# JUDGMENT OF THE COURT

10 November 2026*

(*Social security – Principle of aggregation – Article 6 of Regulation (EC) No 883/2004 – Legal value of documents issued by the competent institution of another EEA State in accordance with Article 5 of Regulation (EC) No 987/2009 – Article 76 of Regulation (EC) No 883/2004 – Principle of sincere cooperation – Article 3 EEA – Freedom of movement – Article 28 EEA – Article 29 EEA – Indirect discrimination – Justification*)

In Case E-1/26,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Supreme Court of Norway (*Norges Høyesterett*), in the case between

**A and B**

and

**the Norwegian State, represented by the Labour and Welfare Directorate (*Staten v/Arbeids- og velferdsdirektoratet)***

THE COURT,

composed of: Páll Hreinsson, President (Judge-Rapporteur), Bernd Hammermann and Michael Reiertsen, Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

- A, represented by John Christian Elden and Olaf Halvorsen Rønning, advocates;
- B, represented by Jørn Are Gaski, advocate;
- the Norwegian Government, represented by Ida Thue, acting as Agent;

* Language of the request: Norwegian. Translations of national provisions are unofficial and based on those contained in the documents of the case.

- the Spanish Government, represented by Manuel Acedo-Rico Montiel, acting as Agent;

- the EFTA Surveillance Authority ('ESA'), represented by Johanne Førde, Johanna Himmanen, Johannes Kohler and Melpo-Menie Joséphidès, acting as Agents; and

- the European Commission ('the Commission'), represented by Marzena Brauhoff and Bernd-Roland Killmann, acting as Agents,

having heard oral argument on behalf of A, represented by Olaf Halvorsen Rønning; B, represented by Hans Gerhard Drage, advocate; the Norwegian Government, represented by Ida Thue; ESA, represented by Johanne Førde and Johannes Kohler; and the Commission, represented by Marzena Brauhoff, at the hearing on 9 June 2026,

gives the following

**J U D G M E N T**

## I INTRODUCTION

1 The present request for an advisory opinion concerns the right to disability benefits in Norway and whether requirements under national law for disability benefits are compatible with EEA law. Under Norwegian law, entitlement to disability benefits is acquired through continuous membership in the national social security scheme for a period of three or five years, which is acquired, inter alia, through having been lawfully resident in Norway. A and B do not satisfy those conditions based on periods of residence in Norway alone, but have been residents and acquired social security rights in other EEA States before moving to Norway.

2 The request has been made in proceedings between A and B and the Norwegian State, represented by the Labour and Welfare Directorate.

## II LEGAL BACKGROUND

### EEA law

3 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.*
>
> *Moreover, they shall facilitate cooperation within the framework of this Agreement.*

4 Article 28 EEA reads, in extract:

> *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.*
>
> *3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:*
>
> *(a) to accept offers of employment actually made;*
>
> *(b) to move freely within the territory of EC Member States and EFTA States for this purpose;*
>
> *(c) to stay in the territory of an EC Member State or an EFTA State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;*
>
> *(d) to remain in the territory of an EC Member State or an EFTA State after having been employed there.*
>
> ...

5 Article 29 EEA reads:

> *In order to provide freedom of movement for workers and self-employed persons, the Contracting Parties shall, in the field of social security, secure, as provided for in Annex VI, for workers and self-employed persons and their dependants, in particular:*
>
> *(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;*
>
> *(b) payment of benefits to persons resident in the territories of Contracting Parties.*

6 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1; and Norwegian EEA Supplement 2015 No 76, p. 40) ('Regulation 883/2004'), as corrected by OJ 2004 L 200, p. 1, and OJ 2007 L 204, p. 30, was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 76/2011 of 1 July 2011 (OJ 2011 L 262, p. 33; and Norwegian EEA Supplement 2011 No 54, p. 46) ('JCD No 76/2011') and is referred to at point 1 of Annex VI (Social Security) to the EEA Agreement. Constitutional requirements were indicated by Iceland and Liechtenstein.

Those requirements were fulfilled by 31 May 2012, and the decision entered into force on 1 June 2012.

7 Recital 10 of Regulation 883/2004 reads:

> *However, the principle of treating certain facts or events occurring in the territory of another Member State as if they had taken place in the territory of the Member State whose legislation is applicable should not interfere with the principle of aggregating periods of insurance, employment, self-employment or residence completed under the legislation of another Member State with those completed under the legislation of the competent Member State. Periods completed under the legislation of another Member State should therefore be taken into account solely by applying the principle of aggregation of periods.*

8 Points (t), (u) and (v) of Article 1 of Regulation 883/2004, entitled 'Definitions', read:

> *(t) "period of insurance" means periods of contribution, employment or self-employment as defined or recognised as periods of insurance by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of insurance;*
>
> *(u) "period of employment" or "period of self-employment" mean periods so defined or recognised by the legislation under which they were completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of employment or to periods of self-employment;*
>
> *(v) "period of residence" means periods so defined or recognised by the legislation under which they were completed or considered as completed;*

9 Article 4 of Regulation 883/2004, entitled 'Equality of treatment', reads:

> *Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.*

10 Article 5 of Regulation 883/2004, entitled 'Equal treatment of benefits, income, facts or events', reads:

> *Unless otherwise provided for by this Regulation and in the light of the special implementing provisions laid down, the following shall apply:*
>
> *(a) where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State;*

*(b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.*

11 Article 6 of Regulation 883/2004, entitled 'Aggregation of periods', reads:

*Unless otherwise provided for by this Regulation, the competent institution of a Member State whose legislation makes:*

*— the acquisition, retention, duration or recovery of the right to benefits,*

*— the coverage by legislation, or*

*— the access to or the exemption from compulsory, optional continued or voluntary insurance,*

*conditional upon the completion of periods of insurance, employment, self-employment or residence shall, to the extent necessary, take into account periods of insurance, employment, self-employment or residence completed under the legislation of any other Member State as though they were periods completed under the legislation which it applies.*

12 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1; and Norwegian EEA Supplement 2015 No 76, p. 89) ('Regulation 987/2009') was incorporated into the EEA Agreement by JCD No 76/2011 and is referred to at point 2 of Annex VI (Social Security) to the EEA Agreement. Constitutional requirements were indicated by Iceland and Liechtenstein. Those requirements were fulfilled and notified by 31 May 2012, and the decision entered into force on 1 June 2012.

13 Article 5 of Regulation 987/2009, entitled 'Legal value of documents and supporting evidence issued in another Member State', reads:

*1. Documents issued by the institution of a Member State and showing the position of a person for the purposes of the application of the basic Regulation and of the implementing Regulation, and supporting evidence on the basis of which the documents have been issued, shall be accepted by the institutions of the other Member States for as long as they have not been withdrawn or declared to be invalid by the Member State in which they were issued.*

*2. Where there is doubt about the validity of a document or the accuracy of the facts on which the particulars contained therein are based, the institution of the Member State that receives the document shall ask the issuing institution for the necessary clarification and, where appropriate, the withdrawal of that document. The issuing*

*institution shall reconsider the grounds for issuing the document and, if necessary, withdraw it.*

*3. Pursuant to paragraph 2, where there is doubt about the information provided by the persons concerned, the validity of a document or supporting evidence or the accuracy of the facts on which the particulars contained therein are based, the institution of the place of stay or residence shall, insofar as this is possible, at the request of the competent institution, proceed to the necessary verification of this information or document.*

*4. Where no agreement is reached between the institutions concerned, the matter may be brought before the Administrative Commission by the competent authorities no earlier than one month following the date on which the institution that received the document submitted its request. The Administrative Commission shall endeavour to reconcile the points of view within six months of the date on which the matter was brought before it.*

14 Article 12 of Regulation 987/2009, entitled 'Aggregation of periods', reads:

*1. For the purposes of applying Article 6 of the basic Regulation, the competent institution shall contact the institutions of the Member States to whose legislation the person concerned has also been subject in order to determine all the periods completed under their legislation.*

*2. The respective periods of insurance, employment, self-employment or residence completed under the legislation of a Member State shall be added to those completed under the legislation of any other Member State, insofar as necessary for the purposes of applying Article 6 of the basic Regulation, provided that these periods do not overlap.*

*3. Where a period of insurance or residence which is completed in accordance with compulsory insurance under the legislation of a Member State coincides with a period of insurance completed on the basis of voluntary insurance or continued optional insurance under the legislation of another Member State, only the period completed on the basis of compulsory insurance shall be taken into account.*

*4. Where a period of insurance or residence other than an equivalent period completed under the legislation of a Member State coincides with an equivalent period on the basis of the legislation of another Member State, only the period other than an equivalent period shall be taken into account.*

*5. Any period regarded as equivalent under the legislation of two or more Member States shall be taken into account only by the institution of the Member State to whose legislation the person concerned was last compulsorily subject before that period. In the event that the person concerned was not compulsorily subject to the legislation of a Member State before that period, the latter shall be taken into*

*account by the institution of the Member State to whose legislation the person concerned was compulsorily subject for the first time after that period.*

*6. In the event that the time in which certain periods of insurance or residence were completed under the legislation of a Member State cannot be determined precisely, it shall be presumed that these periods do not overlap with periods of insurance or residence completed under the legislation of another Member State, and account shall be taken thereof, where advantageous to the person concerned, insofar as they can reasonably be taken into consideration.*

15 Decision No H6 of 16 December 2010 concerning the application of certain principles regarding the aggregation of periods under Article 6 of Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2011 C 45, p. 5; and Norwegian EEA Supplement 2017 No 4, p. 726) ('Decision H6') was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 92/2012 of 30 April 2012 (OJ 2012 L 248, p. 30; and Norwegian EEA Supplement 2012 No 50, p. 35) and is referred to at point 3.H6 of Annex VI (Social Security) to the EEA Agreement as an act of which the Contracting Parties shall take due account.

**National law**

16 Section 1-3 of Act No 19 of 28 February 1997 on National Insurance (*lov 28. februar 1997 nr. 19 om folketrygd*) ('the National Insurance Act') reads:

*The present Act shall be interpreted and applied in accordance with the principles on free movement and equal treatment as provided for in the Main Part of the EEA Agreement.*

17 Section 2-1 of the National Insurance Act reads:

*Persons who reside in Norway are compulsorily members of the national insurance scheme.*

*Residents of Norway are those who stay in Norway, when the stay is intended to last or has lasted at least 12 months. A person who moves to Norway is considered resident from the date of entry.*

*It is a condition for membership that the person concerned has legal residence in Norway.*

*In the event of temporary absence from Norway that is not intended to last more than 12 months, the person concerned is still considered resident here. However, this does not apply if the person concerned is to stay or has stayed abroad for more than six months per year for two or more consecutive years.*

18 Section 2-2 of the National Insurance Act reads:

*A person who is not a member of the national insurance scheme under section 2-1 is nevertheless compulsorily member of the national insurance scheme if the person concerned is a worker (section 1-8) in Norway or on the Norwegian part of the Continental Shelf in connection with exploration or extraction of oil, gas or other natural resources. This shall apply only if not otherwise provided for in or pursuant to the present Act.*

*It is a condition that the person concerned is legally able to engage in paid employment in Norway or on the Norwegian Continental Shelf.*

19 Section 12-1 a of the National Insurance Act reads:

*Disability benefit is an invalidity benefit under the social security regulation. Provisions in the present chapter shall be disapplied to the extent necessary in respect of relevant provisions in the Main Part of the EEA Agreement, the Social Security Regulation, the Implementing Regulation and bilateral and multilateral social security agreements: see sections 1-3 a and 1-3 b.*

*The Ministry may, by regulation, issue provisions supplementing or facilitating compliance with provisions on invalidity benefits in the Social Security Regulation and the Implementing Regulation.*

20 Section 12-2 of the National Insurance Act reads:

*It is a condition for entitlement to disability benefit that the person concerned has been a member of the national insurance scheme for the five years preceding the onset of disability: see section 12-8. In the assessment of whether the condition is fulfilled, no account shall be taken of periods spent serving with international organisations or bodies of which the Norwegian State is a member, to which it makes financial contributions or to which it is responsible for contributing to staffing.*

*The condition of five years of prior membership in the first paragraph shall not apply to a person who has been a member of the insurance scheme for at least one year immediately before he or she submits a claim for disability benefit, if*

*a. the person concerned became disabled before turning 26 years of age and at that time was a member of the national insurance scheme, or*

*b. the person concerned, after turning 16 years of age, has been a member of the national insurance scheme except for a maximum of five years.*

*The condition in the first paragraph shall not apply if the person concerned was a member of the national insurance scheme at the time of the onset of disability and the disability benefit in the event of a 100 per cent degree of invalidity:*

*a. calculated on the basis under the first paragraph of section 12 11 will at least correspond to half of the high rate under the third sentence of the second paragraph of section 12-13, or*

*b. calculated on the basis of periods of insurance will at least correspond to half of the minimum benefit under the second paragraph of section 12-13.*

*Future periods of insurance shall not be included in the calculation: see the fifth paragraph of section 12-12.*

## III FACTS AND PROCEDURE

### The case concerning A

21 A, who was born in Pakistan, is now a Spanish citizen. He moved to Spain in 2005 and worked there before moving to Norway on 10 April 2013. The onset of A's disability was in January 2016, and A applied for disability benefit in Norway on 19 December 2017. A's application was refused by decision of the Norwegian Labour and Welfare Administration ('Nav'). That decision was upheld by an order of 7 September 2020 of the National Insurance Court (*Trygderetten*). A has twice applied, unsuccessfully, for the case to be reopened before the National Insurance Court and has reapplied for disability benefit, with the result that various decisions and orders have been handed down. The issues in dispute have related, inter alia, to the time of the onset of A's disability and whether he has been a member of the national social security scheme for a sufficiently lengthy period to be entitled to a disability benefit.

22 The decision at issue in the main proceedings was adopted after A reapplied for disability benefit on 29 July 2021. He was refused the benefit by Nav decision of 16 November 2021, on the ground that he did not satisfy the requirement laid down in the first paragraph of Section 12-2 of the National Insurance Act of membership in the national social security scheme for a period of five years prior to the onset of disability in January 2016 or the alternative conditions laid down in the second or third paragraph of Section 12-2 of the National Insurance Act.

23 Norwegian authorities have twice obtained information from Spanish authorities on the E205 ES form, the first time on 4 April 2019 in connection with the first application procedure and the second time on 22 November 2021. Nav requested additional information and received a response from Spanish authorities by letter of 17 January 2022.

24 By order of 1 August 2024, the National Insurance Court upheld the refusal of Nav Appeals (*Nav Klageinstans*), concluding, inter alia, that the requirement of continuous membership in the national social security scheme for five years prior to the onset of disability was not fulfilled. In its order, the National Insurance Court stated as follows:

*NAV has obtained information on periods of insurance from Spain, which shows that he was registered as having periods of insurance in Spain during the following periods:*

*17.01.2008 – 31.01.2009*

*02.12.2009 – 19.02.2011*

*01.08.2011 – 16.12.2011*

*01.02.2012 – 23.02.2012*

*02.04.2012 – 17.05.2012*

*25.09.2012 – 24.12.2012*

*28.11.2013 – 12.12.2013*

25 A appealed to Borgarting Court of Appeal (*Borgarting lagmannsrett*), claiming that the National Insurance Court's decision was invalid. Borgarting Court of Appeal ruled on that appeal by judgment and order of 4 February 2025, following a simplified procedure, which found in favour of the Norwegian State.

26 In its judgment, Borgarting Court of Appeal held as follows:

*A accordingly does not satisfy the condition of membership in the national insurance scheme in Norway during the five years preceding the onset of disability.*

*Membership periods in other EEA countries are however included in the assessment of prior membership: see Articles 6 and 45 of Social Security Regulation No 883/2004. As a result, periods of insurance from Norway and periods of insurance from other EEA States can be aggregated: see Article 6 of the Social Security Regulation. It is a requirement, however, that the period of insurance must be continuous, including in the event of aggregation with periods of insurance from EEA States.*

*According to the information provided by the Spanish authorities, A lacks a period of insurance from Spain in the period from 25 December 2012 until he moved to Norway on 10 April 2013, the date used as a basis by the National Insurance Court. The Court of Appeal refers inter alia to Annex 83 to the statement in defence. In a letter to the Norwegian authorities, the Spanish authorities stated that a condition for membership in Spain is that the person concerned must be in employment, and that this is the reason for the interruptions in the period of insurance in Spain. The Court of Appeal refers inter alia to Annex 86 to the statement in defence.*

*The Court of Appeal also refers to a translation of a letter sent to A by the Spanish authorities (with "Annex No 233" added by hand). The letter was produced by A on 26 November 2024 under "Miscellaneous documents". It is also apparent from that letter that, in Spain, social security rights are acquired only by persons who are in employment. Hence, residence in Spain is not sufficient on its own.*

*It is, incidentally, also apparent from the letter to A that the Spanish authorities have sent information to the Norwegian authorities on five occasions. The Court of*

*Appeal considers that there is no reason to doubt the information the Spanish authorities have provided to NAV.*

*In Norway, everyone who is resident in the realm is, as a rule, compulsorily members of the national insurance scheme. Other EEA countries may have other requirements for membership than Norway and, in many other EEA countries, residence is not a sufficient criterion for membership under the relevant country's social security scheme. A number of countries have a requirement of occupational activity, either as a worker or self-employed person.*

27 A has appealed to the Supreme Court of Norway and on 9 May 2025 the Appeals Selection Committee of the Supreme Court (*Høyesteretts ankeutvalg*) ruled as follows:

*Leave to have the appeal heard by the Supreme Court is granted in respect of the application of the law as it relates to the question whether the requirement of previous membership under section 12-2 of the National Insurance Act is fulfilled. Leave to appeal is otherwise refused.*

**The case concerning B**

28 B, who was born in Morocco, is now a German citizen. She moved from Morocco to Germany in 1996 and then to Norway in 2005.

29 The exact date of moving to Norway has previously been the subject of dispute in the case. For the purposes of the case, the referring court states that it shall be assumed, on the basis of Borgarting Court of Appeal's ruling on the issue, that B moved to Norway no earlier than May 2005. The onset of her disability was in April 2008.

30 B applied for disability benefit on 19 June 2018. Nav obtained information on periods of insurance from German authorities on the E205 DE form, which is dated 22 August 2019.

31 By decision of 8 October 2019, Nav refused the claim for disability benefit on the ground that B did not satisfy the condition of continuous membership in the national social security scheme for a period of three years and/or the German social security scheme prior to the onset of disability. Nav took the view that she also did not satisfy the alternative conditions laid down in the second or third paragraph of Section 12-2 of the National Insurance Act. The decision states the following with respect to affiliation in the national social security scheme in Germany:

*We have received documentation from the social security authorities in Germany to the effect that you have been a member of their social security scheme during the following periods:*

| ***As from*** | ***Up to and including*** |
|---|---|
| *01.03.2004* | *31.10.2004* |

*01.07.2003 01.07.2003*

*01.07.1996 30.09.2002*

*We have not included periods stated merely as 8.1.2 as, according to the German forms [sic], they are included only in the calculation of early retirement pension, and based on practice which assumes that these are not periods that are considered for the purposes of entitlement to a German invalidity benefit*.

32 By decision of 15 December 2020, Nav Appeals upheld the order that B was not entitled to disability benefit. B brought the case before the National Insurance Court, which handed down an order on 14 December 2022 upholding that decision.

33 B appealed to Eidsivating Court of Appeal (*Eidsivating lagmannsrett*), which suspended the proceedings because B had also requested that the case be reopened in respect of the earlier refusal. In the dismissal of that request by Nav Appeals, dated 18 August 2023, inter alia the following is stated:

*In the request for reopening, the appellant states that there was a serious procedural error in that NAV failed to assess her membership in the German social security scheme in accordance with the total period of insurance in Germany. In that connection, reference is made to the order in which the National Insurance Court has noted that the German social security authorities did not indicate any relevant period of insurance after 31 October 2004 and that neither NAV nor the National Insurance Court is to review that information. This is the correct interpretation: see inter alia the judgment in LA-2016-200383.*

34 The proceedings before the Court of Appeal were then resumed. By judgment of 17 February 2025, Eidsivating Court of Appeal found in favour of the State. The judgment includes the following findings:

*Information obtained from the German authorities shows that B acquired periods of insurance in Germany as follows: as from 1 July 1996 up to and including 30 September 2002, as from 1 July 2003 up to and including 1 July 2003 and, lastly, as from 1 March 2004 up to and including 31 October 2004. The Norwegian authorities are to base themselves without question on information from other countries' authorities: see Article 5 of the Implementing Regulation. B may not, therefore, successfully argue that NAV ought to have examined the German rules or that NAV has misapplied the German rules. The Court of Appeal nevertheless notes that there is nothing to support the position that the information from the German authorities is incorrect. During the preparatory stages of the case, it seems as though there was some discussion as to whether the Norwegian authorities had used the correct form to obtain information from the German authorities. The Court of Appeal understands that this submission has been withdrawn, but can in any event not see that any errors were made in obtaining the information.*

*B has also claimed that Article 51 of the Social Security Regulation, relating to aggregation of periods of insurance, must entail that she is entitled to disability benefit. As stated earlier, it is an unconditional requirement for entitlement to disability benefit under the Norwegian rules that prior periods of insurance must be continuous. The last period in which periods of insurance were acquired conferring entitlement to invalidity benefit under the German rules ended on 31 October 2004. The Court of Appeal interprets the EEA rules as meaning that, if B had had a period of insurance in Germany until the end of March 2005, it would have been included in the calculation. That is not the case here, however. It cannot be inferred from Article 6 or Article 51 of the Social Security Regulation that the Norwegian authorities have an unconditional obligation to aggregate previous periods of insurance completed in another EEA country and Norwegian periods of insurance, irrespective of when the period of insurance was completed in that other country, as claimed by B. The Court of Appeal accordingly does not take the view that it is contrary to the EEA Agreement or the Social Security Regulation not to aggregate membership periods in Germany and Norwegian periods of insurance.*

35 B has appealed to the Supreme Court of Norway. On 25 June 2025, the Appeals Selection Committee of the Supreme Court granted leave to appeal as regards the issue of the application of the law. Leave to appeal was otherwise refused.

**The questions referred to the Court**

36 Against that background, on 9 February 2026, the Supreme Court of Norway decided to request an advisory opinion from the Court. The request was registered at the Court on the same date. The Supreme Court has referred the following questions to the Court:

*1. When entitlement to invalidity benefit in the competent State (Norway) is subject to a requirement of a prior period of membership in the social security scheme which inter alia can be acquired through a period of residence in that State, which time period(s) in another EEA State (Spain/Germany) is/are then relevant for aggregation with time periods in the competent State under Article 6 of the Social Security Regulation, and subject to which conditions is the aggregation to take place?*

*Is account to be taken of:*

- *periods of residence in the other State under Article 1(v) of the Social Security Regulation;*

- *periods of insurance in the other State under Article 1(t) of the Social Security Regulation; or*

- *more/other periods in the other State?*

*2. In the determination of which time period(s) in another EEA State can be aggregated under Article 6 of the Social Security Regulation, can the competent*

*State base itself solely on the responses given by the other State pursuant to the Implementing Regulation on the E 205 form or more recent equivalents, or must the competent State, in situations such as those at issue in the present cases, obtain additional information, including information relating to period of residence and what constitutes a period of insurance/is regarded as equivalent to such a time period in the other State?*

*3. Do Article 6 of the Social Security Regulation, and/or Articles 28 and 29 of the EEA Agreement, impose requirements – and, if so, which ones – as to how a national condition of continuous period of insurance/membership in the national insurance scheme as a condition for acquiring invalidity benefit must be applied in cases such as the present ones, in which there is to be aggregation with time periods from another EEA State?*

37 Reference is made to the written observations published on the Court's website for a fuller account of the arguments and proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

## IV ANSWER OF THE COURT

### Question 1

38 By its first question, the referring court essentially asks how the principle of aggregation laid down in Article 6 of Regulation 883/2004 is to be applied when entitlement to invalidity benefits is subject under national law to a requirement of prior affiliation in the national social security scheme, which can be acquired through a period of residence in that State. The referring court wishes to ascertain which periods in another EEA State are relevant for aggregation with periods in the competent EEA State under Article 6 of Regulation 883/2004 and subject to which conditions the aggregation is to take place. In particular, the referring court asks whether account is to be taken of periods of residence under Article 1(v) of Regulation 883/2004, periods of insurance under Article 1(t) of that regulation or other periods related to that EEA State.

39 In order to provide a useful answer to the referring court, it should be noted at the outset that the purpose of Regulation 883/2004 is to coordinate the social security systems of EEA States in order to guarantee that the right to free movement of persons can be exercised effectively. That regulation modernised and simplified the rules contained in Council Regulation (EEC) No 1408/71 (OJ English Special Edition 1971(II), p. 416), while retaining the same objective as the latter. Accordingly, the case-law relating to Regulation 1408/71 may be relevant for the interpretation of Regulation 883/2004 (see the judgment of 18 April 2024 in *A* v *NAV (Minimum benefit)*, E-3/23, paragraph 53 and case-law cited).

40 The Court further observes that the Norwegian disability benefit at issue in the main proceedings, as is also apparent from Section 12-1 a of the National Insurance Act,

constitutes an ‘invalidity benefit’ under Article 3(1)(c) of Regulation 883/2004 and thus falls within its material scope.

41 It follows from the request that Section 12-2 of the National Insurance Act has been construed as imposing a requirement of continuous membership in the national social security scheme for a period of five years, prior to the onset of disability. Section 2-1 of the National Insurance Act provides that persons who reside in Norway are compulsorily members of the national social security scheme. As follows from the request and the written observations of those participating in the proceedings, the dispute before the referring court regarding Question 1 concerns in particular whether the periods to be aggregated under Article 6 of Regulation 883/2004 should include only periods of insurance or also periods of residence completed in other EEA States.

42 In the circumstances of the main proceedings, prior to moving to Norway, A and B have completed periods of insurance in both Spain and Germany, although with intermittent gaps, due to a variety of reasons.

43 A has argued that although he did not have a continuous period of insurance in Spain, he did have continuous periods of residence in that State. Given that a person may be affiliated to the national social security scheme of Norway through residence, A submits that the Norwegian authorities are obliged, on the basis of Article 5 of Regulation 883/2004, to take account of periods of residence in Spain for the purposes of assessing entitlement to an invalidity benefit.

44 B has argued that Norwegian authorities did not properly take account of her ‘neutral period of insurance’ under German law in the aggregation of periods for the purposes of assessing entitlement to a disability benefit. In her written observations, B has explained that the term ‘neutral period of insurance’ refers to periods in respect of which, although contributions were not paid, German law provides that for the purposes of assessing entitlement to an invalidity benefit, such a period is permissible within a given reference period provided that actual periods of insurance, where contributions have been paid, are sufficient. Thus, B submits that, on the basis of Article 5 of Regulation 883/2004, such a ‘neutral period of insurance’ must be taken into account for the purposes of aggregation.

45 The Court observes that Article 5 of Regulation 883/2004 enshrines the principle of equal treatment of benefits, income and facts. It is in that context that Article 5(b) of Regulation 883/2004 provides that where, under the legislation of the competent EEA State, legal effects are attributed to the occurrence of certain facts or events, that EEA State is to take account of like facts or events occurring in any EEA State as though they had taken place in its own territory (see the judgment of 29 July 2022 in *Anna Bryndís Einarsdóttir*, E-5/21, paragraph 25, and compare the judgment of 12 March 2020 in *Caisse d’assurance retraite et de la santé au travail d’Alsace-Moselle*, C-769/18, EU:C:2020:203, paragraph 43).

46 However, Article 5 of Regulation 883/2004 must be interpreted in light of recital 10 of that regulation, which states that the principle of treating certain facts or events

occurring in the territory of another EEA State as if they had taken place in the territory of the EEA State whose legislation is applicable should not interfere with the principle of aggregating periods of insurance, employment, self-employment or residence completed under the legislation of another EEA State with those completed under the legislation of the competent EEA State. Periods completed under the legislation of another EEA State should therefore be taken into account solely by applying the principle of aggregation of periods.

47 Accordingly, Article 5(b) of Regulation 883/2004 concerns the taking into account, in the competent EEA State, of the occurrence of specific facts or events taking place in another EEA State, such as a birth, death or accident, and does not govern the aggregation of periods completed in another EEA State (compare the judgment of 21 May 2026 in *Sociálna poisťovňa, ústredie*, C-717/24, EU:C:2026:441, paragraph 50).

48 The Court notes, in that regard, that Article 6 of Regulation 883/2004 implements the basic principle of aggregation of periods for assessing the entitlement to benefits as laid down in Article 29(a) EEA. This principle is intended to ensure that exercise of the right to free movement does not have the effect of depriving workers of social security advantages that they would have been entitled to if they had spent the relevant working time in only one EEA State (see the judgment in *Anna Bryndís Einarsdóttir*, E-5/21, cited above, paragraph 23 and case-law cited).

49 To that end, Article 6 of Regulation 883/2004 provides that the competent institution of an EEA State whose legislation makes the acquisition of the right to benefits conditional upon the completion of periods of insurance, employment, self-employment or residence shall, to the extent necessary, take into account periods of insurance, employment, self-employment or residence completed under the legislation of any other EEA State as though they were periods completed under the legislation which it applies.

50 Article 1(t) of Regulation 883/2004 defines ‘period of insurance’ as meaning periods of contribution, employment or self-employment as defined or recognised as periods of insurance by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of insurance.

51 Article 1(u) of Regulation 883/2004 defines ‘period of employment’ or ‘period of self-employment’ as meaning periods so defined or recognised by the legislation under which they were completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of employment or to periods of self-employment.

52 Article 1(v) of Regulation 883/2004 defines ‘period of residence’ as meaning periods so defined or recognised by the legislation under which they were completed or considered as completed.

53 Since Regulation 883/2004 does not determine the conditions governing the constitution of periods of insurance, periods of employment or periods of residence,

those conditions, as is apparent from points (t), (u) and (v) of Article 1 of that regulation, are defined exclusively by the legislation of the EEA State under which the periods in question are completed (compare the judgment of 21 October 2021 in *Zakład Ubezpieczeń Społecznych I Oddział w Warszawie*, C-866/19, EU:C:2021:865, paragraph 26).

54 It follows that any periods to be aggregated are determined with reference to the national legislation of each of the EEA States concerned (compare, to that effect, the judgment of 11 November 2004 in *Adanez-Vega*, C-372/02, EU:C:2004:705, paragraph 54). The competent institution must therefore aggregate the periods qualifying for an entitlement to a benefit provided against a certain risk completed in any other EEA State. In this case, it seems to be undisputed that A and B have completed periods of insurance qualifying for entitlement to invalidity benefits under respectively Spanish and German legislation.

55 The fact that membership in the national social security scheme in Norway is compulsory for persons who reside in Norway does not have the consequence under Regulation 883/2004 that periods of residence completed in other EEA States, under whose legislation they do not constitute periods qualifying for entitlement to invalidity benefits, should be aggregated by the competent institution in Norway for the purposes of assessing entitlement to invalidity benefits.

56 Similarly, whether the 'neutral periods of insurance' referred to by B give rise to entitlement to invalidity benefits is a matter of German law, determining which periods are recognised or defined as qualifying periods for the purposes of the benefit concerned under German law. Depending on the legislation of an EEA State, both contributory periods and periods treated as equivalent to insurance periods can be considered as qualifying periods for the purposes of establishing entitlement to a benefit, i.e. insurance periods.

57 In light of the foregoing, the answer to the first question must be that for the purposes of aggregating periods pursuant to Article 6 of Regulation 883/2004 with a view to establishing the right to a benefit under national law, account must be taken of periods qualifying for entitlement to benefits in respect of the relevant risk under the legislation of another EEA State.

**Question 2**

58 By its second question, the referring court asks whether in the determination of which periods in another EEA State are to be aggregated under Article 6 of Regulation 883/2004, the competent EEA State can base itself solely on the responses given by the other EEA State pursuant to Regulation 987/2009 on the E205 form or more recent equivalents or whether the competent EEA State must, in situations such as those at issue in the main proceedings, obtain additional information, including information relating to periods of residence and what constitutes a period of insurance or is regarded as equivalent to such a period in the other EEA State.

59 Article 12(1) of Regulation 987/2009 provides that, for the purposes of applying Article 6 of Regulation 883/2004, the competent institution shall contact the institutions of the EEA States to whose legislation the person concerned has also been subject in order to determine all the periods completed under their legislation.

60 It follows from the request that, in the main proceedings, the Norwegian authorities obtained information from the Spanish and German authorities on standardised forms as to which periods giving rise to social security coverage in those States A and B had completed. However, the referring court seeks to clarify whether the Norwegian authorities obtained that information in a correct manner and whether they ought to have obtained other relevant information.

61 Article 76 of Regulation 883/2004 is an expression of the principle of sincere cooperation between the Contracting Parties laid down by Article 3 EEA. Article 76 thus imposes a duty on the institutions concerned to carry out a proper factual assessment and consequently to guarantee the correctness of the information contained in a decision pursuant to that regulation. It also follows from the principle of sincere cooperation that the EEA States concerned are under an obligation to apply Regulation 883/2004 correctly. This entails that it is incumbent on the institution concerned, irrespective of its previous decisions, to base its findings on the person's actual situation (see the judgment of 14 December 2021 in *ISTM*, E-1/21, paragraph 36).

62 In order to ensure the correct application of the provisions laid down in Regulations 883/2004 and 987/2009, those regulations lay down detailed mechanisms for the exchange of information and cooperation between EEA States. In particular, the mutual information and cooperation provided for by Article 76 of Regulation 883/2004 is intended to enable the institutions concerned to have the necessary information for the purposes of ensuring the correct application of those regulations (see the judgment in *ISTM*, E-1/21, cited above, paragraph 37).

63 Article 5(1) of Regulation 987/2009 provides that documents issued by the institution of an EEA State and showing the position of a person for the purposes of the application of Regulations 883/2004 and 987/2009, and supporting evidence on the basis of which the documents have been issued, are to be accepted by the institutions of the other EEA States for as long as they have not been withdrawn or declared invalid by the EEA State in which they were issued (see the judgment of 24 January 2023 in *Maitz*, E-5/22, paragraph 56).

64 Moreover, Article 5(2) of Regulation 987/2009 provides that, where there is doubt about the validity of a document or the accuracy of the facts on which the particulars contained therein are based, the institution of the EEA State that receives the document shall ask the issuing institution for the necessary clarification and, where appropriate, the withdrawal of that document. The issuing institution shall reconsider the grounds for issuing the document and, if necessary, withdraw it.

65 Accordingly, if an EEA State doubts the correctness of an issued document, the competent EEA State issuing the document is obliged to reconsider whether the form

was properly issued and, if appropriate, withdraw it (see the judgment of 14 December 2004 in *Tsomakas and Others*, E-3/04, paragraph 31).

66 Pursuant to Article 5(4) of Regulation 987/2009, where no agreement is reached between the institutions concerned, the matter may be brought before the Administrative Commission by the competent authorities no earlier than one month following the date on which the institution that received the document submitted its request. The Administrative Commission shall endeavour to reconcile the points of view within six months of the date on which the matter was brought before it.

67 In circumstances such as those of the main proceedings, the competent institution must therefore accept and base itself on the documents issued by the relevant institution of another EEA State in accordance with Article 5(1) of Regulation 987/2009. However, where the competent institution has doubts about the validity of a document or the accuracy of the facts on which the particulars contained therein are based, that institution shall ask the issuing institution for the necessary clarifications and, where appropriate, the withdrawal of that document pursuant to Article 5(2) of that regulation. Where no agreement is reached between the institutions concerned, the matter may be brought before the Administrative Commission in accordance with Article 5(4) of Regulation 987/2009.

68 As submitted by ESA and the Commission, such an interpretation is confirmed by the Administrative Commission's Decision H6, an act of which the Contracting Parties are to take due account. In particular, the Commission has referred to point 2 of that decision, which states that the principle of aggregation requires that periods communicated by other EEA States shall be aggregated without questioning their quality.

69 In light of the foregoing, the answer to the second question must be that, for the purposes of aggregating periods pursuant to Article 6 of Regulation 883/2004, the competent EEA State shall base itself on the documents issued by another EEA State in accordance with Article 5(1) of Regulation 987/2009. However, where the competent EEA State doubts the correctness of an issued document, the principle of sincere cooperation laid down in Article 3 EEA requires the competent EEA State to seek further information in accordance with Article 76 of Regulation 883/2004 and Article 5(2) of Regulation 987/2009 from the other EEA State issuing the document.

**Question 3**

70 By its third question the referring court asks, in essence, whether Article 6 of Regulation 883/2004 and/or Articles 28 and 29 EEA impose requirements as to how a condition under national law of a continuous period of affiliation in the national social security scheme as a condition for acquiring invalidity benefits must be applied in situations such as those at issue in the main proceedings.

71 It follows from the request that the requirement set out in Section 12-2 of the National Insurance Act has been construed as imposing a requirement of continuous membership

in the national social security scheme in Norway for a period of five years prior to the onset of disability. Previously, that provision required that the person concerned had to have been a member for a continuous period of three years prior to the onset of disability.

72 As is apparent from the written observations submitted by those participating in the proceedings, it has been argued that the requirement of continuous membership has been applied as entailing that any gap in membership during the relevant period precludes that requirement from being satisfied. Thus, even a short interruption in membership has, in practice, the consequence that the continuity requirement is reset. Moreover, given that the relevant period is determined by reference to the date on which the disability occurred, a person with interruptions in membership may, as a result, risk never becoming entitled to Norwegian disability benefits.

73 As the referring court has explained in its request for an advisory opinion, the requirement of continuous membership laid down in Section 12-2 of the National Insurance Act is subject to certain exceptions laid down in that provision. First, the condition of five years of prior membership does not apply to a person who has been a member of the social security scheme for at least one year immediately before he or she submits a claim for disability if: (a) the person concerned became disabled before turning 26 years of age and at that time was a member of the national social security scheme, or (b) the person concerned, after turning 16 years of age, has been a member of the national social security scheme except for a maximum of five years. Second, the condition of five years of prior membership does not apply if the person concerned was a member of the national social security scheme at the time of the onset of disability and the disability benefit in the event of a 100 per cent degree of disability reaches a certain proportion further specified in other provisions of the National Insurance Act.

74 However, it is common ground among the parties in the main proceedings that those exceptions are not applicable to the situations of A and B.

75 It is against this background that the referring court wishes to clarify whether and subject to which conditions such a requirement under national law of continuous affiliation may be compatible with EEA law.

76 It should be observed from the outset that EEA law does not detract from the power of the EEA States to organise their social security systems. In the absence of harmonisation at EEA level, it is for the legislature of each EEA State to determine the conditions on which social security benefits are granted. When exercising that power, however, the EEA States must comply with EEA law and, in particular, with the provisions of the EEA Agreement giving every EEA national the right to move and reside freely within the territory of the EEA States (see the judgment of 16 June 2026 in *ESA* v *Iceland (EASA)*, E-30/24, paragraph 82 and case-law cited).

77 Article 28(1) EEA provides that freedom of movement for workers shall be secured among EU Member States and EFTA States. All provisions of the EEA Agreement relating to the freedom of movement for workers are intended to facilitate the pursuit

by nationals of EEA States of occupational activities of all kinds throughout the EEA and preclude measures which might place nationals of EEA States at a disadvantage when they wish to pursue an economic activity in the territory of another EEA State (see the judgment of 15 July 2021 in *ESA* v *Norway*, E-9/20, paragraphs 100 and 101 and case-law cited).

78 In order to realise those aims, Article 29(a) EEA provides that EEA States shall, in the field of social security, secure, in particular, aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of EEA States. The objective of Article 29 EEA is to contribute to the establishment of the greatest possible freedom of movement. It is settled case-law that the provisions of Regulation 883/2004, which has been adopted to give effect to Article 29 EEA, must be interpreted in light of that objective (see the judgment in *A* v *NAV (Minimum benefit)*, E-3/23, cited above, paragraph 54).

79 The objective pursued by Article 29 EEA entails that migrant workers must not lose their right to social security benefits or have the amount of those benefits reduced because they have exercised their right to free movement. Regulation 883/2004 seeks to prevent a worker who, having exercised his or her right of free movement, has worked in more than one EEA State from being treated less favourably than a worker who has worked in only one EEA State, without objective justification. This is also reflected in recitals 4 and 5 of Regulation 883/2004 which state that, while it is necessary to respect the special characteristics of national social security legislation and draw up only a system of coordination, at the same time equality of treatment under the different national legislation for the persons concerned must be guaranteed (see the judgment in *A* v *NAV (Minimum benefit)*, E-3/23, cited above, paragraph 56).

80 The Court observes, in this respect, that the principle of non-discrimination has been given concrete expression, in the field of social security, by Article 28 EEA and Article 4 of Regulation 883/2004. Therefore, Article 4 of Regulation 883/2004 must, in principle, be interpreted in the same way and in conformity with Article 28 EEA (compare the judgment of 11 April 2024 in *Sozialministeriumservice*, C-116/23, EU:C:2024:292, paragraphs 48 and 54).

81 In view of the objective pursued, Article 6 of Regulation 883/2004 implements the basic principle of aggregation for assessing the entitlement to benefits as laid down in Article 29(a) EEA. In this regard, the Court recalls that the principle of aggregation is intended to ensure that exercise of the right to free movement does not have the effect of depriving workers of social security advantages that they would have been entitled to if they had spent the relevant working time in only one EEA State (see the judgment in *Anna Bryndís Einarsdóttir*, E-5/21, cited above, paragraph 23 and case-law cited, and compare the judgment of 21 January 2016 in *Commission* v *Cyprus*, C-515/14, EU:C.2016:30, paragraphs 41 and 42).

82 Accordingly, it must be examined whether Articles 28 and 29 EEA preclude a requirement of continuous affiliation in a national social security scheme for the purpose of aggregation pursuant to Article 6 of Regulation 883/2004.

83 The Court recalls that it is settled case-law that, for the purpose of applying the principle of aggregation, the fact that, having transferred his or her residence from one EEA State to another EEA State, the person concerned was for a short period neither employed nor registered as seeking employment in the latter State does not interrupt the continuity of the insurance periods completed by that person or preclude application of the aggregation rule laid down by Article 6 of Regulation 883/2004 (compare the judgment of 26 October 1995 in *Klaus*, C-482/93, EU:C:1995:349, paragraph 30).

84 The issue in the present case, however, concerns interruptions in periods of insurance which are not directly connected with the consequences of relocation to another EEA State.

85 The Norwegian Government submits that because the insurance periods acquired in other EEA States are taken into consideration under the same conditions as if they had been completed under Norwegian legislation, Section 12-2 of the National Insurance Act does not have the effect that workers who have spent time in other EEA States are treated less favourably than those who have only stayed within Norway.

86 In this regard the Court recalls that although EEA States remain competent to define the conditions for granting social security benefits, those conditions adopted may not give rise to overt or disguised discrimination between EEA workers. Even when periods completed under the legislation of any other EEA State are taken into consideration under the same conditions as if they had been completed under national legislation, such conditions may have a greater effect on migrant workers (compare, to that effect, the judgment of 3 March 2011 in *Tomaszewska*, C-440/09, EU:C:2011:114, paragraphs 24 and 31, and the judgment of 4 October 1991 in *Paraschi*, C-349/87, EU:C:1991:372, paragraph 24).

87 In order to assess whether the national requirement at issue has such an effect, it is necessary to take account of the entire legal and factual context relevant to the situation in the main proceedings. Although members of the national social security scheme in Norway are obliged to pay contributions, the primary criterion for obtaining membership is residence, irrespective of whether contributions are actually payed. In contrast, affiliation in national insurance schemes in other EEA States may be exclusively based on contributions, typically related to employment.

88 It follows from the request that when A and B were in Spain and Germany, respectively, they were covered by such contribution-based national insurance schemes primarily linked to their employment status. As a result, both A and B had a number of interruptions in their coverage based on those national insurance schemes. Accordingly, as stated in the request, it followed from the documents issued by the competent institutions in Spain and Germany that the periods of insurance completed by A and B were not continuous. Therefore, the competent institution in Norway, also having regard to the periods of membership completed under the national social security scheme in Norway, concluded that A and B did not satisfy the requirement of continuous membership for the required period for entitlement to disability benefits in Norway.

89 An individual in the same situations as A and B, but who had resided and worked only in Norway, due to the fact that membership in the national social security scheme is primarily tied to residency, would not fail to satisfy the requirement of continuous membership due to similar interruptions in their employment situation. Accordingly, the requirement of a continuous period of affiliation especially affects persons using their freedom of movement, as interruptions in periods of insurance is a common feature of employment-based contribution schemes, typically accounted for by applying different types of reference periods and/or calculation rules. Thus, contrary to the submission of the Norwegian Government, the situations are comparable as both types of social security systems have mechanisms for taking account of situations in which individuals are not paying contributions.

90 Accordingly, having regard to the legal and factual context relevant to the situation at issue in the main proceedings, individuals such as A and B, who have worked in other EEA States than Norway, are being treated less favourably than a worker who has worked only in Norway.

91 Therefore, a requirement of continuous affiliation is intrinsically liable to affect workers who are nationals of other EEA States more than workers who have only worked in Norway. Such a requirement is also liable to have the effect of depriving workers of social security advantages that they would have been entitled to if they had spent the relevant working time in only one EEA State. That effect is not mitigated by the exceptions laid down in Section 12-2 of the National Insurance Act, none of which – in any event – apply to the situations of A and B.

92 It follows that such a requirement discriminates indirectly between Norwegian nationals and nationals of other EEA States.

93 It is settled case-law that a national rule which discriminates indirectly between EEA nationals may be justified by overriding reasons of general interest, provided that it is suitable to securing the attainment of the objective which it pursues and does not go beyond what is necessary to attain it (see the judgment of 20 November 2024 in *Bygg & Industri Norge*, E-2/24, paragraph 94 and case-law cited, and the judgment of 17 December 2010 in *Kottke*, E-5/10, paragraph 40).

94 In the present case, the Norwegian Government has referred to avoiding the risk of seriously undermining the financial balance of the national social security system.

95 While reasons of a purely economic nature cannot constitute overriding reasons in the public interest justifying a restriction on a fundamental freedom guaranteed by the Agreement, the Court has held that the risk of seriously undermining the financial balance of the social security system may constitute such an overriding general-interest reason in so far as it could have consequences for the overall level of protection (see the judgment of 5 May 2021 in *Criminal proceedings against N*, E-8/20, paragraph 97, and the judgment of 5 December 2024 in *K* v *Nasjonalt klageorgan for helsetjenesten (Cross-border healthcare)*, E-15/23, paragraph 89).

96 In the circumstances of the present case, however, the Court has not been provided with any information capable of demonstrating that the requirement of continuous membership is suitable to attain the abovementioned objective or that it does not go beyond what is necessary to attain it.

97 In its written observations, both ESA and the Commission have pointed out that the Norwegian legislation in respect of the risk of invalidity constitutes 'type B legislation' within the meaning of Article 44(1) of Regulation 883/2004. This entails that the aggregation of periods completed in another EEA State against this risk serves only the purpose of granting the entitlement to the invalidity benefit. Subsequently, the amount of such a benefit is to be calculated on a pro-rata basis resulting in an amount corresponding to the periods completed in Norway. Thus, as submitted by ESA and the Commission, excluding EEA nationals who have exercised their freedom of movement to Norway from accessing such pro-rata benefits solely on account of them having interruptions in their periods of affiliation is not proportionate to the aim sought.

98 In light of the foregoing, the answer to the third question must be that Articles 28 and 29 of the EEA Agreement preclude the application of a requirement of continuous membership, such as the one laid down in the first paragraph of Section 12-2 of the Norwegian National Insurance Act, for the purposes of aggregation pursuant to Article 6 of Regulation 883/2004.

## V COSTS

99 Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds,

THE COURT

in answer to the questions referred to it by the Supreme Court of Norway hereby gives the following Advisory Opinion:

1. **For the purposes of aggregating periods pursuant to Article 6 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems with a view to establishing the right to a benefit under national law, account must be taken of periods qualifying for entitlement to benefits in respect of the relevant risk under the legislation of another EEA State.**

2. **For the purposes of aggregating periods pursuant to Article 6 of Regulation (EC) No 883/2004, the competent EEA State shall base itself on the documents issued by another EEA State in accordance with Article 5(1) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems. However, where the competent EEA State doubts the correctness of an issued document, the principle of sincere cooperation laid down in Article 3 of the EEA Agreement requires the competent EEA State to seek further information in accordance with Article 76 of Regulation (EC) No 883/2004 and Article 5(2) of Regulation (EC) No 987/2009 from the other EEA State issuing the document.**

3. **Articles 28 and 29 of the EEA Agreement preclude the application of a requirement of continuous membership, such as the one laid down in the first paragraph of Section 12-2 of the Norwegian National Insurance Act, for the purposes of aggregation pursuant to Article 6 of Regulation (EC) No 883/2004.**

Páll Hreinsson Bernd Hammermann Michael Reiertsen

Delivered in open court in Luxembourg on 10 November 2026.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President