

Pleas in law and main arguments

By the present action, the Commission seeks a declaration that the Republic of Bulgaria has infringed its obligations resulting from Article 14(1) of Regulation (EC) No 715/2009 in conjunction with Article 16(1) and (2)(b) thereof, which replace Article 14(1) and Article 5(1) and (2) of Regulation (EC) No 1775/2005.

Those obligations are the following:

- The obligations resulting from Article 14(1) of Regulation (EC) No 715/2009 in conjunction with Article 16(1) and (2)(b) thereof to provide maximum capacity to all market participants and, in particular, services for virtual reverse flow gas transport.

According to the Bulgarian authorities, the reason why the abovementioned obligation to provide maximum capacity was not fulfilled is that there is no physical connection between the transit system and the national gas transport system of the Republic of Bulgaria, and that those systems are subject to different regulations.

A further reason why that obligation was not fulfilled, claim the Bulgarian authorities, is that there are three interstate agreements in force between the Republic of Bulgaria and the Government of the USSR, which were concluded in 1986 and 1989.

The Commission contends that, if the interstate trade agreement of 27 April 1998 between OOO Gazprom and Bulgartransgaz EAD impedes the fulfilment by the Bulgarian authorities of their obligation to provide maximum capacity, the Republic of Bulgaria is required, pursuant to Article 351(2) of the Treaty on the Functioning of the European Union, to take all appropriate steps to eliminate such incompatibilities with the provisions of European Union law.

(¹) Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ 2009 L 211, p. 36).

Reference for a preliminary ruling from the Corte di appello di Roma (Italy) lodged on 3 May 2012 — Martini SpA v Ministero delle Attività Produttive

(Case C-211/12)

(2012/C 194/24)

Language of the case: Italian

Referring court

Corte di appello di Roma

Parties to the main proceedings

Applicant: Martini SpA

Defendant: Ministero delle Attività Produttive

Questions referred

1. Must Article 35 of Commission Regulation (EC) No 1291/2000 of 9 June 2000 (¹) be interpreted as meaning that the essential aim underlying the penalty laid down therein — consisting in total forfeiture of the security required from Community economic operators which have obtained an import or export licence for a product governed by the common organisation of the market for cereals — is to deter those operators from failing to comply with a primary obligation (such as the actual importation or exportation of the cereals covered by the relevant licence) which they are required to fulfil with regard to the operation in respect of which they have been granted the licence and lodged the relevant security?
2. Must Article 35(4) of Regulation (EC) No 1291/2000, in so far as it lays down the time-limits and procedure for the release of the security lodged at the time when an import licence is issued, be interpreted as meaning that, where there is a failure to comply with a secondary obligation — consisting, in particular, in the late production of proof that the product has been correctly imported (and, consequently, the late submission of the related application for release of the security lodged) — the amount of the penalty to be imposed must be determined independently of the amount of the specific security the forfeiture of which must be ordered for non-compliance with a primary obligation in relation to those same imports, and must the amount of the penalty be determined, in particular, by reference to the normal amount of security applicable to most imports of products of the same type carried out during the reference period?
3. Must Article 35(4)(c) of Commission Regulation (EC) No 1291/2000, in so far as it provides that ‘... where, for a given product, there are licences or certificates with different levels of security, the [lowest] rate applicable to imports ... shall be used to calculate the amount to be forfeited.’, be interpreted as meaning that, where cereals have been correctly imported by a Community economic operator, non-compliance with the time-limit laid down for producing proof that the product has actually been imported into the European Community must be subject to a penalty calculated by reference to the lowest amount of security in force during the same period in which that product was imported, irrespective of the specific duty applicable (as argued by Martini) or only where the same duty applies (as argued by the Italian State)?

(¹) OJ 2000 L 152, p. 1.