JUDGMENT OF THE COURT
24 January 2023*

(*Social security – Regulation (EC) No 883/2004 – Regulation (EC) No 987/2009 – Residence in a third country – Self-employed person – Applicability of EEA law – Recommendation of the Administrative Commission – Article 3 EEA – Principle of sincere cooperation*)

In Case E-5/22,

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 Princely Court of Appeal (*Fürstliches Obergericht*), in the case between

Christian Maitz

and

Liechtensteinische Alters- und Hinterlassenenversicherung,
Liechtensteinische Invalidenversicherung, and
Liechtensteinische Familienausgleichskasse,

concerning the interpretation of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems,

THE COURT,

composed of: Páll Hreinsson, President (Judge-Rapporteur), Bernd Hammermann, and Ola Mestad (ad hoc), Judges,

Registrar: Ólafur Jóhannes Einarsson,

* Language of the request: German.

having considered the written observations submitted on behalf of:

- Christian Maitz, represented by Dr Moritz Blasy and Christian Scheffknecht, attorneys;

- the Liechtenstein Government, represented by Dr Andrea Entner-Koch and Romina Schobel, acting as Agents;

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

- the European Commission ("the Commission"), represented by Denis Martin and Bernd-Roland Killmann, acting as Agents;

having regard to the Report for the Hearing,

having heard the oral arguments on behalf of Christian Maitz, represented by Dr Moritz Blasy; the Liechtenstein Government, represented by Romina Schobel; ESA, represented by Marte Brathovde; and the Commission, represented by Bernd-Rolland Killmann, at the hearing on 22 November 2022,

gives the following

Judgment

I Legal background

EEA law

1 Article 3 of the Agreement on the European Economic Area ("EEA" or "the EEA Agreement") reads as follows:

> *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.*

2 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1), as corrected by OJ 2004 L 200, p. 1, and OJ 2007 L 204, p. 30, ("Regulation 883/2004") was incorporated into the EEA Agreement by Decision No 76/2011 of the EEA Joint

Committee of 1 July 2011 (OJ 2011 L 262, p. 33) and is referred to at point 1 of Annex VI (Social Security) to the EEA Agreement. Constitutional requirements were indicated by Iceland and Liechtenstein. The requirements were fulfilled by 31 May 2012 and the decision entered into force on 1 June 2012. Regulation 883/2004 was amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012, amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ 2012 L 149, p. 4), which was incorporated into the EEA Agreement by Decision No 14/2013 of the EEA Joint Committee (OJ 2013 L 144, p. 19). No constitutional requirements were indicated, and the decision entered into force on 2 February 2013.

3 Recital 17 of Regulation 883/2004 reads:

> *With a view to guaranteeing the equality of treatment of all persons occupied in the territory of a Member State as effectively as possible, it is appropriate to determine as the legislation applicable, as a general rule, that of the Member State in which the person concerned pursues his activity as an employed or self-employed person.*

4 Article 1 of Regulation 883/2004, entitled "Definitions", reads, in extract:

> *For the purposes of this Regulation:*
>
> *(a) 'activity as an employed person' means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists;*
>
> *(b) 'activity as a self-employed person' means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists;*
>
> *...*
>
> *(j) 'residence' means the place where a person habitually resides;*
>
> *(k) 'stay' means temporary residence;*
>
> *...*

5 Article 2(1) of Regulation 883/2004, entitled "Persons covered", reads:

> *1. This Regulation shall apply to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors.*

6 Article 3 of Regulation 883/2004, entitled "Matters covered", reads, in extract:

1. This Regulation shall apply to all legislation concerning the following branches of social security:

...

(d) old-age benefits;

…

7 Article 7 of Regulation 883/2004, entitled "Waiving of residence rules", reads:

Unless otherwise provided for by this Regulation, cash benefits payable under the legislation of one or more Member States or under this Regulation shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary or the members of his/her family reside in a Member State other than that in which the institution responsible for providing benefits is situated.

8 Article 11 of Regulation 883/2004, entitled "General rules", reads, in extract:

1. Persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. Such legislation shall be determined in accordance with this Title.

2. For the purposes of this Title, persons receiving cash benefits because or as a consequence of their activity as an employed or self-employed person shall be considered to be pursuing the said activity. This shall not apply to invalidity, old-age or survivors' pensions or to pensions in respect of accidents at work or occupational diseases or to sickness benefits in cash covering treatment for an unlimited period.

3. Subject to Articles 12 to 16:

(a) a person pursuing an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State;

(b) a civil servant shall be subject to the legislation of the Member State to which the administration employing him/her is subject;

(c) a person receiving unemployment benefits in accordance with Article 65 under the legislation of the Member State of residence shall be subject to the legislation of that Member State;

(d) a person called up or recalled for service in the armed forces or for civilian service in a Member State shall be subject to the legislation of that Member State;

(e) any other person to whom subparagraphs (a) to (d) do not apply shall be subject to the legislation of the Member State of residence, without prejudice to other provisions of this Regulation guaranteeing him/her benefits under the legislation of one or more other Member States.

...

9 Article 13 of Regulation 883/2004, entitled "Pursuit of activities in two or more Member States", reads, in extract:

1. A person who normally pursues an activity as an employed person in two or more Member States shall be subject:

(a) to the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that Member State; or

(b) if he/she does not pursue a substantial part of his/her activity in the Member State of residence:

(i) to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated if he/she is employed by one undertaking or employer; or

(ii) to the legislation of the Member State in which the registered office or place of business of the undertakings or employers is situated if he/she is employed by two or more undertakings or employers which have their registered office or place of business in only one Member State; or

…

2. A person who normally pursues an activity as a self-employed person in two or more Member States shall be subject to:

(a) the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that Member State; or

(b) the legislation of the Member State in which the centre of interest of his/her activities is situated, if he/she does not reside in one of the Member States in which he/she pursues a substantial part of his/her activity.

…

10 Article 71(1) of Regulation 883/2004, entitled "Composition and working methods of the Administrative Commission", reads:

1. The Administrative Commission for the Coordination of Social Security Systems (hereinafter called the Administrative Commission) attached to the European Commission shall be made up of a government representative from

each of the Member States, assisted, where necessary, by expert advisers. A representative of the European Commission shall attend the meetings of the Administrative Commission in an advisory capacity.

11 Article 72 of Regulation 883/2004, entitled "Tasks of the Administrative Commission", reads, in extract:

The Administrative Commission shall:

(a) deal with all administrative questions and questions of interpretation arising from the provisions of this Regulation or those of the Implementing Regulation, or from any agreement concluded or arrangement made thereunder, without prejudice to the right of the authorities, institutions and persons concerned to have recourse to the procedures and tribunals provided for by the legislation of the Member States, by this Regulation or by the Treaty;

(b) facilitate the uniform application of Community law, especially by promoting exchange of experience and best administrative practices;

...

12 Article 76 of Regulation 883/2004, entitled "Cooperation", reads, in extract:

1. The competent authorities of the Member States shall communicate to each other all information regarding:

(a) measures taken to implement this Regulation;

(b) changes in their legislation which may affect the implementation of this Regulation.

2. For the purposes of this Regulation, the authorities and institutions of the Member States shall lend one another their good offices and act as though implementing their own legislation. ...

13 Annex XI to Regulation 883/2004 contains an entry concerning Liechtenstein. Point 1(a)(i) and (ii) of that entry reads:

1. Compulsory insurance under Liechtenstein sickness insurance scheme for benefits in kind ("Krankenpflegeversicherung") and possible exemptions:

(a) The Liechtenstein legal provisions governing compulsory sickness insurance for benefits in kind shall apply to the following persons not resident in Liechtenstein:

(i) persons subject to Liechtenstein legal provisions under Title II of the Regulation;

(ii) persons for whom Liechtenstein shall bear the costs of benefits according to Article 24, 25 and 26 of the Regulation;

...

14 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1) ("Regulation 987/2009") was incorporated into the EEA Agreement by Decision No 76/2011 of the EEA Joint Committee of 1 July 2011 (OJ 2011 L 262, p. 33) and is referred to at point 2 of Annex VI (Social Security) to the EEA Agreement. Constitutional requirements were indicated by Iceland and Liechtenstein. The requirements were fulfilled by 31 May 2012 and the decision entered into force on 1 June 2012.

15 Article 4(1) of Regulation 987/2009, entitled "Format and method of exchanging data", reads:

1. The Administrative Commission shall lay down the structure, content, format and detailed arrangements for exchange of documents and structured electronic documents.

16 Article 5(1) of Regulation 987/2009, entitled "Legal value of documents and supporting evidence issued in another Member State", reads:

1. Documents issued by the institution of a Member State and showing the position of a person for the purposes of the application of the basic Regulation and of the implementing Regulation, and supporting evidence on the basis of which the documents have been issued, shall be accepted by the institutions of the other Member States for as long as they have not been withdrawn or declared to be invalid by the Member State in which they were issued.

17 Article 19(2) of Regulation 987/2009, entitled "Provision of information to persons concerned and employers", reads:

2. At the request of the person concerned or of the employer, the competent institution of the Member State whose legislation is applicable pursuant to Title II of the basic Regulation shall provide an attestation that such legislation is applicable and shall indicate, where appropriate, until what date and under what conditions.

18 Decision No 236/2019 of the EEA Joint Committee of 27 September 2019 amending Annex VI (Social Security) to the EEA Agreement entered into force on 28 September 2019. No constitutional requirements were indicated. Article 1 of Decision No 236/2019 of the EEA Joint Committee reads:

The following point is inserted under the heading 'ACTS OF WHICH THE CONTRACTING PARTIES SHALL TAKE NOTE' and before point 4.P1 (Recommendation No P1 of 12 June 2009) of Annex VI to the EEA Agreement:

'4.A1 32018 H 0529(01): Recommendation No A1 of 18 October 2017 concerning the issuance of the attestation referred to in Article 19(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council (OJ C 183, 29.5.2018, p. 5).'

National law

19 Pursuant to Article 21 of the Convention establishing the European Free Trade Association (EFTA) (LGBl. 1992 No 17 and LGBl. 2003 No 189), entitled "Coordination of social security systems", compulsory insurance rules are applicable between Liechtenstein and Switzerland.

II Facts and procedure

20 Mr Maitz is an Austrian national. In July 2015 he transferred his residence from Austria to Switzerland.

21 On 13 November 2018, he was entered in the register of lawyers by the Vienna Bar Association, Austria, (*Rechtsanwaltskammer Wien*). This entitled him to practise as a lawyer in Austria.

22 On 3 December 2018, he was entered in the register of established European lawyers by the Liechtenstein Chamber of Lawyers (*Liechtensteinische Rechtsanwaltskammer*). For entry in the register, it is necessary that the applicant produces a certificate issued by the competent authority in their home State evidencing that he is a member of this profession. Pursuant to Liechtenstein law, an established European lawyer is authorised to engage in the same professional activities as any lawyer entered in the register of lawyers, except where otherwise provided.

23 Pursuant to Austrian law, all lawyers entered in the register of an Austrian bar association must pay contributions to the Austrian pension institution that provides old-age and invalidity benefits for lawyers and trainee lawyers as well as survivors' benefits in the event of the lawyer's death, unless they are, by virtue of their activities as a lawyer, already subject to compulsory affiliation to an old-age pension scheme of another EEA State or Switzerland.

24 For 2018, Mr Maitz was exempted by the Vienna Bar Association from his obligation to pay contributions to the Austrian pension institution.

25 From 1 January 2019 onwards, Mr Maitz was required by the Vienna Bar Association to submit the form Portable Document ("PD") A1 completed by the competent social

security authority. According to the request, it is claimed that this form serves as an attestation of the national legislation applicable to the person concerned and confirmation that Mr Maitz does not have to pay contributions in Austria. The submission of form PD A1 is said to entail an automatic exemption from contributions to the Austrian pension institution.

26 Since 1 January 2019 Mr Maitz has worked in Liechtenstein as an employed or self-employed lawyer. His income was obtained exclusively from these activities. He did not obtain any income in Austria and was not employed in Switzerland.

27 On the basis of his professional income in Liechtenstein, Mr Maitz is compulsorily insured with the Liechtenstein Old-Age and Survivors' Insurance (*Liechtensteinische Alters- und Hinterlassenenversicherung*) against the risk of old-age and is obliged to pay contributions. The Liechtenstein Old-Age and Survivors' Insurance, Liechtenstein Invalidity Insurance (*Liechtensteinische Invalidenversicherung*) and Liechtenstein Family Allowances Office (*Liechtensteinische Familienausgleichskasse*) ("the Liechtenstein Institutions") are institutions governed by public law which provide statutory old-age and survivors' benefits, invalidity benefits and family benefits in Liechtenstein.

28 Mr Maitz requested the Liechtenstein Institutions to issue him with a form PD A1 for the years 2019 and 2020 as evidence of old-age benefits provision.

29 By the Liechtenstein Institutions' order of 4 August 2020, it was determined that the income obtained by Mr Maitz from employed and self-employed activities in Liechtenstein is liable to mandatory contributions payable to the Liechtenstein Institutions. It was further determined that a form PD A1, attesting to an exclusive liability and insurance obligation in Liechtenstein or in a single State within the meaning of social security coordination, could not be issued.

30 An appeal brought by Mr Maitz challenging that decision was rejected by the Liechtenstein Institutions by decision of 29 December 2021. Mr Maitz challenged that decision by an appeal to the Princely Court of Appeal.

31 In the appeal proceedings, the Liechtenstein Institutions offered to issue an official attestation concerning the old-age benefits provision existing in Liechtenstein in place of a form PD A1.

32 Against this background, the Princely Court of Appeal decided to stay the proceedings and request an Advisory Opinion from the Court. The request, dated 28 April 2022, was registered at the Court on 3 May 2022. The Princely Court of Appeal has referred the following questions to the Court:

1. *Is it necessary for the scope ratione personae of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 (OJ 2004 L 166, p. 1), incorporated in the EEA Agreement by Decision of the EEA Joint Committee of 1 July 2011 (LGBl. 2012 No 202), that the Member State national*

who is subject to the legislation of one or more Member States within the meaning of Article 2(1) of that Regulation is resident in one of the Member States?

If the answer to that question is in the negative:

Can an agreement concluded by the EU or an EEA Member State with a third country by which the scope of application of the Regulation mentioned was extended to the third country change the answer to this question?

2. *Must an attestation within the meaning of Article 19(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1), incorporated into the EEA Agreement by Decision of the Joint Committee of 1 July 2011 (LGBl. 2012 No 202), be issued necessarily by means of a form (PD A1) laid down by the Administrative Commission for the Coordination of Social Security Systems in order to produce the legal effects specified in Article 5(1) of that Regulation?*

33 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the 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.

III Answer of the Court

Question 1

34 By the first part of its first question, the referring court asks, in essence, whether it is a condition under Article 2(1) of Regulation 883/2004 that, in addition to being a national of an EEA State and being subject to the legislation of one or more EEA States, a person must also be resident in an EEA State in order to be covered by the scope *ratione personae* of that regulation. By the second part of its first question, the referring court asks whether an agreement concluded by an EEA State with a third country, which aims to extend the scope of application of that regulation to that third country, can change the answer to the first part of the question.

35 As a starting point, the Court recalls that the provisions of Title II of Regulation 883/2004 constitute a complete and uniform system of conflict of laws rules. That system is mandatory for EEA States and its application depends solely on the objective situation of the employed person concerned. The conflict of laws rules in Title II entail that an EEA State may not decide the extent to which its own legislation or that of another EEA State applies (see Case E-1/21 *ISTM*, judgment of 14 December 2021, paragraph 35).

36 Title II of Regulation 883/2004 is intended to fulfil a dual purpose, namely to prevent the simultaneous application of a number of national legislative systems, as well as to ensure that persons covered by that regulation are not left without social security cover because there is no legislation which is applicable to them (compare the judgment in *TEAM POWER EUROPE*, C-784/19, EU:C:2021:427, paragraph 32 and the case law cited).

37 Article 2(1) of Regulation 883/2004 provides that the regulation is applicable to nationals of EEA States, stateless persons and refugees residing in an EEA State who are or have been subject to the legislation of one or more EEA States, and to members of their families and their survivors. The European Court of Justice has held in relation to the equivalent provision of Regulation 883/2004's predecessor, Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1971 L 149, p. 2), that Article 2 prescribes an additional condition *vis-à-vis* stateless persons and refugees, namely, that they must be resident in an EEA State, whereas in respect of nationals of EEA States, this condition does not apply (compare the judgment in *Chuck*, C-331/06, EU:C:2008:188, paragraph 30). This entails that the provisions of Regulation 883/2004 may apply to EEA nationals, regardless of whether or not they are resident in an EEA State.

38 Where a person falls within the scope *ratione personae* of Regulation 883/2004, as defined in Article 2 of that regulation, the single legislation rule laid down in Article 11(1) of that regulation is, in principle, applicable (compare the judgment in *TEAM POWER EUROPE*, cited above, paragraph 33, and case law cited).

39 Article 11(1) of Regulation 883/2004 prescribes that any person to whom that regulation applies is subject to the legislation of a single EEA State only. The question as to which national legislation is applicable is determined in accordance with the provisions of Title II of that regulation (compare the judgments in *Kik*, C-266/13, EU:C:2015:188, paragraph 47 and the case law cited, and in *Walltopia*, C-451/17, EU:C:2018:861, paragraph 42, and case law cited).

40 For the purposes of the present case, Article 11(3)(a) of Regulation 883/2004 lays down the general rule that an EEA national pursuing an activity as an employed or self-employed person in an EEA State is in principle subject to the legislation of the State in which they pursue that activity (compare the judgments in *TEAM POWER EUROPE*, cited above, paragraph 34 and case law cited, *Alpenrind and Others*, C-527/16, EU:C:2018:669, paragraph 93). As it follows from recital 17 of Regulation 883/2004, it is with a view to guaranteeing the equality of treatment of all persons occupied in the territory of an EEA State as effectively as possible that it is considered appropriate to determine as the legislation applicable, as a general rule, that of the EEA State in which the person concerned pursues his activity as an employed or self-employed person.

41 The terms "activity as an employed person" and "activity as a self-employed person" are both defined in Article 1(a) and (b) of Regulation 883/2004 as meaning "any activity or equivalent situation treated as such for the purposes of the social security legislation

of the Member State in which such activity or equivalent situation exists". It follows, therefore, from the combined reading of Article 1(a) and (b) of Regulation 883/2004, that the application of the principle set out in Article 11(3)(a) is subject to the condition that the person is pursuing an activity "as an employed or self-employed person", according to the social security legislation of the State in question (compare the judgment in *X v Staatssecretaris van Financiën,* C-569/15, EU:C:2017:673, paragraphs 23 to 26). Hence, the existence of an employment relationship or activities as a self-employed person – deemed as such under the legislation of the EEA State where it takes place – is essential for the application of the legislation of the State of employment.

42 Conversely, the application of the legislation of the State in which the person is resident, may apply only in circumstances in which a person does not pursue an economic activity as per Article 11(3)(e) of Regulation 883/2004, when a person is receiving unemployment benefits in the circumstances set out in Article 11(3)(c), or in the situations set out in Article 13. A situation in which an individual pursues all of his economic activity in one EEA State while residing in a third country, is not specifically addressed and does not fall within those provisions.

43 The Court observes that one of the objectives of the conflict of laws rules laid down by Regulation 883/2004 is to ensure that all insured persons falling within its scope enjoy continuous cover without that continuity being affected by discretionary choices of individuals or of the competent authorities of EEA States (see *ISTM*, cited above, paragraph 35).

44 As such, it is not a condition under Article 2(1) of Regulation 883/2004 that a national of an EEA State who is subject to the legislation of one or more EEA States within the meaning of that article must reside in an EEA State in order to fall within the personal scope of that regulation.

45 With respect to the second part of the first question, namely whether an agreement concluded by an EEA State with a third country, which aims to extend the scope of application of Regulation 883/2004 to that third country, with specific adaptations to the conflict of laws rules, can change the answer to the first part of the first question, the Court observes that an EEA State cannot make the rights conferred by EEA law subject to the provisions of another international agreement (see Case E-1/04 *Fokus Bank* [2004] EFTA Ct. Rep. 11, paragraph 31, and Case E-14/15 *Holship* [2016] EFTA Ct. Rep. 240, paragraph 128).

46 This principle applies to an international agreement concluded by an EEA State and a third country containing rules on social security coordination. Specific adaptations in such an agreement to social security conflict of laws rules cannot result in EEA States being absolved of their obligations arising from EEA law.

47 The provisions of Title II of Regulation 883/2004 constitute a complete and uniform system of conflict of laws rules. Accordingly, once a person falls within the scope of Article 2 of that regulation, Article 11(1) is, in principle, applicable, and the national legislation applicable is to be determined in accordance with the provisions of Title II

of Regulation 883/2004 (compare the judgment in *TEAM POWER EUROPE*, cited above, paragraphs 32 and 33 and case law cited). This entails that there is no scope for an agreement concluded between an EEA State and a third country to have effects in this respect with regard to individuals falling within the scope of Regulation 883/2004.

48 It follows from the above that a bilateral international agreement cannot affect the obligation of an EEA State to comply with EEA law. Indeed, if the application of a provision of EEA law could be impeded by a measure adopted pursuant to the implementation of such an agreement, this would be against the duty of every EEA State to facilitate the application of that provision of EEA law. The fact that the third country, for its part, is or is not obliged to comply with any obligation stemming from EEA law cannot be of relevance in this assessment (compare the judgment in *Caisse pour l'avenir des enfants*, C-801/18, EU:C:2019:684, paragraphs 35 to 40).

49 As pointed out by the Commission during the hearing, the rights under Regulation 883/2004 are in principle limited to other EEA States (compare the judgment in *Chuck*, cited above, paragraph 38). However, it follows from settled case law that when an EEA State concludes an international agreement on social security with a third country, the fundamental principle of equal treatment requires that EEA State to grant nationals of other EEA States the same advantages as those which its own nationals enjoy under that international agreement unless it can provide objective justification for refusing to do so (compare the judgment in *Caisse pour l'avenir des enfants*, cited above, paragraph 40 and case law cited).

50 Furthermore, EEA States are obliged to ensure that such international agreements applicable to matters of social security are applied in such a manner that they do not obstruct the application of Articles 2(1), and 11(1) and Article (3)(1)(a) of Regulation 883/2004 (see *Holship*, cited above, paragraph 128).

51 In the light of the foregoing, the answer to the first part of the first question must be that it is not a condition under Article 2(1) of Regulation 883/2004 for nationals of an EEA State to also be resident in an EEA State in order to be covered by the personal scope of that regulation. The answer to the second part of the first question must be that an agreement on social security concluded by an EEA State with a third country, which aims to extend the scope of application of Regulation 883/2004 to that third country, cannot impose the residence of an individual as a condition deviating from Articles 2(1) and 11 of that regulation.

Question 2

52 By its second question, the referring court asks whether an attestation within the meaning of Article 19(2) of Regulation 987/2009 must necessarily be issued by means of form PD A1, laid down by the Administrative Commission for the Coordination of Social Security Systems, in order to produce the legal effects specified in Article 5(1) of that regulation.

53 The Court observes that, taking into account the answer to the first question, persons

such as the appellant in the main proceedings come within the personal scope of Regulation 883/2004. According to Article 19(2) of Regulation 987/2009, the competent institution of the EEA State whose legislation is applicable pursuant to Title II of Regulation 883/2004 is to provide an attestation that such legislation is applicable and indicate, where appropriate, until what date and under what conditions (compare the judgment in *Alpenrind and Others*, cited above, paragraph 36).

54 Recommendation No A1 of the Administrative Commission of 18 October 2017 concerning the issuance of the attestation referred to in Article 19(2) of Regulation 987/2009 was incorporated into the EEA Agreement by Decision No 236/2019 of the EEA Joint Committee of 27 September 2019 as an act of which the EEA Contracting Parties are to take note.

55 Recitals (2) and (3) of Recommendation No A1 provide that the Administrative Commission determines the structure and the content of form PD A1 concerning the applicable legislation which applies to the holder, and that this document (if generated) shall be accepted by the institutions of other EEA States. Moreover, as set out in recitals (4) and (5) of that recommendation, the principle of sincere cooperation, as specified in Article 76 of Regulation 883/2004, confers an obligation on the issuing EEA State to confirm the correctness of the information contained in a form PD A1 and that such a document establishes a "presumption that the holder is properly affiliated" to the social security system of the issuing State.

56 The Court notes that Article 5(1) of Regulation 987/2009 provides that documents issued by the institution of an EEA State and showing the position of a person for the purposes of the application of Regulations 883/2004 and 987/2009, and supporting evidence on the basis of which the documents have been issued, are to be accepted by the institutions of the other EEA States for as long as they have not been withdrawn or declared invalid by the EEA State in which they were issued (compare the judgment in *Alpenrind and Others*, cited above, paragraph 37).

57 Although an Administrative Commission decision may provide aid to social security institutions responsible for applying EEA law, such decisions are not of such a nature so as to require those institutions to use certain methods or adopt certain interpretations when they come to apply the relevant EEA rules in a particular field (compare the judgment in *Knoch*, C-102/91, EU:C:1992:303, paragraph 52 and case law cited). This entails that Recommendation No A1 of the Administrative Commission cannot have the prescriptive effect of requiring EEA State institutions to adopt a particular form of documentation when fulfilling its obligations under Article 19(2) of Regulation 987/2009.

58 Furthermore, Article 3 EEA lays down the principle of sincere cooperation between the Contracting Parties. Article 76 of Regulation 883/2004 is an expression of this principle and imposes a duty on the institution of the EEA State issuing the document to draw up any document used for the purposes of Article 5 with the same care, regardless of whether or not the document takes the form of a PD A1. As such, the issuing institution must assess all relevant facts, whether by means of data contained in official sources,

or by requesting the applicant to provide the necessary information. It also follows from the principle of sincere cooperation that the EEA States concerned are under an obligation to apply Regulations 883/2004 and 987/2009 correctly, even in the absence of a form PD A1 (see *ISTM*, cited above, paragraph 36 and case law cited).

59 On the basis of the above, it is clear that Article 5(1) and (2) of Regulation 987/2009 do not require the documents issued by the institutions of EEA States to comply with any particular form as they only refer to a generic document without requiring any specific form. Further, Article 19(2) of that regulation simply refers to an "attestation", without laying down any specificities as to the form that such a document should take. While the Administrative Commission recommends that such an attestation should be issued in the form of a PD A1, no obligation is incumbent on the institutions of EEA States to use that form. Equally, EEA States may not refuse to recognise documents issued by other EEA States that comply with the relevant provisions of Regulation 987/2009, regardless of whether they are issued in the form of a PD A1 or otherwise.

60 Finally, it should be noted that according to the request, the Liechtenstein Institutions offered to provide an attestation that certain parts of Liechtenstein legislation are applicable to the appellant in the main proceedings. However, Article 19(2) of Regulation 987/2009 envisages that an attestation provided on the basis of that provision should refer to the entirety of the legislation of the EEA State concerned. As observed by the Commission at the hearing, a competent institution of an EEA State cannot refuse to provide an attestation that all of its legislation is applicable. Therefore, an attestation that only certain parts of an EEA State's legislation are applicable will not satisfy the requirement in Article 19(2) of that regulation.

61 In the light of the foregoing, the answer to the second question must be that Article 19(2) of Regulation 987/2009 must be interpreted as not requiring an attestation to be issued exclusively in the form of a PD A1 in order to produce the legal effects set out in Article 5(1) of that regulation.

IV Costs

62 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 Princely Court of Appeal hereby gives the following Advisory Opinion:

1. **It is not a condition under Article 2(1) of Regulation (EC) No 883/2004 on the coordination of social security systems for nationals of an EEA State to also be resident in an EEA State in order to be covered by the personal scope of that regulation.**

   An agreement concluded by an EEA State with a third country, which aims to extend the scope of application of Regulation (EC) No 883/2004 to that third country, cannot impose the residence of an individual as a condition deviating from Articles 2(1) and 11 of that regulation.

2. **Article 19(2) of Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 must be interpreted as not requiring an attestation to be issued exclusively in the form of a Portable Document A1 in order to produce the legal effects set out in Article 5(1) of that regulation.**

Páll Hreinsson Bernd Hammermann Ola Mestad

Delivered in open court in Luxembourg on 24 January 2023.

Ólafur Jóhannes Einarsson
Registrar

Bernd Hammermann
Acting President