



A company established in an EEA State which is proprietor of a vessel flying the flag of a third country may rely on the freedom to provide services where it provides maritime transport services from or to an EEA State

The company must be able to be classed as the service provider and the persons for whom the services are intended must be established in EEA States other than that in which the company is established

EU law provides that the freedom to provide maritime transport services between Member States and between Member States and third countries applies in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended. It also applies to nationals of the Member States established outside the EU and to shipping companies established outside the EU controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation.¹

Fonnsnip is a Norwegian company. Between 2001 and 2003, it owned a vessel which flew the Panamanian flag, the M/S Sava Star. The vessel principally sailed between States that are parties to the EEA Agreement. Its crew was Polish and Russian. Fonnsnip was the crew's employer.

According to Fonnsnip, the crew members' wages were governed by a collective agreement concluded between Fonnsnip and a Russian trade union. On 26 October 2001, when the vessel lay at the port of Holmsund (Sweden), a Swedish trade union being of the opinion that the wages of the Sava Star crew were not equitable, called on Fonnsnip to enter into a collective agreement approved by the International Transport Workers' Federation. Since Fonnsnip rejected that demand, industrial action took place to, inter alia, prevent the loading and unloading of that vessel. On 29 October 2001, a collective agreement was signed by Fonnsnip and the Swedish trade union despite the crew members' protests. The vessel was subsequently able to leave the port of Holmsund.

On 18 February 2003, the Sava Star lay in port at Köping (Sweden). At that time, the 2001 Agreement had expired. After industrial action had been taken by another Swedish trade union, a new collective agreement was signed despite the crew members' protests. The vessel was subsequently able to leave the port.

Fonnsnip brought legal proceedings against the trade unions before the Arbetsdomstolen (Labour Court, Sweden) seeking an order that they repay it the economic loss caused by the interruption in the provision of services caused by the two industrial actions. One of the trade unions brought legal proceedings against Fonnsnip before the Arbetsdomstolen seeking an order that Fonnsnip pay them damages for breach of the 2001 Agreement.

In that respect, the Arbetsdomstolen asks the Court of Justice whether EU law must be interpreted as meaning that a company established in a State that is a party to the EEA Agreement which is proprietor of a vessel flying the flag of a third country may rely on the freedom to provide services

¹ Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1, and corrigendum OJ 1987 L 93, p. 17).

where it provides maritime transport services from or to a State that is a party to the EEA Agreement.

The Court notes first that, in defining the scope *ratione personae* of the freedom to provide services in the shipping industry from or to a State that is a party to the EEA Agreement, EU law identifies two categories of persons who enjoy that freedom to provide services, namely, first, nationals of a State that is a party to the EEA Agreement who are established in the EEA and, second, nationals of a State that is a party to the EEA Agreement who are established in a third country, as well as shipping companies established in a third country and controlled by nationals of a State that is a party to the EEA Agreement.

By including in that scope *ratione personae* the nationals of a Member State established in a third country or controlling a shipping company there, the EU legislature wished to ensure that a significant part of the commercial fleets owned by nationals of a Member State come under the liberalisation of the shipping industry, so that Member States' shipowners could better face, *inter alia*, the restrictions imposed by third countries.

The legislature set out a requirement that there be a connection by providing that vessels must be registered in a State that is a party to the EEA Agreement so that the nationals of such a State who operate from an establishment situated in a third country are excluded from the freedom to provide services if their vessels do not fly the flag of that State. The absence of a similar requirement for the nationals of a State that is a party to the EEA Agreement who operate from an establishment situated in the EEA shows that the legislature considered that that category of persons displays in itself a sufficiently close connection with the law of the EEA to be included in the scope *ratione personae* of the EU legislation, and regardless of the flag flown by their vessels.

The Court notes that, in the light of that distinction, it is necessary to ascertain whether that person or that company may be considered to be the service provider. That is the case if it operates the vessel by which the transport is carried out. It is within the exclusive jurisdiction of the referring court to assess the truth of that assertion.

Assuming that Fonnship must be classed as a provider of the transport services and, since it is not disputed that the persons for whom the services were intended were, in this case, established in a Member State that is a party to the EEA Agreement other than Norway, the referring court would be led to conclude that that company falls within the scope *ratione personae* of EU law. In those circumstances, **any restriction which, without objective justification, is liable to prohibit, impede or render less attractive the provision of those services must be declared incompatible with EU law.**

The application of EU law is in no way affected by the fact that the vessel carrying out the maritime transport, and on which the workers in whose favour that industrial action was taken are employed, flies the flag of a third country, nor by the fact that the crew members of the vessel are third country nationals.

The Court finds that **a company established in an EEA State which is proprietor of a vessel flying the flag of a third country may rely on the freedom to provide services where it provides maritime transport services from or to an EEA State, provided that it can, due to its operation of that vessel, be classed as the provider of those services and that the persons for whom the services are intended are established in EEA States other than that in which that company is established.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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