

SUMMARY

## **ECJ 10 February 2011, case C-30/10 (Lotta Andersson &ndash; v &ndash; Staten genom Kronofogdemyndigheten i J&ouml;nk&ouml;ping), Insolvency**

***&lt;p&gt;Article 12(c) of Directive 2008/94 does not preclude a provision of national law that excludes an employee from entitlement under the guarantee of payment on the grounds that the employee, alone or together with close relatives, within the six months preceding the application for a declaration of insolvency, was the owner of an essential part of the business and had a considerable influence on its activities.&lt;/p&gt;***

### **Facts**

Mr and Mrs Andersson each owned half of the shares of “Linköpings Ridskola AB”. Mrs Andersson acquired her shares as a gift from her husband, who was the sole director. She was an employee and a deputy director. In November 2008, her husband withdrew her authority as a sole signatory on behalf of the company. One month later, the company was declared insolvent and an insolvency administrator was appointed. He refused to pay Mrs Anderson’s salary for the month of December 2008 and for her notice period. Mrs Andersson took the matter to court, claiming that she was entitled to payment on the basis of the Swedish law transposing Directive 80/987, which was replaced in November 2008 by Directive 2008/94. These Directives provide that the Member States must establish guarantee institutions that pay or guarantee the employees of insolvent employers their salaries and certain benefits for a certain period of time. Article 10(c) of the old Directive and Article 12 of the new Directive allow the Member States to provide for an exemption from this protection in cases where the employee, on his or her own or together with his or her close relatives, was the owner of an

essential part of the employer's business and had a considerable influence on its activities. Swedish law contains such an exemption, with this addition that it exempts individuals who owned an essential part of the business and had a considerable influence on its activities "more recently than six months before the application for a declaration of insolvency".

### **National Proceedings**

The referring Swedish court wished to know whether the six-month provision is compatible with the relevant Directives.

### **ECJ's findings**

The ECJ replied in the affirmative. Article 12(c) of Directive 2008/94 does not preclude a provision of national law that excludes an employee from entitlement under the guarantee of payment on the grounds that the employee, alone or together with close relatives, within the six months preceding the application for a declaration of insolvency, was the owner of an essential part of the business and had a considerable influence on its activities.

---

**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2011-02-10

**Case number:** C-30/10