ESA | EFTA Surveillance Authority

Case No: 84080
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REASONED OPINION

delivered in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice concerning Iceland's breach of Article 29 of Regulation (EC) No 216/2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (EASA) and Article 28 of the EEA Agreement

1 Introduction

By a letter dated 27 September 2019 (Doc No 1088526), the EFTA Surveillance Authority ("the Authority") informed the Icelandic Government that it had received a complaint against Iceland concerning the refusal to transfer pension rights accrued in Iceland to the pension scheme of the European Union institutions ("PSEUI"). The Authority also requested clarifications on the applicable, Icelandic legislation pertaining to the transfer of pension rights.

The complainant, an Icelandic citizen, worked for the Icelandic Civil Aviation Authority from 2001 until 2009 when he was engaged by the European Union Aviation Safety Agency ("EASA") as a temporary agent. By virtue of his previous employment, the complainant had accrued *inter alia* occupational pensions in Iceland.

Shortly after taking up his position at the EASA, the complainant submitted a request for the transfer of his occupational pensions to the PSEUI.[1] However, the Icelandic Social Insurance Administration (*Tryggingastofnun*) replied that it was not possible to transfer pension rights acquired in Iceland to other countries. The refusal applied to both tax-financed public pensions and occupational pension funds.

Having remained under contract with the EASA, the complainant resubmitted his request for the transfer of his occupational pensions in January 2019. To date, that request has been left unanswered.

The complainant contends that by refusing to allow for the transfer of his occupational pensions, Iceland has failed to respect the obligations deriving from Article 29 of Regulation 216/2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency ("EASA Regulation"), as adapted for the purposes of the EEA Agreement.[2] That provision stipulates that EFTA nationals may be employed by the agency and, moreover, that the EU Staff Regulations (Regulation No 31 (EEC), 11 (EAEC)) shall apply to the staff of the agency. Notably, the EU Staff Regulations provide that employees are entitled to have the capital value of their national pension rights transferred to the PSEUI.

On 21 November 2019, the Icelandic Government submitted its reply to the Authority's request for information (Doc No 1099196), in which it contested the merits of the complaint. Following discussions during the package meeting in May 2020, the Authority received further clarifications by way of letters dated 13 August 2020 (Doc No 1147969) and 14 September 2020 (Doc No 1152635).

On 10 February 2021, the Authority sent a Letter of Formal Notice to Iceland (Doc No 1154947). Therein, the Authority concluded that the refusal to allow for the transfer of occupational pensions accrued in Iceland to the PSEUI, does not comply with Article 29 of the EASA Regulation. Further, recalling that Article 28 EEA provides for the freedom of movement for workers in the EEA, which entails the right to leave the home State and go to another EEA State without being placed at a disadvantage, the Authority submitted that the refusal to allow for the transfer of the capital value of occupational pensions accrued in Iceland to the PSEUI, amounts to an unjustified restriction on the free movement of workers in breach of Article 28 EEA.

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[1] The request was submitted via the Paymaster Office, the internal department within the European Commission responsible for the financial entitlements of staff of the European Commission and certain other EU institutions.

[2] Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, included in point 66n. of Annex XIII.VI to the EEA Agreement.

Iceland replied to the Authority's Letter of Formal Notice by a letter of 23 June 2021 (Doc No 1210544). In its letter, the Icelandic Government contended that Iceland is not under an obligation to apply the EU Staff Regulations, arguing that Article 7 of the EEA Agreement does not require such acts to be considered as binding upon the Contracting Parties (the EEA States), and that the Staff Regulations are not incorporated into the EEA Agreement. With respect to Article 28 EEA, the Icelandic Government's letter argues that freedom of movement for workers does not include any rights in relation to organizations or institutions to which the EEA EFTA States are not party, including EU institutions, bodies or agencies.

The case was discussed in detail at the package meeting held in Reykjavík on 8-9 June 2022.

On 17 January 2023, representatives of the Authority met virtually with representatives of the Icelandic Government to discuss the case. The representatives of the Icelandic Government expanded upon the points set out in the Reply to the Authority's Letter of Formal Notice, as well as appending some additional information and documents.

Having examined the Icelandic Government's response, as well as the additional information received from the Icelandic Government in the meeting on 17 January 2023, the Authority maintains its conclusion that by not allowing for the transfer of the capital value of occupational pensions accrued in Iceland to the PSEUI, Iceland is acting in breach of Article 29 of the EASA Regulation and Article 28 of the EEA Agreement.

2 Relevant national law[3]

Section 146 of the Icelandic Aviation Act No 60/1998[4] provides that:

"The Icelandic Transport Authority will participate in the work of the European Aviation Safety Agency (EASA) with the aim, inter alia, of improving aviation safety, reducing pollution from aircraft and presenting the viewpoints of the Icelandic government in the work of the Agency.

The Minister shall, with reference to Paragraph 1, issue a government regulation effecting the incorporation of Regulations of the European Parliament and the Council relating to the establishment of the European Aviation Safety Agency, into the Icelandic legal order. The Minister may issue a regulation effecting the transposition of EEA Acts concerning tasks in the field of the European Aviation Safety Agency (EASA) which have been delegated to the Agency on the basis of the Acts establishing EASA, in accordance with Paragraph 2."

Section 3 of Icelandic Regulation 812/2012[5] reads:

"Implementation:

With this regulation the following EU regulations come into force, with those changes and amendments which follow from Annex XIII of the EEA Agreement, Protocol 1 to the EEA Agreement and other, relevant provisions:

[3] The translations of Icelandic domestic legal provisions in this letter are unofficial.
[4] 1998 nr. 60 10. júní Lög um loftferðir
[5] Nr. 812/2012 Reglugerð um sameiginlegar reglur um almenningsflug og stofnun Flugöryggisstofnunar Evrópu.

1. Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency…"

Section 1(4) of the Icelandic Act on Mandatory Pension Insurance and on the Activities of the Pension Funds No 129/1997 provides that:

"All wage earners and self-employed have the right and obligation to ensure pension by participating in a pension fund from the age of 16 to 70."

Sections 19(3) and (4) of the Icelandic Act on Mandatory Pension Insurance and on the Activities of the Pension Funds No 129/1997 read:

"Contributions and, in consequence, the entitlements arising from them, may be transferred between pension funds when the receipt of pension commences for the purpose of facilitating the implementation of this Article,

Pension contributions of foreign, nationals emigrating from Iceland may be reimbursed, provided that this is not prohibited pursuant to international agreements to which Iceland is a party. Reimbursement may not be limited to a specific portion of the contributions except on proper actuarial premises."

3 Relevant EEA law

Article 3 EEA reads:

"The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement.

They shall abstain from any measure which could jeopardize the attainment of the objectives of this Agreement."

Article 7 EEA reads:

"Acts referred to or contained in the Annexes to this Agreement or in decisions of the EEA Joint Committee shall be binding upon the Contracting Parties and be, or made, part of their internal legal order as follows:

(a) an act corresponding to an EEC regulation shall as such be made part of the internal legal order of the Contracting Parties;"

Article 28 EEA provides that:

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

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of EC Member States and EFTA States as regards employment, remuneration and other conditions of work and employment."

The EASA Regulation provides in Article 29, entitled "Staff", that:

"1. The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for purposes of the application of

those Staff Regulations and Conditions of Employment shall apply to the staff of the Agency, without prejudice to the application of Article 39 of this Regulation to the members of the Board of Appeal

2. Without prejudice to Article 42, the powers conferred on the appointing authority by the Staff Regulations and the Conditions of Employment shall be exercised by the Agency in respect of its own staff.

3. The Agency's staff shall consist of a strictly limited number of officials assigned or seconded by the Commission or Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks."

Point 3(a) of the annex to Decision of the EEA Joint Committee No 163/2011 ("the JCD") incorporating the EASA Regulation into the EEA Agreement, includes an adaptation text to Article 29:

"(a). Unless otherwise stipulated below, and notwithstanding the provisions of Protocol 1 to the Agreement, the term "Member State(s)" contained in the Regulation shall be understood to include, in addition to its meaning in the Regulation, the EFTA States. Paragraph 11 of Protocol 1 shall apply.

Point 3(m) of the annex to the same Decision provides the following adaptation to Article 29:

"(m). The following paragraph shall be added to Article 29:

"4. By way of derogation from Article 12(2)(a) of the Conditions of employment of other servants of the European Union, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency."."

Article 30 of the EASA Regulation, entitled "Privileges and immunities" provides:

"The Protocol on the Privileges and Immunities of the European Communities annexed to the Treaties establishing the European Community and the European Atomic Energy Community shall apply to the Agency."

Point 3(n) of the annex to the JCD provides the following text to be added to Article 30:

"The EFTA States shall apply to the Agency and to its staff the Protocol of Privileges and Immunities of the European Union [sic] and applicable rules adopted pursuant to that Protocol."

Article 11(2) of Annex VIII to Regulation No 31 (EEC), 11(EAEC) laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community ("the EU Staff Regulations") states the following on the transfer of pension rights:

"2. An official who enters the service of the Union after:

— leaving the service of a government administration or of a national or international organization; or

— pursuing an activity in an employed or self-employed capacity;

shall be entitled, after establishment but before becoming eligible for payment of a retirement pension within the meaning of Article 77 of the Staff Regulations, to have paid to the Union the capital value, updated to the date of the actual transfer, of pension rights acquired by virtue of such service or activities.

In such a case the appointing authority of the institution in which the official serves shall, taking into account the official's basic salary, age and exchange rate at the date of application for a transfer, determine by means of general implementing provisions the number of years of pensionable service with which he shall be credited under Union pension scheme in respect of the former period of service, on the basis of the capital transferred, after deducting an amount representing capital appreciation between the date of the application for a transfer and the actual date of the transfer.

Officials may make use of this arrangement only once for each Member State and pension fund concerned;"

4 The Authority's Assessment

The present assessment is divided into three parts. First, a brief overview is provided of the relevant provisions of the Icelandic pension system, and more particularly, of Article 19(4) of the Icelandic Act on Mandatory Pension Insurance and on the Activities of the Pension Funds No 129/1997, and its relationship to the EASA Regulation and Regulation 883/2004. Second, the breach of Article 29 of the EASA Regulation is assessed, including in light of Article 3 EEA, with a specific focus on the legal status, and effect of, the EU Staff Regulations with respect to the EEA Agreement. Third, the breach of Article 28 EEA and the free movement of workers in relation to EU agencies is assessed, including in light of Article 3 EEA.

4.1 Overview of relevant provisions of the Icelandic pension system[6]

Article 19(4) of the Icelandic Act on Mandatory Pension Insurance and on the Activities of the Pension Funds No 129/1997 ("the Act") provides that *"[p]ension contributions of foreign nationals emigrating from Iceland may be reimbursed, provided that this is not prohibited pursuant to international agreements to which Iceland is a party."*

In its correspondence with the Authority, the Icelandic Government has argued that Article 19(4) of the Act cannot be applied to EEA nationals moving from Iceland to another EEA State. The Icelandic Government has highlighted that pension rights accrued by EEA nationals in Iceland under the public pension system financed by general taxes and established by Act No 100/2007, on the one hand, and the mandatory occupational pension schemes system, on the other, are protected under the relevant rules of Regulation 883/2004 on the coordination of social security systems.

Furthermore, in its letter dated 21 November 2019, the Icelandic Government posits that, due to the nature and general scheme of the national pension funds system, the funds would need to assess the actuarial assumption of a pension (thereby providing an estimate of the accrued capital value of the pension to date) before any reimbursements of contributions could be approved.

However, as noted in the Letter of Formal Notice, the Authority recalls that the Icelandic Government has recognised that the capital value of an individual's accrued rights under the mandatory occupational pension schemes system can be calculated. Furthermore,

[6] The present analysis is based in part on information provided by the Icelandic Government in its letter dated 21 November 2019 (Doc No 1099196) and recalls the reasoning of the Authority's Letter of Formal Notice in the present case.

Regulation 883/2004 does not represent the relevant legal basis for the transfer of pension rights in this context. Case-law of the European Court of Justice ("the CJEU") demonstrates that transfers of national pension rights to the PSEUI do, in practice, occur, without the CJEU ever having considered if Regulation 883/2004 should in any way prevent this.[7] Instead, in the circumstances at hand, Article 29 of the EASA Regulation including its reference to the EU Staff Regulations, will regulate the pension rights of EASA staff members, including the ensuing right to have one's national pension rights transferred to the PSEUI.

Finally in this regard, the Authority recalls that the issue raised in the context of the present complaint case concerns the *transfer* of accrued pension rights to a pension scheme of an agency established and operating under EEA law, not the *reimbursement* directly to the individual concerned which seems to be the situation covered under Article 19(4) of the Act.

4.2 Breach of Article 29 of the EASA Regulation

The principal question to be assessed in the present case is whether Article 29 of the EASA Regulation, as incorporated into the EEA Agreement, confers upon EFTA nationals working for the EASA the right to have their occupational pensions transferred to the PSEUI.

In this regard, it is noted in the LFN that, first, pursuant to Article 29 of the EASA Regulation as amended for the purposes of the EEA Agreement, EFTA nationals may be employed by the agency. Second, Article 29(1) provides that the EU Staff Regulations shall apply to the staff of the agency. Importantly, Article 11(2) of Annex VIII to the EU Staff Regulations stipulates that officials shall be entitled to have paid to the PSEUI the capital value of pension rights acquired at national level. The Icelandic legislation and administrative practice do not permit such transfers to take place.

4.2.1. The objections voiced by the Icelandic Government

The Icelandic Government, in justifying the domestic law at issue in the present case, essentially contends that because the EU Staff Regulations are not incorporated into the EEA Agreement, EFTA nationals working for the EASA are precluded from making use of the right set forth therein to have their national pensions transferred to the PSEUI.

Iceland emphasises, moreover, that the EU Staff Regulations are laid down in a legislative act that is binding upon the EU Member States only, and that has not been incorporated into the EEA Agreement. The Icelandic Government argues that its position finds support in a statement made by the Commission's legal service when negotiating the incorporation of an act in the field of financial services: here, the EFTA States wished to include an adaptation which had become more or less standard practice in the field of financial services, reading: *"references to other acts in the Regulation shall be considered relevant to the extent and in the form that those acts are incorporated into the Agreement."* To this, the Commission's legal service replied that such an adaptation had no additional legal value, it being obvious that if an EU act had not been incorporated, it could not become part of the EEA Agreement through a reference to it in another act which has been incorporated.[8]

Iceland further notes that the relevant adaptation text in the JCD merely entails a right for EFTA nationals to be employed by the EASA, without making any reference to the EFTA States. By consequence, Article 29 of the EASA Regulation would only serve EFTA

[7] See for instance, Case C-132/18 *Tuerck* and Case C-166/12 *Časta*.

[8] Exchange of views between the EFTA Secretariat and the Legal Service of the European Commission, in email sent by the Icelandic Ministry of Finance to the Authority on 16 June 2021 (Doc No 1208049).

nationals as a legal basis for invoking the EU Staff Regulations towards the EASA, not towards the EFTA States. This in contrast to the approach taken by virtue of the adaptation text to Article 30 of the EASA Regulation, whereby the EFTA States are explicitly obliged to apply to the Agency and its staff the Protocol on the Privileges and Immunities of the EU and applicable rules adopted pursuant to that Protocol.

Finally, Iceland argues that any interpretation of Article 29 of the EASA Regulation, as adapted, to the effect that EFTA nationals can invoke the right to have their national pension rights transferred to the PSEUI, lacks support in Article 7 of the EEA Agreement and the adaptation text itself. Article 7 EEA provides that *"Acts referred to or contained in the Annexes to this Agreement or in decisions of the EEA Joint Committee shall be binding upon the Contracting Parties and be, or be made, part of their internal legal order…"* Iceland argues that *"[a] simple reference within one EU act to another EU act is insufficient to create an obligation to implement or transpose the act referred to,"*[9] and that *"[i]f an EU act has not been incorporated into the EEA Agreement, it cannot become part of the EEA Agreement through a reference to it in another act which has been incorporated."*[10]

4.2.2 The Authority's assessment

In addressing this issue, the Authority notes, first of all, that according to Article 7 EEA, EEA EFTA States are bound by and must ensure full implementation of acts included in the Annexes. Moreover, the EEA EFTA States are obliged under Article 3 EEA to take all appropriate measures to ensure fulfilment of the obligations arising from the Agreement and they must abstain from measures that could jeopardise the attainment of its objectives. It follows from this that, insofar as the EEA EFTA States have agreed to extend the scope of the Agreement, such an extension may limit, as in this case, an EEA EFTA State's discretion.[11]

The Authority further observes that unless the act itself offers specific definitions, the starting point for defining the meaning and scope of a provision of EEA law must be determined considering its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes and objectives of the rules of which it is part.[12]

The wording of Article 29 of the EASA Regulation (as incorporated into the EEA Agreement) clearly provides that EFTA nationals have the right to be employed by the EASA. Moreover, the same provision stipulates that the EU Staff Regulations *"shall apply to the staff of the Agency".*

The staff of the Agency, to whom Article 29 applies, may include EEA nationals. It is clear that the staff of the Agency are the recipients of the rights, since particular provisions of the Staff Regulations provide that rights should be granted to the Staff. The question therefore arises as to who, or which body, should grant these rights to the Staff. A textual reading of Article 29 leaves this issue open (though the rights must nonetheless be granted). However, reading through the Staff Regulations, it is clear that action on behalf of both the Agency itself, on the one hand, and the staff member's State of nationality, on the other, may be required, in order to ensure that the Staff Regulations are applied in an effective manner. Indeed, both the State and the Agency may be required to work in tandem. This is indeed the case with respect to the transfer of pensions, as provided for by Article 11(2) of Annex VIII to of the Staff Regulations.

[9] Letter of the Icelandic Government of 23 June 2021 (Doc No 1210544), p. 2.
[10] Ibid.
[11] See Case E-17/15, *Ferskar kjötvörur ehf*. [2016], paragraphs 48-49.
[12] Case C-201/13 *Deckmyn*, paragraph 19.

Further, it is clear that Article 29 of the EASA Regulation must be read in the context of the adaptations contained in EEA JCD No 163/2011 incorporating the EASA Regulation into the EEA Agreement (to which Iceland's letter of 23 June 2021 makes repeated reference), most of which were specifically added with the objective of ensuring the full participation of the EFTA States in the EASA. This is further emphasised in Recital 4 of the preamble to the JCD. This includes the right of EFTA nationals to be employed at the EASA. Of further relevance in this regard is Recital 4 to the EEA Agreement, which provides that EFTA nationals may rely upon and invoke rights conferred by the EEA Agreement (and acts incorporated into the agreement) on a reciprocal basis.

In addition to the above, the Authority notes that the system providing for the transfer of pension rights seeks, by enabling the EASA pension scheme to be coordinated with the national schemes, to facilitate movement from national employment, whether public or private, to the EASA administration, and thus to ensure that the latter has the best possible chance of being able to choose qualified staff who already possess suitable experience. The pursuit of this objective would be hindered if EEA nationals from Iceland were discouraged from taking up employment in the EASA because of an inability to transfer their pension rights.[13]

In this regard, it should be further noted that an interpretation of Article 29 of the EASA Regulation, as adapted, to the effect that nationals of the EEA EFTA States do not have the right to have their national pension rights transferred to the PSEUI is likely to impede and therefore to discourage employment within an agency of the European Union in which the EEA EFTA States participate, inasmuch as such individuals would not be able to benefit from the pension schemes of that agency to the same extent as EU citizens. Such consequences cannot be accepted in the light of the duty of loyal cooperation owed by EEA EFTA States under the EEA Agreement.[14] Consequently, not permitting the transfer of pension rights as required by Article 29 of the EASA Regulation constitutes a breach of Article 3 of the EEA Agreement.

As noted in the Letter of Formal Notice, the wording of Article 29 of the EASA Regulation, as adapted, leaves little scope for alternative interpretations, and that preference must be given to the interpretation which ensures that provisions of EEA law retain their effectiveness.[15] On this basis, the Authority considers that any interpretation that would amount to disapplying the possibility for EFTA nationals to rely on the EU Staff Regulations as foreseen by Article 29(1), would obstruct the full effectiveness of those persons' right to be employed by the EASA on the same footing as EU nationals. Finally, the Authority observes that the objective of establishing a dynamic and homogeneous European Economic Area can only be achieved if EFTA and EU citizens and economic operators enjoy, relying upon EEA law, the same rights.[16]

On the basis of the foregoing, although the EU Staff Regulations, as such, have not been incorporated into the EEA Agreement, this does not mean that they are wholly excluded from the scope of EEA law. To the extent that secondary legislation, which has been made part of EEA law, requires an external standard of whatever sort to be observed, that standard shall apply in full in the context of, and as specified by, the secondary legislation in question. This logic also applies where the external standard itself is prescribed by an instrument of EU law such as the EU Staff Regulations. Moreover, this is the case irrespective of whether the EFTA States are themselves signatories or parties to the instrument referred to. This does not entail that the Staff Regulations themselves

[13] See Case C-293/03, *Gregorio My* [2004], paragraph 44, and Case 137/80 *Commission v Belgium* [1981] ECR 2393, paragraphs 11 and 12

[14] See Case C-293/03, *Gregorio My* [2004], paragraphs 47-49.

[15] Case E-12/10 *ESA v Iceland*, paragraphs 40 and 60; Case E-2/11 *STX Norway Offshore AS and Others* [2012] EFTA Ct. Rep. 4, paragraphs 29 and 76; Case E-6/12 *ESA v Norway* [2013] EFTA Ct. Rep. 618, paragraph 112.

[16] See Case E-14/11, *DB Schenker*, paragraph 118.

have been *de facto* incorporated into the EEA Agreement, but rather that, in correctly exercising their obligations under acts incorporated into the EEA Agreement, the EEA EFTA States are obliged to have reference to extraneous norms that are not themselves part of EEA law, if acts that *are* incorporated into the EEA Agreement prescribe that regard should be had to such norms. Such norms may, in certain instances, include EU acts that have not been incorporated into the EEA Agreement.

In this regard, it is germane to note that the principal issue in the present case is not the infringement of the EU Staff Regulations themselves, but of Article 29 of the EASA Regulation, which requires that the Staff Regulations be applied to the staff of the EASA. Article 29 therefore prescribes an obligation, with reference to a normative standard that is not, itself, part of EEA law. Such arrangements are not unknown in EEA law.[17] The statement by the Commission's legal service, referred to by the Icelandic Government and whereby a legislative act as such cannot be made part of the EEA Agreement by way of reference, would thus appear to be without relevance to the case at hand, as there is no suggestion that the EU Staff Regulations as such are being incorporated into the EEA Agreement with a corresponding Article 7 EEA obligation to be or be made part of the internal legal order of the EEA EFTA States.

It should further be noted that the question as to the legal status of rules that are referred to in secondary acts that have been incorporated into the EEA Agreement, but that have not, themselves, been incorporated into the EEA Agreement has been treated, albeit indirectly, by the EFTA Court, as well as by the CJEU.

In Case E-2/20, *The Norwegian Government v L*, the EFTA Court made reference to Recital 24 and Article 28 of Directive 2004/38, both of which make explicit reference to the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC is notable for setting out an administrative standard whereby the best interests of the child must be of paramount concern in taking decisions that influence the child's future welfare.[18] Later in the judgment, in paragraphs 50-54, this standard represents part of the matrix of concerns that guides the Court in answering the question referred. Notably, the EFTA Court cites case law here where the ECJ has done likewise.[19] Like the EU Staff Regulations, the UNCRC has no independent normative force in EEA law – and has not been incorporated into the EEA Agreement – but given that it is referred to as a 'standard' by Directive 2004/38, this standard cannot be ignored by the Court in cases in which the relevant provisions of the Directive are to be applied. This strongly suggests that the UNCRC applies *praeter legem,* where an extraneous standard is required to clarify the obligations of EEA States under the relevant provisions of the Directive (since the Directive makes reference to an extraneous standard, but does not define it itself).

Similar reasoning has been applied by the CJEU in the EU legal context. In particular, the applicability of international legal norms that do not form part of EU law, but that are referred to in EU legal texts, came to a head in Joined Cases C-584/10 *P*, C-593/10 *P* and C-595/10 *P* (the 'asset freezing cases'). Here, the Charter of the United Nations, and in particular, its supremacy clause and the presumption of legality of Security Council Resolutions were at issue. Article 3 TEU refers to the Charter of the United Nations, and

[17] For example, in the context of Directive 2004/38/EC, Article 28(3)(b) prescribes that, in determining whether minor children may be expelled from EEA States, regard should be had to the best interests of the child *"as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989"*. This provision does not entail that the United Nations Convention on the Rights of the Child has been incorporated into EEA law, but rather that regard should be had to the normative standards prescribed by the Convention in exercising obligations under this particular sub-article of Directive 2004/38/EC.

[18] In particular, Article 3(1) of the UNCRC provides that *"[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*

[19] See, in particular Case C-82/16 *K.A. and Others*, EU:C:2018:308, paragraph 93

this was used as a basis to discuss the compatibility of EU law with the Charter. As such, while the Charter was not found to be part of EU law, the standards within the Charter were held to be of relevance for determining the EU's scope of action. Again, a simple reference in the text to an extraneous norm did not entail that this norm became part of EU law. However, the standards set out by that norm did circumscribe the EU's freedom of action and served as an interpretative canon for how the EU rules in question could be applied, *praeter legem*.

The Authority sees no reason why the logic applicable in the above cases should not be applied in relation to the EU Staff Regulations and the EASA Regulation. While the contention of the Icelandic Government that the Staff Regulations are not part of the EEA Agreement is undoubtedly sound, this does not entail that they are without legal effect. Rather, Article 29 of the EASA Regulation prescribes an obligation to extend the EU Staff Regulations to EASA Staff. The Authority recalls that this provision would be rendered ineffective if it were to be interpreted in such a manner that the EU Staff Regulations, falling as such outside the scope of the EEA Agreement, were held to be entirely without legal effect. This would contradict the principle of effectiveness, whereas, as noted above, preference must be given to the interpretation which ensures that provisions of EEA law retain their effectiveness.[20]

It should further be noted that a contrary interpretation, such as that advocated by the Icelandic Government, would disincentivise participation in the EASA by EFTA-national staff, something which the incorporation of the relevant EASA Regulation into the EEA Agreement was supposed to obviate. It would also amount to a lop-sided arrangement with a lack of concomitant reciprocity between the EU Member States on the one hand, and the EFTA States on the other. The Authority further notes that recital 9 to the EEA Agreement underlines both the role that individuals play in the EEA through the exercise of the rights conferred on them by the Agreement itself and through the judicial defence of these rights. Furthermore, the Authority recalls that the objective of establishing a dynamic and homogeneous European Economic Area can only be achieved if EFTA and EU citizens and economic operators enjoy, relying upon EEA law, the same rights.[21]

On the basis of the foregoing, the Authority concludes that Iceland is obliged to respect the rights and obligations provided for by the EU Staff Regulations insofar as this is required to fulfil the requirements of the EASA Regulation. As noted in the Letter of Formal Notice, while in other instances, upon the incorporation of an act into the EEA Agreement, specific adaptations might be necessary, *inter alia,* where that act covers policy areas that fall outside the scope of the Agreement or where a provision makes a reference to a non-incorporated act, no such adaptation, as regards the reference to the EU Staff Regulations, was made in the present case.

Moreover, having included the specific adaptation to the effect that EFTA nationals might be employed by the EASA on the same footing as EU nationals, the contracting parties had an even greater incentive to make it clear that the reference to the EU Staff Regulations in Article 29(1) should not apply, had that been their intention.

In addition, it is germane to emphasise that only the interpretation favoured by the Authority would appear to respect the principle of reciprocity, referred to *inter alia* in recital 4 to the EEA Agreement. This principle requires that EFTA nationals may invoke the rights conferred by the EEA Agreement within the EU.

[20] Case E-3/12 *Stig Arne* Jonsson, paragraph 75; Case E-12/10 *ESA v Iceland*, paragraphs 40 and 60; Case E-2/11 *STX Norway Offshore AS and Others* [2012] EFTA Ct. Rep. 4, paragraphs 29 and 76; Case E-6/12 *ESA v Norway* [2013] EFTA Ct. Rep. 618, paragraph 112.
[21] See Case E-14/11, *DB Schenker*, paragraph 118.

In light of the above considerations, the Authority concludes that the refusal to allow for the transfer of occupational pensions accrued in Iceland to the PSEUI, does not comply with Article 29 of the EASA Regulation.

4.3 Breach of Article 28 EEA

With respect to Article 28 EEA, the Authority recalls, first, that Article 28(1) provides that *"freedom of movement for workers shall be secured among EC Member States and EFTA States".* Consistent case law has shown that this provision entails the right for EEA nationals to leave their home State and go to another EEA State to work without being placed at a disadvantage.[22] In addition, consistent case law of the CJEU has held that EEA nationals who have accepted a post in an international organisation or institution come within the scope of the free movement of workers, and that it therefore follows that EEA nationals working for such an international organisation, agency or institution may not be refused the rights and social advantages granted to them on the basis of this freedom.[23] This also applies in circumstances in which workers have exercised their freedom of movement to take up employment in EU institutions and agencies.[24] It should be noted, further, that this case law predates the EEA Agreement.[25]

Any restriction on this right is permissible only if it pursues a legitimate objective justified by overriding reasons in the public interest and, moreover, if the measure in question is suitable for attaining that objective and does not go beyond what is necessary in order to attain it.[26]

In this context, it must be determined whether the refusal to allow for the transfer of the capital value of occupational pensions accrued in Iceland to the PSEUI constitutes a restriction on the freedom of movement for workers. In this context, the CJEU has made clear that:

"[p]rovisions which preclude or deter a national of a Member State 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 concerned."[27]

As noted in the Letter of Formal Notice, inclusion in the PSEUI may present several advantages for staff members of EU institutions and agencies. These may include, *inter alia*, greater pension disbursal, an increased lump sum and periodic payments, and a reduced taxation burden on accrued contributions. By refusing the transfer of occupational pensions accrued in Iceland to the PSEUI, the individuals concerned are placed at a clear disadvantage compared to their colleagues from other EEA States. As such, it presents an obstacle for those individuals to make full use of their right to freedom of movement.

In the Authority's view, the refusal to allow for the transfer of national pension rights to the PSEUI is therefore liable to hinder or make less attractive the exercise of free movement

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[22] Case C-415/93 *Bosman*, paragraphs 94-96; Case C-318/05 *Commission v Germany*, paragraphs 114-115; Case C-269/09 *Commission v Spain*, paragraphs 52-54; and Case C-187/15 *Pöpperl*, paragraphs 23-24.

[23] Case C-27/20, *PF, QG*, paragraph 19-20; Case C-651/16, *DW*, paragraph 19; Case C-466/15 *Adrien and Others*, paragraph 24.

[24] See case C-404/21 *WP* [2022] ECLI:EU:C:2022:1023, paragraph 24.

[25] See, in particular, Joined cases C-389/87 and C- 390/87 *Echternach and Moritz,* paragraphs 10-15.

[26] Case E-8/17 *Kristoffersen* [2018] EFTA Ct. Rep. 383, paragraph 114.

[27] Case C-18/95 *Terhoeve*, paragraph 39.

as guaranteed by the EEA Agreement, even if there is no discrimination on grounds of nationality.[28]

The Icelandic Government, in its letter of 23 June 2021, argues that the Authority's analysis in this regard is incorrect. It notes that Article 28(1) EEA does not include any explicit rights in relation to organisations or agencies to which the EEA EFTA States are not party, including EU institutions, bodies or agencies. The letter further draws attention to the fact that Joint Committee Decision No 163/2011, incorporating the EASA Regulation into the EEA Agreement, provides for participation rights for the EEA EFTA States, but that the EASA remains, in essence, an EU agency. Further, "*[b]earing in mind that the Staff Regulations [are] not incorporated into the EEA Agreement and [are] as such not binding upon the EEA EFTA States, it is not apparent from the provision that there is any obligation for an EEA EFTA State to provide for the possibility for a staff member of EASA to transfer the capital value representing previously acquired pension rights to the [PSEUI].*"[29]

The Authority notes, first of all, that the argument of the Icelandic Government on this point relies upon the non-incorporation of the Staff Regulations into the EEA Agreement. As explained above, in Section 4.2 of the present Reasoned Opinion, the Authority does not argue that the Staff Regulations have been incorporated into the EEA Agreement *per se*, but rather that provisions of the EASA Regulation, and more particularly Article 29 thereof, stipulate that the Staff Regulations shall apply to the staff of the agency (with the Staff Regulations providing that employees are entitled to have the capital value of their national pension rights transferred to the PSEUI). While the Staff Regulations themselves do not form part of the *corpus* of EEA law therefore, Article 29 of the EASA Regulation certainly does, with this provision imposing obligations upon the EEA EFTA States, *inter alia*, the obligation to ensure that the rights enjoyed by staff of the EASA are respected. This is further clarified by Points 3(a) and Point 3(m) of the annex to Decision of the EEA Joint Committee No 163/2011 incorporating the EASA Regulation into the EEA Agreement, which provide that the EEA EFTA States shall be treated in the same manner as EU Member States under the Regulation, and that nationals of the EFTA States may be contracted as staff by the EASA, respectively.

In addition to the above, the Authority recalls that, as noted in Section 4.1 of the present Reasoned Opinion, the Icelandic Government, in the course of its correspondence with the Authority, has contrasted the adaptation text in Decision of the EEA Joint Committee No 163/2011 incorporating the EASA Regulation into the EEA Agreement pertaining to Article 29 with that pertaining to Article 30. Iceland has sought to emphasise that, the language in the adaptation text pertaining to Article 29 merely entails a right for EFTA nationals to be employed by the EASA, without making any explicit reference to the EFTA States. By contrast, the adaptation text to Article 30 of the EASA Regulation makes it clear that the EFTA States are explicitly obliged to apply "*to the Agency and to its staff the Protocol of Privileges and Immunities of the European Union [sic] and applicable rules adopted pursuant to that Protocol.*"

In this context, it is to be recalled that the Staff Regulations were adopted on the basis of powers foreseen by several provisions, including Article 14, of the Protocol on the Privileges and Immunities of the European Union, via a Regulation,[30] and thus constitute *"applicable rules adopted pursuant to that Protocol."* It should be further noted that the adoption of the Regulation in question significantly predates the negotiation of the EEA Agreement. This entails that Article 30 EASA, as adapted for incorporation into the EEA Agreement, in obliging the EEA EFTA States to apply the Protocol on Privileges and Immunities, also obliges them to apply the Staff Regulations to the staff of the Agency.

[28] Case E-14/15 *Holship Norge AS vs Norsk Transportarbeiderforbund*, paragraph 115.
[29] Letter of the Icelandic Government of 23 June 2021 (Doc No 1210544), p. 3.
[30] Regulation (EEC, EURATOM, ECSC) No 259/68 OJ L56/1, 4.3.1968.

In other words, even if there were to be any doubts about the legal effects of Article 29 EASA and the related adaptations, *quod non*, the adaptation in relation to Article 30 confirms the contracting parties' decision that the EFTA States are bound to apply to the Agency's staff the Staff Regulations as part of the "*applicable rules adopted pursuant to [the] Protocol*".

In relation to the above, it is germane to reiterate that, according to Article 7 EEA, EEA EFTA States are bound by and must ensure full implementation of acts included in the Annexes (including Annex XIII, as amended by the EASA Regulation). Moreover, the EEA EFTA States are obliged under Article 3 EEA to take all appropriate measures to ensure fulfilment of the obligations arising from the Agreement and they must abstain from measures that could jeopardise the attainment of its objectives. It follows from this that, insofar as the EEA EFTA States have agreed to extend the scope of the Agreement via amendments to the annexes, such an extension may limit, as in this case, an EEA EFTA State's discretion, including in the area of freedom of movement, than would otherwise be the case.[31]

Secondly, while the Icelandic Government is correct that Article 28(1) EEA does not include any explicit rights in relation to organisations or agencies to which the EEA EFTA States are party, including EU institutions, bodies or agencies, there is no suggestion that such institutions, bodies or agencies should be excluded from the scope of free movement of workers. As noted above, there is, in fact, consistent case law to the contrary. While agencies such as the EASA fulfil a public mission, there is no suggestion that they fall under the public service exception per Article 28(4) EEA.[32] Rather, in *Echternach and Moritz*, the CJEU rejected this argument, holding rather that EEA nationals employed by such agencies come within the scope of the free movement of workers, and that it therefore follows that such individuals may not be refused the rights and social advantages granted to them on the basis of this freedom.[33] Moreover, excluding from the scope of free movement of workers those individuals who exercise their right of free movement would deprive the right of its effectiveness. It should further be noted that the EFTA Court has held that any derogations to the free movement of persons must be interpreted restrictively.[34]

In addition, the Authority notes that the EASA is an agency of the European Union, albeit one in which the EEA EFTA States participate. As such, it has a distinct character from entities possessing separate legal personality provided for by primary EU legislation, such as the European Central Bank ("ECB"), and from other international organisations and organs entirely unconnected to the European Union. The Authority observes that the position of the EEA EFTA States in relation to the EASA, on the one hand, and these other organisations and organs, on the other, is distinct.

In relation to the latter, the CJEU, in *Gardella* – a case referred to by Iceland in its meeting with the Authority of 17 January 2023 –- held that the freedom of movement of workers could not, of itself, entail *"an obligation for a Member State to provide for the option for an official of an international organisation… of transferring the capital value representing previously-acquired pension rights to the pension scheme of that international organisation, or that there is an obligation to conclude an international agreement to that effect."*[35] The Authority will explain in the following paragraphs why that case-law is not relevant for the assessment of this case.

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[31] See Case E-17/15, *Ferskar kjötvörur ehf*. [2016], paragraphs 48-49.

[32] For discussion on the limits of this principle, see in this regard, Case 149/79 *Commission v Belgium* [1980] ECR 3881 and Case 152/73 *Sotigiu v Deutsche Bundespost* [1974] ECR 153.

[33] Joined cases C-389/87 and C- 390/87 *Echternach and Moritz,* paragraphs 10-15.

[34] Case E-15/12 *Jan Anfinn Wahl*, [2013] EFTA Ct. Rep. 534, paragraph 117

[35] Case C-233/12 *Simone Gardella* [2013] ECLI:EU:C:2013:449, paragraph 35.

Gardella involved an employee of the European Patent Office ("EPO"), an organ of the European Patent Organisation founded on the basis of the European Patent Convention of 1973, and not a body of the European Union.

In a case involving an organ of an international organisation established in another EU Member State, either transferring the capital value representing previously acquired pension rights to the pension scheme of that international organisation, or upholding an obligation to conclude an international agreement to that effect would require the agreement of the international organisation in question, and could not be effected unilaterally by the EU Member State. As such, it is clear that the freedom of movement of workers could never, alone, provide a basis for a right for an employee of such an organ to transfer the capital value of his or her pension to the pension scheme of that organ, as the organ's consent to receive the pension – whether on the basis of an international agreement with the State in question, or *ad hoc* – would represent a *conditio sine qua non.*

The CJEU in *Gardella* noted that the EPO is *"an international organisation governed by international law."*[36] The EASA, however, is a creation of EU law, established and regulated by Regulation 216/2008. The Authority notes the wording of Article 29(2) of the latter, which provides that "*the powers conferred on the appointing authority by the Staff Regulations and the Conditions of Employment shall be exercised by the Agency in respect of its own staff."* This creates a clear obligation in respect of the EASA to apply the Staff Regulations in respect of its own staff, which may include nationals of the EEA EFTA States. As noted, the Staff Regulations contemplate the transfer of pensions in circumstances such as those in the present case. As such, even in the event that Article 29 of the EASA Regulation does not give rise to obligations for Iceland to adhere to the EU Staff Regulations, it is clear that the EASA itself is obliged to apply the EU Staff Regulations in respect of its staff. This entails that, contrarily to *Gardella*, there is no legal impediment as a matter of either international or EEA law to Iceland unilaterally providing for the transfer of previously acquired pension rights to the pension scheme of the EASA.

The above entails that in the present case, the conclusion of the CJEU in *Gardella* that *"the absence of such an option for officials of an international organisation such as the EPO cannot be considered to be an impediment to the free movement of workers"*[37] cannot be viewed as conclusive, as the same impediments as present in that case are not applicable in the present circumstances.

Similar logic may also be applied with respect to *WP,*[38] a recent case highlighted by the Icelandic Government in its meeting with the Authority of 17 January 2023. While this case involved the ECB – an EU institution, unlike the EPO in *Gardella* – the CJEU noted that "*ECB staff members are not appointed as officials of the European Union under the conditions laid down in Article 1a(1) of the Staff Regulations*" but are engaged by the ECB *"which … has its own legal personality, which is separate from that of the Union."*[39] The Court further highlighted that while the *Gardella* judgment had drawn attention to the fact that the EPO is not an EU institution or body, it had done so solely in order to *"clarify the ground on which the option, granted under the Staff Regulations, of transferring to the EU pension scheme the capital value representing the pension rights acquired by virtue of previous activities cannot be extended to officials of the EPO and to relations between the latter and a Member State."*[40]

The Court went on to clarify that it was equally clear that the option, granted under the Staff Regulations, of transferring to the EU pension scheme the capital value

[36] Ibid, paragraph 31.
[37] Ibid, paragraph 36.
[38] Case C-404/21 *WP* [2022] ECLI:EU:C:2022:1023
[39] Ibid, paragraphs 33 and 34.
[40] Ibid, paragraph 31.

representing the pension rights, could not apply to ECB staff, as the Staff Regulations were not applicable to them. Instead, a separate and distinct set of rules was applicable, namely the ECB conditions of employment, and the Staff Regulations could therefore not give rise to any rights for ECB staff.

The Court noted that the rules applicable to ECB staff are to be adopted by the Governing Council of the ECB, in accordance with Article 36 of the Protocol on the ESCB and the ECB, and are laid down in the ECB Conditions of Employment. ECB staff are not EU officials or EU staff, with the result that the EU Staff Regulations are not applicable to them, and that, *ipso facto*, no right to have one's pension transferred can arise on the basis of the Staff Regulations.[41] Rather, Article 8(a) of Annex IIIa to the ECB conditions of employment makes it clear that it is incumbent upon the ECB to negotiate in order to enter into agreements or make other appropriate arrangements with EU Member States to facilitate pension transfers.[42] The Court clarified that a provision such as Article 8(a) of Annex IIIa to the ECB conditions of employment does not preclude, in the absence of an agreement between the ECB and the Member State in question, legislation or an administrative practice of that Member State which does not allow an ECB staff member to transfer, to the ECB pension scheme, an amount corresponding to the pension rights he or she has acquired under the pension scheme of that Member State, though the Court did note that the relevant rules did entail that the Member State was under an obligation to participate actively and in good faith in negotiations with a view to eventually entering into an agreement.[43]

It is clear from the above that *WP* may be distinguished from the present case. There, the situation with respect to the potential transfer of pensions was governed solely by Article 8(a) of Annex IIIa to the ECB conditions of employment, which set out a regime providing for the possibility to negotiate a transfer of pensions, and that is of no relevance to the present dispute. While the relevant provision in that case neither contained a provision providing a mechanism for the transfer of staff pensions, nor prescribed that an extraneous set of norms were to be observed that would provide for a right to have pensions transferred to the ECB, as noted above, in the present case, Article 29 of the EASA Regulation is the relevant legal provision. This provision does not provide that an agreement must exist before pension rights may be transferred. Indeed, rather, in prescribing that the EU Staff Regulations shall apply to the Agency's staff, it sets out the right for the Agency's staff to have the value of their pensions transferred.

As with *Gardella*, the reasoning above entails that in the present case, the conclusion of the CJEU in *WP* that the absence of an option for staff of the ECB to transfer their pensions to the ECB cannot be considered to be an impediment to the free movement of workers, cannot be viewed as conclusive, as the same impediments as those that were present in that case – specifically, the relevant specific provisions – are not applicable in the present circumstances.

The *Gardella* and *WP* jurisprudence may be further distinguished by the fact that, whereas in those cases, a citizen of the European Union was unable to transfer the capital value of his or her pension to the pension scheme of the EPO and ECB respectively, there is no doubt that a citizen of the European Union would be able to transfer the capital value of his or her pension to the pension scheme of the EASA. Given that it is not in dispute that both EU citizens and EEA nationals may take up posts as staff at the EASA, and that both enjoy freedom of movement in this regard, it is essential for the proper functioning of the EEA Agreement that such freedom of movement entails similar consequences in both the EU and EFTA pillars. As noted by the EFTA Court, *"[t]he principle of homogeneity…leads to a presumption that provisions framed in the*

[41] Ibid, paragraphs 33 and 34.
[42] Ibid, paragraph 36.
[43] Ibid, paragraph 53.

same way in the EEA Agreement and [EU] law are to be construed in the same way."[44] Here, it is clear that the relevant provisions concerning free movement of workers in the TFEU and the EEA Agreement, respectively, are framed in a manner that is sufficiently similar for such a presumption to apply in circumstances such as those in the present case. In addition, the relevant provisions of the EASA Regulation have been incorporated *verbatim* in the EEA Agreement. While the EFTA Court has noted that "*certain differences in the scope and purpose of the EEA Agreement…may under specific circumstances lead to a different interpretation*"[45], nothing in the present case points to different interpretation of the relevant provisions being applicable. Rather, a divergent interpretation would necessarily lead to a situation in which EEA nationals were dissuaded from exercising their freedom of movement due to less favourable treatment vis-à-vis EU citizens in a comparable situation.

On the basis of the foregoing, the Authority submits that Article 28 EEA is applicable in the present case, and that the contested measure, whereby the capital value of occupational pensions accrued in Iceland may not be transferred to the PSEUI, constitutes a restriction on the freedom of movement for workers.

Any restriction must pursue a legitimate objective justified by overriding reasons in the public interest. It must also be assessed whether the measure in question goes beyond what is necessary in order to attain the chosen objective. This implies that the chosen measure must not be capable of being replaced by an alternative measure that is equally useful but less restrictive to the fundamental freedoms of EEA law.[46] It is for the EEA State imposing the restriction to demonstrate that the measure is suitable to achieve the legitimate objective pursued along with genuinely reflecting a concern to attain that aim in a consistent and systematic manner.[47] The Authority notes that aims of a purely economic or administrative nature cannot justify a restriction on free movement.[48]

Moreover, with respect to the consistency criterion, the Authority recalls that Sections 19(3) and (4) of the Icelandic Act on Mandatory Pension Insurance and on the Activities of the Pension Funds No 129/1997 provide for the pension contributions of foreign nationals to be reimbursed in certain circumstances when such individuals are emigrating from Iceland to non-EEA States, while past exchanges with the Icelandic Government in the course of the present case have made it clear that pensions are in fact exportable in the event that individuals resident in Iceland emigrate to such States, and that the value of pensions may be calculated for this purpose.

The Icelandic Government has failed to demonstrate that the contested restriction is justified.

In light of the above, the Authority submits that the refusal to allow for the transfer of the capital value of occupational pensions accrued in Iceland to the PSEUI, amounts to an unjustified restriction on the free movement of workers in breach of Article 28 EEA.

FOR THESE REASONS,

THE EFTA SURVEILLANCE AUTHORITY,

pursuant to the first paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, and after having given Icelandthe opportunity of submitting its observations,

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[44] Joined Cases E-9 & 10/07 *L'Oreal Norge* [2008] EFTA Ct. Rep. 258, paragraph 27.
[45] Case E-2/06 *EFTA Surveillance Authority v Norway* [2007] EFTA Ct. Rep. 163, paragraph 59.
[46] Case E-8/20 *N* [2021], paragraph 94.
[47] Case E-8/16 *Netfonds Holdings and others*, [2017] EFTA Ct. Rep. 163, paragraph 117.
[48] Case E-8/17 *Kristoffersen*, cited above, paragraph 115; and Case C-212/08 *Zeturf*, EU:C:2011:437, paragraph 48.

HEREBY DELIVERS THE FOLLOWING REASONED OPINION

that by maintaining in force administrative practice which precludes the transfer of the capital value of occupational pensions accrued in Iceland to the PSEUI, Iceland has failed to fulfil its obligation arising from Article 29 of Regulation 216/2008 as adapted to the EEA Agreement by Protocol 1 thereto, and Articles 3 and 28 of the EEA Agreement.

Pursuant to the second paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the EFTA Surveillance Authority requires Iceland to take the measures necessary to comply with this reasoned opinion within *two months* of its receipt.

Done at Brussels, 15 March 2023

For the EFTA Surveillance Authority

For Arne Røksund President	Stefan Barriga Responsible College Member	Árni Páll Árnason College Member

Melpo-Menie Joséphidès
Countersigning as
Director,Legal and Executive Affairs

This document has been electronically authenticated by Stefan Barriga, Melpo-Menie Josephides.