



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-500/20
ÖBB-Infrastruktur Aktiengesellschaft

Advocate General Ćapeta: the Court of Justice should find that it has jurisdiction to interpret the CUI Uniform Rules because the EU has exercised its shared competence by acceding to COTIF

The costs for leasing replacement locomotives do not fall under the strict liability of railway infrastructure managers for loss of or damage to property of the carrier under the CUI Uniform Rules. Such liability, however, can be extended by the parties to the contract.

In July 2015, a train consisting of six locomotives of the German private railway company Lokomotion Gesellschaft für Schienentraktion derailed in Kufstein Station (Austria), resulting in damage to two of the locomotives. For the time of their repair, which took several months, Lokomotion leased replacement locomotives. Lokomotion is claiming these costs from ÖBB-Infrastruktur, the railway infrastructure manager.

The contract on the use of railway infrastructure for international transport which the two companies had concluded includes a reference to several Austrian acts and the Uniform Rules concerning the contract for the use of infrastructure in international rail traffic ('the CUI Uniform Rules'). The latter provide, among others, that the infrastructure manager is liable for loss of or damage to property caused to the carrier during the use of the infrastructure and having its origin in the infrastructure.

The Oberster Gerichtshof (Supreme Court, Austria), seized of the case, must decide whether the costs of leasing the replacement locomotives are to be regarded as such loss of or damage to property, and submitted in this context several questions to the Court of justice.

First, it inquires whether the Court has jurisdiction to interpret the CUI Uniform Rules which form part of COTIF¹, an international agreement concluded by both the EU and its Member States (therefore a "mixed agreement") in the field of transport, in which the Union and the Member States share competence.

Second, in the event that jurisdiction is established, the Court is invited to interpret the extent of liability of railway infrastructure managers under the CUI Uniform Rules.

In today's Opinion, Advocate General Tamara Ćapeta proposes to the Court to answer that it has jurisdiction to interpret the CUI Uniform Rules.

She points out that the CUI Uniform Rules cover an area which, at the time of the EU's accession to the COTIF, belonged to potential shared competences. That means that the competence to legislate in that area was conferred on the EU, but that the possibility of doing so had not (yet) been used.

The question therefore is whether the Court has jurisdiction to interpret parts of a mixed agreement concerning subject-matter for which competence is conferred by the Treaties on the EU, but in respect of which the EU has not yet legislated internally.

¹ Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, establishing the Intergovernmental Organisation for International Carriage by Rail (OTIF). The COTIF was amended by the Vilnius Protocol of 3 June 1999 and ratified by the European Union with effect from 1 July 2011.

According to the Advocate General, **in such a situation the Court has jurisdiction only in relation to those provisions of a mixed agreement in the adoption of which the EU has exercised its competence² and which thereby pre-empt unilateral Member State action.**

Thus, whenever it can be concluded that by acceding to an international agreement the EU chose to exercise (up to that moment only potential) shared competences, the relevant provisions of that agreement become an

When applied to the CUI Uniform Rules, the Advocate General concludes **the EU has, by acceding to the COTIF, exercised its competence in relation to the rules set out therein, including those on the liability of the railway infrastructure manager.** That is so because the EU decided to regulate the liability of the network manager by accepting the CUI Uniform Rules also for intra-EU situations. **Hence, the Court has jurisdiction to interpret these rules.**

As regards the liability issue, the Advocate General considers that **the strict liability of the infrastructure manager for loss of or damage to property under the CUI Uniform Rules does not include the costs incurred by the carrier as a result of having to lease locomotives to replace his existing locomotives due to damage caused to them.**

In her view, leasing replacement locomotives does not target loss of or damage to property, but is an additional cost arising from the carrier's intention to continue providing its service without disruption.

That being said, the Advocate General considers further that **the CUI Uniform Rules allow the parties to the contract effectively to assume greater liability by means of a blanket reference to national law**, including if this leads to a greater extent of liability which is, however, conditional upon fault.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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² The ability to conclude a mixed agreement in an area of shared competence does not depend on the condition that such competence was already exercised internally. It may be exercised for the first time by concluding an international agreement.