JUDGMENT OF THE COURT
15 July 2021*

(*Directive 2003/88/EC – Protection of the safety and health of workers – Working time – Travel to a location other than a worker's fixed or habitual place of attendance – International travel*)

In Case E-11/20,

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

Eyjólfur Orri Sverrisson

and

The Icelandic State

concerning the interpretation of 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, in particular Article 2(1),

THE COURT,

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

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

– Eyjólfur Orri Sverrisson, represented by Jón Sigurðsson, Supreme Court Attorney;

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

– the Icelandic State, represented by Óskar Thorarensen, Supreme Court Attorney, Office of the Attorney General (Civil Affairs), acting as Agent;

– the EFTA Surveillance Authority ("ESA"), represented by Carsten Zatschler, Catherine Howdle and Ewa Gromnicka, acting as Agents; and

– the European Commission ("the Commission"), represented by Donatella Recchia, Napoleón Ruiz García and Michael Wilderspin, acting as Agents,

having regard to the Report for the Hearing,

having heard oral argument from Eyjólfur Orri Sverrisson, represented by Jón Sigurðsson; the Icelandic State, represented by Óskar Thorarensen; ESA, represented by Carsten Zatschler, Catherine Howdle and Ewa Gromnicka, and the Commission, represented by Donatella Recchia, Napoleón Ruiz García and Michael Wilderspin, at the remote hearing on 4 February 2021,

gives the following

Judgment

I Legal background

EEA law

1 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), ("the Directive"), was incorporated in the Agreement on the European Economic Area ("the EEA Agreement" or "EEA") as point 32h of Annex XVIII (Health and safety at work, labour law, and equal treatment for men and women) to the Agreement by Decision of the EEA Joint Committee No 45/2004 of 23 April 2004 (OJ 2004 L 277, p. 12, and EEA Supplement 2004 No 43, p. 11). Constitutional requirements were indicated by Iceland. The requirements were fulfilled and the decision entered into force on 1 August 2005.

2 Article 1 of the Directive reads, in extract:

> *1. This Directive lays down minimum safety and health requirements for the organisation of working time.*
>
> *...*

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.

...

3 Article 2 of the Directive sets out the definitions of, inter alia, working time and rest period:

1. "working time" means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice;

2. "rest period" means any period which is not working time;

4 Article 18 of the Directive entitled "Derogations by collective agreements" reads:

Derogations may be made from Articles 3, 4, 5, 8 and 16 by means of collective agreements or agreements concluded between the two sides of industry at national or regional level or, in conformity with the rules laid down by them, by means of collective agreements or agreements concluded between the two sides of industry at a lower level.

Member States in which there is no statutory system ensuring the conclusion of collective agreements or agreements concluded between the two sides of industry at national or regional level, on the matters covered by this Directive, or those Member States in which there is a specific legislative framework for this purpose and within the limits thereof, may, in accordance with national legislation and/or practice, allow derogations from Articles 3, 4, 5, 8 and 16 by way of collective agreements or agreements concluded between the two sides of industry at the appropriate collective level.

The derogations provided for in the first and second subparagraphs shall be allowed on condition that equivalent compensating rest periods are granted to the workers concerned or, in exceptional cases where it is not possible for objective reasons to grant such periods, the workers concerned are afforded appropriate protection.

Member States may lay down rules:

(a) for the application of this Article by the two sides of industry; and
(b) for the extension of the provisions of collective agreements or agreements concluded in conformity with this Article to other workers in accordance with national legislation and/or practice.

National law

5 The Directive was implemented into Icelandic law by Act No 68/2003 on Working Environment, Health and Safety in Workplaces (Working Time Directive, EEA rules) (*Lög nr. 68/2003 um aðbúnað, hollustuhætti og öryggi á vinnustöðum* ("Act No 68/2003")) which amended Act No 46/1980 on Working Environment, Health and Safety in Workplaces (*Lög nr. 46/1980 um aðbúnað, hollustuhætti og öryggi á vinnustöðum*).

6 Article 52 of the Working Environment, Health and Safety in Workplaces Act, as amended by Article 19 of Act No 68/2003, reads:

> *For the purposes of this chapter, the following terms are defined as stated below:*
>
> *Working time: The time during which a worker is engaged in work, at the disposal of the employer and carrying out his/her activity or duties.*
>
> *Rest time: Time that is not counted as working time.*

7 The first paragraph of Article 9 of the Public Employees' Collective Agreement Act No 94/1986 (*Lög nr. 94/1986 um kjarasamninga opinberra starfsmanna*) provides that working time is to be negotiated in collective agreements.

8 The first paragraph of Article 17 of the Rights and Obligations of Government Employees Act No 70/1996 reads:

> *The agency head decides the hours of work of employees of an agency as prescribed by law or wage agreements.*

9 The employment relationship between Mr Sverrisson and the Icelandic Transport Authority ("ICETRA" (*Samgöngustofa*)) is governed by the collective agreement between the Union of Icelandic Aircraft Mechanics (*Flugvirkjafélag Íslands*) for its members working for ICETRA and the Minister of Finance and Economic Affairs on behalf of the Treasury (*Kjarasamningur Flugvirkjafélag Íslands vegna félagsmanna þess í starfi hjá Samgöngustofu og fjármála- og efnahagsráðherra f.h. ríkissjóðs* ("the Collective Agreement")).

10 Section 2.2 of the Collective Agreement entitled "Daytime work" reads:

> *2.2.1 Daytime work shall be carried out between the hours of 08:00-17:00 from Monday to Friday.*
>
> *2.2.2 The management of an institution may permit individual employees who so request flexible working hours in the period between 07:00-18:00 on*

working days. The approval of the contracting parties shall be sought for such permission.

2.2.3 A worker having daytime employment who discharges part of his work obligations outside daytime work hours as defined in Section 2.2.1 shall receive a payment of a premium according to Section 1.5.1 for that part of his work. If the period of daytime work has been extended pursuant to paragraph 2 of Section 2.1.2 or 2.2.2, no premium is paid for work outside the time limits prescribed in Section 2.2.1.

11 Section 2.3.1 of the Collective Agreement reads:

2.3.1 Overtime means the time worked in addition to specified daily work hours or a shift of an employee as well as work carried out in addition to the hours required on a weekly basis even though they are carried out during daytime working hours.

12 Section 5.5 of the Collective Agreement entitled "Travelling time abroad" reads:

5.5.1 When an employee goes abroad at the initiative of the employer and on the employer's behalf, the payment for such inconvenience shall be as follows:

If the departure of a flight is on a business day before 10:00 and/or arrival after 15:00 the employee shall receive a payment of three hours with a premium of 33.33% pursuant to Section 1.6.1 in each instance.

On general and statutory holidays the corresponding payment shall amount to six hours with a premium of 55% pursuant to Section 1.6.1 irrespective of the time of day of the flight.

It is permissible to agree on leave instead of payment for travelling time in such a manner that a 33.33% premium corresponds to 20 minutes of leave and a 55% premium corresponds to 33 minutes of leave.

II Facts and procedure

13 In its request, the referring court notes that the Icelandic State has not contested the description of the facts of the case set out in Mr Sverrisson's application. Mr Sverrisson is an aircraft mechanic, working as an "inspector" (*eftirlitsmaður*) in the airworthiness and registration department of ICETRA's transport division. His normal working place is at ICETRA's headquarters at Armuli 2, Reykjavík, Iceland. Mr Sverrisson's employment is subject to the Collective Agreement.

14 Typically, Mr Sverrisson works during daytime hours between 8 a.m. and 4 p.m. on weekdays. Mr Sverrisson also has to undertake "inspection visits" (*eftirlitsheimsóknir*), where he audits Icelandic aviation operators' line stations abroad, or responds to requests by Icelandic aviation operators to have an aircraft mechanic visit locations abroad in order to register aircraft for the first time, or to carry out airworthiness inspections of aircraft. Frequently, these involve him travelling to countries outside of Europe. Special requests, which the director of ICETRA must approve before the journey begins, are recorded by ICETRA. Mr Sverrisson and other aircraft mechanics employed by ICETRA have demanded that their travelling time be recognised, in its entirety, as working time, from the time of departure from their homes until they arrive at their final destination, the place of lodging abroad.

15 On 14 December 2016, Mr Sverrisson and other aircraft mechanics ("the aircraft mechanics") at ICETRA requested the calling of a meeting of the collaborative committee. The aircraft mechanics had wished to discuss their demands that their entire travelling time be recognised as working time.

16 On 15 February 2017, a meeting of the collaborative committee was held. However, the aircraft mechanics' demands were rejected by the director of ICETRA. Instead, ICETRA decided to seek an opinion from the Wages, Terms and Human Resources department of the Ministry of Finance and Economic Affairs ("the Ministry"), and thus the meeting was adjourned.

17 On 20 March 2017, another meeting of the collaborative committee was held, which did not produce any results. Once the opinion of the Ministry's Wages, Terms and Human Resources department had been obtained, the aircraft mechanics requested representatives from the Ministry and from the Union of Icelandic Aircraft Mechanics to attend a meeting of the collaborative committee. While the trade union was prepared to send representatives, in early May 2017, the Ministry responded that it did not consider it necessary to attend the meeting.

18 On 12 May 2017, a representative of the aircraft mechanics wrote a letter to ICETRA's director in relation to what had happened.

19 The present case focuses on the working hours related to two trips undertaken by Mr Sverrisson. The first trip was in February 2018. Mr Sverrisson took a round trip to Tel Aviv, Israel, on behalf of Icelandair in Israel, in order for him to register an aircraft (TF-ISX) and grant it temporary airworthiness certification for a flight to Iceland. For this trip, Mr Sverrisson is seeking to have a total of 20.5 hours recognised as working time:

- 26 February: From 5.00 a.m. (beginning of journey) until 8.00 a.m. (beginning of daytime working hours), a total of 3 hours.

- 26 February: From 4.00 p.m. (end of daytime working hours) until 8.30 p.m. (arrival at hotel), a total of 4.5 hours.

- 1 March: From 4.00 p.m. (end of daytime working hours, beginning of journey) until 11.59 p.m., a total of 8 hours.

- 2 March: From 0.01 a.m. until 5.00 a.m. (end of travelling time), a total of 5 hours.

- The above amounts to a total of 20.5 hours on this trip (excluding daytime working hours).

20 On 17 October 2018, Mr Sverrisson and the other aircraft mechanics sent a formal letter of claim to ICETRA, in relation to the demand that the time spent on travelling in connection with projects abroad, and also work conducted by aircraft mechanics abroad outside daytime working hours, be counted as working time in accordance with applicable law and the Directive. On 30 October 2018, ICETRA rejected the demand in writing. On 6 November 2018, Mr Sverrisson's lawyer responded to this letter in writing.

21 In November 2018, Mr Sverrisson undertook a second trip. He travelled to and from Saudi Arabia for the purpose of ICETRA's regular auditing of a line station and two aircraft belonging to the airline Air Atlanta. For this trip, Mr Sverrisson is seeking to have a total of 24.17 hours recognised as working time:

- 12 November: From 4.15 a.m. (beginning of journey) until 8.00 a.m. (beginning of daytime working hours), a total of 3.75 hours.

- 12 November: From 4.00 p.m. (end of daytime working hours) until 11.59 p.m., a total of 8 hours.

- 13 November: From 0.01 a.m. until 2.40 a.m. (arrival at destination), a total of 2.67 hours.

- 18 November: From 10.15 p.m. (beginning of journey) until 11.59 p.m., a total of 1.75 hours.

- 19 November: From 00.01 a.m. until 8.00 a.m. (beginning of daytime working hours), a total of 8 hours.

- The above amounts to a total 24.17 hours on this trip (excluding daytime working hours).

22 It follows from the request that where Mr Sverrisson's journeys were undertaken during "daytime working hours" as set out in Section 2.2 of the Collective Agreement that these periods were considered as working time, and are not in dispute in the national proceedings.

23 On 6 March 2019, Mr Sverrisson brought an action before the courts against the Icelandic State to have his claims recognised.

24 As was the practice of other ICETRA aircraft mechanics when undertaking such business trips abroad, Mr Sverrisson recorded the travelling time and the hours spent working abroad outside daytime working hours as working time in the working-time recording system. However, ICETRA, having taken the view that there was no obligation for it to recognise the hours concerned, i.e. travelling time, as working hours, altered these records in the system.

25 On 2 March 2020, counsel for Mr Sverrisson requested Reykjavík District Court to seek an advisory opinion from the Court.

26 On 20 March 2020, Reykjavík District Court denied Mr Sverrisson's request that an advisory opinion be sought.

27 On 12 June 2020, the Icelandic Court of Appeal (*Landsréttur*) overturned Reykjavík District Court's ruling and decided that an advisory opinion was to be requested. The Court of Appeal held that it had been sufficiently demonstrated that the interpretation of the provisions of Article 2 of the Directive could be of significance for resolving the claims made by Mr Sverrisson, and consequently for the resolution of the case. The Court of Appeal thus considered that an advisory opinion should be sought and that the questions should be phrased in the manner stated in the operative part of its ruling.

28 On 19 June 2020, Reykjavík District Court referred the following questions to the Court, which were received at the Court on 16 July 2020:

> *1. Should Article 2 of Directive 2003/88/EC be interpreted as meaning that time spent travelling by an employee in the service of, and at the behest of, his employer, to a workplace which is not the employee's regular workplace, is working time when it falls outside traditional daytime working hours?*
> *2. For the purpose of answering Question 1, is it of significance whether the journey made by the employee for the employer is made domestically or between countries?*
> *3. For the purpose of answering Question 1, is it of significance what form the work contribution takes during the journey?*

29 On 16 July 2020, the Registrar wrote to Reykjavík District Court, making reference to Article 96 of the Rules of Procedure and Notice 1/99 "Note for Guidance on Requests by

National Courts for Advisory Opinions". The Registrar requested that additional information be received by 1 September 2020.

30 On 26 August 2020, Reykjavík District Court submitted additional information, which was registered at the Court on 11 September 2020.

31 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

Admissibility

32 The Icelandic State has submitted that the present case is inadmissible for a number of reasons, namely that the case concerns questions regarding an appropriate level of remuneration, falling outside the scope of the Directive, and that accordingly there is no EEA law at issue, that the questions referred are hypothetical, and that the referring court did not make a reference prior to the ruling of the Icelandic Court of Appeal.

33 The Court recalls that, under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("SCA"), any court or tribunal in an EFTA State may refer questions on the interpretation of the EEA Agreement to the Court, if it considers an advisory opinion necessary to enable it to give judgment. The purpose of Article 34 SCA is to establish cooperation between the Court and the national courts and tribunals. It is intended to be a means of ensuring a homogenous interpretation of EEA law and to provide assistance to the courts and tribunals in the EFTA States in cases in which they have to apply provisions of EEA law (see Case E-23/13 *Hellenic Capital Market Commission* [2014] EFTA Ct. Rep. 88, paragraphs 30 and 33).

34 It is settled case law that questions on the interpretation of EEA law referred by a national court, in the factual and legislative context, which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. Accordingly, the Court may only refuse to rule on a question referred by a national court where it is quite obvious that the interpretation of EEA law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see Case E-16/16 *Fosen Linjen* [2017] EFTA Ct. Rep. 617, paragraph 43 and case law cited).

35 The Court does not find any of the exceptions from the presumption of relevance applicable in the case at hand. It appears that Mr Sverrisson's claim before the referring court is not

limited to remuneration, but also concerns health and safety aspects falling within the scope of the Directive including the definition of "working time" itself (see Case E-19/16 *Thorbjørn Selstad Thue and the Norwegian Police Federation v the Norwegian Government* [2017] EFTA Ct. Rep. 880 ("*Thue*"), paragraph 27, and compare the judgment in *UO* v *Készenléti Rendőrség*, C-211/19, EU:C:2020:344, paragraph 25). Accordingly, the case has to be held admissible.

Substance

36 In essence, by its first question, the referring court asks for clarification as to whether time spent travelling to a location other than the worker's fixed or habitual place of attendance, in order to carry out his activity or duties in that other location, as required by his employer, constitutes working time within the meaning of Article 2(1) of the Directive, in particular, when such time spent travelling falls outside his standard working hours. By its second question, the referring court asks, in essence, whether it is material that the worker's journey to a location other than his fixed or habitual place of attendance may require domestic or international travel, including outside the territory of the EEA States. By its third question, the referring court, in essence, asks whether the work undertaken by the worker, if any, during the worker's journey is of relevance. It is appropriate to answer the referring court's questions together.

Working time

37 It is settled case law that the purpose of the Directive is to lay down minimum health and safety requirements for the organisation of working time. The Directive harmonises national rules concerning, in particular, the duration of working time. Its purpose is to ensure minimum daily and weekly rest periods, breaks and maximum weekly working time (see Case E-5/15 *Matja Kumba T. M'bye and Others v Stiftelsen Fossumkollektivet* [2015] EFTA Ct. Rep. 674 ("*Matja Kumba*"), paragraph 36).

38 The Directive does not generally apply to the remuneration of workers, save in respect of the special case envisaged by Article 7(1) of the Directive concerning annual paid leave. However, the Directive does not prevent EEA States from applying the definition of "working time" to questions of remuneration. Whether an EEA State chooses to do so or not is a matter for national law (see *Thue*, cited above, paragraph 64).

39 The term "working time" is defined in Article 2(1) of the Directive as any period during which the worker is working, at the employer's disposal, and carrying out his activity or duties, in accordance with national laws and/or practice.

40 The concept of working time may be placed in opposition to rest periods according to Article 2(2), as the two are necessarily mutually exclusive. As such, the Directive does not provide for any intermediate category between working time and rest periods (see *Thue*,

cited above, paragraph 68, and compare the judgment in *Tyco*, C-266/14, EU:C:2015:578, paragraphs 25 and 26 and case law cited).

41 Although the definition in Article 2(1) of the Directive refers to national laws and/or practice, this does not entail that the EEA States may unilaterally determine the scope of that concept. Rather, "working time" and "rest periods" are concepts that must be interpreted in an autonomous manner in order to ensure the full effectiveness of the Directive and its uniform application across the EEA (see *Thue*, cited above, paragraph 67 and case law cited). Furthermore, the EEA States may not unilaterally make the right, which is granted directly to workers, to have working periods and corresponding rest periods duly taken into account, subject to any condition or any restriction whatsoever. Any other interpretation would frustrate the effectiveness of the Directive and undermine its objective (compare the judgment in *D.J.*, C-344/19, EU:C:2021:182, paragraph 31 and case law cited).

42 The Court recalls that Article 2(2) of the Directive provides only that rest periods are periods which are not working time, the two being mutually exclusive. Nevertheless, the distinction between the two concepts may be a fine one, and it will depend on a case-by-case assessment, considering several factors, some of which have already been addressed in case law (see *Thue*, cited above, paragraph 68 and case law cited).

43 The Court must examine whether, in a situation such as in the main proceedings, the elements of the concept of "working time" are present.

44 The first element of the concept of "working time" is that the worker must be carrying out his activity or duties in the context of the worker's employment relationship. As the Court has previously held, the journeys of a worker taken in order to perform tasks specified by his employer at a location away from his fixed or habitual place of attendance are requisite and essential for the worker to undertake dutifully those tasks (see *Thue*, cited above, paragraph 70, and compare the judgment in *Tyco*, cited above, paragraph 32).

45 The Icelandic State has contended that the situation of Mr Sverrisson in the main proceedings is more akin to those circumstances in which a worker travels to, and returns from, a fixed place of work to his home. The Icelandic State has further submitted that the present case should be distinguished on the facts from the judgments in *Tyco*, where the worker did not have a fixed place of work, and *Thue*, where the worker, a member of the police, travelled by police vehicle to locations away from his fixed or habitual place of attendance. These arguments of the Icelandic State must be rejected.

46 As the Court has previously held, as with workers undertaking regular journeys, and workers with a fixed place of work for all assignments, workers in an intermediate position must also be subject to the Directive's protection in situations where they are assigned a place of attendance other than the fixed or habitual place of attendance. To do otherwise would distort the concept of "working time" and jeopardise the objective of the Directive

to protect the safety and health of workers (see *Thue*, cited above, paragraph 71). Moreover, it should be noted that the concept of "working time" covers the entirety of periods of stand-by time, during which the constraints imposed on the worker are such as to affect, objectively and very significantly, the possibility for the latter freely to manage the time during which his or her professional services are not required and to pursue his or her own interests.

47 Any journey to a location other than the worker's fixed or habitual place of attendance shall be deemed to have begun, and its return to have ended, either at the worker's home, or his fixed or habitual place of work, whichever is more reasonable in the circumstances. In making that assessment, the referring court must consider whether the journey to and/or from the location of the worker's assignment is shorter if travelling from the employee's home as opposed to his fixed or habitual place of attendance (see *Thue*, cited above, paragraph 72). In the present case, the work trips lasted for several days. As the Commission submitted in response to a question from the bench at the hearing, during such work trips a hotel or other suitable lodging, even if determined by the employer, may be treated in an equivalent manner to the worker's home for the purpose of determining "rest periods" (compare the order in *Grigore*, C-258/10, EU:C:2011:122, paragraphs 66 and 67). Likewise, when on a work trip, it is for the referring court to determine whether it is more reasonable, in the circumstances of the facts before it, for the journeys to have begun and/or been completed at either the worker's hotel or other suitable lodging, or his place of work during that trip.

48 Consequently, in situations such as that at issue in the main proceedings, a worker, such as Mr Sverrisson, who undertake journeys in order to perform tasks specified by their employer at a location away from their fixed or habitual place of attendance in other countries must be considered as carrying out his activity or duties in the context of the worker's employment relationship.

49 The second element of the concept of "working time" in Article 2(1) of the Directive is that the worker must be at the disposal of the employer during that time. In order for a worker to be regarded as being at the disposal of his employer, that worker must be placed in a situation in which he is legally obliged to obey the instructions of his employer and carry out activities for that employer. It is settled case law that the intensity of the work performed by the worker and his output are not among the characteristic elements of the concept of "working time" within the meaning of the Directive (see *Thue*, cited above, paragraph 73 and case law cited). Therefore, it is of no significance what form the work contribution takes during the journey.

50 The possibility for workers to manage their time without major constraints and to pursue their own interests is a factor capable of demonstrating that the period of time in question is not "working time". A distinction has to be made between situations where the workers are obliged to be present at the workplace and situations where they are not. It is only when

workers are able to remove themselves from the working environment during the rest periods and pursue their own interests freely and in an uninterrupted manner that the rest periods may be considered effective and not to constitute "working time" (see *Thue*, cited above, paragraph 74 and case law cited).

51 A worker in a similar position to Mr Sverrisson, in travelling to a location other than his fixed or habitual place of attendance in order to carry out his activity or duties at that other location, as required by his employer, may have a certain level of flexibility and choice in terms of means of transport and alternative travel routes. However, such travel time is necessary and during that time, the worker remains under the instruction of the employer, with the employer maintaining the right to cancel, change, or add assignments. As such, during the necessary travel time, which generally cannot be shortened, the worker is unable to use his time freely and pursue his own interests, thus remaining at his employer's disposal (see *Thue*, cited above, paragraph 75 and case law cited).

52 A worker travelling by air is unable to dispose freely of his time and pursue his own interests in an unrestricted manner, as he is unable to remove himself from the working environment. Moreover, the worker is undertaking a journey under the instruction of his employer. While travelling by air, there may be periods of professional inactivity, and/or periods when the worker cannot be contacted. However, such periods are inherent to the form of transport chosen by the employer (compare by analogy the judgments in *Jaeger*, C-151/02, EU:C:2003:437, paragraphs 60 to 63, and *Dellas*, C-14/04, EU:C:2005:728, paragraph 48).

53 Consequently, the Icelandic State's argument that a worker is not at his employer's disposal as he is unreachable while travelling by air and not asked to perform any specific duties must be rejected.

54 In a situation such as that at issue in the main proceedings, it is for the employer to put in place any necessary monitoring procedures to avoid potential abuse by a worker in engaging in social activities during a journey (see *Thue*, cited above, paragraph 78 and case law cited).

55 The third element of the concept of "working time" in Article 2(1) of the Directive is that the worker must be working during that period of time. An inherent element of requiring a worker to be present at locations other than his fixed or habitual place of attendance is that such an arrangement denies the worker the ability to determine the distance of his commute. Rather, the worker is under a duty to spend his time travelling to a location removed from either his workplace or his home. Contrary to the arguments of the Icelandic State, it is therefore, immaterial how frequently the employer specifies a place of attendance other than the fixed or habitual one, unless the effect is to transfer the employee's place of employment to a new fixed or habitual place of attendance (see *Thue*, cited above, paragraph 79 and case law cited).

56 Including necessary travel time in the concept of working time is indispensable in order to protect workers' safety and health. As mentioned in recital 4 of the Directive, that objective should not be subordinated to purely economic considerations (see *Thue*, cited above, paragraph 81).

57 It follows, if a worker, such as Mr Sverrisson, is required to undertake certain assignments away from his fixed or habitual place of attendance, travelling to and from that location must be considered an intrinsic aspect of his work. As a consequence, as argued by the Commission, the necessary travel time must be considered to be "working time" for the purposes of Article 2(1) of the Directive. To that end, it is irrelevant, as observed by ESA, and as the Court has previously held, whether the hours spent travelling fall within or outside the worker's normal working hours (see *Thue*, cited above, paragraph 80).

Collective agreements

58 The first paragraph of Article 18 of the Directive provides that derogations by means of collective agreements may only be made from Articles 3, 4, 5, 8 and 16 of the Directive. The Court recalls that the derogations permitted, inter alia from Articles 3 and 5 on daily and weekly rest periods, are on condition that equivalent compensating rest periods are granted to the workers concerned or, in exceptional cases where it is not possible for objective reasons to grant such periods, the workers concerned are afforded appropriate protection. These provide the employer with a degree of flexibility in complying with the requirements of the Directive (see *Thue*, cited above, paragraph 82).

59 However, as ESA observes, it is not possible to derogate either explicitly or by effect from the definitions set out in Article 2 of the Directive by means of a collective agreement (see *Thue*, cited above, paragraph 82, and compare the judgment in *Ville de Nivelles* v *Rudy Matzak*, C-518/15, EU:C:2018:82 ("*Matzak*"), paragraph 34 and case law cited).

60 As exceptions to the EEA's system for the organisation of working time put in place by the Directive, the derogations permitted by Article 18 of the Directive must be interpreted in such a way that their scope is limited to what is strictly necessary in order to safeguard the interests which those derogations enable to be protected (compare the judgments in *Matzak*, cited above, paragraph 38 and case law cited, and *Jaeger*, cited above, paragraph 89).

61 As such, the provisions of collective agreements may not affect the definition or scope of working time as defined by the Directive, including time spent travelling such as that at issue in the main proceedings.

Travel outside the territory of the EEA States

62 As for an employee's travel for the employer outside the territory of the EEA States, the Commission submitted at the hearing that travelling to third countries to perform his or her tasks is significantly more stressful and disruptive for the worker than travelling within the

country in which that worker is based. If the time spent travelling to or from those places were not considered as working time, workers would be deprived of the protection provided by the Directive when it is most needed. Such a result would seriously undermine the objective of the Directive.

63 The Court recalls that legal acts incorporated into the EEA Agreement apply, in principle, to the same area as the EEA Agreement. However, the geographical scope of the EEA Agreement does not preclude EEA law from having effects outside the territory of the EEA States (see Case E-8/19 *Scanteam AS* v *The Norwegian Government*, judgment of 16 July 2020 ("*Scanteam*"), paragraphs 65 and 66).

64 Provisions of EEA law may apply to professional activities pursued outside the territory of the EEA States as long as the employment relationship retains a sufficiently close link with the EEA. That principle must be deemed to extend also to cases in which there is a sufficiently close link between the employment relationship, on the one hand, and the law of an EEA State and thus the relevant rules of EEA law, on the other (see *Scanteam*, cited above, paragraphs 67 to 70 and case law cited, and compare the judgment in *Petersen*, C-544/11, EU:C:2013:124, paragraph 41 and case law cited).

65 The Court finds that in making a journey to a location other than the worker's fixed or habitual place of attendance, it is immaterial whether that journey is made entirely within the EEA or to or from third countries if the employment agreement is established under and governed by the national law of an EEA State.

66 In conclusion, the answer to the questions referred must be that the necessary time spent travelling, outside normal working hours, by a worker, such as Mr Sverrisson, to a location other than his fixed or habitual place of attendance in order to carry out his activity or duties in that other location, as required by his employer, constitutes "working time" within the meaning of Article 2(1) of the Directive. It is immaterial whether that journey is made entirely within the EEA or to or from third countries if the employment agreement is established under and governed by the national law of an EEA State. No assessment of the intensity of the work performed while travelling is required.

IV Costs

67 The costs incurred by ESA and the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT

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

1. **The necessary time spent travelling, outside normal working hours, by a worker, such as the plaintiff in the main proceedings, to a location other than his fixed or habitual place of attendance in order to carry out his activity or duties in that other location, as required by his employer, constitutes "working time" within the meaning of Article 2(1) of 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. It is immaterial whether that journey is made entirely within the EEA or to or from third countries if the employment agreement is established under and governed by the national law of an EEA State.**

2. **No assessment of the intensity of the work performed while travelling is required.**

Páll Hreinsson Per Christiansen Bernd Hammermann

Delivered in open court in Luxembourg on 15 July 2021.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President