



**25**  
years



# The EFTA Court 25 Years On

*Prof. Páll Hreinsson*  
*President of the EFTA Court*

# C-270/80 Polydor [1982]

“It is apparent from an examination of the agreement that although it makes provision for the unconditional abolition of certain restrictions on trade between the community and Portugal, such as quantitative restrictions and measures having equivalent effect, it does not have the same purpose as the EEC treaty , inasmuch as the latter ... seeks to create a single market reproducing as closely as possible the conditions of a domestic market.

Would Polydor also apply to the EEA Agreement ?

# Opinion 1/91

The ECJ's first opinion regarding the draft Agreement suggests that Polydor applies to EEA law.

"The fact that the provisions of the agreement and the corresponding Community provisions are identically worded does not mean that they must necessarily be interpreted identically. An international treaty is to be interpreted not only on the basis of its wording, but also in the light of its objectives" (at paragraph 14).

# The ECJ's Ospelt case [2003]

“... one of the principal aims of the EEA Agreement is to provide for the fullest possible realisation of the free movement of goods, persons, services and capital within the whole European Economic Area, so that **the internal market established within the European Union is extended to the EFTA States.**”

Thus the ECJ ruled that it was (paragraph 32):

“for the Court, in that context, to ensure that **the rules of the EEA Agreement which are identical in substance to those of the Treaty are interpreted uniformly within the Member States.**”

# EFTA Court - Homogeneity

## State liability

*Case E-9/97 Sveinbjörnsdóttir*

“The EEA Agreement is an international treaty sui generis which contains a distinct legal order of its own”;

An objective of the EEA Agreement is to establish the rights of individuals/ economic operators to equal treatment;

Homogeneity is an objective of the EEA Agreement.

# EFTA Court - Homogeneity

## Substantive homogeneity

### Cases E-9/07 and E-10/07 L'Oréal

The homogeneity principle within the EEA leads to “...a presumption that provisions framed in the same way in the EEA Agreement and EC law are to be construed in the same way”, even though “... differences in scope and purpose may under specific circumstances lead to a difference in interpretation.”

The Court further stated:

“This calls for an interpretation of EEA law in line with new case law of the ECJ regardless of whether the EFTA Court has previously ruled on the question.”

# The standing of the EEA institutional structure has been tested and accepted

## Icesave

This dispute was initially approached without success by way of diplomatic negotiations.

ESA instituted legal proceedings before the EFTA Court against Iceland

Had the EEA institutional mechanism not been in place the saga might have dragged on for many years, with no avenue for judicial resolution.

The Netherlands and the UK as well as the EU institutions fully accepted the Court's judgment as both legitimate and final concerning the question of Iceland's liability for her insolvent Deposit Guarantee Fund.



# The Future?