SUPREME COURT OF NORWAY

EFTA Court
- Registry -
1, rue du Fort Thüngen L-1499
Luxembourg

Case no. 24-047132SIV-HRET, civil case, appeal against judgment: Request for an advisory opinion:

1. INTRODUCTION AND BACKGROUND TO THE REQUEST

(1) The Supreme Court of Norway hereby requests an advisory opinion from the EFTA Court for use in the Supreme Court's case no. 24-047132SIV-HRET between Saga Subsea AS (appellant in the Supreme Court) and Øyvind Akselsen and Simen Marius Granlund (respondents in the Supreme Court). The request is made in accordance with Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

(2) The case in the Supreme Court concerns a claim for salary back pay. The key question is whether section 14-12a of the Act of 17 June 2005 No. 62 relating to the working environment, working hours and employment protection, etc. (Working Environment Act), which ensures at least the same conditions for hired-out workers as for the user undertaking's own employees, applies to hired-out workers performing work on board Norwegian-registered multipurpose vessels. "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 concerned in this case has been carried out on the Norwegian continental shelf.

(3) Section 14-12a subsection 1 of the Working Environment Act implements Article 5 (1) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (the Temporary Agency Work Directive) in Norwegian law. There is no corresponding provision in the special Act relating to work on board ships, Act of 21 June 2013 No. 102 relating to employment protection etc. for workers on board ships (Ship Labour Act).

(4) The parties to the case disagree on whether the scope provisions in the Working Environment Act and the Ship Labour Act with 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. A precondition for such an interpretation seems to be that the Temporary Agency Work Directive applies to the respondents' work on board the vessels. The case thus raises questions about the scope of the Temporary Agency Work Directive.

2. THE PARTIES TO THE CASE

(5) The parties to the case in the Supreme Court are:

Appellant: Saga Subsea AS

Counsel: Thor Harald Eike
Advokatfirmaet Eurojuris Haugesund AS,
P.O. Box 548, 5501 Haugesund

Respondents: Øyvind Akselsen and Simen Marius Granlund

Counsel: Bjørn Inge Waage
LO Norway
Løkkeveien 22, 4008 Stavanger

(6) Intervener for Akselsen and Granlund under section 15-7 of the Dispute Act: The union Styrke

Counsel: Edvard Bakke
LO Norway
Torggata 12, 0181 Oslo

(7) The State, represented by the Ministry of Justice and Public Security, participates in accordance with section 30-13 of the Dispute Act. This provision allows the State to participate in Supreme Court cases that raise the question of setting aside or interpreting restrictively statutory rules, in so far as these rules may conflict with Norway's international obligations. The State's participation is limited to safeguarding the State's interests in case of a conflict between national and international rules.

Counsel: The Office of the Attorney General, represented by Helge Røstum
P.O. Box 8012 Dep., 0030 Oslo

3. THE FACTS OF THE CASE

(8) Saga Subsea AS's business activities include the hiring out of personnel to onshore activities, offshore installations (i.e. petroleum activities on the continental shelf outside the territorial boundary) 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 AS is registered as a temporary work agency with the Norwegian Labour Inspection Authority.

(9) Akselsen was employed in Saga Subsea AS in 2018 as a "ROV Supervisor Offshore", ROV being short for Remotely Operated Vehicle. Granlund was employed in 2019, initially in a reduced position, and from 1 January 2020, in a fulltime position as "Rigger/Mechanic". Both Akselsen and Granlund have since left Saga Subsea AS.

(10) Akselsen and Granlund had individual employment contracts with Saga Subsea AS. Saga Subsea AS 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 Akselsen and Granlund.

(11) Akselsen was hired out approximately 90 percent of his working time to multipurpose vessels in the offshore industry, and 10 percent to offshore installations. Granlund was hired out approximately 75–80 percent of his working time to multipurpose vessels in the offshore industry and 20–25 percent to offshore installations and onshore facilities. The case concerns the salary for the periods during which they worked on multipurpose vessels.

(12) During the periods in question, Akselsen and Granlund were hired out to three Norwegian undertakings to work on board various Norwegian-registered vessels.

(13) Thus, this case is limited to concern employees in 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. For the sake of this case, it is not necessary for the EFTA Court to consider to what extent the Temporary Agency Work Directive may oblige an EEA State to issue rules on equal treatment of hired-out labour on board other ships registered in or otherwise connected to that State.

(14) Saga Subsea AS has not disputed that Akselsen and Granlund were paid less than the user undertakings' own employees, despite their performing the same work.

(15) Akselsen and Granlund claimed salary back pay from Saga Subsea AS in accordance with 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.

(16) On 30 May 2022, Haugaland and Sunnhordaland District Court handed down a judgment in favour of Saga Subsea AS. Akselsen and Granlund appealed to Gulating Court of Appeal, which handed down a judgment on 6 February 2024, ordering Saga Subsea to back-pay salaries of NOK 153,498 to Akselsen and NOK 442,627 to 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 Akselsen and Granlund on multipurpose vessels.

(17) Both Saga Subsea AS and Akselsen and Granlund appealed to the Supreme Court. The appeal from Saga Subsea AS 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 Akselsen and Granlund challenged the Court of Appeal's assessment of the size of the salary claims, but leave to appeal was not granted.

(18) An oral hearing was held in the Supreme Court on 3 and 4 December 2024. During the deliberations on 14 January 2025, the Supreme Court decided that further proceedings were required, see section 9-17 subsection 2 of the Dispute Act, and that an advisory opinion should be sought from the EFTA Court.

4. THE LEGAL BACKGROUND TO THE CASE

4.1 Relevant Norwegian legislation

(19) The overarching question in the Supreme Court is whether section 14-12a of the Working Environment Act applies to hired-out workers performing work on board multipurpose vessels in connection with petroleum activities on the Norwegian continental shelf. The provision's subsection 1 reads:

> **"Section 14-12 a.** ***Equal treatment regarding pay and working conditions in connection with the hiring out of workers by temporary work agencies***
>
> (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."

(20) Section 14-12a subsection 1 of the Working Environment Act implements Article 5 (1) read in conjunction with Article 3 (1) of the Temporary Agency Work Directive in Norwegian law, see Proposition to the Storting 74 L (2011-2012) page 104.

(21) According to section 1-2 subsection 2, the Working Environment Act – including section 14-12a – applies to "undertakings that engage employees unless otherwise explicitly provided by the Act". According to section 1-2 subsection 2 (a), "shipping" is exempt from the Act.

(22) For workers employed on board Norwegian ships, the Ship Labour Act applies, see section 1-2 subsection 1, with some exceptions in the Act itself that are not relevant to this case. Article 5 (1) of the Temporary Agency Work Directive is not implemented in the Ship Labour Act.

(23) Section 1-3 of the Working Environment Act contains a separate provision on the application of the Working Environment Act to offshore petroleum activities. Subsection 1 states that the Act applies to "activities associated with the exploration for and exploitation of natural resources in the seabed or its substrata, in Norwegian inland waters, Norwegian territorial waters and on the Norwegian part of the continental shelf". However, according to subsection 3, the Ministry may "by regulation wholly or partly exempt from the Act activities as referred to in subsection 1 …".

(24) Such an exemption is given in Regulations of 12 February 2010 No. 158 relating to health, safety and the environment in the petroleum activities and at certain onshore facilities (the Framework Regulations), stating the following in section 4 subsection 3:

> "Exempt from the Working Environment Act and provisions in these Regulations adopted in accordance with the Working Environment Act are

...

b. vessels performing construction, plumbing or maintenance activities within the petroleum industry..."

(25) The wording may indicate that the vessels on which Akselsen and Granlund worked belong to the category of vessels that are exempt from the Working Environment Act according to section 4 subsection 3 (b) of the Regulations. If so, their employment is regulated by the Ship Labour Act.

(26) During the implementation of the Temporary Agency Work Directive into the Working Environment Act, and next during the work on the Ship Labour Act, the application of the Temporary Agency Work Directive to seafarers was considered.

(27) In a Proposition to the Storting from the Ministry of Labour regarding amendments to the Working Environment Act, Prop.74 L (2011-2012), the Ministry stated on page 22:

> "The Temporary Agency Work Directive is not considered to naturally apply to shipping. Employees on board NOR and NIS ships [registered in the Norwegian ordinary and international ship registers, respectively] are employed under fixed collective agreements that do not differentiate between hired and permanent employees. Additionally, the Directive will have little practical impact in addition to the Maritime Labour Convention (MLC 2006), which safeguards seafarers' rights regardless of whether they are employed by the shipping company or through a recruiting or placement service, registered within or outside a Convention State, as long as they work on a ship registered in a Convention State. Although Norway has ratified the Convention, it has not yet entered into force. However, due to, among other things the EU's support for the MLC 2006, it is expected to become effective in the course of 2013."

(28) The Ministry of Trade and Industry supported the view of the Ministry of Labour in the subsequent Proposition to the Storting on the Ship Labour Act, Prop.115 L (2012-2013), and stated further on page 106:

> "The Seafarers Organisations, LO [the Norwegian Confederation of Trade Unions] and Unio [the Confederation of Unions for Professionals] have argued that the rules on equal treatment should be incorporated into the Ship Labour Act. The Ministry is currently not in a position, also due to time constraints, to further investigate rules on equal treatment and the hiring of seafarers. However, the Ministry will closely monitor the development and discuss this issue with trade unions later. In this regard, we refer to the Committee's [in charge of preparing the draft act] statement, recommending that if hiring undermines organised work life and leads to social dumping, specific regulation of hiring should be considered."

(29) The legislation – both the Working Environment Act and the Ship Labour Act – thus seems to build on the premise that the Temporary Agency Work Directive does not apply to shipping, or that the issue in any case is unresolved.

(30) The non-application of the Working Environment Act to multipurpose vessels in the petroleum industry has later been expressed in a report to the Storting from the Ministry of Labour and Social Affairs of 6 April 2018 on health, environment and safety in the petroleum industry, see Report St. 12 (2017–2018). In chapter 4.6.2 with the headline "Multipurpose vessels", it is set out that "the Working Environment Act applies to all installations, fixed and floating, that have direct control over wells" and "flotels (residential installations)", but not to "supply and auxiliary vessels for the petroleum industry".

Regarding multipurpose vessels in particular, it is noted that "the working conditions for the employees on board are regulated by the shipping legislation in the country where the ship is registered ('the flag state principle')".

(31) If section 14-12a of the Working Environment Act does not apply to work on board multipurpose vessels on the Norwegian continental shelf, the principle of equal treatment in Article 5 (1) of the Temporary Agency Work Directive is consequently not applicable to Akselsen's and Granlund's work on board multipurpose vessels.

(32) Against this background, the question is whether work on board multipurpose vessels in connection with petroleum activities on the Norwegian continental shelf is regulated by the Temporary Agency Work Directive. If the answer is yes, the Supreme Court must determine whether national principles of interpretation may provide a basis for a different solution than that which, based on the description above, may seem to follow from the Norwegian statutory provisions. Whether, and if so how, this is possible, is a key issue for the Supreme Court to consider. However, since it is a matter of interpretation and application of Norwegian law, the Supreme Court will not address the issue further here.

4.2 The Temporary Agency Work Directive etc.

(33) The Temporary Agency Work Directive has been incorporated into the EEA Agreement through Annex XVIII no. 32k. Article 5 (1) first subparagraph reads:

> **"Article 5. The principle of equal treatment**
>
> 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."

(34) Article 1 of the Temporary Agency Work Directive on the scope of application of the Directive is general and says nothing about work on board a ship. Article 1 (1) and (2) read:

> **"Article 1. Scope**
>
> 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."

(35) There is also no mention of shipping in the Preamble to the Temporary Agency Work Directive. The purpose of the Directive is described in Article 2:

> "**Article 2. Aim**
>
> 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."

(36) Seafarers' rights are regulated in other legal acts, including Council Directive 2009/13/EC of 16 February 2009 on the implementation of the agreement entered into by the Association of Shipowners in the European Union (ECSA) and the European Transport Workers' Federation (ETF) in relation to the Convention on seafarers' working and living standards, adopted on 23 February 2006 by the International Labour Organisation (the Maritime Labour Convention (MLC)). This Directive has been made part of the EEA Agreement through Annex XVIII No. 32j.

(37) In a report from August 2011 by an expert group appointed by the Commission in connection with the implementation of the Temporary Agency Work Directive in the EU and the EEA-EFTA States, the following is stated on pages 5-6:

"Does the Temporary Agency Work Directive apply to seafarers?

The Agreement concluded by the European Community Shipowners' Association (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, annexed to Directive 2009/13/EC, defines the term 'seafarer' as meaning any person who is employed or engaged or works in any capacity on board a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply.

Directive 2008/104/EC does not exclude seafarers from its scope. However, seafarers carry out their duties under very specific working conditions, partly in international waters and in a sector characterized by the provision of manpower through 'manning agencies'. Therefore, the situation of seafarers raises legal questions about the concrete effects of the agency work Directive on this particular profession.

Furthermore, the case of seafarers raises the issue of the determination of the law applicable to their employment contracts. This question is not regulated by Directive 2008/104/EC but Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations ('Rome I') establishes criteria to be applied in that respect.

Therefore, the complex issue of the application of the Temporary Agency Work Directive to seafarers needs to be assessed on a case-by-case basis by taking into account a number of relevant criteria."

5. THE PARTIES' CONTENTIONS REGARDING THE QUESTION PRESENTED

5.1 Saga Subsea AS

(38) Saga Subsea AS contends:

"The legislative purpose of the Temporary Agency Work Directive was to establish a framework for protecting temporary agency workers, ensuring equal treatment with permanent employees in the user undertakings, while respecting the diversity of labour markets and the relationship between the organisations of the participants in those markets.

Article 3 (1) (a) defines a worker as any person who, in the relevant Member State, is protected as a worker under national employment law. The concept of a worker in EEA law generally lacks a uniform definition, but the Temporary Agency Work Directive refers to the national definition of a worker.

The obligation resting on the EEA State will thus be to ensure that the persons and groups covered by the national concept of a worker are guaranteed the rights under the Directive. The central and fundamental aspect of the Temporary Agency Work Directive is expressed in Article 5 (1), which states that the basic working and employment conditions of temporary agency workers shall be at least those that would apply if they had been recruited directly by the user undertaking. At the same time, there is a possibility to derogate from the conditions, provided that an adequate level of protection is provided for the worker, see Article 5 (2)–(4).

Considering the need for flexibility and the special circumstances of workers, including temporary workers, employed by Norwegian temporary work agencies, who work both in and outside of Norwegian territorial waters, it is appropriate to adopt an approach that specifically addresses these concerns and the need for flexibility. Workers defined as seafarers perform their work under very specific working conditions, partly in international waters and in a sector otherwise staffed through crew agencies. Consequently, the national concept of a worker is not entirely suitable, as it is challenged by the distinctive characteristics of the workers in both the temporary work agencies and in the staffing industry.

Shipping is extensively regulated by national legislation covering the specific conditions within the industry. The Ship Labour Act aims to ensure sound conditions of employment and equality of treatment in the workplace at sea, see section 1 (a). The Act contains provisions that limit its scope to workers on board Norwegian ships and does not apply to employees who only work on board while the ship is in port, see section 1-2 subsection 1 and 2. The Act is mainly mandatory, with some exceptions related to ships registered in the Norwegian International Ship Register (NIS), see section 1-3. In addition to regulating the employer's obligations, temporary appointment and salary, see sections 2-4, 3-4 and chapter 4, the provisions cover other aspects of the employment and work.

In addition to national regulations, seafarers are ensured fundamental and detailed protection of their rights through international regulations such as the MLC Convention, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (the STCW Convention) and the International Convention for the Safety of Life at Sea (the SOLAS Convention). The MLC Directive has been made part of the EEA Agreement through Annex XVIII no. 32j.

Thus, the fundamental purposes behind the Temporary Agency Work Directive are duly protected through national and international special legislation, which must be considered to comply with the flexibility and respect for diversity of the labour market that the Temporary Agency Work Directive also aims to ensure. When implementing the Temporary Agency Work Directive in national legislation, each Member State is entitled to consider these

central aspects in assessing whether and to what extent it is desirable to apply the Directive also to shipping.

Given the unique conditions under which seafarers work, including workplace, travel to and from the vessel, working conditions and the organisation thereof, the Temporary Agency Work Directive is not naturally applicable to shipping. Also, the Directive holds no practical significance beyond the MLC Convention, which entered into force on 20 August 2013.

Against this background, Saga Subsea AS argues that Article 5 of the Temporary Agency Work Directive should not be interpreted to apply to workers employed by a temporary work agency based in an EEA State during the period they are hired out to companies in the same EEA State on vessels involved in petroleum activities on that State's continental shelf. This is because the worker is sufficiently protected through other legislation and international obligations, and the considerations behind the Temporary Agency Work Directive are addressed through other legal acts.

It is argued that the general question of the EEA Agreement's geographical scope and application to the continental shelves of the EEA States, and the interpretation of its Article 126 in that regard, is not relevant to the case in the EFTA Court. Under any circumstance, Saga Subsea AS endorses the State's contentions on this issue, included in paragraph 41 below."

5.2 Øyvind Akselsen and Simen Marius Granlund

(39) Øyvind Akselsen and Simen Marius Granlund contend:

"The Temporary Agency Work Directive applies to seafarers. This is supported by its wording, in addition to its purpose, context and background. Directives related to employment law are generally formulated and, in principle, generally applicable to all industries and employee categories. Exceptions require a clear basis in other relevant sources of law, and such exceptions do not exist.

Based on a natural understanding of the Directive's *wording*, both the main rule and the exceptions, there is no basis for excluding seafarers or shipping. If seafarers were not intended to be covered by the Temporary Agency Work Directive, this would be explicitly stated in the wording.

The aim of the Directive is to ensure the protection of temporary agency workers and to recognise temporary work agencies as employers, see Article 2. This covers any workers and any temporary work agency. There is no basis for excluding temporary agency workers who are seafarers, or shipping.

There are also no circumstances regarding the *creation and context* of the Temporary Agency Work Directive suggesting seafarers should be excluded from its scope. On the contrary, the Temporary Agency Work Directive was adopted after a lengthy process, during which social and labour market legislation within shipping in the EU was simultaneously developed, aiming to create more and better jobs. The EU Commission's communication of 10 October 2007 – *Reassessing the regulatory social framework for more and better*

seafaring jobs in the EU – led to a focus on improving seafarers' working conditions, which influenced all future EU legislation on social and labour market issues. The context means that excluding shipping from the scope of the Temporary Agency Work Directive would have required thorough analysis and justification.

Regard should also be had to the European Parliament and Council Directive (EU) 2015/1794 of 6 October 2015 amending European Parliament and Council Directives 2008/94/EC, 2009/38/EC, and 2002/14/EC, as well as Council Directives 98/59/EC and 2001/23/EC regarding seafarers – commonly referred to as the Amendment Directive. The purpose of the Amendment Directive was to strengthen seafarers' rights, and as a result, five Directives that previously had exceptions for seafarers were amended. The Temporary Agency Work Directive was not affected or mentioned in the process leading up to the adoption of the Amendment Directive. If the Temporary Agency Work Directive made exceptions for, or allowed exceptions for, shipping, the Temporary Agency Work Directive would naturally be among those considered amended.

Furthermore, the Temporary Agency Work Directive is implemented for seafarers in the legislation of other EEA States, such as Sweden and Finland.

The Temporary Agency Work Directive itself does not indicate its *geographic scope*. In the expert group's report from August 2011, see paragraph 37 above, it is noted on page 5 that

> "the mere fact that the activities are carried out outside the territory of the EU in itself is not sufficient to exclude the application of EU rules, provided that the employment relationship retains a sufficiently close link with EU law (see for instance judgment of 30 April 1996 in the case C-214/94, Boukhalfa ..."

To the extent it is necessary to determine the geographical scope of the Temporary Agency Work Directive – whether the Temporary Agency Work Directive is applicable on the continental shelf – it is argued that the scope of the EEA Agreement must be determined according to functional criteria, in the same way as in EU law. There is no basis for claiming that Article 126 of the EEA Agreement constitutes a geographical barrier to the mandatory application of the EEA Agreement to the Norwegian continental shelf.

In any case, the Temporary Agency Work Directive applies to the continental shelf under the EU law doctrine of "sufficiently close link", see the EFTA Court's advisory opinion in Case E-8/19 *Scanteam*, paragraphs 66-70. Specifically for the present case, a reference is made to the EEA Agreement, Protocol 4, Article 3 no 1 (l), which states that the EEA Agreement includes "products extracted from the seabed or below the seabed which is situated outside its territorial sea but where it has exclusive exploitation rights".

The activities on board the relevant multi-purpose vessels have a sufficiently close link to the production of petroleum as covered by Protocol 4 of the EEA Agreement. Reference is also made to the CJEU's rulings for instance in *Weber* (C-37/00) and *Salemink* (C-347/10)."

5.3 The union Styrke

(40) The union Styrke endorses the contentions from Øyvind Akselsen and Simen Marius Granlund.

5.4 The State represented by the Ministry of Justice and Public Security

(41) The State represented by the Ministry of Justice and Public Security contends:

"The Temporary Agency Work Directive does not apply to seafarers. The wording does not indicate whether the Directive applies to seafarers. Nor is this commented on in the Preamble. The working conditions at sea differ significantly, however, from those on land, and this is reflected in the fact that seafarers' rights are extensively regulated in separate legal acts.

If the Directive applied to seafarers, one would in the light of this special regulation expect this to be clearly expressed in the Directive itself. The silence indicates that this is not the case, and that the legal acts on seafarers' working conditions are *lex specialis*.

The protective aim underlying the Directive does not warrant a different interpretation, as it must be assumed that the EU legislature intended for these protective aims to be upheld by the legal acts specifically applicable at sea.

Directives related to working life applicable to seafarers contain explicit rules on this, see Article 1(3) subsection 2 of the Working Time Directive (Directive 2003/88/EC) and Article 1(8) of the Working Conditions Directive (Directive 2019/1152/EC). This is not the case for the Temporary Agency Work Directive.

In any case, the Directive is not applicable to work on board ships on the Norwegian continental shelf. Article 126 of the EEA Agreement specifies that the Agreement is limited to the territory of Norway, which, according established international law, does not include the continental shelf. The history and context of the provision confirm that it was a deliberate choice during the conclusion of the EEA Agreement for its scope to differ from that of the EU.

The activities in question also do not have a sufficiently close link to the EEA, see the EFTA Court's Case E-8/19 *Scanteam*. The case concerns a claim for salary for periods on board multipurpose vessels; that is, exclusively for work performed on the continental shelf."

6. QUESTION TO THE EFTA COURT

(42) Based on the factual and legal situation described above, the Supreme Court of Norway hereby asks for the EFTA Court's answer to the following question:

> 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?

Oslo 11 April 2025

Henrik Bull
Supreme Court justice