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ATTORNEY GENERAL FOR CIVIL AFFAIRS

To EFTA Court

OSLO, 4.5.2026

Written observations by the Norwegian State, represented by the Labour and Welfare Directorate

represented by Ida Thue, advocate at the Office of the Attorney General for Civil Affairs, in

Case E-1/26 A and B v Norwegian State, represented by the Labour and Welfare Directorate

in which Høyesterett (the Supreme Court of Norway) has requested an advisory opinion pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, on the interpretation of Article 6 of Regulation (EC) No 883/2004 of the European Parliament and the Council of 29 April 2004 on the coordination of social security systems, Articles 5 and 12 of Regulation (EC) No 987/2009 of the European Parliament and the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, and Articles 28 and 29 of the EEA Agreement

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1 INTRODUCTION

(1) This request for an advisory opinion concerns the aggregation of insurance periods under Article 6 of Regulation 883/2004 on the coordination of social security systems (hereinafter "the Regulation").

(2) The cases in the main proceedings concern claims for disability benefits under the National Insurance Act (hereinafter "NIA") from persons who have also lived in other EEA States. The questions in the request for an advisory opinion are related to the application of one of three alternative qualifying requirements in Section 12-2 of the NIA. Section 12-2 first paragraph requires five years of membership in the National Insurance Scheme before the

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onset of disability. Section 12-2 second and third paragraph set out alternative conditions for the right to a disability benefit for persons who do not meet the criteria in Section 12-2 first paragraph.

(3) The Norwegian State considers that the requirement of five years of prior membership in Section 12-2 first paragraph of the NIA constitutes a requirement of five years of "periods of insurance" against the risk of disability, cf. Article 1(t) of the Regulation. Article 6 of the Regulation requires that periods of insurance completed under the legislation of other EEA States against the risk of invalidity are taken into account as though they were completed under Norwegian legislation.

(4) All the insurance periods provided in the certificates from the issuing institutions in other EEA States where the appellants A and B in the main proceedings had been insured (Spain and Germany), were in fact added to the insurance periods completed under Norwegian legislation as if these insurance periods had been completed under Norwegian legislation. The information in these certificates is binding on the Norwegian institution since they have not been withdrawn or declared invalid by the authorities or the courts of those States, cf. Articles 5 and 12 of Regulation 987/2009.

(5) The system put in place by Regulation 883/2004 is a system of coordination, applicable to nationals of an EEA State who make use of their right to freedom of movement. It is inherent in such a system that the conditions governing the constitution of periods of insurance will differ depending on the EEA States in which the person concerned has been insured. Those conditions are defined exclusively by the legislation of the State under which the insurance periods in question were completed.

(6) The principle of aggregation in Article 6 of the Regulation implements the principle of aggregation as laid down in Article 29 EEA. An EEA State is entitled to impose a minimum period of insurance, such as Section 12-2 of the NIA, provided that periods completed under the legislation of any other EEA State are also taken into consideration under the same conditions as if they had been completed under national legislation

(7) The periods of time during which A and B were not insured are not related to the exercise of the right to freedom of movement, cf. Article 28 EEA. The cases in the main proceedings are not comparable to *Klaus*[1].

(8) The fact that persons who were not insured in any EEA State during a certain period of time are not treated in the same way as persons who were at the time insured under Norwegian legislation does not amount to overt or disguised discrimination of EEA workers. This is merely a consequence of the system of aggregation of periods from different EEA States set up by Article 29 EEA and Article 6 of the Regulation. The system is built on the premise that persons who during a certain period of time are not insured in any EEA State are not in a comparable situation to persons who are in fact insured in an EEA State.

[1] C-482/93, *Klaus v Bestuur van de Nieuwe Algemene Bedrijfsvereniging*, EU:C:1995:349.

(9) Persons who are insured in Norway must pay social security contributions according to Section 23-3 of the NIA. This includes persons who only receive social security benefits for e.g. unemployment, sickness or maternity. The appellants A and B were not in a comparable situation to such persons when they were not insured under the legislation of any EEA State.

(10) A and B cannot claim that insurance periods which were completed in Norway or other EEA States before or after the relevant period of time under Section 12-2 first paragraph of the NIA (five years before the onset of disability in the case of A – three years in the case of B) should be taken into account, since this would be tantamount to amending Section 12-2.

(11) Consequently, a national rule such as Section 12-2 of the NIA is compatible with Article 6 of the Regulation and Article 28 and 29 EEA provided that insurance periods completed under the legislation of other EEA State for the risk of invalidity are added to periods completed under the legislation applied by the competent institution.

2 THE FACTS OF THE CASES BEFORE THE SUPREME COURT

2.1 The Spain case (A)

(12) A was born in Pakistan in 1987. He moved to Spain in 2005 and to Norway on 10 April 2013 and has been a member of the National Insurance Scheme in Norway since that date.

(13) The onset of A's disability was January 2016.

(14) A submitted a claim for disability benefit to the Norwegian Labour and Welfare Administration (hereinafter "Nav") on 19 December 2017. This claim was rejected by Nav on the grounds that A did not satisfy the requirement of adequate medical treatment in Section 12-5 of the NIA. The decision was upheld by the National Insurance Court in a ruling 7 December 2018.

(15) Nav forwarded the claim to Spanish social security authorities on 20 March 2019 on form E204 informing them that his claim for disability benefit had been rejected. Nav sent Spain the forms E205 issued by Norway containing information about periods of insurance in Norway, E207 completed by the claimant, containing information regarding insurance history in other EEA States, and E213 containing information from the general practitioner. Spain was requested to send the forms E205, E210 (notification of decision), and the decision on disability benefit from the Spanish social security authorities.

(16) Nav received the forms E210 and E205 from Spain on 26 April 2019. According to the first form, A had from 11 March 2019 right to a monthly payment of invalidity benefit of 198,15 euros from Spain. The second form listed all the periods of insurance completed by A under the legislation of Spain.

(17) A submitted a new claim for disability benefits to Nav on 29 July 2021. To assess the claim, Nav sent the form E001 to Spain on 27 October 2021 and requested form E205 from Spain. Attached was the form E205 listing all periods of insurance in Norway.

(18) Nav rejected A's claim on 16 November 2021 on the grounds that he did not fulfil any of the prior membership requirements under section 12-2 of the NIA when the Spanish periods of insurance on the form E205 Nav had received in April 2019 were also taken into account.

(19) Nav sent the form P1 to A 16 November 2021, in accordance with Article 48 of Regulation 987/2009, informing him of the decisions made by the Norwegian and Spanish social security authorities.

(20) A filed a complaint against Nav's decision, arguing that he had also been insured in other periods than the ones listed on form 205 from Spanish authorities. On that basis Nav sent a new form E001 on 26 November 2021, asking for clarification, cf. Article 5(2) of Regulation 987/2009.

(21) On 1 December 2021 Nav also sent the form E001 to another institution in Spain asking for periods of insurance, as A had claimed that Nav had asked the wrong institution in Spain.

(22) Nav received the form E205 on 2 December 2021 in which the competent institution in Spain listed the same periods they had previously informed Nav of.

(23) On 21 December 2021 Nav received an answer from the other institution that Nav's form was forwarded to the competent institution.

(24) The competent institution sent Nav a letter on 17 January 2022 explaining which periods of insurance A had in Spain and why some periods were not listed on the form E205 from Spain.

(25) In order to satisfy the requirement of membership in the National Insurance Scheme during the five years prior to the contingency, cf. Section 12-2 first paragraph of the NIA, A would have had to be insured against the risk of invalidity under the legislation of one or several EEA States from January 2011 to January 2016.

(26) A did not meet the requirement in Section 12-2 first paragraph of the NIA. According to the information in form E 205 from Spain, A had completed some periods of insurance against the risk of invalidity between January 2011 and 10 April 2013, when he moved to Norway, but there were also several periods when he had not been insured:

- 20 February 2011 – 31 July 2011 (ca. 5,5 months)
- 2 March 2012 – 1 April 2012 (ca. 1 month)
- 2 June 2012 – 2 September 2012 (3 months)
- 25 December 2012 – 9 April 2013 (ca. 3,5 months)

(27) None of these periods without insurance were related to A exercising his right to freedom of movement, cf. Article 28 EEA. He was not employed after 24 December 2012. During the last period before moving to Norway, he lived in Spain with his family.

(28) A did not fulfil the alternative qualifying requirement in Section 12-2 second paragraph litra a of the NIA, since the onset of A's disability occurred after the age of 26.

(29) A did not meet the alternative qualifying requirement in Section 12-2 second paragraph litra b of the NIA since he had more than five years without periods of insurance in the EEA after the age of 16. At the time of the disability, A had slightly less than 7 years without insurance time after the age of 16.

(30) A did not satisfy the alternative requirement in Section 12-2 third paragraph litra a of the NIA, since the disability benefit under the NIA based on A's earnings in the period before the onset of disability did not amount to half of the minimum benefit under Section 12-13 second paragraph third sentence (the benefit A receives from Spain was taken into account). The requirement in Section 12-2 paragraph litra a, amounted to NOK 131 935 at the time, and A's potential Norwegian disability benefit, combined with the disability benefit from Spain, would amount to around NOR 42 000.

(31) A did not fulfil the alternative qualifying criterion in Section 12-2 third paragraph litra b of the NIA, as he did not have the required 20 years of insurance from EEA States (in practice: 19 years and 6 months). He lacked about 14 years of insurance.

(32) Since A did not meet any of the five alternative qualifying requirements in Section 12-2 of the NIA, Nav held that he did not have right to a disability benefit under Norwegian law.

2.2 The Germany case (B)

(33) B was born in Morocco in 1964. She moved to Germany in 1996 and to Norway in May 2005.

(34) The onset of B's disability was April 2008.

(35) B submitted a claim for disability benefit to Nav on 13 June 2018.

(36) The claim for disability benefit was forwarded to the German social security authorities on 22 January 2019 on form E204, together with form E205 issued by Norway with information on periods of insurance completed under Norwegian legislation, form E213 with information from the general practitioner, and form E207, completed by the claimant, with information regarding insurance history in other EEA States. NAV requested that forms E205 and E210 (the form for notification of decision), as well as the decision itself, be forwarded.

(37) The German authorities replied by submitting form E205 dated 22 August 2019. Germany later forwarded a decision refusing the application for a disability pension in Germany, dated 18 September 2019, together with a notification of the refusal (not on form E210, but in free text). Both the refusal decision and the notification stated that the medical conditions were not considered to be fulfilled.

(38) NAV rejected B's claim for a disability benefit by decision of 8 October 2019.

(39) In order to fulfil the requirement of membership in the National Insurance Scheme during the three years prior to the contingency, cf. Section 12-2 first paragraph of the NIA, B would

have had be insured against the risk of disability under the legislation of one or several EEA States from 31 March 2005 until 31 March 2008.

(40) B did not meet the requirement in Section 12-2 first paragraph of the NIA. According to the information in form E 205 issued by Germany, B had completed some periods of insurance under German legislation, but not in the period between 1 November 2004 and 31 March 2005. There are no facts indicating that A was at that time in the process of moving from Germany to Norway.

(41) B did not fulfil the alternative qualifying requirement in Section 12-2 second paragraph litra a of the NIA, since the onset of B's disability occurred after the age of 26.

(42) B did not meet the alternative qualifying requirement in Section 12-2 second paragraph litra b of the NIA, as she had more than five years without periods of insurance in the EEA after the age of 16. At the time of disability, B had more than 17 years without insurance after the age of 16.

(43) B did not satisfy the alternative requirement in Section 12-2 third paragraph litra a of the NIA, since the disability benefit under the NIA based on the B's earnings in the period before the onset of disability did not amount to half of the minimum benefit under Section 12-13 second paragraph third sentence. The required amount was NOK 123 824 at the time, and B's amount would have been NOR 45 033.

(44) B did not fulfil the alternative qualifying criterion in Section 12-2 third paragraph litra b of the NIA. She did not have the required 20 years of insurance from EEA States (in practice: 19 years and 6 months). B lacked more than 10 years of insurance.

(45) Since B did not meet any of the five alternative qualifying requirements in Section 12-2 of the NIA, Nav held that she did not have right to a disability benefit under Norwegian law.

3 DISABILITY BENEFITS AND QUALIFYING PERIODS UNDER NORWEGIAN LAW

(46) Disability benefit under the Norwegian National Insurance Scheme is a long-term benefit that the applicant will receive until the time he/she reaches the age for old-age pension.

(47) The disability benefit is regarded as an" invalidity benefit" under Title III Chapter IV of the Regulation. Benefits covered by the risks of invalidity and old age may be received over an extended period of time and constitute a considerable expense for the EEA States.

(48) Since long-term benefits are costly, most states require that the applicant has a previous link to their social security system – typically a minimum period of previous insurance against the risk in question. This is called a qualifying period.

(49) The current rules on disability benefit in the NIA are based on the Act on Disability Benefit from 1960, the first act establishing a general disability pension scheme in Norway. Already at that time, there was a qualifying requirement of five years of insurance against the risk of disability immediately preceding the claim. The rules on prior membership have later been

amended on several occasions. The current rules in Section 12-2 first paragraph entered into force on 1 January 2021. Prior to this, the requirement was three years of membership. The alternative qualifying requirements in Section 12-2 second and third paragraph have also been amended on several occasions.

(50) The right to a disability benefit can be acquired in several different ways under the NIA.

(51) First, there is a right to a disability benefit where the applicant has been a member of the National Insurance Scheme for the five years preceding the onset of disability (Section 12-2 first paragraph). The applicant must have been insured against the risk of disability.

(52) When applied together with Article 6 of the Regulation, the requirement in Section 12-2 is met if the applicant has been insured against the risk of invalidity in Norway or another EEA State during the five years preceding the onset of disability.

(53) The situation at issue in *Klaus,*[2] where a worker was not insured under the legislation of any EEA State for a short period of time, such as a few days, during which he is physically moving from one EEA State to another before resuming employment, will in practice not occur when Section 12-2 of the NIA is applied together with the Regulation.

(54) Article 11(3)(a) of the Regulation provides that an employed person shall be subject to the legislation of the EEA State in which he/she pursues the economic activity. For example, a person who is employed in Germany is subject to German social security legislation. If that person moves to Norway, but continues to be employed in Germany, he/she will still be subject to German legislation, cf. Article 11(3)(a). If the person is no longer economically active, he/she is subject to the legislation of the EEA State of residence, cf. Article 11(3)(e).

(55) A person's residence under Article 11(3)(e) is determined by considering a number of factors, cf. Article 11 of Regulation 987/2009. A person who terminates his/her economic activity in Germany will be subject to Norwegian legislation from the moment the person's centre of life interests is in Norway. This is often prior to the physical relocation, for instance when the person has acquired housing in Norway, or his/her spouse or children have moved here.

(56) If there are clear indications of intent to move to Norway and the person's economic activity has ceased in Germany, and he/she moves to Norway within reasonable time, he/she will be subject to Norwegian legislation immediately after the economic activity has ceased. The person will then automatically become a member of the National Insurance Scheme, and his/her periods of insurance will not be interrupted because he/she has exercised the right to freedom of movement under Article 28 EEA.

(57) Second, there is a right to a disability benefit where the applicant has been a member of the National Insurance Scheme for at least one year immediately before the claim was submitted, became disabled before 26 years of age, and at the time of the onset of the

[2] C-482/93, *Klaus v Bestuur van de Nieuwe Algemene Bedrijfsvereniging*, EU:C:1995:349.

disability was a member, or has been a member after 16 years of age except for a maximum of five years, cf. Section 12-2 second paragraph.

(58) The objective of Section 12-2 second paragraph is that persons who were disabled at an early age or have a close link with the social security system despite not meeting the requirement of five years membership, shall have the right to a disability benefit.

(59) When applied together with Article 6 of Regulation 883/2004, the criterion in Section 12-2 second paragraph will be met if the applicant has been a member of the National Insurance Scheme, or insured in another EEA State, for at least one year immediately before the claim was submitted, and became disabled before turning 26 years of age and was insured against the risk of invalidity in an EEA State at that time, or has been insured against the risk of invalidity in an EEA State after turning 16 years of age, except for a maximum of five years.

(60) Third, there is a right to disability benefit when the applicant was a member of the National Insurance Scheme at the time of the onset of disability and the disability benefit based on the applicant's previous earnings will amount to half of the minimum benefit under Section 12-13, or calculated on the basis of periods of insurance, will at least correspond to half of the minimum benefit, cf. Section 12-2 third paragraph.

(61) The objective of Section 12-2 third paragraph is that applicants with a close connection to the social security system, either because of high earnings in the years before the onset of disability or because they have been insured against the risk of disability for a long time, shall have the right to a disability benefit, despite not meeting the requirement in Section 12-2 first paragraph.

(62) When applied together with Articles 5, 6 and 51(3) of Regulation 883/2004, the criterion in Section 12-2 third paragraph will be met if the applicant was insured against the risk of invalidity in an EEA State at the onset of the disability, and the disability benefit based on earnings in Norway before the onset of disability, combined with documented pension income from other EEA States, will amount to half of the minimum benefit under Section 12-13, or calculated on the basis of periods of insurance against the risk of invalidity in the EEA, will at least correspond to half of the minimum benefit. For example, a person who has been insured against the risk of invalidity for 20 years in an EEA State will qualify for disability benefit under this provision, regardless of whether the person has had pensionable income in Norway. This criterion will also be fulfilled, for example, in cases where the applicant has had the maximum possible pensionable income in the Norwegian National Insurance Scheme for one year, and income in another EEA State for two years, provided that the total insurance time in EEA States is at least 13 years.

(63) The alternative qualifying requirements in Section 12-2 of the NIA are based on a balancing of considerations, as explained in the preparatory works Ot.prp. nr. 4 (1993-1994) part 3.2.1, Prop. 130 L (2010–2011) part 7.9.4, Prop. 85 L (2016–2017) part 7.4.3.4, 9.10.3 and 9.1.11.1 and Prop. 10 L(2019–2020) part 6.3. One objective was not to have more generous qualifying conditions than other EEA States, but also not overly stringent. The Norwegian legislator was

also worried that generous qualifying requirements could act as a disincentive for seeking employment.

(64) There is also a right to disability benefit when the applicant is disabled due to a work-related accident, cf. Section 12-17 of the NIA. There is no requirement of prior periods of insurance in these cases. When applied together with Article 5 of Regulation 883/2004, work-related accidents from other EEA states are taken into consideration when assessing whether the requirements in Section 12-17 are met.

4 THE PROCESSING OF DISABILITY APPLICATIONS IN NORWAY WHEN THE APPLICANT HAS LIVED IN ANOTHER EEA STATE

(65) When the Labour and Welfare Administration (Nav) is the competent institution for a claim for a disability benefit, information on completed periods is collected in accordance with the rules in Article 12(1) and Article 47(4) and (5) of Regulation 987/2009. If the applicant resides in Norway, Nav will conduct a preliminary assessment of the applicant's periods of insurance in the Norwegian National Insurance Scheme. The result of this preliminary assessment is presented on a SED P5000 (insurance periods) and sent to any relevant EEA States together with the application.

(66) When a reply with a SED P5000 containing the credited periods of insurance from other EEA States is received, Nav will finalise the assessment of periods of insurance in the Norwegian National Insurance Scheme and apply the relevant conflict-of law rules, see below. Once Nav has made a final decision as to whether the applicant has a right to a disability benefit, a copy of the decision letter and a SED P6000 (information of decision) is sent to the other relevant institutions.

(67) If the applicant resides in another EEA State, Nav receives an application (SED P2200) from the competent institution in the EEA State of residence. In approximately 50 percent of the cases, a confirmation of insurance periods in the other EEA state (SED P5000) is received at the same time as the SED P2200 (claim for disability benefit). In the remaining cases, Nav requests this confirmation.

(68) If Nav has doubts about the validity of a document or the accuracy of the facts on which the particulars contained therein are based, Nav will send a request to the issuing institution asking for clarification or an updated P5000, in accordance with Article 5 (3) of Regulation 987/2009.

(69) When Nav has all the information necessary regarding the claim for a disability benefit, whether the applicant resides in Norway or in another EEA State, the time of onset of disability is set pursuant to Section 12-8 of the NIA.

(70) When the decision is made, Nav notifies the claimant about the decision, cf. Article 3(4), second subparagraph, and Article 48(1), first subparagraph of Regulation 987/2009. Once the contact institution (which, in cases where the applicant resides in Norway, is Nav) has been notified of all decisions taken by each institution, it shall send the claimant and the

other institutions concerned a summary of those decisions, cf. Article 48(1) second subparagraph of Regulation 987/2009.

(71) When the applicant has received a summary of the decisions, he or she retains the right to a new assessment of the decisions by the institutions involved under Article 48(2). This only applies if it appears to the claimant following receipt of the summary that his/her rights may have been adversely affected by the interaction of decisions. The right to a new assessment does not apply to all aspects of the decision. The claimant shall have the right to a review of the decisions by the institutions concerned within the time limits laid down in the respective national legislation, which in Norway is six weeks from the decision was received.

(72) Under the former Regulation 1408/71, certifications were regulated by article 2 in Regulation 574/72, and model documents called E-forms were used. The change from E-forms to SEDs under Regulation 987/2009 has not affected applicants' material rights.

5 QUESTION 1

(73) By its first question, the referring court asks, in essence, which periods from other EEA States must be aggregated under Article 6 of the Regulation when applying a provision such as Section 12-2 first paragraph of the NIA.

(74) Article 6 requires that periods of insurance, employment, self-employment or residence completed under the legislation of other EEA States are added to the periods completed under the legislation applied by the competent institution.

(75) It is settled case-law that Regulation 883/2004 does not set up a common scheme of social security but has the sole objective of ensuring coordination between the various national schemes which continue to exist. The EEA States thus retain the power to organise their own social security schemes.[3]

(76) The Regulation does not determine the conditions governing the constitution of periods of employment, insurance or residence, and these periods are therefore defined exclusively by the legislation of the EEA State under which the periods in question are completed.[4]

(77) Article 1(t) of the Regulation defines the concept "periods of insurance" as periods of contribution, employment or self-employment as defined or recognised as periods of insurance by the legislation under which they were completed or considered as completed, and all periods treated as such by the said legislation as equivalent to periods of insurance.

(78) The requirement in Section 12-2 first paragraph of the NIA of five years of membership in the National Insurance Scheme preceding the onset of disability is a requirement of periods of insurance within the meaning of Article 1(t) of the Regulation.

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[3] See the judgment in *Zakład Ubezpieczeń Społecznych I Oddział w Warszawie*, C-866/19, EU:C:2021:865, para. 25, with further references.
[4] Ibid., para. 26.

(79) The requirements for membership in the National Insurance Scheme are set out in Chapter 2 of the NIA. Members of the scheme must pay social security contributions according to the provisions of Section 23-3 of the NIA.

(80) It is therefore not correct, as submitted by A, that the requirement in Section 12-2 first paragraph, of five years of prior membership, refers to a period of residence within the meaning of Article 1(v) of the Regulation. As already mentioned, Section 12-2 requires periods of prior membership in the National Insurance Scheme, not periods of residence.

(81) In any event, it is for the Norwegian Supreme Court to determine whether the requirement in Section 12-2 first paragraph constitutes a period of insurance, cf. Article 1(t), or a period of residence, cf. Article 1(v), as those terms are defined by reference to national legislation.

(82) Article 6 of the Regulation provides that the competent institution of an EEA State whose legislation makes the acquisition of the right to benefits conditional upon the completion of periods of insurance, employment, self-employment or residence shall, to the extent necessary, take into account periods of insurance, employment, self-employment or residence completed under the legislation of other EEA States as though they were completed under the legislation which it applies.

(83) Section 12-2 first paragraph of the NIA requires five years of insurance against the risk of invalidity. Consequently, periods of insurance against the risk of invalidity completed by A and B under the legislation of other EEA States must be added to the periods completed under Norwegian legislation.

(84) Periods of insurance for a different social security risk cannot be aggregated under Article 6. If, for example, a person has completed periods of insurance under the legislation of another EEA State only in relation to maternity benefits, these periods cannot be added to periods of insurance for invalidity benefits. Such an interpretation of Article 6 would not be compatible with the objective of coordination, as the person has not acquired any rights in relation to the risk of invalidity from the other EEA State[5].

(85) In any event, the same follows from national legislation in the case in the main proceedings, since the criterion of prior membership in Section 12-2 first paragraph of the NIA must be interpreted as requiring insurance in the National Insurance Scheme which covers the risk of disability.

(86) All periods of insurance — be they contributory periods or periods treated as equivalent to insurance periods under national legislation — fulfil the notion of "periods of insurance" for

[5] See also Decision No H6 of the Administrative Commission for the Coordination of Social Security Systems of 16 December 2010 concerning the application of certain principles regarding the aggregation of periods under Article 6 of the Regulation, Section 2, which refers to "periods for the relevant *contingency*".

the purposes of applying the Regulation.[6] The principle of aggregation requires that periods communicated by other EEA States shall be aggregated without questioning their quality.[7]

(87) Where a national provision requires certain periods of prior insurance, such as Section 12-2 first paragraph of the NIA, periods which are not defined as "periods of insurance" under the legislation of other EEA States cannot be taken into account when applying Article 6.

(88) Any periods of employment or self-employment, cf. Article 1(u), or periods of residence, cf. Article 1(v), completed under the legislation of other EEA States are consequently immaterial in relation to a national provision which requires "periods of insurance".

(89) Periods that are not defined as periods of insurance, employment, self-employment or residence by the EEA State under which legislation they were completed, cf. Article 1(t), (u) and (v), can never be taken into account. Article 6 expressly refers to periods of insurance, employment, self-employment or residence "completed under the legislation of" an EEA State. Only such periods may be aggregated pursuant to Article 6.[8]

(90) Hence, the fact that a person has resided legally in another EEA State, or that legal residence would have been sufficient for membership of the insurance scheme in the competent EEA State had the person lived in that EEA State at the time, is immaterial for the aggregation of periods under Article 6. Periods of insurance for the relevant risk completed under the legislation of another EEA State shall be taken into account solely by applying the principle of aggregation of periods as laid down in Articles 6, see recital 10 of the Regulation.[9]

(91) Article 5 of the Regulation is not of relevance when aggregating periods under Article 6. Article 5 and 6 of the Regulation have different material scopes. Article 6 is *lex specialis* as regards the coordination of periods of insurance from several EEA States..

(92) Hence, the answer to the first question is that Article 6 of the Regulation must be interpreted as meaning that when a national provision requires periods of insurance in order to acquire the right to a disability benefit, the competent institution must take into account all periods of insurance against the risk of invalidity completed under the legislation of other EEA States as though they were completed under the legislation which it applies.

6 QUESTION 2

(93) By its second question, the referring court asks, in essence, whether Article 6 of Regulation 883/2004 and Articles 5 and 12 of Regulation 987/2009 must be interpreted as meaning that

[6] See Decision No H6 of the Administrative Commission for the Coordination of Social Security Systems of 16 December 2010 concerning the application of certain principles regarding the aggregation of periods under Article 6 of the Regulation, Section 1.
[7] Ibid., Section 2
[8] See the judgment in *Zakład Ubezpieczeń Społecznych I Oddział w Warszawie*, C-866/19, EU:C:2021:865, para. 26.
[9] See also Decision No H6 of the Administrative Commission for the Coordination of Social Security Systems of 16 December 2010 concerning the application of certain principles regarding the aggregation of periods under Article 6 of the Regulation, Section 2.

the institution of the competent State can base itself on the answers from issuing institutions of other EEA States when aggregating periods under Article 6 of Regulation 883/2004, or is required to obtain additional information.

(94) Article 12(1) of Regulation 987/2009 provides that the competent institution shall contact the institutions of the EEA States to whose legislation the person concerned has also been subject in order to determine all the periods completed under their legislation. Periods of insurance, employment, self-employment or residence completed under the legislation of a Member State shall be added to those completed under the legislation of any other Member State, see Article 12(2).

(95) Pursuant to Article 5(1) of Regulation 987/2009, documents issued by the institution of a EEA State and showing the position of a person for the purposes of the application of Article 6 of Regulation 883/2004 shall be accepted by the institutions of the other EEA States for as long as they have not been withdrawn or declared to be invalid by the EEA State in which they were issued.

(96) If there is doubt about the validity of a document or the accuracy of the facts on which the particulars contained therein are based, it follows from Article 5(2) of Regulation 987/2009 that the institution of the EEA State that receives the document shall ask that institution for the necessary clarification and, where appropriate, the withdrawal of that document. The issuing institution shall reconsider the grounds for issuing the document and, if necessary, withdraw it. If it is not withdrawn, it is binding on the institution and the courts in the State that receives the document, apart for cases of fraud of abuse of rights.[10]

(97) If the institution of the competent EEA State has doubts as to the validity of a document or the facts on which the information in that document is based, it must consequently ask the issuing institution for the necessary clarification under Article 5(2).

(98) The institution of the competent EEA State cannot, however, base itself on other periods of insurance, employment, self-employment or residence then the periods provided in the certificate from the issuing institution, apart from cases of fraud or abuse of rights.[11]

(99) Thus, the information in a certificate from the issuing institution is binding on the receiving institution for as long as it has not been withdrawn or declared invalid by the authorities or courts of the that EEA State.

(100) Should the applicant disagree with the issuing institution's understanding of national law – for example as to what constitutes a period of insurance against the risk of invalidity under German social security legislation – the applicant can demand a review of that institution's decision, see Article 48(2) of Regulation 987/2009.

(101) Based on the above, the answer to question 2 is that Article 6 of Regulation 883/2004, read together with Articles 5 and 12 of Regulation 987/2009, must be interpreted as meaning that

[10] See, to this effect, the judgment in *Alpenrind and Others*, C-527/16, EU:C:2018:669, paras. 39–47.
[11] Ibid. para. 46.

a certificate from the issuing institution is binding on the institution and the courts in the EEA State that receives the document, for as long as it has not been withdrawn or declared invalid by the authorities or courts of the issuing EEA State. The institution that receives the document is obliged to ask the issuing institution for the necessary clarification where there is doubt about the validity of a document or the accuracy of the facts on which the particulars contained therein are based.

7 QUESTION 3

(102) By its third question, the referring court asks, in essence, whether Article 6 of the Regulation, and/or Articles 28 or 29 of the EEA Agreement, imposes requirements as to how a national requirement such as Section 12(2) first paragraph of the NIA must be applied for persons who have lived in more than one EEA State.

(103) It is recalled that Section 12(2) first paragraph of the NIA is a requirement of prior "periods of insurance" within the meaning Article 1(t) of the Regulation.

(104) There are no other further conditions attached to the requirement of five years of insurance in Section 12(2). It is sufficient to have five years of insurance prior to the onset of disability. In such a case, periods of insurance completed under the legislation of other EEA States are taken into account solely by applying the principle of aggregation of periods as laid down in Article 6.[12]

(105) In the case in the main proceedings, the insurance periods completed by A and B under the legislation of other EEA States (Spain and Germany) were added by Nav to the periods they had completed under Norwegian law. No insurance periods in the forms received from the Spanish and German institutions were disregarded. The insurance periods completed by A and B under the Spanish and German legislation were also treated in the same way as the insurance periods they had completed under Norwegian legislation. All periods of insurance completed in the five years before the onset of disability (three years in the case of B), were taken into account.

(106) Where a national social security provision requires a period of prior insurance without any other conditions, the provision will be compatible with Article 6 if all periods of insurance completed under the legislation of other EEA States for the same risk are taken into account as if they were completed under the legislation applied by the competent institution.

(107) The case-law relied on by B in the reference for a preliminary ruling[13], concerned national provisions that are not comparable to Section 12-2 first paragraph of the NIA.

[12] See Decision No H6 of the Administrative Commission for the Coordination of Social Security Systems of 16 December 2010 concerning the application of certain principles regarding the aggregation of periods under Article 6 of the Regulation, Section 2.
[13] See paras. 72 and 75.

(108) The national provisions at issue in *Tomaszewska*[14], concerned a mandatory minimum 30-year insurance period for the right to a retirement pension. There was an additional requirement that non-contribution periods could not exceed one third of the contribution periods completed in Poland.[15] Contribution periods from other Member States were not taken into consideration when determining the one-third maximum limit for non-contribution periods in relation to contribution periods.

(109) The CJEU stated that the Member States remain competent to define the conditions for granting social security benefits, even if they make them more strict, provided that the conditions adopted do not give rise to overt or disguised discrimination between European Union workers.[16] The system put in place by the Regulation is merely a system of coordination, concerning, inter alia, the determination of the legislation applicable to employed persons who make use of their right to freedom of movement.[17] It is inherent in such a system that the conditions governing the constitution of periods of employment or insurance will differ depending on the State in which the person concerned has worked. Those conditions are defined exclusively by the legislation of the Member State under which the periods in question were completed.[18]

(110) The CJEU held[19] that the principle of aggregation in Article 45 of former Regulation 1408/71 implements the principle of aggregation of insurance, residence or employment periods as laid down in Article 42(a) EC (which corresponding to Article 29 EEA), and concluded that a Member State is entitled to impose a minimum contribution period for the acquisition of entitlement to a pension provided for by national legislation and to define the nature and limits of insurance periods which may be taken into account for that purpose, on condition that periods completed under the legislation of any other Member State are also taken into consideration under the same conditions as if they had been completed under national legislation.[20]

(111) The CJEU stated that although Polish law may impose a minimum contribution period for the acquisition of right to a retirement pension and for determining the nature of and limits on contribution periods which may be taken into account, it may do so solely on condition that contribution periods completed in another Member State are taken into consideration under the same conditions as those completed in Poland.[21]

(112) The national legislation at issue in *Duchon*[22] was similar to *Tomaszewska* in that there were special provisions that discriminated directly or indirectly against persons who had worked in other Member States.

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[14] C-440/09, *Tomaszewska,* EU:C:2011:114.
[15] See para. 12.
[16] Para. 24.
[17] Para. 25.
[18] Para. 26.
[19] Para. 28.
[20] Para. 31.
[21] Para. 36
[22] C-290/00, *Duchon*, EU:C:2002:234

(113) First, there was an exception to the requirement of a qualifying period as a condition for the acquisition of the right to an occupational disability pension where that disability is the result of an accident at work only in the event that the victim had been insured compulsorily or privately at the time of the accident under the legislation of that State, to the exclusion of the legislation of all other Member States.[23]

(114) Another provision took into account, for the purposes of the prolongation of the reference period during which the qualifying period for acquisition of the right to a pension must have been completed, only those periods during which the insured person received a disability pension under a national accident insurance scheme, without providing for the possibility of a prolongation of that period where a benefit of such a kind was paid under the legislation of another Member State.[24]

(115) The case in the main proceedings concern qualifying requirements for disability benefit in Section 12-2 of the NIA. The first paragraph of Section 12-2 requires five years of insurance preceding the onset of disability. The second and third paragraph of Section 12-2 set out alternative qualifying requirements for applicants who do not satisfy the requirement of five years of insurance before the onset of disability. In practice, there are five different ways to qualify for disability benefit under Section 12-2, since both the second and third paragraph refer to two alternative requirements, as explained in Chapter 3 above.

(116) The appellants A and B did not satisfy any of the five alternative qualification requirements in Section 12-2 of the NIA, see Chapter 2 above.

(117) When Nav applied Section 12-2 first to third paragraph, insurance periods completed by A and B under Spanish and German legislation, as set out in the certificates issued by Spain and Germany, were added to the periods they had completed under Norwegian legislation. This is not contested by A and B.

(118) Consequently, the insurance periods from other EEA States were aggregated in accordance with Article 6 of the Regulation.

(119) The periods during which the appellants A and B were not insured in Spain and Germany, are furthermore not related to the exercise of the right to free movement under Article 28 EEA, as in *Klaus*, see Chapter 2 and 3 above.

(120) However, the appellants claim that the fact that only insurance periods from the five years preceding the onset of disability (three years for B) are relevant under Section 12-2 first paragraph discriminates against workers from other EEA States, cf. Articles 28 and 29 EEA. They argue that the conditions for insurance under Norwegian law are more generous as compared to other EEA States and that it is easier for persons who have spent their entire life in Norway to satisfy the requirement in Section 12-2 first paragraph.

[23] See para. 36.
[24] Para. 46

(121) The Norwegian Government maintains that a provision such as Section 12-2 first paragraph of the NIA is compatible with Articles 28 or 29 EEA. It does not give rise to overt or disguised discrimination between EEA workers.

(122) It follows from the case-law of the CJEU, that the EEA States are entitled to impose a minimum qualifying period for the acquisition of entitlement to a benefit provided for by national legislation, and to define the nature and limits of insurance periods which may be taken into account for that purpose, on condition that periods completed under the legislation of any other EEA State are also taken into consideration under the same conditions as if they had been completed under national legislation.[25] In such cases, there is no overt or disguised discrimination between European Union workers.[26]

(123) In the case in the main proceedings, the insurance periods completed under the legislation of other EEA States (Germany and Spain) were taken into account under the same conditions as if they had been completed under Norwegian legislation. Hence, the appellants A and B have not lost any acquired social security rights from other EEA States.

(124) Insurance periods completed by A under Spanish legislation during the five years before the onset of disability were added to periods completed under Norwegian legislation.

(125) Insurance periods completed by B under German legislation during the three years before the onset of disability were added to periods completed under Norwegian legislation.

(126) Consequently, the appellants A and B were treated in the same ways as persons who had completed the same insurance periods during the same period of time under Norwegian legislation. The application of Section 12-2 first paragraph of the NIA therefore does not give rise to overt or disguised discrimination between EEA workers.

(127) The fact that A and B, as regards the periods in which they were not insured in any EEA State against the risk of invalidity, are not treated in the same way as persons who were insured under Norwegian legislation, cannot be regarded as discriminatory.

(128) Persons who were not insured under the legislation of any EEA State, as was the case of the appellants A and B for part of the five/three years before the onset of their disability, are not in a comparable situation to persons who were insured under the legislation of an EEA State. Persons who were insured against the risk of invalidity under Norwegian legislation during the whole period of five/three years were also required to pay social security contributions according to Section 23-3 of the NIA. This includes persons who only receive social security benefits, such for example as sickness and unemployment benefit. It is obvious that their situation is not comparable to persons who were not insured against the risk of disability in any EEA State and who were not obliged to pay social security contributions for that risk.

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[25] See for example, C-440/09, *Tomaszewska,* EU:C:2011:114. para. 31. In the judgment in C-866/19 *Zakład Ubezpieczeń Społecznych I Oddział w Warszawie*, EU:C:2021:865, para. 24, the CJEU stated that the case-law relating to the provisions on aggregation in Regulation 1408/71 (such as *Tomaszewska*) retains all its relevance.

[26] See C-440/09, *Tomaszewska,* EU:C:2011:114. para. 31, read together with para. 24.

(129) The fact that the Norwegian provisions on membership in the National Insurance Scheme in the NIA differ from the provisions in other EEA States – such as Spain or Germany – cannot be regarded as discriminatory, cf. Article 28 EEA, but is simply a consequence of the system of coordination established by Article 29 EEA and the rules on aggregation in Article 6, cf. Article 1(t).

(130) The system of coordination is built on the premise that persons who are not insured in any EEA State are not in a comparable situation to persons who are in fact insured in an EEA State. Consequently, a person who is not insured in any EEA State cannot claim to be treated as if he or she had been insured in an EEA State at that time.

(131) Persons who have lived in an EEA State with more generous insurance requirements will be in an advantageous situation compared to persons coming from other EEA States, not only in relation to qualifying requirements but in relation to any national provision which refers to insurance periods. Such effects are inherent in a system of coordination and thus cannot be regarded as discriminatory, cf. Article 28 EEA.

(132) It is therefore compatible with Article 6 of the Regulation and Article 28 and 29 EEA that the appellants A and B are not treated in the same way, in relation to periods during which they were not insured in any EEA State against the risk of invalidity, as persons who were insured under Norwegian legislation, and who were required to pay social security contributions, cf. Section 23-3 of the NIA.

(133) Furthermore, A and B cannot claim that insurance periods which they completed in Norway or other EEA States before or after the relevant period of time under Section 12-2 of the NIA (five years before the onset of disability in the case of A – three years in the case of B) must be taken into account, since this would be tantamount to amending Section 12-2.

(134) An interpretation to the effect that persons who are not insured against a given risk in any EEA State, could claim to be treated in the competent EEA State as if they had been insured there, would not only be contrary to the wording and system of the Regulation and Article 29 EEA, but could furthermore have an negative impact on the level of social protection within the EEA. If EEA States with generous membership requirements must extend rights to persons who were not insured in any EEA State, without those persons having to pay social security contributions in accordance with the provisions of the EEA State, that State would have a strong incentive to amend its rules on membership to avoid a free-rider problem. This could in turn lead to a "race to the bottom" as regards conditions for membership in social security schemes and a lower general level of social protection within the EEA.

(135) The financial balance and legitimacy of a scheme of insurance such as the Norwegian one is based on redistribution among the insured members. In practice, members with high levels of income contribute to coverage for lower income members, while at the same time being entitled to benefits based only on part of that income. Qualifying rules for access to long-term benefit are an essential component of this system. Provided these rules are applied in a non-discriminatory manner, such as in the present case, they are compatible with Article 6 of the Regulation and Articles 28 and 29 EEA.

(136) Based on the above, the answer to question 3 is that a national qualifying requirement such as Section 12-2 first paragraph of the NIA is compatible with Article 6 of the Regulation and Articles 28 and 29 EEA provided that all periods of insurance completed under the legislation of other EEA States for the same risk are taken into account, as if they were completed under the legislation applied by the competent institution.

8 ANSWER TO THE QUESTIONS

(137) On this basis, the Norwegian State respectfully submits that the questions from the Supreme Court of Norway should be answered as follows:

1. Article 6 of Regulation 883/2004 must be interpreted as meaning that when a national provision requires periods of insurance in order to acquire the right to a disability benefit, the competent institution must take into account all periods of insurance against the risk of invalidity completed under the legislation of other EEA States as though they were completed under the legislation which it applies.

2. Article 6 of the Regulation 883/2004, read together with Articles 5 and 12 of Regulation 987/2009, must be interpreted as meaning that a certificate from the issuing institution is binding on the institution and the courts in the EEA State that receives the document, for as long as it has not been withdrawn or declared invalid by the authorities or courts of the issuing EEA State. The institution that receives the document is obliged to ask the issuing institution for the necessary clarification where there is doubt about the validity of a document or the accuracy of the facts on which the particulars contained therein are based.

3. A national requirement of insurance such as Section 12-2 first paragraph of the NIA is compatible with Article 6 of the Regulation and Articles 28 and 29 EEA provided all periods of insurance completed under the legislation of other EEA States for the same risk are taken into account as if they were completed under the legislation applied by the competent institution.

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Oslo, 4.5.2026

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