

Parties to the main proceedings

Applicant: ERSTE Bank Hungary Nyrt

Defendants: Magyar Állam, B.C.L Trading GmbH, ERSTE Befektetési Zrt.

Intervener: dr. Bárándy és Társai Ügyvédi Iroda, Komerční banka a.s.

Question referred

Does Article 5(1) of Council Regulation (EC) No 1346/2000⁽¹⁾ of 29 May 2000 on insolvency proceedings ('the Regulation') govern civil proceedings relating to the existence of rights in rem (security deposits) where the country in which the bond, and subsequently the money it represented, was deposited as a security was not a Member State of the European Union at the time when insolvency proceedings were instituted in another Member State, but was a Member State of the European Union by the time the application initiating the proceedings was submitted?

⁽¹⁾ OJ L 160, p. 1,

Action brought on 15 November 2010 — European Commission v Hellenic Republic

(Case C-528/10)

(2011/C 30/35)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: G. Zavvos and H. Støvlbæk)

Defendant: Hellenic Republic

Form of order sought

- declare that, by failing to adopt the necessary measures in implementing the first railway package, the Hellenic Republic has failed to fulfil its obligations under Articles 6(2) to (5) and 11 of Directive 2001/14/EC⁽¹⁾ and under Article 30(1), (4) and (5) of that directive;
- order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

(i) Failure to apply a system of incentives to reduce the costs of provision of infrastructure and access charges

The Commission submits that the Hellenic Republic, without advancing an adequate explanation, has not adopted the

measures necessary for the actual application of a system which provides infrastructure managers with incentives to reduce the costs of provision of infrastructure and the level of access charges, thereby failing to fulfil its obligations under Article 6(2) to (5) of Directive 2001/14.

(ii) Failure to lay down a performance scheme

In addition, the Commission contends that the Hellenic Republic, without advancing an adequate explanation, has not adopted the necessary measures and officially established a set of mechanisms to ensure the creation and application of a performance scheme with the objective of minimising disruption and improving the performance of the railway network in Greece, and it has therefore failed to fulfil its obligations under Article 11 of Directive 2001/14.

(iii) Failure to set up an independent regulatory body and to ensure that it is able to impose penalties

Moreover, the Commission submits that the Hellenic Republic, without advancing an adequate explanation, has not created a regulatory body responsible for transport matters which is independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. Specifically, the National Railway Council which has responsibility operates under the supervision of the Ministry of Transport and Communications which, as is known, exerts a decisive influence on the railway undertaking TRAINOSE. This situation obviously results in a conflict of interests given the position of the public officials as members of the regulatory body who have to ensure that there is no discriminatory treatment to the detriment of the State railway undertaking's competitors while, at the same time, in the context of their regulatory duties, they must take account of the commercial interests of the railway undertaking which is overseen by the ministry itself. On the basis of the foregoing, the Commission contends that the Hellenic Republic has failed to fulfil its obligations under Article 30(1) of Directive 2001/14.

Furthermore, the Commission contends that the Hellenic Republic, without advancing an adequate explanation, has not adopted the measures necessary for ensuring that the regulatory body is able to impose penalties in cases of a refusal to provide information or in order for a situation to be remedied. More specifically, the Hellenic Republic has not adopted the decision establishing the type of penalties, the amount of fines and the procedure for imposing and levying the latter, with the consequence that it has failed to fulfil its obligations under Article 30(1), (4) and (5) of Directive 2001/14.

⁽¹⁾ OJ L 75, 15.3.2001, p. 29.