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TO THE PRESIDENT AND MEMBERS OF THE EFTA COURT

WRITTEN OBSERVATIONS

Pursuant to Article 20 of the Statute of the EFTA Court, the following are the written observations of Mr Akselsen, Mr Granlund and the trade union Forbundet Styrke, represented by lawyers Bjørn Inge Waage and Edvard Bakke

in **Case E-6/25**

in connection with the request for an advisory opinion from the Supreme Court of Norway (*Norges Høyesterett*): see Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (SCA), in proceedings between

Saga Subsea AS

appellant,

v

Øyvind Akselsen and Simen Granlund

respondents,

Forbundet Styrke

intervener in support of the respondents,

concerning the question whether Article 5 of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (Temporary Agency Work Directive) must be interpreted as applying to any worker, including seafarers who are employees of a temporary work agency domiciled in an EEA State, during the period in which they are hired out for labour to undertakings domiciled in that same EEA State on board a vessel in connection with petroleum activities on that State's continental shelf.

The respondents and the intervener in support of the respondents hereby submit the following written observations.

1 Introduction

(1) Øyvind Akselsen and Simen Marius Granlund were employed by Saga Subsea AS, whose activities include acting as a temporary work agency. They were hired out to various user undertakings in the offshore industry, including undertakings operating on land, offshore installations and assignments on vessels in the offshore industry.

(2) The parties agree that they have been paid less than direct employees of the user undertakings.

(3) The respondents have claimed that they should benefit from equal treatment under the equal treatment rule provided for in the Act of 17 June 2005 No. 62 relating to the working environment, working hours and employment protection, etc. (Working Environment Act) (*lov 17. juni 2005 nr. 62 om arbeidsmiljø, arbeidstid og stillingsvern mv. (arbeidsmiljøloven)*). In the Court of Appeal (*lagmannsretten*), Mr Akselsen was awarded NOK 153 498 and Mr Granlund was awarded NOK 442 627. The salary claims related to a three-year period spanning 2019 to 2022.

2 Facts of the main proceedings

(4) The respondents and the intervener refer to part 3 of the Supreme Court's request for an advisory opinion as regards the facts of the case and considers that they are comprehensively described in relation to the question on which the EFTA Court is to rule.

3 Legal assessment – the question on which the EFTA Court is to rule

(5) The question on which the EFTA Court is to rule is set out in part 6 of the Supreme Court's request for an advisory opinion. The question calls for a discussion of the scope *ratione personae* and geographical scope of the Temporary Agency Work Directive.

3.1 The scope *ratione personae* of the Temporary Agency Work Directive

(6) The scope *ratione personae* of the Temporary Agency Work Directive is provided for in Article 1 ('Scope') thereof. The Directive applies to:

> *'... workers with a contract of employment or employment relationship with a temporary-work agency who are assigned to user undertakings to work temporarily under their supervision and direction.'*

(7) Article 3(1)(a) defines 'worker' as follows:

> *"'worker" means any person who, in the Member State concerned, is protected as a worker under national employment law'.*

(8) The term 'any person' clarifies the point that no persons or occupations are excluded. The Directive applies to anyone classified as a worker under national employment law. The employment relationship of Mr Akselsen and Mr Granlund prima facie comes within the scope of section 1-3(1) of the Working Environment Act. They are deemed to be workers: see section 1-8 of the Working Environment Act, and accordingly come within the scope of the legal definition set out in the Temporary Agency Work Directive and the scope *ratione personae* thereof.

(9) Letter (b) of the third paragraph of section 4 of Regulation No 158 of 12 February 2010 relating to health, safety and the environment in petroleum activities and on certain onshore facilities (the Framework Regulation) (*forskrift 12. februar 2010 nr. 158 om helse, miljø og sikkerhet I petroleumsvirksomheten og på enkelte landanlegg (rammeforskriften)*) excludes activities on 'vessels engaged in construction, plumbing [pipelaying] or maintenance activities in the petroleum industry...'. Those activities are regulated by the Act relating to employment protection, etc. for employees on board ships (Ship Labour Act) (*Lov om stillingsvern mv. for arbeidstakere på skip (skipsarbeidsloven)*). Section 1-2(1) of the Ship Labour Act provides that that act applies to 'any employee working on board Norwegian ships'. Section 1-1(a) of the Ship Labour Act provides that the purpose of the Act is 'to ensure secure conditions of employment and equality of treatment in the workplace at sea'. Even if it was that act and not the Working Environment Act that was to apply, Mr Akselen and Mr Granlund would still have the status of worker and be protected as workers under national employment law.

(10) Norwegian authorities have taken the view that the Temporary Agency Work Directive and the equal treatment rule thereunder should not encompass or is not apt for seafarers. They submit primarily that it would not be reconcilable with the wording of the Temporary Agency Work Directive and its connection to national law for it to so apply; otherwise, everyone who qualified as a worker under national law would also be covered by the Temporary Agency Work Directive.

(11) Excluding certain occupational groups would take on the airs of a distinctly positive law approach. The general but precise wording of the Directive ('any person') does not support there being such an exclusion.

(12) The equal treatment rule in Article 5 of the Temporary Agency Work Directive, which provides that the basic working and employment conditions of temporary agency workers 'shall be ... at least those that would apply if they had been recruited directly by that undertaking to occupy the same job', helps to explain why the Temporary Agency Work Directive does not exclude seafarers.

(13) The reasoning is fairly simple: if specific rules apply which prima facie are directed at shipping operations, and if there are particular working environment rules at sea, then hired-out seafarers must also be covered by the conditions and rules which already apply to personnel on board. Having the equal treatment rule under the Temporary Agency Work Directive cover seafarers will

ensure that any applicable specific rules will retain their effect and that the considerations they are to safeguard will not be undermined through the hiring-in of workers.

(14) The Temporary Agency Work Directive cannot be compared to legal instruments which lay down positive law exclusions for seafarers, such as Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time or Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union. Such exclusions serve the purpose of *excluding* shipping operations from general rules, in order to regulate shipping operations specifically instead. The reason is that working conditions at sea may differ from working conditions ashore and, for that reason, require specific rules.

(15) The fact that the Temporary Agency Work Directive does not exclude seafarers can be explained by the fact that it regulates operators in a tripartite relationship. Given the asymmetry in a tripartite relationship, excluding seafarers would not have freed up corresponding space for regulating shipping separately. Such an exclusion would, in reality, serve only the temporary work agency. It is submitted that no particular shipping-related consideration can justify that a shore-based temporary work agency should be able to treat differently employees who work together with seafarers.

(16) The facts of the present case illustrate this point. Considerations weighing in favour of Mr Akselen and Mr Granlund being granted the same conditions as their vessel-based colleagues are not weakened by the fact that they work at sea and not on shore.

(17) Specifically excluding seafarers would also be contrary to *the statement of purpose* set out in Article 2 of the Temporary Agency Work Directive, which reads as follows:

> *'The purpose of this Directive is to ensure the protection of temporary agency workers and to improve the quality of temporary agency work by ensuring that the principle of equal treatment, as set out in Article 5, is applied to temporary agency workers, and by recognising temporary-work agencies as employers ...'*

(18) In an August 2011 report of an expert group established by the Commission in connection with the transposition of the Temporary Agency Work Directive in the EU and EFTA States, the following was stated on pages 5-6:

> *'Does the Directive apply to seafarers?*
>
> *The Agreement concluded by the European Community Shipowners' Association (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, annexed to Directive 2009/13/EC, defines the term "seafarer" as meaning any person who is employed or engaged or works in any capacity on board a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply.*
>
> *Directive 2008/104/EC does not exclude seafarers from its scope. However, seafarers carry out their duties under very specific working conditions, partly in international waters and in a sector characterized by the provision of manpower through "manning agencies". Therefore, the situation of seafarers raises legal questions about the concrete effects of the agency work Directive on this particular profession.*

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

Therefore the complex issue of the applicability of the Directive to seafarers needs to be assessed on a case-by-case basis by taking into account a number of relevant criteria.'

(19) The expert group takes it as a given that the Temporary Agency Work Directive covers seafarers, but emphasises that questions of application may arise which must be assessed on a case-by-case basis.

(20) That caveat refers inter alia to the restriction under which EU law cannot apply outside the scope of the EU Member States' jurisdiction. Due to the worldwide nature of shipping, other States' jurisdiction will challenge and, eventually, replace the EU States' jurisdiction. The crossing point and crossover can raise complex issues. The basic premisses are nevertheless clear.

(21) Article 3(5) of the Treaty on European Union requires the European Union to adhere to 'the strict observance and the development of international law'. According to the Court of Justice of the European Union (CJEU), EU legal instruments apply only in so far as there is a basis for doing so under principles of international law on jurisdiction: see judgments in *Poulsen*, C-286/90, EU:C:1992:453, paragraphs 9–11, and *Intertanko*, C-308/06, EU:C:2008:312, paragraphs 43–45.

(22) At the same time, Article 3(5) of the Treaty on European Union (TEU) requires that 'in its relations with the wider world, the Union shall uphold and promote its values and interests'. This explains why the CJEU applies EU legal instruments right up to the outer limits of international law's jurisdictional boundaries: see, for example, judgment in *Q and Others* v *United Airlines*, C-561/20, EU:C:2022:266. That this may involve complex assessments which must be resolved on a case-by-case basis is, therefore, a correct, but purely descriptive observation. From a legal standpoint, no safety margin is to be read into the provisions so as to circumvent the challenges which may arise.

(23) Once again, the present case is illustrative. If a general exclusion was instituted for seafarers because, in certain cases, it might lead to complex assessments, that would go too far in a case such as the present one, which falls within core Norwegian jurisdiction.

(24) On the last point, suffice it to refer to Proposition to the Storting Prop. 88 L (2024–2025) p. 25, where the following is stated:

'Norwegian authorities accordingly have exclusive jurisdiction over the operation and use of facilities and installations having economic purposes on the Norwegian continental shelf. This entails that Norwegian authorities will have jurisdiction over ships involved in the operation or use of installations on the Norwegian continental shelf. In such cases, Norwegian authorities will be able to impose Norwegian pay conditions.'

(25) Other international rules protecting seafarers may influence or booster the practical effect of the Temporary Agency Work Directive. This as well, however, is a descriptive observation, not a legal argument against allowing the Directive to apply in respect of seafarers.

(26) The most important example of specific regulation of seafarers is Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) - Annex: European Agreement on the organisation of working time of seafarers (Directive 1999/63/EC). Article 2 of that directive defines the term 'seafarer' and the key counterpart in the bilateral relationship, the 'shipowner'.

(27) Usually a temporary work agency for the purposes of the Temporary Agency Work Directive will not also be a 'shipowner' for the purposes of the Maritime Labour Convention (MLC, 2006).

(28) If the application of the Temporary Agency Work Directive comes within the jurisdiction of the EU Member States and EEA Contracting Parties, and will help to enhance protection for workers, as in the present case, it accordingly supplements the protection under the MLC Convention. This is a general, contemporaneous application, not a question of conflict of rules or lex specialis.

(29) This is confirmed by recital 13 of Directive 2009/13/EC, which implements the MLC Convention:

> *'The provisions of this Directive should apply without prejudice to any existing Community provisions being more specific and/or granting a higher level of protection to seafarers, and in particular those included in Community legislation.'*

(30) Recital 15 of Directive 2009/13/EC states:

> *'This Directive should not be used to justify a reduction in the general level of protection of workers in the fields covered by the Agreement annexed to it.'*

(31) Article 3(2) of Directive 2009/13/EC provides inter alia that:

> *'The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive.'*

(32) The Temporary Agency Work Directive is directed at 'any person who, in the Member State concerned, is protected as a worker', irrespective of sector. The equal treatment rule under the Directive refers to 'the general level of protection of workers'. It thus follows explicitly from Article 3(2) of Directive 2009/13/EC that the Temporary Agency Work Directive is to be applied together with the rules applicable to shipping.

(33) With Directive 2009/13/EC as a backdrop, the EU law system emerges clearly. Positive law exclusions for seafarers in other EU legislation are not to be interpreted as expressing a general, non-legislative principle. Such an interpretation would render Article 3(2) of Directive 2009/13/EC nugatory. The provision is to the contrary: where general EU legislation protecting workers does not exclude seafarers, the general rules are to apply alongside the specific legislative rules.

(34) Thus, the statement in Proposition to the Storting Prop.74 L (2011–2012) page 22, to the effect that 'the Temporary Agency Work Directive [will] not have any particular practical implications alongside the convention on seafarers' working and living conditions (MLC Convention)' is at odds

with the EU legislature's premiss expressed in Article 3(2) of Directive 2009/13/EC, to the effect that general EU rules protecting workers may have practical implications and, therefore, are to continue to apply.

(35) That background also helps to explain why the individual specific exclusions for seafarers are not general either, but rather composite and in a positive law form. They set out in detail when Directive 2009/13/EC is to apply and when it is not to apply.

(36) One example of such a composite, positive law approach is found in Article 1(8) of Directive (EU) 2019/1152, which provides:

> *'Chapter II of this Directive applies to seafarers and sea fishermen without prejudice to Directives 2009/13/EC and Directive (EU) 2017/159, respectively. The obligations set out in points (m) and (o) of Article 4(2), and Articles 7, 9, 10 and 12 shall not apply to seafarers or sea fishermen.'*

(37) By way of further relevant context, reference is made to Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers. That amending directive abolished the exclusions for seafarers in five other directives. According to recital 4 thereof, the purpose was to provide full security to allow seafarers to 'fully [enjoy] their rights to fair and just working conditions'. Transposing that reasoning to the present case, the purpose underlying the amendment is at odds with the position that a general, non-legislative exclusion is to apply in respect of seafarers.

(38) Thus, in the absence of positive exclusions, it follows from the context, the objective of protection, Article 3(2) of Directive 2009/13/EC and from general EU law principles of interpretation that general protection rules, such as those laid down in the Temporary Agency Work Directive, cover <u>all</u> workers, including seafarers. Such an interpretation is supported by the wording of the Temporary Agency Work Directive.

(39) Thus, in so far as the Temporary Agency Work Directive grants Mr Akselsen and Mr Granlund a worker's right they do not already have under other legislation directed specifically at seafarers, they will be able to avail themselves of the general protection rule laid down in the Temporary Agency Work Directive, alongside rules which protect seafarers.

3.2 Scope of application of the Temporary Agency Work Directive

(40) The Temporary Agency Work Directive does not contain any specific provision on where it applies. Nevertheless, Article 3(1) seems to assume that it applies where a worker is protected under 'national employment law'.

(41) In paragraph 65 of its judgment in Case E-8/19 *Scanteam*, the EFTA Court observed that legal acts incorporated into the EEA Agreement apply, in principle, to the same area as the EEA Agreement.

(42) The scope of application of EU law is defined functionally, which means that it coincides with the scope of the Member States' jurisdiction. The same holds true for the application of the EEA Agreement in the EEA pillar: see Article 2(c) and 126(1) of the EEA Agreement.

(43) The CJEU does not infer the scope of the EU Member States' jurisdiction from EU law sources, but rather bases itself on general principles of international law and Article 29 of the Vienna Convention on the Law of Treaties: see, for example, judgment in *Weber*, C-37/00, EU:C:2002:122, paragraph 29.

(44) Thus, in the EEA EU Member States, the scope of the Temporary Agency Work Directive, as implemented via the EEA Agreement, will not be determined geographically, but rather will coincide with the jurisdiction of the EEA EU Member States.

(45) It has been held that EU secondary legislation will apply on board ships performing work on the continental shelf, when Article 77 of the United Nations Convention on the Law of the Sea (UNCLOS) gives the Member States exclusive jurisdiction there, as is the case for petroleum operations: see judgments in *Weber*, C-37/00, EU:C:2002:122, paragraph 36, and *Salemink*, C-347/10, EU:C:2012:17, paragraph 35.

(46) It is submitted that the application of the EEA Agreement to the EEA EFTA States in the EFTA pillar is the same as the application of the EEA Agreement to the EEA EU States in the EU pillar.

(47) The scope of treaties is usually set out in the introductory sections and provisions.

(48) The preamble to the EEA Agreement states that its objective is to:

> *'... [establish] a dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition and [provide] for the adequate means of enforcement including at the judicial level, and achieved on the basis of equality and reciprocity and of an overall balance of benefits, rights and obligations for the Contracting Parties'.*

(49) In paragraph 68 of its judgment in Case E-12/13 *EFTA Surveillance Authority* v *Iceland*, the EFTA Court stated that reciprocity and homogeneity are fundamental EEA law principles. There is a strong presumption of homogeneity: see judgment in Joined Cases E-1/24 and 7/24 *TC and AA*, paragraph 50.

(50) If the application and scope of the EEA Agreement in the EFTA pillar of the EEA cooperation are not the same as in the EU pillar of the EEA cooperation, the principles of reciprocity and homogeneity forming the basis of that agreement will be rendered nugatory.

(51) Article 1 of the EEA Agreement provides that the aim of that agreement of association is to promote 'respect of the same rules, with a view to creating a homogeneous European Economic Area'.

(52) Article 2b of the EEA Agreement refers to the EFTA States by their constitutional name, without referring to a geographical area, and mirrors Article 52 TEU. This reference method is viewed as an expression of a functional approach towards the scope of the obligations under the Agreement: see Jens Evensen, 'Oversikt over oljepolitiske spørsmål', annex to Stortingsmelding (Report to the Storting) 76 (1970–71), p. 101, and Finn Arnesen in *EEA Commentary* (2018), p. 947.

(53) The obligation of loyalty provided for in Article 3 of the EEA Agreement requires the Contracting Parties to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of that agreement. Per Article 2b of the EEA Agreement, 'the Kingdom

of Norway' has jurisdiction to ensure the application of the equal treatment rule laid down in Article 5 of the Temporary Agency Work Directive: see paragraph 12 above. Thus it follows from the obligation of loyalty under Article 3 of the EEA Agreement that Norway has an obligation to take those measures.

(54) It would be contrary to the principle of non-discrimination laid down in Article 4 of the EEA Agreement if Norwegian citizens were to be entitled to worker protection and equal treatment under EEA law when engaged in work on the continental shelves of EEA EU States, if EU citizens were not to have the same protection on the continental shelves of EEA EFTA States. Reference is made to the CJEU's interpretation of the principles of non-discrimination and equal treatment in its judgment in *Ruska Federacija* v *I.N.*, C-897/19 PPU, EU:C:2020:262, paragraphs 55–57, read in conjunction with the CJEU's interpretation of the special relationship between Norway and the EU and the principle of mutual trust in the judgment in *Alchaster*, C-202/24, EU:C:2024:649, paragraphs 62 and 67, read in conjunction with its interpretation of the principles of homogeneity and reciprocity in its judgment in *UK* v *Council*, C-431/11, EU:C:2013:589, paragraphs 55 and 58, and also its purposive interpretation of the obligation of loyalty in paragraph 65 of the latter judgment.

(55) Article 6 of the EEA Agreement provides that the provisions of that agreement which are identical in substance to EU rules are, in their 'implementation and application', to be interpreted the same. If the Temporary Agency Work Directive, as incorporated into the EEA Agreement, applies on the continental shelves of the EEA EU States but not on the continental shelves of the EEA EFTA States, then the 'implementation and application' of otherwise identical rules will not be the same.

3.3 Article 126 of the EEA Agreement

(56) It seems clear that it was the EU that drafted the provision on territorial scope in Article 35 of the 1973 Agreement between the European Economic Community and the Kingdom of Norway (OJ L 171, 27.6.1973 2–102) ('the 1973 Trade Agreement'): see European Commission Legal Service, Territorial application of the agreements signed by the Community with EFTA countries and certain Mediterranean countries, JUR/413/74, 18 February 1974.

(57) The same formulation was continued in Article 126 of the EEA Agreement and is used in the EU's other trade agreements with third countries.

(58) It has been argued that Article 126 of the EEA Agreement 'is worded in the same manner as provisions on geographical scope in other agreements between the EU and third countries, and defines this scope by reference to the "territories" of the EFTA States and the "territories" where the EU treaties are applied': see Arnesen (2018), p. 946. This is used to argue that the scope of the EEA Agreement in the EFTA pillar is subject to a specific geographical delimitation that benefits only the EFTA States, and that the substance of that delimitation must be interpreted narrowly, based on the definition of 'territory' in Article 2 UNCLOS.

(59) It is submitted that, in the light of its wording, general principles of international law, purpose and legislative history, Article 126 of the EEA Agreement is a provision on territorial scope that is intended to correspond to Article 355 TFEU, and not a provision on geographical scope.

(60) In general international law, it is common to distinguish between indications of functional scope and territorial scope: see Article 52 TEU, by contrast with Article 355 TFEU, and Article 1 by contrast with Article 56 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. As regards the case-law of the European Court of Human Rights, see Magne Frostad, 'The "Colonial Clause" and Extraterritorial Application of Human Rights: The European Convention on Human Rights Article 56 and its Relationship to Article 1', *Arctic Review on Law and Politics*, vol. 4, 1/2013 pp. 21–41.

(61) Provisions on territorial scope do not give any indications as to geographical scope, but do regulate the application in areas belonging to the treaty States' territories. The wording and location of Article 126 of the EEA Agreement supports the position that it is such a provision.

(62) This is the EU's objective and interpretation of the provision in the EEA Agreement and other agreements with third countries: see European Commission Legal Service, Territorial application of the agreements signed by the Community with EFTA countries and certain Mediterranean countries, JUR/413/74, 18 February 1974.

(63) Ever since the 1973 Trade Agreement was signed, the EU law context has been construed in such a way that it can hardly provide a basis for an alternative understanding by the parties to the effect that 'territory' should serve as a geographical delimitation.

(64) That EU law, on the basis of functional considerations, applies to continental shelves was set out in the Memorandum concerning the applicability of the Treaty establishing the European Economic Community to the continental shelf, SEC/70/3095: see Evensen (1971), p. 101.

(65) For an equally long period, it has been clear that 'the sphere of application of the Treaty is not limited by the concept of territory': see Cesare Masteripieri, 'Freedom of establishment and freedom to supply services', *Common Market Law Review*, 1973, p. 161.

(66) At the final plenary meeting for the signature of the 1973 Trade Agreement, Norway issued a unilateral declaration on shipping. The background for that declaration was that the Community, out of consideration for substantive consistency in relation to other agreements, had not been able to go as far as Norway wished in that area: see Report to the Storting Innst. S. nr. 296 (1972–73), pp. 960 and 963.

(67) Shipping takes place outside the 'territory'. The manner in which Norway's intentions were expressed supported a common understanding by the parties of a functional approach towards the scope of the 1973 Trade Agreement.

(68) The same understanding by the parties found expression in the wording and substance of the 1973 Trade Agreement.

(69) Article 1 of Protocol No 3 thereto sets out the general rule that the scope of the rules on origin are to be inferred from the respective designations 'the Community' or 'Norway'.

(70) According to Article 4(a) of Protocol No 3, that agreement was to cover 'mineral products extracted from their soil or from their seabed', in other words, the continental shelves.

(71) Note 1 in Annex I further states that the 1973 Trade Agreement was to apply on the 'high seas'. Products from vessels which, from a functional standpoint, came within the jurisdiction of the Contracting Parties, were to be covered.

(72) In any event, the 1973 Trade Agreement is of limited significance for the interpretation of a provision found in many of the EU's agreements. Generally, there is a strong presumption that the EU would not take the initiative for or accept a provision departing from the principle of reciprocity, to the detriment of the Community.

3.4 Application of the EEA Agreement to petroleum operations

(73) It is submitted that the EEA Agreement and the Temporary Agency Work Directive in any event apply to petroleum operations on the Norwegian Continental Shelf and that the working conditions have 'a sufficiently close link' to those operations: see judgment in Case E-8/19 *Scanteam*, paragraphs 67 and 68.

(74) Given how the CJEU applies the link doctrine, in employment law contexts it will be sufficient that the workers are governed by Norwegian law, are Norwegian and work for Norwegian companies: see judgment in *L. Kik* v *Staatssecretaris van Financiën*, C-266/13, EU:C:2015:188, paragraph 54.

(75) Article 3(1)(l) of Appendix A to Protocol 4 to the EEA Agreement provides that it covers:

> *'products extracted from the seabed or below the seabed which is situated outside its territorial sea but where it has exclusive exploitation rights'.*

(76) The Proposition to the Storting St.prp. nr. 100 (1991–1992) pp. 164–165 states that the petroleum sector is covered by the EEA Agreement.

(77) This point is confirmed by the incorporation of Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons into the EEA Agreement: see Proposition to the Storting St.prp 40 (1994–95) p. 4, where the following grounds are given for EEA relevance:

> 'In a cooperation arrangement such as the EEA, it is important in the assessment of the Concession Directive to know what type of activity the Directive covers. It covers business activities coming within the parameters of the EFTA countries' participation in the EU internal market and therefore the mutual cooperation in the EEA.'

(78) In Report to the Storting St.meld. nr. 40 (1993–94) on membership in the European Union, the following is stated on p. 185:

> 'During the EEA negotiations, that part of the EC's rules which was relevant for the internal market was incorporated into the EEA Agreement. .... For the petroleum sector, that meant, for example, that questions about the use of Norwegian goods and services, the use of Norwegian labour, landing in Norway, delivering for national needs, the right to approve transport choices for oil

and gas, the use of bases, training of national personnel and the use of the Norwegian language are addressed in the EEA Agreement. Reference is made to Proposition to the Storting St.prp. 100 (1991–92).... Hence in these areas EU membership does not entail anything new for Norwegian energy policy beyond what we have already agreed to through the EEA Agreement.'

(79) The foregoing statement confirms what has been said in other sources: the regulation of the continental shelves and the petroleum sector are identical in EU and EEA law. Employment law rules, such as the Temporary Agency Work Directive, apply to petroleum operations on the Norwegian Continental Shelf.

4 Conclusion

(80) In the light of the foregoing, the respondents and the intervener submit that the EFTA Court should answer the question referred as follows:

'Article 5 of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (Temporary Agency Work Directive) must be interpreted as applying to any worker, including seafarers who are employees of a temporary work agency domiciled in an EEA State, during the period in which they are hired out for labour to undertakings domiciled in that same EEA State on board a vessel in connection with petroleum activities on that State's continental shelf.'

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Stavanger/Oslo, 20.06.2025

Bjørn Inge Waage

Edvard Bakke