions of Community legislation which are substantially reproduced in this Agreement and to arrive at an equal treatment of individuals and economic operators as regards the four freedoms and the conditions of competition;

4 Article 1 EEA reads:

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:

(a) the free movement of goods;

(b) the free movement of persons;

(c) the free movement of services;

(d) the free movement of capital;

(e) the setting up of a system ensuring that competition is not distorted and that the rules thereon are equally respected; as well as

(f) closer cooperation in other fields, such as research and development, the environment, education and social policy.

5 Article 2(b) and (c) EEA reads:

(b) the term "EFTA States" means the Iceland, the Principality of Liechtenstein and the Kingdom of Norway;

(c) the term "Contracting Parties" means, concerning the Community and the EC Member States, the Community and the EC Member States, or the Community, or the EC Member States. The meaning to be attributed to this expression in each case is to be deduced from the relevant provisions of this Agreement and from the respective competences of the Community and the EC Member States as they follow from the Treaty establishing the European Economic Community;

6 Article 3 EEA reads:

> *The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement.*
>
> *They shall abstain from any measure which could jeopardize the attainment of the objectives of this Agreement.*
>
> *Moreover, they shall facilitate cooperation within the framework of this Agreement.*

7 Article 126 EEA reads:

> *1. The Agreement shall apply to the territories to which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty, and to the territories of Iceland, the Principality of Liechtenstein and the Kingdom of Norway.*
>
> *2. Notwithstanding paragraph 1, this Agreement shall not apply to the Åland Islands. The Government of Finland may, however, give notice, by a declaration deposited when ratifying this Agreement with the Depositary, which shall transmit a certified copy thereof to the Contracting Parties, that the Agreement shall apply to those Islands under the same conditions as it applies to other parts of Finland subject to the following provisions:*
>
> *(a) The provisions of this Agreement shall not preclude the application of the provisions in force at any given time on the Åland Islands on:*
>
> > *(i) restrictions on the right for natural persons who do not enjoy regional citizenship in Åland, and for legal persons, to acquire and hold real property on the Åland Islands without permission by the competent authorities of the Islands;*
> >
> > *(ii) restrictions on the right of establishment and the right to provide services by natural persons who do not enjoy regional citizenship in Åland, or by any legal person, without permission by the competent authorities of the Åland Islands.*
>
> *(b) The rights enjoyed by Ålanders in Finland shall not be affected by this Agreement.*
>
> *(c) The authorities of the Åland Islands shall apply the same treatment to all natural and legal persons of the Contracting Parties.*

8 Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ 2008 L 327, p. 9; Norwegian EEA Supplement

2016 No 64, p. 138) ("Directive 2008/104" or "the Directive") was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 149/2012 of 13 July 2012 (OJ 2012 L 309, p. 34; Norwegian EEA Supplement 2012 No 63, p. 39) and is referred to at point 32k of Annex XVIII (Health and safety at work, labour law, and equal treatment for men and women) to the EEA Agreement. Constitutional requirements indicated by Iceland and Liechtenstein were fulfilled by 4 March 2013. The decision entered into force on 1 May 2013.

9 Recital 12 of Directive 2008/104 reads:

> *This Directive establishes a protective framework for temporary agency workers which is non-discriminatory, transparent and proportionate, while respecting the diversity of labour markets and industrial relations.*

10 Article 1 of Directive 2008/104, entitled "Scope", reads:

> *1. This Directive applies to workers with a contract of employment or employment relationship with a temporary-work agency who are assigned to user undertakings to work temporarily under their supervision and direction.*
>
> *2. This Directive applies to public and private undertakings which are temporary-work agencies or user undertakings engaged in economic activities whether or not they are operating for gain.*
>
> *3. Member States may, after consulting the social partners, provide that this Directive does not apply to employment contracts or relationships concluded under a specific public or publicly supported vocational training, integration or retraining programme.*

11 Article 2 of Directive 2008/104, entitled "Aim", reads:

> *The purpose of this Directive is to ensure the protection of temporary agency workers and to improve the quality of temporary agency work by ensuring that the principle of equal treatment, as set out in Article 5, is applied to temporary agency workers, and by recognising temporary-work agencies as employers, while taking into account the need to establish a suitable framework for the use of temporary agency work with a view to contributing effectively to the creation of jobs and to the development of flexible forms of working.*

12 Article 3 of Directive 2008/104, entitled "Definitions", reads, in extract:

> *1. For the purposes of this Directive:*
>
> *(a) 'worker' means any person who, in the Member State concerned, is protected as a worker under national employment law;*

(b) 'temporary-work agency' means any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction;

(c) 'temporary agency worker' means a worker with a contract of employment or an employment relationship with a temporary-work agency with a view to being assigned to a user undertaking to work temporarily under its supervision and direction;

...

2. This Directive shall be without prejudice to national law as regards the definition of pay, contract of employment, employment relationship or worker.

Member States shall not exclude from the scope of this Directive workers, contracts of employment or employment relationships solely because they relate to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary-work agency.

13 Article 5 of Directive 2008/104, entitled "The principle of equal treatment", reads:

1. The basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job.

For the purposes of the application of the first subparagraph, the rules in force in the user undertaking on:

(a) protection of pregnant women and nursing mothers and protection of children and young people; and

(b) equal treatment for men and women and any action to combat any discrimination based on sex, race or ethnic origin, religion, beliefs, disabilities, age or sexual orientation;

must be complied with as established by legislation, regulations, administrative provisions, collective agreements and/or any other general provisions.

2. As regards pay, Member States may, after consulting the social partners, provide that an exemption be made to the principle established in paragraph 1 where temporary agency workers who have a permanent contract of

employment with a temporary-work agency continue to be paid in the time between assignments.

3. Member States may, after consulting the social partners, give them, at the appropriate level and subject to the conditions laid down by the Member States, the option of upholding or concluding collective agreements which, while respecting the overall protection of temporary agency workers, may establish arrangements concerning the working and employment conditions of temporary agency workers which may differ from those referred to in paragraph 1.

4. Provided that an adequate level of protection is provided for temporary agency workers, Member States in which there is either no system in law for declaring collective agreements universally applicable or no such system in law or practice for extending their provisions to all similar undertakings in a certain sector or geographical area, may, after consulting the social partners at national level and on the basis of an agreement concluded by them, establish arrangements concerning the basic working and employment conditions which derogate from the principle established in paragraph 1. Such arrangements may include a qualifying period for equal treatment.

The arrangements referred to in this paragraph shall be in conformity with Community legislation and shall be sufficiently precise and accessible to allow the sectors and firms concerned to identify and comply with their obligations. In particular, Member States shall specify, in application of Article 3(2), whether occupational social security schemes, including pension, sick pay or financial participation schemes are included in the basic working and employment conditions referred to in paragraph 1. Such arrangements shall also be without prejudice to agreements at national, regional, local or sectoral level that are no less favourable to workers.

5. Member States shall take appropriate measures, in accordance with national law and/or practice, with a view to preventing misuse in the application of this Article and, in particular, to preventing successive assignments designed to circumvent the provisions of this Directive. They shall inform the Commission about such measures.

14 Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9; Norwegian EEA Supplement 2006 No 58, p. 78) ("Directive 2003/88") was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 45/2004 of 23 April 2004 (OJ 2004 L 277, p. 12; Norwegian EEA Supplement 2004 No 43, p. 11) and is referred to at point 32h of Annex XVIII (Health and safety at work, labour law, and equal treatment for men and women) to the EEA Agreement. Constitutional requirements indicated by Iceland were fulfilled by 14 June 2005. The decision entered into force on 1 August 2005.

15 Article 1(3) of Directive 2003/88, entitled "Purpose and scope", reads:

> *3. This Directive shall apply to all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC, without prejudice to Articles 14, 17, 18 and 19 of this Directive.*
>
> *This Directive shall not apply to seafarers, as defined in Directive 1999/63/EC without prejudice to Article 2(8) of this Directive.*

16 Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ 2019 L 186, p. 105) ("Directive 2019/1152") was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 221/2024 of 23 September 2024 (OJ L, 2024/3049, 19.12.2024, ELI: http://data.europa.eu/eli/dec/2024/3049/oj; Norwegian EEA Supplement 2024 No 92, p. 66). Constitutional requirements were indicated by Iceland, Liechtenstein and Norway and the entry into force of the decision is pending.

17 Article 1(8) of Directive 2019/1152, entitled "Purpose, subject matter and scope", reads:

> *8. Chapter II of this Directive applies to seafarers and sea fishermen without prejudice to Directives 2009/13/EC and Directive (EU) 2017/159, respectively. The obligations set out in points (m) and (o) of Article 4(2), and Articles 7, 9, 10 and 12 shall not apply to seafarers or sea fishermen.*

National law

18 Section 14-12a subsection 1 of Act No 62 of 17 June 2005 relating to the working environment, working hours and employment protection, etc. (*lov 17. juni 2005 nr. 62 om arbeidsmiljø, arbeidstid og stillingsvern mv. (arbeidsmiljøloven)*) ("the Working Environment Act") implements Article 5(1) of Directive 2008/104 into Norwegian law. Section 14-12a entitled "Equal treatment regarding pay and working conditions in connection with the hiring out of workers by temporary-work agencies", reads, in extract:

> *(1) The temporary-work agency shall ensure that the workers that it hires out are at least given the conditions that would have applied if the worker had been recruited directly by the user undertaking to perform the same work regarding:*
>
> *(a) the length and placement of working hours,*
>
> *(b) overtime work,*
>
> *(c) the length and placement of breaks and rest periods,*
>
> *(d) nightwork,*

(e) holidays, holiday pay, days off and remuneration for such days, and

(f) pay and coverage of expenses.

19 Section 1-2 of the Working Environment Act, entitled "The scope of the Act", reads, in extract:

(1) The Act shall apply to undertakings that engage employees unless otherwise explicitly provided by the Act.

(2) The following are exempt from the Act:

a. shipping, hunting and fishing, including the processing of the catch on board the ship but such that diving operations and pilotage are covered by the Act,

b. military aviation which is covered by the Aviation Act.

The Ministry may issue regulations concerning exemptions from the Act for civil aviation and state aviation other than military aviation and concerning special provisions for such aviation and concerning the application of the Act for diving operations and special provisions and exemptions for such operations.

20 Section 1-3 of the Working Environment Act, entitled "Offshore petroleum activities", reads:

(1) The Act shall apply to activities associated with the exploration for and exploitation of natural resources in the seabed or its substrata, Norwegian inland waters, Norwegian sea territory and the Norwegian part of the continental shelf.

(2) The Act shall apply to activities as referred to in the first paragraph in the area outside the Norwegian sector of the continental shelf if this ensues from a special agreement with a foreign state or from international law in general.

(3) The Ministry may by regulation wholly or partly exempt from the Act activities as referred to in the first and second paragraphs. The Ministry may also provide in regulations that the Act wholly or partly shall apply to activities as referred to in the first paragraph in areas outside the Norwegian part of the continental shelf if exploration for or exploitation of natural resources on the seabed or its substrata are conducted from an installation registered in a Norwegian shipping register or if manned underwater operations are carried out from an installation or vessel registered in a Norwegian shipping register. The Ministry may by regulation also provide

> *that the Act shall apply in connection with the movement of installations or vessels as mentioned.*
>
> *(4) Special provisions may also be laid down in regulations issued pursuant to this section.*

21 Section 4 subsection 3 of Regulation No 158 of 12 February 2010 relating to health, safety and the environment in the petroleum activities and at certain onshore facilities (the Framework Regulations) (*forskrift 12. februar 2010 nr. 158 om helse, miljø og sikkerhet i petroleumsvirksomheten og på enkelte landanlegg (rammeforskriften)*) ("the Framework Regulations") reads, in extract:

> *Exempt from the Working Environment Act and provisions in these Regulations adopted in accordance with the Working Environment Act are …*
>
> *b. vessels that carry out construction, pipe-laying or maintenance activities within the petroleum industry …*

22 For workers employed on board Norwegian ships, Act No 102 of 21 June 2013 relating to employment protection, etc. for employees on board ships (*lov 21. juni 2013 nr. 102 om stillingsvern mv. for arbeidstakere på skip (skipsarbeidsloven)*) ("the Ship Labour Act") applies, see Section 1-2 subsection 1 thereof, with some exceptions in that act.

EU law

23 Article 52 of the Treaty on European Union ("TEU") reads:

> *1. The Treaties shall apply to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.*
>
> *2. The territorial scope of the Treaties is specified in Article 355 of the Treaty on the Functioning of the European Union.*

24 Article 355 of the Treaty on the Functioning of the European Union ("TFEU") reads:

In addition to the provisions of Article 52 of the Treaty on European Union relating to the territorial scope of the Treaties, the following provisions shall apply:

1. The provisions of the Treaties shall apply to Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin, the Azores, Madeira and the Canary Islands in accordance with Article 349.

2. The special arrangements for association set out in Part Four shall apply to the overseas countries and territories listed in Annex II.

The Treaties shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list.

3. The provisions of the Treaties shall apply to the European territories for whose external relations a Member State is responsible.

4. The provisions of the Treaties shall apply to the Åland Islands in accordance with the provisions set out in Protocol 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

5. Notwithstanding Article 52 of the Treaty on European Union and paragraphs 1 to 4 of this Article:

(a) the Treaties shall not apply to the Faeroe Islands;

(b) the Treaties shall not apply to the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus except to the extent necessary to ensure the implementation of the arrangements set out in the Protocol on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus annexed to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union and in accordance with the terms of that Protocol;

(c) the Treaties shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.

6. The European Council may, on the initiative of the Member State concerned, adopt a decision amending the status, with regard to the Union,

of a Danish, French or Netherlands country or territory referred to in paragraphs 1 and 2. The European Council shall act unanimously after consulting the Commission.

International law

25 The United Nations Convention on the Law of the Sea, signed at Montego Bay (Jamaica) on 10 December 1982, entered into force on 16 November 1994 ("Convention on the Law of the Sea"). The European Union, its Member States, Iceland and Norway are parties to the Convention on the Law of the Sea.

26 Article 77 of the Convention on the Law of the Sea, entitled "Rights of the coastal State over the continental shelf", reads:

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

27 Article 80 of the Convention on the Law of the Sea, entitled "Artificial islands, installations and structures on the continental shelf", reads:

Article 60 applies mutatis mutandis *to artificial islands, installations and structures on the continental shelf.*

III FACTS AND PROCEDURE

28 Saga Subsea is a Norwegian temporary-work agency whose business activities include the hiring out of personnel to onshore activities, offshore installations (that is to say, petroleum activities on the continental shelf beyond the territorial limits) and to assignments on vessels in the offshore industry. The hiring out of personnel to offshore installations and vessels in the offshore industry constitutes the main part of the hiring out activities. Saga Subsea is registered as a temporary-work agency with the Norwegian Labour Inspection Authority.

29 Mr Akselsen was employed by Saga Subsea in 2018 as a "ROV (Remotely Operated Vehicle) Supervisor Offshore". Mr Granlund was employed in 2019, initially in a part-time position, and from 1 January 2020, in a full-time position as a "Rigger/Mechanic". The plaintiffs are no longer employed by Saga Subsea.

30 The plaintiffs had individual employment contracts with Saga Subsea. Saga Subsea has never been a party to, or joined, any collective agreements. Nor were there any collective agreements declared universally applicable that governed the employment relationships of the plaintiffs.

31 During the periods in question, the plaintiffs were hired out to three Norwegian undertakings to work on board various Norwegian-registered vessels. Saga Subsea has not disputed that the plaintiffs were paid less than the user undertakings' own employees, despite performing the same work.

32 Mr Akselsen was hired out approximately 90 per cent of his working time to multipurpose vessels in the offshore industry, and 10 per cent of his working time to offshore installations. Mr Granlund was hired out approximately 75-80 per cent of his working time to multipurpose vessels in the offshore industry and 20-25 per cent of his working time to offshore installations and onshore facilities.

33 The case concerns the plaintiffs' salary for the periods during which they worked on multipurpose vessels. The referring court explains that the term "multipurpose vessels" means vessels used for performing various supply and support functions in connection with the exploration for, and extraction of, subsea petroleum deposits. All work at issue in this case was carried out on the Norwegian continental shelf.

34 The parties to the case disagree on whether the provisions setting out the scope of the Working Environment Act and the Ship Labour Act together with the Framework Regulations can be interpreted to mean that the Working Environment Act, either in its entirety or only Section 14-12a, applies to work on board multipurpose vessels.

35 According to the referring court, the present case is limited to the issue of employees of a Norwegian temporary-work agency who are hired out to Norwegian undertakings to perform work on board Norwegian-registered multipurpose vessels in connection with petroleum activities on the Norwegian continental shelf. The referring court considers that it is not necessary for the Court to consider to what extent Directive 2008/104 may oblige an EEA State to lay down rules on equal treatment of hired-out labour on board other ships registered in or otherwise connected to that State.

36 The plaintiffs claimed back payment of salary from Saga Subsea pursuant to Section 14-12a subsection 1(f) of the Working Environment Act. This provision states that a temporary-work agency must ensure that hired-out workers are at least given the conditions that would have applied if they had been recruited directly by the user undertaking to perform the same work.

37 On 30 May 2022, Haugaland and Sunnhordaland District Court handed down a judgment in favour of Saga Subsea. The plaintiffs appealed to Gulating Court of Appeal, which handed down a judgment on 6 February 2024, ordering Saga Subsea to make back payments of salary amounting to NOK 153 498 in the case of Mr Akselsen and NOK 442 627 in the case of Mr Granlund. Unlike the District Court, the Court of Appeal found that the Working Environment Act, including Section 14-12a, was applicable to the work performed by the plaintiffs on the multipurpose vessels.

38 Saga Subsea and the plaintiffs appealed to the Supreme Court. The appeal from Saga Subsea challenged the Court of Appeal's application of the law, and the Supreme Court's Appeals Selection Committee granted leave to appeal on 3 May 2024. The appeal from the plaintiffs challenged the Court of Appeal's assessment of the value of the salary claims but leave to appeal was not granted in that respect.

39 An oral hearing was held in the Supreme Court on 3 and 4 December 2024. On 14 January 2025, the Supreme Court decided that an advisory opinion should be sought from the Court.

40 Against this background, on 11 April 2025, the Supreme Court decided to request an advisory opinion from the Court. The request, dated 11 April 2025, was registered at the Court on the same date. The Supreme Court has referred the following question to the Court:

> *Should Article 5 of the European Parliament and Council Directive 2008/104/EC of 19 November 2008 on temporary agency work (the Temporary Agency Work Directive) be interpreted to mean that the provision applies to employees of a temporary work agency domiciled in an EEA State during the period they are hired out for labour to an undertaking domiciled in the same EEA State on board a vessel used in connection with petroleum activities on that State's continental shelf?*

41 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.

IV ANSWER OF THE COURT

Preliminary remarks

42 By its question, the referring court asks, in essence, whether Article 5 of Directive 2008/104 should be interpreted as applying to employees of a temporary-work agency domiciled in Norway during the period they are hired out to a user undertaking domiciled there to work aboard a vessel used in connection with petroleum activities on Norway's continental shelf.

43 In order to answer the question of the referring court, the Court will examine both the personal scope of Directive 2008/104 and the applicability of the EEA Agreement to petroleum activities on an EEA State's continental shelf.

Personal scope of Directive 2008/104

44 The first subparagraph of Article 5(1) of Directive 2008/104 provides that the basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job.

45 In its request, the referring court explains that the national legislation at issue in the main proceedings seems to be premised on the assumption that Directive 2008/104 does not apply to shipping and, in particular, work on multipurpose vessels in the petroleum industry.

46 Accordingly, it must be examined whether individuals who perform work on multipurpose vessels come within the scope of Directive 2008/104.

47 According to Article 1(1) of Directive 2008/104, that directive applies to workers with a contract of employment or employment relationship with a temporary-work agency who are assigned to user undertakings to work temporarily under their supervision and direction. Furthermore, Article 1(2) provides that the Directive applies to public and private undertakings which are temporary-work agencies or user undertakings engaged in economic activities whether or not they are operating for gain.

48 Article 3(1)(a) of the Directive defines "worker" as meaning any person who, in the EEA State concerned, is protected as a worker under national employment law. Article 3(1)(c) defines "temporary agency worker" as meaning a worker with a contract of employment or an employment relationship with a temporary-work agency with a view to being assigned to a user undertaking to work temporarily under its supervision and direction. Article 3(2) provides that the Directive is without prejudice to national law as regards the definition of "worker".

49 Accordingly, it follows from the wording of Article 3(1)(a) of the Directive that the concept of "worker" for the purposes of the Directive covers any person who carries out work and who is protected on that basis in the EEA State concerned (compare the judgment of 17 November 2016 in *Betriebsrat der Ruhrlandklinik*, C-216/15, EU:C:2016:883, paragraph 26).

50 The essential features of such an employment relationship is that, for a certain period of time, a person performs services for and under the direction of another person, in return for which he or she receives remuneration, the legal characterisation under national law and the form of that relationship, as well as the legal relationship between those two persons, not being decisive in that regard (see the judgment of 20 November 2024 in *Margrét Rósa Kristjánsdóttir*, E-3/24, paragraph 36 and case law cited, and

compare the judgment in *Betriebsrat der Ruhrlandklinik*, C-216/15, cited above, paragraph 27 and case law cited).

51 According to the information contained in the case file, there is no indication that individuals such as the plaintiffs do not come within the scope of the concept of "worker" within the meaning of Article 3(1)(a) of the Directive. Moreover, at the hearing, in response to a question from the Court, Saga Subsea, the plaintiffs, and the Norwegian Government stated that the plaintiffs are protected as workers under Norwegian law. Similarly, on the basis of the information contained in the request, it appears that the other conditions for the application of the Directive are satisfied in a situation such as that at issue in the main proceedings.

52 However, in their written observations and at the hearing, Saga Subsea and the Norwegian Government have submitted that the Directive does not apply to the plaintiffs on the grounds that they are seafarers and that the Directive does not apply to seafarers. In particular, the Norwegian Government argues that if the legislature had intended for the Directive to be applicable to seafarers, this would have been spelled out explicitly in the text of the Directive. The Norwegian Government further claims that the protective aim underlying the Directive does not warrant a different interpretation, as it must be assumed that the legislature intended for those protective aims to be upheld by the legal acts specifically applicable to seafarers under EEA law.

53 In contrast, the plaintiffs, ESA and the Commission have observed that the Directive does not contain any provision explicitly excluding seafarers from the scope of that Directive.

54 The plaintiffs, ESA and the Commission further emphasise that such exclusions exist in other employment legislation, such as Article 1(3) of Directive 2003/88 concerning certain aspects of the organisation of working time or Article 1(8) of Directive 2019/1152 on transparent and predictable working conditions in the European Union. Therefore, the absence of an explicit exclusion for seafarers indicates that Directive 2008/104 is applicable to seafarers. In particular, they submit that if seafarers were intended not to be covered, or only to be partially covered, by the Directive, such an exception would have been explicitly provided for. Furthermore, they submit that excluding seafarers from the scope of the Directive would be liable to jeopardise the attainment of the objectives pursued by the Directive and undermine its effectiveness.

55 It must be recalled that it is settled case law that the interpretation of a provision of EEA law requires account to be taken not only of its wording, but also of its context, and the objectives and purpose pursued by the act of which it forms part. The legislative history of a provision of EEA law may also reveal elements that are relevant to its interpretation. Moreover, where a provision of EEA law is open to several interpretations, preference must be given to the interpretation which ensures that the provision retains its effectiveness (see the judgment of 7 May 2025 in *TC and AA*, Joined Cases E-1/24 and E-7/24, paragraph 92).

56 The Court observes that there is no provision in the Directive which explicitly excludes seafarers from its scope of application. As stated above, the Directive applies to any person who carries out work and is protected on that basis in the EEA State concerned. Further, the essential features of an employment relationship are independent from where the actual work is performed. Hence, persons performing work on ships are covered by that definition. Therefore, in order not to apply for seafarers, the Directive would need to provide for a specific exclusion, as in other legal acts, referred to by the Commission, which explicitly exclude seafarers from their scope. The protection granted to temporary agency workers under Directive 2008/104 is complementary to, and hence not in conflict with, the legal acts specifically applicable to seafarers under EEA law.

57 Moreover, an interpretation of the Directive that excludes seafarers from its scope by implication would be at variance with the purpose of the Directive, which, as is stated in Article 2 thereof, is to ensure the protection of temporary agency workers and to improve the quality of temporary agency work by ensuring that the principle of equal treatment, as set out in Article 5, is applied to temporary agency workers. This objective is also reflected in recital 12 of the Directive, which states that the Directive establishes a protective framework for temporary agency workers which is non-discriminatory, transparent and proportionate, while respecting the diversity of labour markets and industrial relations.

58 Accordingly, neither the wording, context nor objective of the Directive lend any support to interpreting the Directive in a manner which excludes seafarers from its scope by implication.

59 It follows from the above that individuals, such as the plaintiffs in the main proceedings, who perform work on multipurpose vessels come within the scope of Directive 2008/104.

60 In its written observations, the Norwegian Government has indicated that since the Directive has been transposed into national law by way of the Working Environment Act rather than the Ship Labour Act, the plaintiffs may not be able to rely on the Directive's protection in the main proceedings.

61 In this regard, the Court recalls that it is inherent in the objectives of the EEA Agreement that when a national court applies domestic law it is bound to interpret national law within its competence in conformity with EEA law. The Court has therefore consistently held that a national court must apply the interpretative methods recognised by national law, as far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive, favouring the interpretation of the national rules which is the most consistent with that purpose (see the judgment of 15 July 2021 in *Liti-Link AG*, E-14/20, paragraph 75 and case law cited, and the judgment of 17 October 2014 in *LBI hf.*, E-28/13, paragraphs 42 and 45 and case law cited).

Applicability of the EEA Agreement to petroleum activities on an EEA State's continental shelf

62 The referring court is also seeking guidance as to whether EEA law is capable of applying in connection with petroleum activities on an EEA State's continental shelf. It must therefore be examined whether such economic activities on an EEA State's continental shelf come within the scope of the EEA Agreement.

63 The Norwegian Government, with the support of Saga Subsea, has submitted that Article 126 EEA must be interpreted as precluding the application of EEA law to the Norwegian continental shelf. It argues that the term "territory" in Article 126(1) EEA must be interpreted as exclusively referring to land territory, internal waters and the territorial sea, as well as the air space above. In this respect, the Norwegian Government argues that Article 126(1) EEA imposes a strict geographical limit on the scope of EEA law and that the Court's case law on the extraterritorial application of EEA law, arising from its judgment of 16 July 2020 in *Scanteam*, E-8/19, is mistaken and should be reconsidered. At the same time, the Norwegian Government submits that the Contracting Parties are permitted to incorporate legal acts into the EEA Agreement which provide for the application of those legal acts beyond the geographical scope laid down in Article 126(1) EEA.

64 The Norwegian Government further submits that Article 126 EEA is worded differently as regards EU Member States, referring not to the territories of the States themselves, but to the territories to which the EU Treaties are applied. The Norwegian Government refers, in particular, to the fact that the wording of Article 52(1) TEU differs from that of Article 126(1) EEA, and notes that there is no reference to "the territories" of EU Member States, with Article 52(1) TEU referring only to their official names. Thus, the Norwegian Government submits that the geographical scope of the EEA Agreement set out in Article 126 EEA is worded differently for the EFTA States and for the EU and its Member States.

65 In essence, the Norwegian Government argues that the geographical scope of the EEA Agreement is different for the EU and its Member States, on the one hand, and for the EFTA States, on the other. In particular, in light of the case law of the Court of Justice of the European Union ("ECJ") concerning the applicability of EU law to the continental shelf of EU Member States, the Norwegian Government essentially submits that EEA law applies to the continental shelf of EU Member States, but that it does not apply to the continental shelf of the EFTA States.

66 The plaintiffs, ESA and the Commission, on the other hand, have submitted that it follows not only from the wording of the provision itself, but also from contextual, historical and teleological points of view, that the word "territories" in Article 126(1) EEA cannot mean something different for the EU Member States than it does for the EFTA States.

67 Furthermore, the plaintiffs, ESA and the Commission have submitted that it would be clearly incompatible with the overall balance of rights and obligations under the EEA

Agreement and with the equality of the Contracting Parties if the EEA Agreement were to only apply to the continental shelf of EU Member States, but not to that of the EFTA States. It would result in Norway having an unfair competitive advantage, as it would have access to the internal market for some activities, but benefit from a preferential regime when those activities are carried out on its continental shelf.

68 The Court observes at the outset that whether the EEA Agreement is applicable to the continental shelf in situations such as those of the main proceedings is a question of EEA law, which must be resolved in light of the text of the EEA Agreement and its objectives and context. The Court recalls that this interpretation is performed on the basis of the interpretative methods applied by this Court and the ECJ in the interpretation of EEA law.

69 The general aim of the EEA Agreement, as laid down in Article 1(1) EEA, is to promote a continuous and balanced strengthening of trade and economic relations between the Contracting Parties with equal conditions of competition and the respect of the same rules, with a view to creating a homogenous European Economic Area (see the judgment of 5 June 2025 in *Dartride*, E-25/24, paragraph 28 and case law cited).

70 Article 1(2) EEA provides that, in order to attain the objectives set out in Article 1(1) EEA, the EEA Agreement shall entail the free movement of goods, persons, services and capital, the setting-up of a system ensuring that competition is not distorted and that the rules thereon are equally respected, as well as close cooperation in certain other fields.

71 Accordingly, one of the principal aims of the EEA Agreement is to provide for the fullest possible realisation of the free movement of goods, persons, services and capital within the whole European Economic Area, so that the internal market established within the European Union is extended to the EFTA States (see the judgment of 14 November 2017 in *ESA* v *Iceland*, Joined Cases E-2/17 and E-3/17, paragraph 59 and case law cited, and compare the judgment of 2 April 2020 in *Ruska Federacija*, C-897/19 PPU, EU:C:2020:262, paragraph 50 and case law cited).

72 These overarching and fundamental aims of the EEA Agreement are also evident from the preamble of the EEA Agreement. As follows from the fourth and fifteenth recitals of the EEA Agreement, the objective of the Contracting Parties is to establish a dynamic and homogenous European Economic Area, based on common rules and equal conditions of competition achieved on the basis of equality and reciprocity and of an overall balance of benefits, rights and obligations for the Contracting Parties, as well as to arrive at an equal treatment of individuals and economic operators as regards the four freedoms and the conditions of competition.

73 In this regard, the Court recalls that the EEA Agreement reaffirms, as stated in its second recital, the special relationship between the European Union, its Member States and the EFTA States, which is based on proximity, long-standing common values and European identity. It is in the light of that special relationship that one of the principal objectives of the EEA Agreement must be understood, namely to provide for the fullest possible

realisation of the free movement of goods, persons, services and capital within the whole EEA, so that the internal market established within the European Union is extended to the EFTA States (see the judgment in *TC and AA*, Joined Cases E-1/24 and E-7/24, cited above, paragraph 49 and case law cited).

74 The objective of establishing a homogenous European Economic Area with the fullest possible realisation of free movement between the Contracting Parties, as specified in Article 2(b) and (c) EEA, entails that the EEA Agreement must, in principle, apply whenever the Contracting Parties exercise jurisdiction within the material scope of the EEA Agreement.

75 Article 3 EEA establishes that the Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the EEA Agreement, without any geographical limitations.

76 Moreover, EEA law may apply even in situations occurring in third countries, provided that there is a sufficiently close link to the EEA (see the judgment in *Scanteam*, E-8/19, cited above, paragraph 68, and compare the judgment of 30 April 1996 in *Boukhalfa*, C-214/94, EU:C:1996:174, paragraph 15 and case law cited).

77 In contrast to the situation in *Scanteam*, E-8/19, cited above, where public procurement procedures undertaken by a foreign mission of an EFTA State in a third country necessitated an assessment of whether a sufficiently close link to the EEA existed, the present case concerns petroleum activities on the continental shelf of an EEA State where that State enjoys exclusive sovereign rights.

78 The scope of application of the Directive is not subject to any specific geographical limitations. Accordingly, the Directive must apply to the same area as the EEA Agreement (see the judgment in *Scanteam*, E-8/19, cited above, paragraph 65).

79 Having regard to the judgment of the ECJ of 17 January 2012 in *Salemink*, C-347/10, EU:C:2012:17, paragraph 32, the Court recalls the judgment of the International Court of Justice of 20 February 1969 (the so-called North Sea Continental Shelf cases, *I.C.J. Reports*, 1969, p. 3, paragraph 19). In that case, the International Court of Justice had to rule on the rights of the coastal State in respect of the area of the continental shelf constituting a natural prolongation of its land territory under the sea. It held that such rights exist *ipso facto* and *ab initio* by virtue of the State's sovereignty over the land and by extension of that sovereignty in the form of the exercise of sovereign rights for the purposes of the exploration of the seabed and the exploitation of its natural resources.

80 Now, it follows from Article 77 of the Convention on the Law of the Sea that the coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. Those rights are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without its express consent (compare the judgment in *Salemink*, C-347/10, cited above, paragraph 33).

81 In accordance with Article 80 of the Convention on the Law of the Sea, in conjunction with Article 60 thereof, the coastal State has the exclusive right to construct artificial islands, installations and structures on the continental shelf, to authorise them and to regulate their construction, operation and use. The coastal State has exclusive jurisdiction over such artificial islands, installations and structures (compare the judgment in *Salemink*, C-347/10, cited above, paragraph 34).

82 Accordingly, since an EEA State has sovereignty over the continental shelf adjacent to it – albeit functional and limited sovereignty – work carried out on fixed or floating installations or vessels positioned on the continental shelf, in the context of the prospecting and/or exploitation of natural resources, is to be regarded as work carried out in the territory of that State for the purposes of applying EEA law (compare to that effect the judgment in *Salemink*, C-347/10, cited above, paragraph 35 and case law cited, and the judgment of 19 March 2015 in *Kik*, C-266/13, EU:C:2015:188, paragraphs 40 and 41).

83 An EEA State which takes advantage of the economic rights to prospect and/or exploit natural resources on that part of the continental shelf which is adjacent to it cannot avoid the application of EEA law provisions designed to ensure the protection of temporary agency workers in situations such as those at issue in the main proceedings (compare the judgment in *Salemink*, C-347/10, cited above, paragraph 36).

84 Accordingly, the exercise of an activity taking place on the continental shelf subject to the exclusive right of the coastal state comes within the scope of the EEA Agreement unless the interpretation of Article 126 EEA leads to a different result, an issue to which the Court will now turn.

85 With regard to the wording of Article 126(1) EEA, the Court notes that some of the official language versions use the exact same wording in the context of referring to the EU and its Member States and in the context of referring to the EFTA States. For instance, the English, French and Spanish versions provide, respectively, that the EEA Agreement shall apply "to the territories"/"*aux territoires*"/"*a los territorios*" to which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty, and "to the territories"/"*aux territoires*"/"*a los territorios*" of Iceland, the Principality of Liechtenstein and the Kingdom of Norway.

86 In contrast, some versions use a plural form in the context of referring to the EU and its Member States and a singular form in the context of referring to the EFTA States. For instance, the Norwegian and Danish versions provide, respectively, that the EEA Agreement shall apply to "*territorier*"/"*områder*" to which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty, and to the "*territorium*"/"*område*" of Iceland, the Principality of Liechtenstein and the Kingdom of Norway.

87 Furthermore, some versions use different wording in the context of referring to the EU and its Member States and in the context of referring to the EFTA States. For instance, the German and Icelandic versions provide, respectively, that the EEA Agreement shall

apply to "*für die Gebiete*"/"*svæð*[*i*]" to which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty, and to "*für die Hoheitsgebiete*"/"*yfirráðasvæð*[*i*]" of Iceland, the Principality of Liechtenstein and the Kingdom of Norway.

88 It follows from settled case law that in the case of divergence between the language versions of a legal act, a provision must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part (see the judgment of 5 December 2024 in *K* v *Nasjonalt klageorgan for helsetjenester*, E-15/23, paragraph 86 and case law cited).

89 The Norwegian Government argues that the term "territory" has a specific meaning under public international law and that that meaning must be given full effect in Article 126(1) EEA, in particular with the consequence that the EEA Agreement is subject to a strict geographical limitation. However, in the context of EEA law, there is no need to assess how the term "territory" is construed in public international law. The Court recalls that the scope and objective of the EEA Agreement go beyond what is usual for an agreement under public international law. The application of EEA law to petroleum activities on the continental shelf of an EEA State is a question of EEA law that must be decided as such within the context and framework of the EEA Agreement (see the judgment of 10 December 1998 in *Sveinbjörnsdóttir*, E-9/97, paragraph 59).

90 The Court further observes that a different geographical scope under the EEA Agreement for the EU and its Member States, on the one hand, and for the EFTA States, on the other, would be fundamentally at odds with the equality, reciprocity and overall balance of benefits, rights and obligations for the Contracting Parties, as set out in the fourth recital of the EEA Agreement. Such a differentiated geographic scope, imposing different obligations on some of the Contracting Parties and diverging from their equality and reciprocity, would need to be firmly grounded in the text of the EEA Agreement. There is no basis for such an interpretation of the scope of the Agreement.

91 As pointed out by the plaintiffs, ESA and the Commission, Article 126(1) EEA is essentially a standardised provision based on a template used by the EU in a number of free trade agreements since the early 1970s. The Court notes, as also remarked on by the Commission at the hearing, that the reference to territories included in Article 126 EEA was introduced for the purpose of ensuring, from the side of the EU, the application of the territorial limitations explicitly provided for in the EU Treaties, with regard to geographic areas such as the overseas territories covered by Article 349 TFEU, vis-à-vis the other Contracting Parties.

92 Accordingly, Article 126 EEA was not intended to delimit the EEA Agreement to certain maritime zones. Moreover, the similar functions of Article 126 EEA and Article 355 TFEU is evident, inter alia, from their common designation of applicability to the Åland Islands in Article 126(2) EEA and Article 355(4) TFEU.

93 Had the purpose of Article 126(1) EEA been to preclude the applicability of the EEA Agreement to the continental shelf of the EFTA States, this would have been clearly reflected in its text.

94 In this connection, the Court notes that the EEA Agreement contains special accommodations made for the EFTA States in certain areas, such as the sectoral adaptations applicable to Liechtenstein as set out in Annex VIII to the EEA Agreement, as well as the exceptions relating to fisheries and fishing for Iceland and Norway, set out in points 9 and 10 of that annex respectively. In those circumstances, such special accommodations are clearly reflected in the text of the EEA Agreement.

95 Furthermore, contrary to the assertion of the Norwegian Government, the judgment of 25 February 2005 in *Pedicel*, E-4/04, paragraph 39, is not incompatible with the conclusion that the EEA Agreement is applicable to petroleum activities on the continental shelf of an EFTA State. That judgment concerned the interpretation of Article 8(3) EEA, which clearly reflects in its text the different scope of the EEA Agreement compared to the EU Treaties as regards the EEA Agreement's coverage of agricultural and fishery products.

96 It follows that Article 126(1) EEA does not exclude petroleum activities on the continental shelf of an EEA State from the scope of the EEA Agreement.

97 In the light of the foregoing, the answer to the question referred must be that Article 5 of Directive 2008/104 must be interpreted as meaning that it applies to employees of a temporary-work agency domiciled in an EEA State during the period they are hired out for labour to a user undertaking domiciled in the same EEA State on board a vessel used in connection with petroleum activities on that EEA State's continental shelf.

V COSTS

98 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 question referred to it by the Supreme Court of Norway hereby gives the following Advisory Opinion:

Article 5 of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work must be interpreted as meaning that it applies to employees of a temporary-work agency domiciled in an EEA State during the period they are hired out for labour to a user undertaking domiciled in the same EEA State on board a vessel used in connection with petroleum activities on that State's continental shelf.

Páll Hreinsson Bernd Hammermann Michael Reiertsen

Delivered in open court in Luxembourg on 19 February 2026.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President