Case No:75182
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Decision No: 199/17/COL

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

of 29 November 2017

closing an own initiative case arising from an alleged failure by Norway to comply with its obligations under Article 1 of Regulation 4055/86 applying the freedom to provide services to maritime transport and Article 36 EEA

THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 31 thereof,

Whereas:

By a letter dated 14 May 2014 (Doc. No 706985) the Internal Market Affairs Directorate of the EFTA Surveillance Authority ("the Directorate") informed Norway that it had opened an own initiative case on the incorporation of the act mentioned at point 53 of Annex XIII to the EEA Agreement (*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, as amended*) ("Regulation No 4055/86").

This own initiative case had its background in the submissions made by the Authority on the case of the Court of Justice of the European Union C-83/13, *Fonnship A/S v Svenska Transportarbetarforebundet and others* ("*the Sava Star*")[1]. The case addressed the question of whether nationals of EEA States who are established in a EEA State also need to operate EEA-flagged vessels in order to rely on the freedom to provide maritime services. The judgement was delivered on 8 July 2014.

In its letter of 14 May 2014, the Authority invited Norway to clarify the implementation of Articles 1(1) and 1(4) of Regulation No 4055/86 with regards to Norwegian International Ship Register ("NIS")-registered vessels, and more specifically, to provide its views on whether NIS-registered vessels fully benefited from the freedom to provide intra-Community maritime services as laid down in Regulation No 4055/86.

By letter dated 15 June 2014 (Doc. No 711116), the Norwegian Government replied to the Authority's request for information. In its reply, the Norwegian Government stated that Regulation No 4055/86 had been fully incorporated in Norway, and that all EEA nationals

[1] Judgment of 8 July 2014, Case C-83/13, *Fonnship A/S v Svenska Transportarbetareförbundet and Facket för Service och Kommunikation (SEKO) (The "Sava Star")*, ECLI:EU:C:2014:2053.

enjoyed the freedom to provide services in accordance with the provisions of Regulation No 4055/86.

The Norwegian Government further stated that the right to provide maritime services as contained in Article 1(4)(a) of Regulation No 4055/86 is implemented

"*by the free, open and unrestricted possibility for all established EEA nationals to provide for intra Community services through the following alternatives:*

- *The ownership and operation of any EEA and non-EEA registered vessels subject to any trading area limitations imposed by the register*
- *the ownership and operation use of vessels registered in Norway;*
  *a) in the Norwegian ordinary register (NOR). Such vessels are also eligible for the ''net wage scheme" as approved by ESA, or alternatively*
  *b) in the NIS register, other than for scheduled passenger transportation between Norwegian and harbours in other EEA States, and between harbours in Denmark, Finland, Iceland and Sweden*"

Thus, the Norwegian Government took the view that Regulation No 4055/86 had been fully incorporated into Norwegian law and that all EEA nationals enjoyed the freedom to provide services in accordance with its provisions.

On 18 March 2015, the Authority submitted another request for information (Doc. No 745161). The Authority took the view that, although ship registration is not a field harmonised at EEA level, and thus falls within the competence of the EEA States, EEA States must nonetheless exercise such competence in compliance with the fundamental freedoms in the EEA, including the freedom to provide services. The Authority referred to the judgement in the *Sava Star* case, and invited the Norwegian Government to provide its observations on whether the applicable limitations to NIS registered vessels laid down in Article 4 of the NIS Act[2] and Article 1 of Regulation 596 of 1993[3] were a restriction of the freedom to provide maritime services in the light of Article 1 of Regulation No 4055/86. The Authority likewise asked the Norwegian Government to discuss any potential justifications for this restriction.

The Authority noted that the limitations applying to NIS-registered vessels as set out above mean that (i) NIS-registered vessels are not permitted to carry cargo or passengers between Norwegian ports, unless an exemption is granted by the Norwegian Maritime Authority and (ii) NIS-registered vessels are not permitted to engage in regular scheduled passenger transport between Norwegian and foreign ports and Nordic harbours.

The Authority stated that the first limitation relates to maritime cabotage, and hence falls outside of the scope of the Authority's investigation. The second limitation was to be analysed in the light of the freedom to provide maritime services established by Regulation No 4055/86.

On 24 April 2015, the Authority followed this request by an additional letter to the Norwegian Government (Doc. No 754570). In this letter the Authority enquired about new

[2] The Norwegian International Ship Register Act (*Lov 12. juni 1987 nr. 48 om norsk internasjonalt skipsregister*) ("NIS Act").
[3] Regulation 9 July 1993 No 596 on the trade area for passenger vessels registered in the Norwegian International Ship Register (*Forskrift 9. juli 1993 nr. 596 om fartsområde for passasjerskip registrert i norsk internasjonalt skipsregister* (NIS) ("Regulation 596 of 1993").

amendments to the Norwegian legislation related to trading area limitations imposed on NIS-registered cruise ships.

In its reply of 22 May 2015 (Doc. No 758217), the Norwegian Government clarified the situation regarding cruise ships, and reiterated its view that the trading area limitations applicable to NIS-registered vessels do not constitute a restriction of the freedom to provide maritime transport services.

On 9 February 2016, the Authority issued a letter of formal notice (Doc. No 779551) to Norway for failure to fulfil its obligations under Article 36 of the EEA Agreement and under Article 1 of Regulation No 4055/86. The Authority considered that, in light of the information received from Norway, the trade limitation on passenger scheduled services for NIS vessels constituted a *prima facie* restriction of the freedom to provide services. In the view of the Authority, this restriction had not been justified.

By letter of 4 May 2016 (Doc. No 803603) Norway provided its observations to the letter of formal notice. Furthermore, Norway submitted additional observations to the letter of formal notice on 7 September 2016 (Doc. No 817183).

In both letters, Norway claimed that the trade limitation imposed on NIS-registered vessels is in line with Norway's obligations under the EEA Agreement. According to the Norwegian argumentation: (i) the trade limitation does not constitute a restriction of the freedom to provide services, and (ii) even if the trade limitation were to constitute a restriction, such a restriction would be justified on the grounds of overriding reasons of public interest, in particular the protection of employment of EEA seafarers.

Since late 2014, the Norwegian Government, and more specifically, the Ministry of Trade, Industry and Fisheries has launched several initiatives in the context of the Norwegian Maritime Strategy. Among those, the work of the Trade Limitation Committee *("fartsområdeutvalget")* and the public hearing started on 18 January 2017 on a proposed set of changes to Regulation 596 of 1993 have dealt with the trade limitations in question.

In view of the information made available to the Authority by the Norwegian Government by its letters dated 4 May 2016 and 7 September 2016, and taking note of the submissions received in the context of the public hearing mentioned on the proposal of changes for Regulation 596 of 1993, the Authority considers that the current trade limitations set out in the NIS Act applicable to NIS-registered vessels with respect to scheduled passenger services is a restriction justifiable under EEA law on the grounds of overriding reasons of public interest.

Furthermore, and based on the general EEA principle of homogeneity, consideration has also been given to the set-up of similar registers established in other EEA states, which have not been challenged in the light of Regulation No 4055/86.

Finally, the Authority continues to acknowledge that ship registration has not been the subject of harmonisation within the EEA. To this end, the Authority further notes that there are no rules – either in the EEA Agreement, or in Regulation No 4055/86 – which specifically oblige the EFTA States to organise their shipping registers in any particular way.

Taking into account all of the above, there are, therefore, no grounds for pursuing this case further.

HAS ADOPTED THIS DECISION:

The own initiative case against Norway for failing to fulfil its obligations arising from the act referred to at point 53 of Annex XIII to the EEA Agreement (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*,[4] and under Article 36 of the EEA Agreement is hereby closed.

For the EFTA Surveillance Authority

For Sven Erik Svedman
President

For Helga Jónsdóttir
College Member

*This document has been electronically signed by Helga Jonsdottir, Frank J. Buechel.*

[4] OJ L 378, 31.12.1986, p. 1. Regulation No 4055/86 was included in Annex XIII to the original EEA Agreement when it entered into force on 1 January 1994. The Regulation was adapted, but the adaptations have no bearing on the present case.