

As regards Article 107 TFEU, what is at issue is not merely the domestic transfer of financial resources, since the transport authorities, in their dual role as owners of public transport undertakings, benefit directly from the allocation of resources and use them selectively at the expense of the private sector via direct awards. The transport authorities exercised over the public transport undertakings control similar to that which they exercise over their own departments. The allocation of resources to the transport authorities is inextricably linked with a favouring effect, since at that point in time the use of the resources for the economic activities of municipal undertakings is often already established. This distorts competition and affects trade between Member States.

Moreover, on account of the fact that Paragraph 7a of the NNVG amounts to aid, but also independently therefrom, there has been an infringement of Article 108(3) TFEU, since the Federal Republic of Germany failed to notify Paragraph 7a of the NNVG to the European Commission.

(<sup>1</sup>) European Commission decision not to raise objections to the measure adopted by the Land Niedersachsen under Paragraph 7a of the Niedersächsisches Nahverkehrsgesetz (Law on local transport of the Land of Lower Saxony) (Case SA. 46697 (2017/NN)) (OJ 2018 C 292, p. 1).

---

## Action brought on 5 December 2020 — European Commission v Slovak Republic

(Case C-661/20)

(2021/C 44/38)

*Language of the case: Slovak*

### Parties

*Applicant:* European Commission (represented by: C. Hermes, R. Lindenthal, acting as Agents)

*Defendant:* Slovak Republic

### Form of order sought

The applicant claims that the Court should:

- Declare that the Slovak Republic has failed to fulfil its obligations under Article 6(3) of Council Directive 92/43/EEC (<sup>1</sup>) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora in conjunction with Article 7 thereof, inasmuch as it exempted programs for the care of forests and the amendments thereto, casual logging and measures for the prevention of risk to forests and for the elimination of the consequences of damage caused by natural disasters from the requirement that, in the event that they are such as to be likely to have a significant effect on Natural 2000 network areas, they are to be subject to appropriate assessment of their effects on the relevant areas in view of the conservation objectives of those areas,
- Declare that the Slovak Republic has failed to fulfil its obligations stemming from Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora in conjunction with Article 7 thereof inasmuch as it has failed to adopt appropriate steps for the prevention of the deterioration of the habitats and of significant disturbance in the special areas of conservation designated for the Capercaillie (OCHÚ Low Tatras SKCHVU018, OCHÚ Tatras SKCHVU030, OCHÚ Greater Fatra SKCHVU033, OCHÚ Muránska planina-Stolica SKCHVU017, OCHÚ Choč mountains SKCHVU050, OCHÚ Horná Orava SKCHVU008, OCHÚ Volovec mountains SKCHVU036, OCHÚ Lesser Fatra SKCHVU013, OCHÚ Poľana SKCHVU022, OCHÚ Slovenský Raj (Slovak paradise) SKCHVU053, OCHÚ Levoča mountains SKCHVU051 and OCHÚ Strážov mountains SKCHVU028),
- Declare that the Slovak Republic has failed to fulfil its obligations stemming from Article 4(1) of Directive 2009/147/EC (<sup>2</sup>) of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds inasmuch as it has failed to adopt specific protective measures concerning the habitat of the Capercaillie in connection with OCHÚ Low Tatras SKCHVU018, OCHÚ Tatras SKCHVU030, OCHÚ Greater Fatra SKCHVU033, OCHÚ Muránska planina-Stolica SKCHVU017, OCHÚ Volovec mountains SKCHVU036, OCHÚ SKCHVU013 Lesser Fatra and OCHÚ Levoča mountains SKCHVU051, designated for its protection, so as to ensure its survival and reproduction in the areas of its distribution, and
- order the Slovak Republic to pay the costs.

### Pleas in law and main arguments

According to Article 6(3) of the Directive on Habitats any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon is to be subject to appropriate assessment of its effects on the site in view of the site's conservation objectives. The competent national authorities may not, on the basis of the conclusions of the assessment of the effects on the site, agree with the plan or project unless they have ascertained that it will not adversely affect the integrity of the site concerned. In Slovakia, the zákon o ochrane prírody (Law on nature protection) and the zákon o lesoch (Law on Forests) do not ensure that programs for the care of forests and amendments thereto, casual logging and measures for the prevention of risk to forests and for the elimination of the consequences of damage cause by natural disasters were subject to the requirement of an appropriate assessment of the effects on Natura 2000 network sites. The correct transposition of Article 6(3) of the Directive on Habitats in conjunction with Article 7 thereof was not ensured at the point at which the time limit laid down in the reasoned opinion expired and still causes continuing problems.

According to Article 6(2) of the Directive on Habitats, Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive. Under Article 7 of the Directive on Habitats, that provision also covers both sites with European Union significance and also specific protected areas under the Directive on Birds. The Slovak Republic, under Article 4(1) of the Directive on Birds, has progressively designated 12 special areas of conservation for the protection of the Capercaillie, which is a species set out in Annex I to the Directive on Birds. However, Slovakia has not taken appropriate steps to avoid the deterioration of the habitats of the Capercaillie and significant disturbance of the species in those 12 special areas of conservation.

Under Article 4(1) of the Directive on Birds, the Slovak Republic was under the obligation, in the 12 special areas of conservation designated for the Capercaillie, to provide for special measures, which include the obligation to provide for special conservation objectives. At the point at which the time limit in the reasoned opinion had expired, and even at the point at which the present application was lodged, the Slovak Republic still had not, under the Law on Nature Protection, adopted programs for the management of conservation areas for the habitats of the Capercaillie in 7 special areas of conservation.

<sup>(1)</sup> OJ 1992 L 206, p. 7.

<sup>(2)</sup> OJ 2010 L 20, p. 7.

---

**Appeal brought on 4 December 2020 by the Single Resolution Board against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 23 September 2020 in Case T-414/17, Hypo Vorarlberg Bank AG v Single Resolution Board**

**(Case C-663/20 P)**

(2021/C 44/39)

*Language of the case: German*

### Parties

*Appellant:* Single Resolution Board (SRB) (represented by: H. Ehlers, P.A. Messina and J. Kerlin, acting as Agents, and H.-G. Kamann, F. Louis and P. Gey, Rechtsanwälte)

*Other party to the proceedings:* Hypo Vorarlberg Bank AG

### Form of order sought

The appellant claims that the Court should:

- set aside the judgment of the General Court of 23 September 2020, *Hypo Vorarlberg Bank v Single Resolution Board* (T-414/17, EU:T:2020:437);
- dismiss the application for annulment;
- order the respondent to pay the costs of the proceedings.