

2. Article 11 of Directive 2001/14/EC, since the charging scheme introduced by the Spanish authorities does not set out any performance scheme in accordance with the criteria laid down in that article;
3. Article 30(1) of Directive 2001/14/EC, since the Spanish legislation does not ensure that the regulatory body (el Comité de Regulación Ferroviaria) is sufficiently independent vis-à-vis ADIF (the railway infrastructure manager) and RENFE-Operadora (a railway undertaking attached to the Spanish Ministry of Public Works);
4. Article 10(7) of Directive 91/440/EEC, because the regulatory body (el Comité de Regulación Ferroviaria) lacks the means necessary to perform the function conferred on it under that article of monitoring the competition in the rail services markets;
5. Article 13(2) and Article 14(1) of Directive 2001/14/EC in so far as the Spanish legislation lays down criteria for the allocation of railway infrastructure capacity which are discriminatory; these may in fact result in the allocation of train paths for a longer term than one working timetable period; the criteria are also lacking in detail.

⁽¹⁾ OJ 2001 L 75, p. 29.

⁽²⁾ OJ 1991 L 237, p. 25.

Action brought on 8 October 2010 — European Commission v Hellenic Republic

(Case C-485/10)

(2010/C 328/44)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: B. Stromsky and M. Konstantinidis)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

- declare that, by failing to take, within the period prescribed, all the measures necessary to implement Commission Decision E(2008) 3118 of 2 July 2008 (as rectified by the Commission Decision of 13 August 2008) on aid granted to Hellenic Shipyards SA or, in any event, by failing to give sufficient information to the Commission on the measures taken in accordance with Article 19 of the decision, the

Hellenic Republic has failed to fulfil its obligations under Articles 2, 3, 5, 6, 8, 9 and 11 to 18 of that decision and under the Treaty on the Functioning of the European Union;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The subject of the Commission's action is the non-implementation by the Hellenic Republic of the Commission's decision relating to illegal State aid in favour of Hellenic Shipyards SA which must be recovered from the non-military part of that undertaking.

The Commission points out that the Hellenic Republic should have ensured implementation of the decision within four months of the date of its notification. The decision was published on 13 August 2008 and the Commission did not grant any extension for implementation of the decision. Consequently, the period for compliance formally expired on 13 December 2008.

The Commission states that, in accordance with the settled case-law of the Court, the only justification that may be put forward by a Member State in an action for failure to fulfil obligations brought by the Commission pursuant to Article 108(2) of the Treaty on the Functioning of the European Union is that is absolutely impossible for it properly to implement the decision.

However, in this case the Greek authorities have never raised the argument of absolute impossibility of implementation. On the contrary, from the outset they expressed their intention to implement the decision as rapidly as possible. Nevertheless, the Commission notes that as of the date on which this action was lodged, they have not taken any steps that would constitute even partial implementation of the decision.

The Commission considers that Greece has not taken the necessary action to implement the decision either in accordance with the solution discussed between its services and the competent Greek authorities or in any other appropriate way.

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) (United Kingdom) made on 18 October 2010 — Barbara Mercredi v Richard Chaffe

(Case C-497/10)

(2010/C 328/45)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicant: Barbara Mercredi

Defendants: Richard Chaffe

Questions referred

1. Please clarify the appropriate test for determining the habitual residence of a child for the purpose of:

(a) Article 8 of EC Regulation 2201/2003 ⁽¹⁾

(b) Article 10 of EC Regulation 2201/2003

2. Is a Court an 'institution or other body' to which rights of custody can be attributed for the purposes of the provisions of EC Regulation 2201/2003?

3. Does Article 10 have a continuing application after the courts of the requested Member State have rejected an application for the return of the child under the 1980 Hague Abduction Convention on the basis that Articles 3 and 5 are not made out?

In particular, how should a conflict between a determination of the requested state that the requirements of Articles 3 and 5 of the 1980 Hague Abduction Convention are not met and a determination of the requesting state that the requirements of Articles 3 and 5 are met be resolved?

⁽¹⁾ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 OJ L 338, p. 1