ATTORNEY GENERAL FOR CIVIL AFFAIRS

EFTA Court
1 rue du Fort Thüngen
L-1499 Luxembourg

OSLO, 24.06.2025

Written observations by the Kingdom of Norway

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

Case E-6/25 *Saga Subsea AS v Akselsen and Granlund*

in which the Supreme Court of Norway (Norges Høyesterett) has requested a preliminary ruling from the EFTA Court 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 Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, and Article 126(1) of the EEA Agreement.

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1 INTRODUCTION

(1) This case concerns a claim for salary back pay from two persons who were hired out by a temporary work agency to work on a multipurpose vessel (supply and auxiliary vessels for the petroleum industry) on the Norwegian continental shelf.

(2) The respondents submit that their employer is obliged to pay them the same salary for the same work as the user undertaking's own employees. They have referred to Article 5(1) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (the Temporary Agency Work Directive), on equal treatment as regards the basic working and employment conditions of temporary agency workers

(3) Article 5(1) of the Directive has been implemented in Norwegian law in Section 14-12a of the Act of 17 June 2005 No. 62 relating to the working environment, working hours and employment protection, etc. (Working Environment Act).

(4) Article 5(1) has not been implemented in the Act of 21 June 2013 No. 102 relating to employment protection for workers on board ships (Ship Labour Act).

(5) The key question thus seems to be a question of national law: Does work on multipurpose vessels falls within the scope of the Working Environment Act or the Ship Labour Act?

(6) If the Working Environment Act applies to work on multipurpose vessels, the respondents can rely on Section 14-12a on equal treatment. If the Ship Labour Act applies, there is no national provision on equal treatment that can be relied on against the employer.

(7) The Supreme Court of Norway has, however, decided to refer a question to the EFTA Court:

> *"Should Article 5 of the European Parliament and Council Directive 2008/104/EC of 19 November 2008 on temporary agency work (the Temporary Agency Work Directive) be interpreted to mean that the provision applies to employees of a temporary work agency domiciled in an EEA State during the period they are hired out for labour to an undertaking domiciled in the same EEA State on board a vessel used in connection with petroleum activities on that State's continental shelf?"*

(8) In the case in the main proceedings, the Government has submitted that this question does not seem relevant. Directives do not have direct effect in the national law of the EFTA States. The respondents cannot rely on any possible unimplemented provisions of the Temporary Agency Work Directive if the Ship Labour Act applies to their work.

(9) In any event, the Government is of the opinion that the Temporary Agency Work Directive does not apply to seafarers (Section 2 below), and that the EEA Agreement does not apply to the continental shelf of the EFTA States (Sections 3 and 4 below).

2 THE TEMPORARY AGENCY DIRECTIVE DOES NOT APPLY TO SEAFARERS

(10) By the first part of its question, the referring court essentially asks whether the Temporary Agency Work Directive applies to workers hired out by a temporary work agency to work on board multipurpose vessels used in connection with petroleum activities.

(11) The Government submits that the Temporary Agency Work Directive is not applicable to seafarers, such as the respondents in the main proceedings.

(12) There are considerable differences as to how working life is organised at sea and on land. These differences are reflected in specialised rules on the rights of seafarers in national law, in public international law and in EU Directives.

(13) In Norwegian law, the rights of seafarers are set out in the Ship Labour Act and the Ship Safety and Security Act .[1]

[1] Act of 16 February 2007 No. 9 relating to ship safety and security.

(14) On the international level, the rights of seafarers are safeguarded by specialised public law instruments such as the Maritime Labour Convention (MLC), adopted by the 94th (Maritime) Session of the International Labour Conference in 2006.

(15) The MLC revises and consolidates 37 existing conventions. It sets out the right of seafarers to decent conditions of work in almost every aspect of their working and living conditions, including minimum age, employment agreements, hours of work and rest, payment of wages, paid annual leave, repatriation, on board medical care, the use of recruitment and placement services, accommodation, food and catering, health and safety protection and accident prevention, and complaint procedures for seafarers.

(16) Article II(1)(f) of the MLC defines "seafarer" as any person who is employed or engaged or works in any capacity on board a ship. The MCL therefore applies to persons hired out to work on multipurpose vessels on the continental shelf, such as the respondents.

(17) The MLC has been implemented in EU law by Council Directive 2009/13/EC on implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention.

(18) Recital 2 of the Directive describes the MLC as a single, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour conventions.

(19) There are also two other directives on work at sea: Council Directive 1999/63/EC 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), and Council Directive (EU) 2017/159 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche).

(20) Given the specificities of the employment conditions of seafarers and sea fishermen, and the comprehensive specialised rules that apply to their employment relationship on the national, international and EU level – particularly after the adoption of the MLC – it must be assumed that directives that refer to "workers" but make no mention of seafarers, are not applicable to seafarers.

(21) Hence, 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, contains an express provision on the applicability to seafarers and sea fishermen in Article 1(8):

> *"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."

(22) The Temporary Agency Work Directive does not contain express provisions on seafarers. In the opinion of the Government, this indicates that the Directive does not apply to seafarers, particularly so because seafarers carry out work in a sector characterised by the provision of manpower through 'manning agencies'.[2] The situation covered by the Temporary Agency Work Directive (workers in temporary-work agencies who are assigned to user undertakings to work temporarily under their supervision and direction) therefore seems to be of limited relevance to seafarers.

(23) This distinguishes the Temporary Agency Work Directive from the directives amended by Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015. These directives concern issues of practical importance for seafarers, such as protection of employees in the event of the insolvency of the employer, rules on informing and consulting employees, collective redundancies and the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

(24) If the EU legislature had intended the Temporary Agency Work Directive to be applicable to seafarers, this would have been expressed in the wording of the Directive.

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

(26) The fact that the Temporary Agency Work Directive has been implemented for seafarers in the legislation of some EU States, such as Sweden and Finland, is not sufficient to extend the scope of the Directive to seafarers.

(27) Based on the above, the Government submits that the Temporary Agency Work Directive is not applicable to seafarers.

3 THE EEA AGREEMENT DOES NOT APPLY TO NORWAY'S CONTINENTAL SHELF

(28) By the second part of its question, the Supreme Court of Norway essentially asks whether the EEA Agreement applies to work on board a vessel used in connection with petroleum activities on Norway's continental shelf.

(29) Article 126(1) EEA states that:

"The Agreement shall apply to the territories to which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that

[2] Report – Expert group – Transposition of Directive 2008/104 on temporary agency work (2011) p. 6.

Treaty, and to the territories of Iceland, the Principality of Liechtenstein and the Kingdom of Norway."

(30) The EEA Agreement is subject to the customary rules on the interpretation of treaties as set out in the Vienna Convention on the Law of Treaties. Pursuant to Article 31(1), a "treaty shall be interpreted in good faith and in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

(31) Thus, the ordinary meaning of the terms of the treaty is the starting point.

(32) The wording of Article 126(1) EEA is clear and cannot be misunderstood: The EEA Agreement applies to "the territories" of the EFTA States Iceland, Liechtenstein and Norway.

(33) Article 126(1) EEA is in line with the presumption that a treaty is binding upon each party in respect of its entire territory, see Article 29 of the Vienna Convention on the Law of Treaties.

(34) In international law, the ordinary meaning of the term "territory" is understood to include land territory, internal waters and the territorial sea, as well as the air space above.

(35) The term "territory" does not include the continental shelf or the exclusive economic zones, which are geographical areas where states only have sovereign rights.

(36) This understanding of the term "territory" is inter alia reflected in Article 2(I) and 2(2) of the United Nations Convention on the Law of the Sea (UNCLOS), as well as in legal literature[3]

(37) Norway's territory consists of the Kingdom of Norway (mainland Norway, Svalbard and Jan Mayen) and the Norwegian dependencies (the Bouvet Island, Queen Maud's Land and Peter I's Island). The EEA Agreement only applies to the territory of the Kingdom of Norway.[4]

(38) Activity outside the territories of the EFTA States – such as activity on the continental shelf – thus falls outside the scope of the EEA Agreement.

(39) This has been the consistent view of the Norwegian Government since the entry into force of the EEA Agreement, and it is reflected in the information given to the Norwegian Parliament ("Stortinget") in the process leading up to its consent to the ratification of the Agreement.[5]

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[3] See for example Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (2009) p. 392, Aust, *Modern Treaty Law and Practice* (2000) p. 162, and Waverijn and Nieuwenhout, "Swimming in ECJ Case Law: The Rocky Journey to EU Law Applicability in the Continental Shelf and Exclusive Economic Zone", CMLR 56, 1623–1648 (2019) p. 1642–1643.

[4] An exception is made for Svalbard, which – although part of the territory of the Kingdom of Norway – is excluded from the scope of the EEA Agreement. Under Protocol 40 of the EEA Agreement Norway is entitled to exempt Svalbard from the application of the Agreement. The exemption was made on 6 November 1992 and is reflected in Section 6 of the Act on the incorporation into Norwegian law of the Main Part of the EEA Agreement (the EEAAct) of 22 November 1992 no 109.

[5] Legislative bill to the Parliament on the ratification of the EEA Agreement, St.prp. nr. 100 (1991–92) p. 103, and the Report to Stortinget (White Paper) on The EEA Agreement and Norway's other Agreements with the EU, Meld. St. 5 (2012–13), s. 41.

This is also in line with consistent general practice in Norway on the interpretation of the term "territory".[6]

(40) The EFTA States have thus declined to incorporate EU acts which primarily apply outside the territory. Examples are Directive 2008/56 establishing a framework for community action in the field of marine environmental policy and Directive 2013/30 on safety of offshore oil and gas operations. In both cases, the EFTA States have informed the European Commission that the acts will not be incorporated into the EEA Agreement on account of Article 126(1) EEA.

(41) Article 126 EEA is worded differently as regards the EU States, referring not to the territories of the States themselves, but to the territories to which the EU Treaties are applied.

(42) The scope of the EU treaties is set out in Article 52 TEU:

> *"1. The Treaties shall apply to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.*
>
> *2. The territorial scope of the Treaties is specified in Article 355 of the Treaty on the Functioning of the European Union."*

(43) Again, the wording in Article 52 TEU differs from Article 126(1) EEA. There is no reference to "the territories of" the EU States. Instead, Article 52 TEU refers only to their official names.

(44) Article 52 TEU must be understood in the light of Article 1 (on the establishment of the EU). The Member States have conferred competences on the EU to attain objectives they have in common. The reference in Article 52 to the Member States themselves (not their territories) makes it reasonable to assume that EU law would be applicable to any geographical area where the EU States have jurisdiction, regardless of whether that jurisdiction is based on territorial sovereignty or sovereign rights (as on the continental shelf).

(45) The object and purpose of the EEA Agreement is to expand the EU internal market to the EFTA States to form a homogenous EEA. However, the EEA Agreement was never intended to have the same scope as the EU Treaties, which entail a more comprehensive cooperation in many respects. The EEA Agreement does, importantly, not entail a transfer of power to the

[6] This is reflected e.g. in the legislative bill to the Parliament on the Act on Norway's territorial sea and contiguous zone, Ot.prp.nr. 35 (2002-2003), on page 7 and 12, and in the legislative bill to the Parliament on the Norwegian Penal Code, Ot.prp.nr. 8 (2007-2008), on page 306.

EU.[7] The geographical scope of the EEA Agreement in Article 126 EEA is therefore worded differently for the EFTA States and the EU States.

(46) The principle of homogeneity is not relevant for the interpretation of Article 126(1) EEA.

(47) This principle, as set out Article 6 EEA, applies to provisions that are identical in substance to "corresponding rules" in the EU Treaties. It leads to a presumption that provisions that are framed in the same way in the EEA Agreement and EU law are to be construed in the same way.[8]

(48) Provisions that are only found in the EEA Agreement, such as Article 126(1) EEA, cannot be regarded as "corresponding rules" within the meaning of Article 6 EEA. It is common ground that there are no rules on the geographical scope of the EEA Agreement in the EU Treaties.

(49) The principle of homogeneity is applicable only within the confines of the EEA Agreement. It cannot be used as a tool to define the very scope of the Agreement itself. The geographical scope of the EEA Agreement must, as explained above, be based on an interpretation of Article 126(1) EEA in accordance with customary rules on interpretation of international law.

(50) In any event, since the geographical scope of the EEA Agreement is worded differently for the EFTA states and the EU States in Article 126 EEA – and differently from Article 52 EU – the principle of homogeneity is not relevant when interpreting Article 126(1) EEA.

(51) In Case E-4/04 *Pedicel*, the EFTA Court confirmed that as the material scope of the EEA Agreement is different from the EU Treaties, the case law of the CJEU is not relevant.[9] This line of argument is equally valid when it comes to the geographical scope of the Agreement.

(52) For the same reason, Article 126(1) cannot, as regards the geographical scope of application of the EEA Agreement for the EFTA States, be interpreted in conformity with case-law of the CJEU on the geographical application of EU Treaties on the continental shelf.[10] According to this case-law, EU law may apply to geographic areas where the Member State has limited (functional) jurisdiction provided they have conferred this authority to the EU.

(53) This is not, however, sufficient under the EEA Agreement as regards the EFTA States, since Article 126(1) EEA refers to "the territories" of the EFTA States, and not to the territories to which the EU Treaties are applied. As already noted, the continental shelf is not a part of the "territory" of the coastal state under public international law.

(54) The differences in how the geographical scope is worded for the EFTA States and the EU States in Article 126 EEA is not an instance of "a widening gap" but reflects fundamental differences between the EU Treaties and the EEA Agreement that must be respected.

[7] Save for certain exceptions, e.g. in the field of state aid and competition.
[8] Joined Cases E-9/07 and E-10/07 *L'Oreal*, para 28, and Joined Cases E-1/24 and 7/24 *TC and AA*, para. 50
[9] Case E-4/04 *Pedicel*, para 39.
[10] See Case C-37/00 *Weber* and Case C-347/10 *Salemink*.

(55) As noted by the EFTA Court in Case E-4/04 *Pedicel*, the objective of creating a dynamic and homogenous EEA does not extend to the interpretation of the scope of the Agreement as laid down in Article 8(3) EEA.[11] The Court stated:

> *"The Contracting Parties are pursuing the objective of creating a dynamic and homogeneous European Economic Area. This fundamental goal, which is laid down, inter alia, in the fourth and fifteenth recitals of the Preamble to the EEA Agreement, may make a dynamic interpretation of EEA law necessary. That is, however, not so with regard to Article 8(3) EEA. The Court cannot hold that Article 11 EEA applies to trade in wine since this would amount to extending the scope of the Agreement."*[12]

(56) The Government of Norway fully shares the view that the provisions setting out the scope of the EEA Agreement, both materially and geographically, cannot be interpreted in a dynamic way. This is also in line with general principles of treaty interpretation. Every state holds the power to enter into agreements with other states[13] and it is for the state to define the extent of its international commitments.

(57) When entering into the EEA Agreement, the EFTA States did not, as the EU Member States have, transfer power to the EU. Rather, their sovereign rights as states remained the same.[14] A dynamic interpretation of the scope of the EEA Agreement would encroach upon the EFTA States' treaty making powers.

(58) In fact, every single new piece of EU legislation that is incorporated into the EEA Agreement entails a new international law obligation for Norway. This is reflected in internal procedures, which require that the constitutional provisions on accession to treaties are followed for every EU act that is incorporated into the EEA. This is a thorough process that in many cases requires the consent of Parliament.[15]

(59) Based on the above, there is nothing in the wording of the EEA Agreement, nor its object and purpose, which could justify a wider interpretation of Article 126(1) EEA, such as an expansion of the geographical scope to the continental shelf of the EFTA States.

(60) The geographical scope of the EEA Agreement, as set out in Article 126 EEA, defines the area where the EEA Agreement applies and delimits the physical borders of the EEA cooperation. The acts that are incorporated into the Annexes of the EEA Agreement operate within these borders, cf. Article 119 EEA, which states that the Annexes and the acts referred to therein shall form an integral part of the EEA Agreement.

(61) The fixed geographical scope of the Agreement is reflected in Protocol 1 on horizontal adaptations, in paragraph 8 "References to territories". That provision makes it clear that:

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[11] Case E-4/04 *Pedicel*, para 28.
[12] Ibid.
[13] Vienna Convention on the Law of Treaties, Article 6.
[14] Save for certain exceptions, e.g. in the field of state aid and competition. Those are however not relevant in this context.
[15] The Norwegian Constitution of 17 May 1814, §§ 26(2) and 115.

> *Whenever the acts referred to contain references to the territory of the "Community" or of the "common market'' the references shall for the purposes of the Agreement be understood to be references to the territories of the Contracting Parties as defined in Article 126 of the Agreement.*

(62) This provision substantiates that the scope of the EEA Agreement is fixed by Article 126 EEA, stating that even if there are references in implemented acts that, viewed in isolation, could entail a wider scope of application, they shall be understood as references to the scope as defined in Article 126 EEA.

(63) Accordingly, when new legal acts are incorporated into the EEA Agreement, by decision of the EEA Joint Committee, the annexes and protocols to the EEA Agreement are updated. The new legal acts apply within the geographical and material scope set out in the Agreement.[16] This means that even if an act has provisions where application outside the territory may be relevant, they will, for the EFTA States, only apply within the geographical scope of the EEA Agreement as defined in Article 126(1). There is no need for any adaptation to such acts, as the geographical scope of the EEA Agreement defines also the geographical scope of the incorporated acts.

(64) Any expansion of the scope of the EEA Agreement must in principle take place in accordance with Article 118 EEA, which provides for procedures in the case of further development and amendment of the Agreement. If agreement is reached on an amendment of the Agreement, it will be subject to ratification or approval by the parties in accordance with their own procedures.

(65) That said, there are a few examples where restricted expansions of the geographical scope of specific legal acts have been seen as feasible and, importantly, agreed between the parties upon incorporation of the relevant acts into the EEA Agreement. It has been seen as falling within the competence of the contracting parties to allow for such restricted expansions.

(66) The reason for giving certain acts application beyond the geographical scope of the Agreement has been based on specific assessments for each individual act. It must be emphasised that the limited application of those legal acts outside the geographical scope of the EEA Agreement was not the result of any obligation. Rather, the application of those legal acts outside the scope of the EEA Agreement was due to i) a concrete assessment of feasibility and ii) the agreement of the parties at the time of incorporation of the relevant act into the Agreement. It has not, e.g. been based on subsequent interpretation, giving the act functional application.

(67) The incorporation of these few acts into the EEA Agreement does not imply that there has been any change in the geographical scope of the EEA Agreement for the EFTA States, nor

[16] Case E-8/19 *Scanteam*, para. 65.

does it imply any acceptance of the theory of "functional application" of the EEA Agreement to activities taking place outside the territory of the Kingdom of Norway.

4 NO EXTRATERRITORIAL APPLICATION OF EEA LAW

(68) In Case E-8/19 *Scanteam*, the EFTA Court held that the geographical scope of the EEA Agreement does not preclude EEA law from having effects outside the territory of the EEA:

> *"It follows from well-established case law of the ECJ that EU law applies in judging all legal relationships in so far as these relationships, by reason either of the place where they are entered into or of the place where they take effect, can be located within the territory of the European Union (compare the judgments in Walrave and Koch, 36/74, EU:C:1974:140, paragraph 28, and Petersen, C-544/11, EU:C:2013:124, paragraph 40 and case law cited). The ECJ has also held that EU law may apply to professional activities pursued outside the territory of the European Union as long as the employment relationship retains a sufficiently close link with the European Union (compare the judgment in Petersen, C-544/11, cited above, paragraph 41 and case law cited)."*[17]

(69) The EFTA Court seemed to consider that the principle that EU law may apply to professional activities pursued outside of the EU if the employment relationship has a sufficiently close link with the EU, could be extended to the EEA Agreement.

(70) The circumstances in the main proceedings appear to be similar to Case C-544/11 *Petersen*, which was one of the judgments referred to by the EFTA Court in *Scanteam*.

(71) Petersen was a Danish national resident in Germany who was employed by an undertaking established in Denmark and had income from activity carried out in Benin in the context of a development aid project financed by the Danish International Development Agency.[18]

(72) The CJEU found that there was a sufficiently close link with the European Union:

> *"42 In a situation such as the one at issue in the case in the main proceedings, a link of that kind exists due to the fact that a European Union citizen, who is resident in a Member State, has been engaged by an undertaking established in another Member State on whose behalf he carries on his activities. In addition, according to the applicant in the main proceedings, and subject to the findings of the referring court on that point, the employment contract between him and his employer – an undertaking situated in Denmark – has been concluded under Danish law. Moreover, as the German Government points out, and subject to the findings of the referring court, Mr Petersen is covered by social insurance in Denmark and the account into which his salary is paid is situated in that Member State.*

[17] Para. 67.
[18] Case C-544/11 *Petersen*, paras. 2 and 12–13.

> *43 The fact that the applicant in the main proceedings carried on his activity in the context of development aid focused entirely in a third State cannot undermine the links to European Union law listed in the preceding paragraph, which are sufficient to allow the applicant in the main proceedings to rely on Article 45 TFEU in a situation such as that at issue in the main proceedings."*

(73) In the present case, the respondents are Norwegian citizens resident in Norway, employed by a Norwegian temporary work agency who are hired out to Norwegian undertakings to perform work on board Norwegian-registered multipurpose vessels, and their employment relationship is governed by Norwegian law.

(74) If the principle of a sufficiently close link with EU law can be extended to the EEA Agreement, there would therefore seem to be a sufficiently close link in the present case.

(75) However, the EFTA Court did not explain in *Scanteam* why the principle of extraterritorial application of EU law could be extended to the EEA Agreement.

(76) The EFTA Court found no reason to examine Article 126 EEA[19], and consequently did not consider whether it would have been compatible with the geographical scope of the EEA Agreement to extend the principle of the extraterritorial application of EU law to the EEA Agreement and the EFTA States.

(77) It is the firm view of the Norwegian Government that extraterritorial application of the EEA agreement as regards the EFTA States would be contrary to Article 126(1) EEA.

(78) First, the wording of the Article 126(1) EEA clearly defines the geographical scope to the territory of the EFTA States. The meaning of the "territory" of a state is firmly established in international law, as explained above.

(79) In Article 52 TEU there is no reference to the territories of the Member States. Instead, the scope of geographical application is set by reference to e.g. "the Kingdom of Denmark", "Ireland" and "the United Kingdom of Great Britain and Northern Ireland". Furthermore, the EU States have conferred rule-making powers on the EU. This has paved the way for a wider understanding of the scope of EU law, which extends to areas where the Member States have sovereign rights (functional jurisdiction), [20] as well as extraterritorial situations with a sufficiently close link to the EU.

(80) In contrast, the wording of Article 126 EEA is clear and leaves no room for an interpretation that goes beyond that of the "territory" of the EFTA States.

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[19] Para. 73.

[20] The common fisheries policy, that applies to fishing opportunities within the Exclusive Economic Zones of Fisheries zones of the Member States, is an example of this. The Member States have sovereign rights in these areas of the oceans, but these zones do not form part of their territories under international law. Norway's cooperation on fisheries with the EU is not part of the EEA Agreement, but is based on the Norway EU Fisheries Agreement of 1980 and related instruments.

(81) Second, the EU Member States have transferred substantial powers to the EU, including regarding external relations. This is not true for the EEA, which remains an economic partnership that revolves around the EFTA State's participation in the EU internal market. While the integration is far-reaching, its limits are nevertheless firmly set out in the EEA Agreement, *inter alia* in the provisions on the material and geographical scope of the Agreement.

(82) The dynamic element of the EEA Agreement takes place, as explained above, based on agreement between the parties on the incorporation of acts into the Agreement. No new obligations are introduced automatically, there is no direct effect. All new legal obligations must follow the procedures for accession to treaties in order to become binding.

(83) Third, the objective of a homogeneous internal marked is not without limits. Most importantly, it is only relevant within the scope of the Agreement and in areas where EU and EEA law is identical in substance. This is not the situation when it comes to the geographical scope nor the depth of integration. To put it plainly, it is not always possible to bridge the differences between EU law and EEA law. The nature of the partnerships is too diverse. Thus, within the present legal regime, one must accept that there cannot be full harmonisation of EU and EEA law. Functional and extraterritorial application of EU law is one of the special features of EU law that cannot be extended to the EEA.

(84) Article 126(1) EEA expressly provides that the EEA Agreement applies to the territories of the EFTA States. It is evident that the reference in Article 126 to the territories of the EFTA States would lose much of its meaning if EEA law were to be considered applicable to activities on the continental shelf due to a close connection with the national law of one the EFTA States.

(85) The Norwegian Government therefore respectfully invites the EFTA Court to reconsider whether the principle of extraterritorial application of EU law can be extended to the EEA Agreement, and to conclude that the EEA Agreement does not apply outside the territories of the EFTA States, such as on the continental shelf.

5 ANSWER TO THE QUESTION FROM THE SUPREME COURT OF NORWAY

(86) On this basis, the Norwegian Government respectfully submits that the question from the Supreme Court of Norway should be answered as follows:

> *Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency does not apply to employees of a temporary work agency domiciled in an EEA State during the period they are hired out for labour to an undertaking domiciled in the same EEA State on board a vessel used in connection with petroleum activities on that State's continental shelf.*

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Oslo, 24 June 2025

Ida Thue
Advocate