

Case C-205/99

Asociación Profesional de Empresas Navieras de Líneas Regulares
(Analir) and Others

v

Administración General del Estado

(Reference for a preliminary ruling
from the Tribunal Supremo)

(Freedom to provide services — Maritime cabotage — Conditions for the grant
and continuation of prior administrative authorisation — Concurrent
application of the methods of imposing public service obligations and of
concluding public service contracts)

Opinion of Advocate General Mischo delivered on 30 November 2000 . . . I- 1274

Judgment of the Court, 20 February 2001 I- 1295

Summary of the Judgment

1. *Transport — Maritime transport — Freedom to provide services — Regular maritime cabotage services — Subjection to prior administrative authorisation — Inclusion in the conditions for granting and maintaining that authorisation of a condition enabling the shipowner's solvency to be assessed — Permissible — Conditions (Council Regulation No 3577/92, Arts 1 and 4)*

2. *Transport — Maritime transport — Freedom to provide services — Regular maritime cabotage services — Public service obligations and public service contracts — Concurrent application of those two methods — Permissible — Conditions*
(Council Regulation No 3577/92, Arts 2(3) and 4(1))

1. The combined provisions of Article 1 and Article 4 of Regulation No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) permit the provision of regular maritime cabotage services to, from and between islands to be made subject to prior administrative authorisation only if:

- a real public service need arising from the inadequacy of the regular transport services under conditions of free competition can be demonstrated;

- it is also demonstrated that that prior administrative authorisation scheme is necessary and proportionate to the aim pursued;

- such a scheme is based on objective, non-discriminatory criteria which are known in advance to the undertakings concerned.

Moreover, Community law permits a Member State to include in the conditions for granting and maintaining prior administrative authorisation as a means of imposing public service obligations on a Community shipowner a condition enabling account to be taken of his solvency, such as the requirement that he have no outstanding tax or social security debts, thus giving the Member State the opportunity to check the shipowner's 'capacity to provide the service', provided that such a condition is applied on a non-discriminatory basis.

(see paras 40, 51, operative part 1-2)

2. Article 4(1) of Regulation No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) is to be interpreted as permitting a Member State to impose public service obligations on some shipping companies and, at the same time, to conclude public service contracts within the meaning of Article 2(3) of the regulation with others for the same

line or route in order to ensure the same regular traffic to, from or between islands, provided that a real public service need can be demonstrated and in so far as that application of the two methods concurrently is on a non-discriminatory basis and is justi-

fied in relation to the public-interest objective pursued.

(see para. 71, operative part 3)