

**Reference for a preliminary ruling from the
Bundesfinanzhof (Germany) lodged on 27 October 2010
— Finanzamt Hildesheim v BLC Baumarkt GmbH &
Co. KG**

(Case C-511/10)

(2011/C 30/25)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Finanzamt Hildesheim

Respondent: BLC Baumarkt GmbH & Co. KG

Question referred

Is the third subparagraph of Article 17(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes ⁽¹⁾ to be interpreted as authorising the Member States to prescribe primarily an apportionment criterion other than the transaction formula for apportioning the input tax on the construction of a mixed-use building?

⁽¹⁾ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

**Action brought on 26 October 2010 — European
Commission v Republic of Poland**

(Case C-512/10)

(2011/C 30/26)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: H.Støvlbæk and K. Herrmann, Agents)

Defendant: Republic of Poland

Form of order sought

— hold that, in the context of the implementation of the first railway package, the Republic of Poland has failed to meet the obligations imposed on it pursuant to Article 6(3) of and Annex II to Council Directive 91/440/EEC of 29 July

1991 on the development of the Community's railways, as subsequently amended, ⁽¹⁾ and Articles 4(2) and 14(2) of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, ⁽²⁾ as well as pursuant to Article 6(2) and (3) of Directive 2001/14/EC, Article 6(1) of Directive 2001/14/EC in conjunction with Article 7(3) and (4) of Directive 91/440/EEC, as subsequently amended, and Articles 7(3) and 8(1) of Directive 2001/14/EC;

— order the Republic of Poland to pay the costs of the proceedings.

Pleas in law and main arguments

The Commission raises four heads of complaint alleging failure on the part of the Republic of Poland to comply with the provisions of the first railway package.

In the first place, according to the Commission, the Republic of Poland made no provision for mechanisms designed to ensure the decision-making and organisational independence of the infrastructure manager fulfilling a fundamental role, namely PLK S.A. (Polskie Linie Kolejowe, a public limited company), vis-à-vis the holding concern, that is to say, vis-à-vis both the dominant company PKP S.A. and the other subsidiaries of the holding concern which operate as rail carriers.

Second, the Republic of Poland did not, in the opinion of the Commission, adopt appropriate measures — in accordance with the first subparagraph of Article 6(1) of Directive 2001/14/EC and Article 7(3) and (4) of Directive 91/440/EEC — with a view to ensuring that the infrastructure manager PLK S.A. would achieve financial equilibrium within an appropriate period of time. The Polish State, it is submitted, is allowing PLK S.A. to accumulate losses up to the year 2012.

Third, in the Commission's view, the Republic of Poland failed to provide for the specific system of incentives required under Article 6(2) and (3) of Directive 2001/14/EC for PLK S.A. with a view to reducing the costs and expenditure incurred in respect of use of the railway infrastructure.

Fourth, in the opinion of the Commission, the Republic of Poland did not — contrary to Article 7(3) of Directive 2001/14/EC — adopt the measures necessary to ensure that charges for minimal access to railway infrastructure would be set on the basis of the costs directly incurred as a result of operating the train service. In addition, the Polish State failed to make provision for the control mechanism required by Article 8(1) of Directive 2001/14/EC which would make it possible to conduct an examination as to whether various market segments are in a position, from an economic point of view, to bear the increased expenditure for access to and use of the railway infrastructure.

⁽¹⁾ OJ 1991 L 237, p. 25.

⁽²⁾ OJ 2001 L 75, p. 29.