



EUROPEAN COMMISSION

Brussels, 2 September 2024
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**TO THE PRESIDENT AND MEMBERS OF THE
EFTA COURT**

WRITTEN OBSERVATIONS

submitted by the **EUROPEAN COMMISSION**, pursuant to Article 20 of the Statute of the EFTA Court, by the European Commission, represented by Elisabetta MONTAGUTI, Legal Adviser and Jonathan TOMKIN Member of its Legal Service, acting as agents with a postal address for service in Brussels at the Legal Service, *Greffe contentieux*, BERL 1/169, 200, rue de la Loi, 1049 Brussels, and consenting to service by e-EFTACOURT

in Case E-15/24,

A

Appellant

- and –

B

Respondent

concerning the interpretation of Article 28 of the EEA Agreement and Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

I. THE LEGAL FRAMEWORK

A. EEA Law

1. Part III of the EEA Agreement provides for the free movement of persons in the EEA. Chapter I (Articles 28 – 30) is entitled “Free movements of workers the self-employed”; Chapter II (Articles 31- 35) is entitled “The right of establishment”; Chapter III (Articles 36-39) is entitled “Services”; Chapter IV (Articles 40-45) is entitled “Capital”.

2. Article 28(1), (3) and (5) of the EEA Agreement reads as follows:

“1. Freedom of movement for workers shall be secured among EC Member States and EFTA States.

[...]

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

[...]

(b) to move freely within the territory of EC Member States and EFTA States for this purpose;

(c) to stay in the territory of an EC Member State or an EFTA State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

[...]

5. Annex V contains specific provisions on the free movement of workers.”

3. The detailed rules on the right of movement of Union citizens and their family members, as set out in Directive 2004/38/EC are applicable in the EEA legal order following the incorporation of that Directive into the EEA Agreement by the EEA Joint Committee Decision 158/2007 of 7 December 2007¹.
4. The Directive was incorporated into the EEA Agreement by its insertion in point 3 of Annex VIII (“Right of Establishment”) to the Agreement. Pursuant to the second paragraph of point 3:

¹ OJ L124, 8.5.2008, p.20.

- a. The Directive is to apply, as appropriate, to the fields covered by Annex VIII.
 - b. The Agreement applies to nationals of the Contracting Parties. However, members of their family possessing third country nationality shall derive certain rights according to the Directive.
 - c. The words “Union citizen(s)” shall be replaced by the words “national(s) of EC Member States and EFTA States.”
 - d. In Article 24(1) the word “Treaty” shall read “Agreement” and the words “secondary law” shall read “secondary law incorporated in the Agreement”.
5. Pursuant to Protocol 35 of the EEA Agreement the effect of implemented EEA law must be given precedence over national law².
 6. Recital 2 of Directive 2004/38/EC recalls that the free movement of persons constitutes one of the fundamental freedoms of the internal market, which comprises an area without internal frontiers, in which freedom is ensured in accordance with the provisions of the Treaty.
 7. Article 4(1) of Directive 2004/38/EC reads as follows:

“Without prejudice to the provisions on travel documents applicable to national border controls, all Union citizens with a valid identity card or passport and their family members who are not nationals of a Member State and who hold a valid passport shall have the right to leave the territory of a Member State to travel to another Member State..”
 8. Article 5(1) of Directive 2004/38/EC provides that:

“Without prejudice to the provisions on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport and shall grant

² Protocol 35 to the EEA Agreement states that for cases of possible conflicts between implemented EEA rules and other statutory provisions, the EFTA States undertake to introduce, if necessary, a statutory provision to the effect that EEA rules prevail in these cases.

family members who are not nationals of a Member State leave to enter their territory with a valid passport.”

9. Article 7 of Directive 2004/38/EC provides that:

“1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

(a) are workers or self-employed persons in the host Member State; [...]

[...]”

10. Article 27(1) and (2) of Directive 2004/38/EC provides that:

“1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute a grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.”

B. National Law

11. The Commission refers to the provisions of national law as set out at pages 4-6 of the request for an Advisory Opinion.

II. THE FACTS AND THE PROCEDURE

12. The appellant, 'A', and respondent, 'B', in the main proceedings are, respectively, the mother and father of a minor child 'C' who was born in 2016.
13. Both A and B are Norwegian nationals residing in Norway. Following the breakdown of their relationship in 2022, they agreed to exercise shared parental responsibility over their child, who resides permanently with A³.
14. A wishes to relocate with her child and new partner to Denmark. It is apparent from the request for an Advisory Opinion that A is employed by a multinational company with operations in both Norway and Denmark and has been offered the possibility to transfer her place of employment to Denmark.
15. In circumstances where B did not consent to the proposed relocation, A, on 16 June 2023, and in line with the requirements of the Norwegian Children and Parents Act (the "Children's Act")⁴, instituted proceedings against B before the Oslo District Court, with a view to obtaining permission from the Court for the proposed relocation.
16. By judgment dated 27 February 2024, A's application for consent to relocate was refused. The District Court further laid down details of the parents' access rights.
17. A has appealed the refusal before the Borgarting Court of Appeal. As part of the proceedings, A observed that pursuant to the Children's Act, the entitlement of a parent in her situation to move with her child to reside and work in another EEA country is subject to the consent of the parent having shared parental responsibility, or failing such consent, the permission of the court. By contrast, no such requirement for consent applies as regards relocation within Norway. In these conditions, the appellant submits that a requirement imposed by the Children's act is discriminatory and in breach of the requirements of EEA Law.

³ Although not stated expressly in the request for advisory opinion, the Commission understands that the mother has sole custody of the child.

⁴ Norwegian Act relating to Children and Parents of 8 April 1981 no.7.

18. Considering that the determination of the appeal requires an interpretation of EEA law, the Court of Appeal decided to stay the proceedings and submit the following questions to the EFTA Court for an Advisory Opinion:

“Firstly, is it, and if so, under which circumstances is it, compatible with the rights of the parents and the child under Directive 2004/38/EC that national legislation on the relationship between a child and its parents stipulates that a custodial parent, in situations where the parents have joint parental responsibility and the non-custodial parent does not consent to the relocation, cannot relocate to another EEA state with the child without initiating legal action and getting the court's permission to relocate, when the same parent would have the right to relocate domestically with the child without obtaining the non-custodial parent's consent or permission from the court?”

Secondly, is it, and if so, under which circumstances is it, compatible with Article 28 of the EEA Agreement that national legislation on the relationship between a child and its parents stipulates that a custodial parent, in situations where the parents have joint parental responsibility and the noncustodial parent does not consent to the relocation, cannot relocate to another EEA state with the child to take up employment there without initiating legal action and getting the court's permission to relocate, when the same parent would have the right to relocate domestically with the child without obtaining the non-custodial parent's consent or permission from the court?”

III. ON THE REQUEST FOR AN ADVISORY OPINION

19. By its questions, the referring court seeks guidance on whether the freedom of movement of workers provided for in Article 28 EEA and Directive 2004/38 precludes national rules, such as those at issue in the main proceedings, which make the right of a parent who exercises joint parental responsibility over a child, to move with that child to reside and work in another EEA State, conditional on that parent obtaining the consent of the other parent or issuing proceedings with a view to obtaining permission from a court. These questions arise in a context where no equivalent obligation to obtain consent is imposed on parents seeking to relocate within the EEA State concerned.

20. Pursuant to Article 28(1) of the EEA Agreement, freedom of movement for workers shall be secured among EC Member States and the EFTA States. Article 28 EEA precludes any national measure which is capable of hindering or rendering less attractive the exercise by EEA nationals of the fundamental freedoms guaranteed by that article⁵.
21. The detailed rules governing the condition for the exercise of that right are laid down in particular in Directive 2004/38. As is apparent from the provisions of Articles 4 and 5 of Directive 2004/38, freedom of movement includes both the right to leave the territory of a Member State to travel to another Member State ('right of exit') and the right to be admitted to the territory of a Member State ('right of entry')⁶. In accordance with settled case-law, rules which preclude or deter an EEA national from leaving his country of origin in order to exercise his right to freedom of movement constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned⁷.
22. It does not appear to be disputed that the provisions of the Children's Act at issue in the present proceedings constitute a restriction on the right of free movement. The consequence of the contested provisions of the Children's Act is that a parent with shared rights of parental responsibility over a minor, cannot leave the State with that minor to move and reside as a worker in another EEA State.
23. However, freedom of movement is not unconditional and may be subject to limitations and conditions. Pursuant to Article 27(1) of Directive 2004/38, which falls within Chapter VI of that directive, freedom of movement may be restricted

⁵ See, as regards Article 45 TFEU, Case C-703/17, *Krah*, EU:C:2019:850, paragraph 41. See also: Case C-318/05, *Commission v Germany*, EU:C:2007:495, paragraph 114; Case C-269/09, *Commission v Spain*, EU:C:2012:439, paragraph 51 and Case C-187/15, *Pöpperl*, EU:C:2016:550, paragraphs 23-24.

⁶ See, for example, Case C-128/22, *Nordic Info*, EU:C:2023:951, paragraph 55. See also, Case C-703/17, *Krah*, EU:C:2019:850, paragraph 41.

⁷ See, as regards Article 45 TFEU, Case C-464/02, *Commission v Denmark*, paragraph 35; Case C-345/05, *Commission v Portugal*, paragraph 16; Case C-269/09, *Commission v Spain*, EU:C:2012:439, paragraphs 52-54, and C-104/06, *Commission v Sweden*, paragraph 18 and Case C-318/05, *Commission v Germany*, EU:C:2007:495, paragraph 115.

on grounds of public policy, public security and public health⁸. In addition, it is well established that freedom of movement may be restricted for the purposes of ensuring compliance with a State's obligation to respect fundamental rights⁹.

24. In the respondent's submission, the requirement for consent under the Children's Act is capable of being justified on both public health and public policy grounds. In the first instance, it is argued that the effective removal of a child from a parent can impact on the mental health of the child. Secondly, the consent requirement is claimed to be consistent with the public policy objective of preserving the right to respect for family life and the best interests of the child¹⁰.
25. The Commission recalls that Contracting parties to the European Convention on Human Rights are required to ensure respect for the right to family life enshrined in Article 8 ECHR. In accordance with settled case-law, the mutual enjoyment by parents and children of each other's company constitutes a fundamental element of that right¹¹. The European Court of Human Rights (ECtHR) has moreover underlined that as regards a child's family life, there is broad consensus – including in international law – that in all decisions concerning children their best interests must be paramount¹². Mechanisms must therefore be in place to allow for that interest to be taken into account.
26. Furthermore, although the essential object of Article 8 ECHR is to protect the individual against arbitrary interference by public authorities, it is well established that Contracting parties have certain positive obligations inherent in ensuring

⁸ See Case E-5/23, *LDL*, judgment of 21 March 2024, paragraph 49 referring to *Orfanopoulos and Oliveri*, C-482/01 and C-493/01, EU:C:2004:262, paragraph 47.

⁹ See, as regards the objective of ensuring rights of the child, Case C-244/06, *Dynamic Medien*, EU:C:2008:85, paragraph 42. See also, more generally, Case C-112/00, *Schmidberger*, EU:C:2003:333, paragraph 74 and Case C-36/02, *Omega*, EU:C:2004:614, paragraph 35.

¹⁰ See the Request for an Advisory Opinion, page 9.

¹¹ *Kupás v Hungary*, judgment of 28 October 2021, application no. 24720/17, paragraph 38. See also, *K. and T. v. Finland* [GC], judgment of 12 July 2001, application no. 25702/94, paragraph 151, and *Monory v. Romania and Hungary*, judgment of 5 April 2005, application no. 71099/01, paragraph 70.

¹² *Luzzi v Italy*, judgment of 5 December 2019, application no. 48322/17, paragraph 67. See also, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, paragraph 135.

effective respect for family life¹³. Such positive obligations include the adoption of measures designed to secure respect for family life even in the sphere of relations between individuals, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific steps¹⁴. Competent authorities must be equipped with powers to adopt measures to ensure that parents are reunited with their children, including in cases of conflict between the two parents¹⁵. The requirement to take positive steps also applies to the provision of assistance enabling a parent to effectively enforce his parental and access rights¹⁶.

27. In view of these considerations the Commission considers that it is, in principle, legitimate for a Member State to introduce measures that restrict the freedom of movement of a parent exercising joint parental responsibility, where such measures are necessary to protect family life and the best interests of the child, in particular, by safeguarding a child's right to maintain on a regular basis a personal relationship and direct contact with both their parents. Such a measure may also contribute to protecting children against international child abduction as it would simplify the return of children who were relocated against their best interests by reference to the missing court approval¹⁷.
28. At the same time restrictions on freedom of movement must comply with the principle of proportionality. Pursuant to that principle, measures restricting a

¹³ See *Luzi v Italy*, judgment of 5 December 2019, application no. 48322/17, paragraph 65. See also, specifically, as regards the failure to prevent travel abroad that would undermine effective access rights: *Zawadka v Poland*, judgment of 23 June 2005, application no. 48542/99, paragraph 53. See also, *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, p. 11, § 23, and, mutatis mutandis, *Osman v. the United Kingdom*, judgment of 28 October 1998, Reports 1998-VIII, p. 3159, § 115)

¹⁴ *Zawadka v Poland*, judgment of 23 June 2005, application no. 48542/99, paragraph 53.

¹⁵ See *Luzi v Italy*, judgment of 5 December 2019, application no. 48322/17, paragraph 65. See also: *Zawadka v Poland*, judgment of 23 June 2005, application no. 48542/99, paragraph 53, as well as *Ignaccolo-Zenide v. Romania*, no. 31679/96, paragraph 108, *Zavřel v. the Czech Republic*, no. 14044/05, paragraph 47, 18 January 2007, and *Mihailova v. Bulgaria*, application no. 35978/02, paragraph 80.

¹⁶ *Zawadka v Poland*, judgment of 23 June 2005, application no. 48542/99.

¹⁷ See Case C-454/19, *ZW*, EU:C:2020:947, paragraph 43. See also page 8 of the Request for an Advisory Opinion: "If a parent relocates abroad with the child against Section 40(1), second sentence or (2), the other parent can exercise their rights using the provisions of the Child Abduction Act based on the [1980 Hague Convention]".

fundamental freedom must be suitable to achieve the public interest objective invoked and not go beyond what is necessary in order to attain that objective¹⁸. It is settled case-law that measures must both be apt to achieve the public interest objective at issue and must also be internally consistent and systematic¹⁹.

29. The question which arises in the present case is whether these requirements are fulfilled in circumstances where the obligation to obtain consent imposed by the Children's Act *applies solely to travel to another EEA State* and does not apply to relocation within the State. Indeed, it is apparent from the request for an Advisory Opinion that the parent with custody of a child has exclusive right to decide on the child's place of residence within the territory of Norway, no matter the distance²⁰. It equally appears that the decision on internal relocation is circumscribed only by an obligation to give prior notification to the other parent and, in the event of disagreement, a mandatory mediation procedure²¹.
30. As regards the suitability and consistency of the measure in question, the Commission submits, first of all, that the move by one parent with his or her child from one place of residence to another may have an impact on family life whether that relocation takes place within a single State or between two States. This is

¹⁸ Case C-673/16, *Coman and Others*, EU:C:2018:385, paragraph 41 and the case-law cited. See also: Case C-679/16, *A (Assistance for a disabled person)*, EU:C:2018:601, paragraph 67 and Case C-243/01, *Gambelli*, EU:C:2003:597, paragraph 67.

¹⁹ See Case E-8/20, *Criminal proceedings v N*, judgment of 5 May 2021, paragraph 109 and Case E-3/06, *Ladbrokes*, judgment of 30 May 2007, paragraph 51. For instances of inconsistency resulting from unequal treatment, in particular, see: Case C-500/06, *Corporación Dermoestética*, EU:C:2008:421 and C-169/07, *Hartlauer*, EU:C:2009:141, paragraphs 54-60. On the requirement for consistency generally: Case C-243/01, *Gambelli*, EU:C:2003:597 paragraph 67. See also, as regards, differentiated penalties for the offence of child abduction: Case C-454/19, *ZW*, EU:C:2020:947, paragraph 43. For the application of the consistency requirement in other policy areas, see: Case C-265/06, *Commission v Portugal*, EU:C:2008:210, paragraph 43 and Case C-333/14, *Scotch Whiskey Association and Others*, EU:C:2015:845, paragraphs 37-38.

For further examination of the requirement for consistency, see Gunnar Thor Petursson, "*Two tales, One Outcome?: The Principle of Proportionality in the Case-law of the EFTA Court*", p.231 and Halvard Haukeland Fredriksen and Christian NK Franklin, "*The NAV Case in the EFTA Court and the Supreme Court of Norway*", p.267 at p.280, published in "The EFTA Court, developing over three decades" (Hart, 2024).

²⁰ See request for an Advisory Opinion, pages 4 and 6: "*Once these duties have been fulfilled, the custodial parent has the right, even if the other parent does not consent, to relocate with the child within Norway, regardless of the travel distance*".

²¹ See Section 42a of the Children Act and request for an Advisory Opinion, page 5.

particularly the case, where the State of residence, such as EEA State in the main proceedings, is one that has a sizeable geographic territory and where the distances between the place of residence between a parent and their child could be considerable. Indeed, a long distance move *within a single EEA State* could conceivably have a greater detrimental impact on family life than the cross-border relocation by a frontier worker to a neighbouring EEA State²². Of course, it is not excluded that relocation to another EEA State could also entail travel to territories that are considerably further away compared to relocation within the same EEA State. Nevertheless, all these scenarios suggest that it is the relocating at a distance, as opposed to the *simple fact of crossing a border*, that is capable, *in itself*, of having an impact on family life.

31. At the same time, the Commission recognises that relocation to another State, regardless of distance, could also have important effects on family life. In this respect, it is noted that most particularly in situations of family breakdown, the existence of a dispute between parents over custody or access rights may make the preservation of family life conditional on the possibility for one parent to effectively enforce his or her rights through the courts. Since relocation between EEA States is liable to impact on both the applicable law as well as the courts with jurisdiction, relocation to another EEA State has the potential to alter materially the conditions under which a parent may secure the recognition and enforcement of rights recognised in the EEA State of residence.
32. Nevertheless, the Commission notes that it is precisely to mitigate the possible adverse consequences of the existence of different legal systems and jurisdictions on the right to protection of family life that EEA States have entered into international agreements that provide for judicial cooperation in civil matters and facilitate the recognition and enforcement of judgments in the field of family law. In this context, A has referred in her observations to the existence of “*a well-*

²² In the case of Norway, the distance from North to South stretches over 1,700 kilometres. Where relocations take place close to the Norwegian-Swedish border, it may well be that the child concerned can visit both parents even during the same day, which is evidently not possible if the parents live at the opposite ends of Norway. By way of additional example, flights between Oslo and Trondheim are approximately the same duration as those between Oslo and Copenhagen and Oslo and Stockholm. Flights between Oslo and Tromsø, in the north of Norway, are twice as long as flights between Oslo and these two capitals and certainly longer than flights to Hamburg or a number of other European cities.

*functioning cooperation [which] has been established between the competent authorities of the two states*²³. The question which therefore falls for consideration is whether it follows from the existence of such instruments of cooperation that movement within an EEA State or between EEA States is comparable, such that it would not in fact be justified or coherent to treat cross-border relocation differently to relocation within a single EEA State²⁴.

33. As regards such cooperation, the Commission notes, first of all, that while the Union has adopted rules on recognition and parental rights²⁵, such rules are not applicable to either of the States at issue in the main proceedings.
34. However, both Norway and Denmark, like all EU Member States, are parties to other instruments of judicial cooperation in civil matters, including the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children or Hague Convention 1996 (the ‘1996 Hague Convention’)²⁶. The Commission notes that the 1996 Convention aims, among others, to avoid conflicts between the legal systems of different states in matters involving parental authority and protection measures for children, as well as to establish cooperation in this area between States and between States’ competent authorities.
35. The Commission further notes that both Norway and Denmark – like all EU Member States – are also parties to the 1980 Hague Convention on civil aspects of international child abduction²⁷ and all EEA States are parties to the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions

²³ See Request for an Advisory Opinion, page 8.

²⁴ See, in this respect, the reasoning of the Court in Case C-454/19, *ZW*, EU:C:2020:947, paragraphs 48-49.

²⁵ Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (OJ L 178, 2.7.2019, p. 1).

²⁶ Though not all EEA States: neither Iceland nor Liechtenstein are parties to the 1996 Hague Convention.

²⁷ Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Though not all EEA States: while Norway and Iceland are parties to the 1980 Convention, Liechtenstein is not.

concerning Custody of Children and on Restoration of Custody of Children²⁸. In addition, Norway is also bound by the Convention of 6 February 1931 between Norway, Denmark, Finland, Iceland and Sweden (the ‘Nordic Family Law Convention’)²⁹.

36. The Commission recalls that, according to case-law of the CJEU, the simple fact that movement to another Member State implies becoming subject to a different legal jurisdiction, cannot, *in and of itself*, justify a differentiated treatment when compared with movement within a single Member State, in circumstances where relevant and appropriate instruments of judicial cooperation are in place to ensure that rights enjoyed in one State can be recognised and enforced in another³⁰. In such a context, an attempt to invoke practical difficulties or the absence of effective judicial protection linked to a change in jurisdiction would amount to placing Member States on the same footing as third States and would be at odds with the very spirit of the rules in place³¹.
37. Indeed, as noted above, the adoption of instruments facilitating the recognition and enforcement of judgments rendered in another State is intended precisely to mitigate the effects of cross-border relocation within the Area of Freedom Security and Justice in which free movement of persons is ensured pursuant to Article 3(2) TEU. The presumption that another Member State would fail to comply with its obligations under Union law or fail to comply with fundamental rights would moreover be contrary to the principle of mutual trust which has been recognised as the cornerstone for the creation of a genuine judicial area³².

²⁸ European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, European Treaty Series, no.105 (Luxemburg, 20.V.1980). Other international cooperation instruments may also be relevant inasmuch as child abduction also has criminal law implications.

²⁹ Agreement between Sweden, Denmark, Finland, Iceland and Norway concerning changes in the text of articles 2, 7 and 9 of the Convention concluded between Sweden, Denmark, Finland, Iceland and Norway on 6 February 1931 containing certain provisions of private international law regarding marriage, adoption and guardianship (UNTS v. 202 (p.241)).

³⁰ Case C-454/19, ZW, EU:C:2020:947.

³¹ See, to this effect, Case C-454/19, ZW, EU:C:2020:947, paragraph 48.

³² Case C-454/19, ZW, EU:C:2020:947, paragraph 49.

38. Certainly, the current question concerns an EFTA State, on the one hand, and an EU Member State on the other, neither of which are subject to Council Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction.
39. However, as noted above, it is apparent that other instruments of judicial cooperation that have equivalent objectives in the field of family law are in place between the States concerned. All contracting parties to a treaty are called upon to implement their obligations in good faith, and the presumption that another State would fail to comply with such obligations would be oblivious of this principle.
40. Moreover, the Court of Justice has recognised the “special relationship” between EEA States and EU Member States, which is based on proximity, long-standing common values and European identity³³. The Court of Justice has also underlined that the fact that an individual not only has the status as a national of an EFTA State, which is a party to the EEA Agreement, but also the fact that that State implements and applies the Schengen *acquis*, renders the situation of that person objectively comparable with that of an EU citizen to whom, in accordance with Article 3(2) TEU, the Union offers an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured³⁴.
41. It follows from these considerations that, in the Commission’s submission, the imposition of a consent requirement that is triggered and justified solely by reference to a cross-border relocation, placing other EEA States on the same footing as any other third country, without imposing any equivalent requirement for relocation within an EEA State entails that the avowed objective of the rules at issue, i.e. facilitating the right of a child to maintain contact with both parents³⁵, does not appear to be pursued in a consistent and systematic manner. In any event, such requirement goes beyond what is necessary to attain the legitimate objective

³³ In Case C-897/19 PPU, I.N., EU:C:2020:262, paragraphs 44 and 50.

³⁴ In Case C-897/19 PPU, I.N., EU:C:2020:262, paragraph 58.

³⁵ See request for an Advisory Opinion, page 7.

which it pursues. This view is reinforced by the extensive nature and extent of the review that is applied solely to cross-border relocation, but which nevertheless appears to exceed considerations linked to a change in jurisdiction³⁶.

42. At the same time, the Commission notes that in the very specific context regarding the preservation of family life and the special considerations that attach to safeguarding the right of the child, there is certainly a heightened interest in ensuring that decisions are taken in a timely way and which to the greatest possible extent are preventive in nature³⁷. Thus, a consent requirement would not, in the Commission's submission, appear precluded, where it is conceived and applied in a systematic and internally coherent manner.
43. In view of the considerations set out above, the Commission submits that the questions of the referring court should be answered in the sense that Article 28 EEA should be interpreted as not precluding, in principle, national rules which makes the right of a parent who exercises joint parental responsibility over a child, to move with that child to reside and work in another EEA State, conditional on that parent obtaining the consent of the other parent or issuing proceedings with a view to obtaining permission from a court, where that condition is conceived and applied in a manner that is suitable to achieve the public interest objective invoked and does not go beyond what is necessary to attain that objective. That requirement is not, however, fulfilled in a case where the obligation to obtain consent applies exclusively to relocation to another EEA State without applying to relocation within the EEA State concerned.

³⁶ The nature and scope of the review is referred to in the judgment of the Supreme Court of Norway mentioned at pages 5-6 of the request for an Advisory Opinion. The consideration of the best interest of the child, in a situation of joined parental responsibility, is not an independent assessment, but should relate to the effects of the movement of the residence of a child on the child's right to maintain contact with both parents. This also the specific purpose of the provisions of the Norwegian Children Act on relocation (see request for an Advisory Opinion, page 7). On the other hand, there would not be a justification for a general requirement for the public authorities to verify whether the change of residence to another EEA State in exercise of the right of free movement (by the EU parent or by the EU child accompanied by the custodian parent) would be in the child's best interest. The Court of Justice has generally considered that the best interest of the child can be relied upon to prevent refusal of a right of residence, not as a condition on granting a right of residence (see e.g. C-454/19. X, paragraphs 43, 14).

³⁷ See in this Regard Article 35 of the Convention on the Rights of the Child and the Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, PART III – "Preventive Measures". See in particular, Section I.2.2 "Consent to Travel".

IV. CONCLUSION

44. Having regard to the reasons set out above, the Commission considers that the questions referred to the EFTA Court for an Advisory Opinion by the Court of Appeal (Borgarting) should be answered as follows:

Article 28 EEA should be interpreted as not precluding, in principle, national rules which makes the right of a parent who exercises joint parental responsibility over a child, to move with that child to reside and work in another EEA State, conditional on that parent obtaining the consent of the other parent or issuing proceedings with a view to obtaining permission from a court, where that condition is conceived and applied in a manner that is suitable to achieve the public interest objective invoked and does not go beyond what is necessary to attain that objective. That requirement is not, however, fulfilled in a case where the obligation to obtain consent applies exclusively to relocation to another EEA State without applying to relocation within the EEA State concerned.

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