



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-41/15  
Gerard Dowling and Others v Minister for Finance

**EU law does not preclude an increase in the share capital of a bank without the agreement of the general meeting of the shareholders in a situation where there is a serious disturbance of the economy and the financial system of a Member State**

*The interests of shareholders and creditors cannot be held to prevail in all circumstances over the general interest of the stability of the financial system*

The economic crisis faced by Ireland in 2008 had serious effects on the financial stability both of the Irish banks and of Ireland. In December 2010, Ireland and the Commission concluded an agreement with respect to an economic and financial adjustment programme. By an Implementing Decision of 7 December 2010,<sup>1</sup> the EU made available to Ireland financial assistance as consideration for which Ireland undertook to restructure and recapitalise the banking sector by 31 July 2011.

In accordance with those undertakings, Ireland took steps to recapitalise the national banks, including ILP, a credit institution operating in Ireland. The Irish Minister for Finance submitted to the shareholders of ILPGH (a company owning ILP's entire share capital) a proposal designed to achieve the recapitalisation of ILP. That proposal was rejected by the general meeting of ILPGH on 20 July 2011.

In order to recapitalise ILP notwithstanding that refusal, the Minister obtained from the courts a Direction Order requiring ILPGH to issue, in return for a capital injection of €2.7 billion, new shares to the Minister. The Minister therefore obtained, without any decision having been made by the general meeting of shareholders of ILPGH, 99.2% of the shares of that company.

Members and shareholders of ILPGH then brought an application before the High Court, Ireland, for the setting aside of the Direction Order. In their opinion, the increase in share capital resulting from that order is incompatible with an EU directive,<sup>2</sup> since it was effected without the approval of the general meeting of ILPGH.

The Minister rejected that argument, relying on Implementing Decision 2011/77 and other provisions of EU law which authorise Ireland to take measures necessary to defend the integrity of its own financial system notwithstanding the provisions of the directive.

The High Court concluded, on the balance of probabilities, that ILP could not have raised the required amount of capital, and that were the recapitalisation not to have occurred within the time allowed, that would have led to the failure of ILP, a failure that would have had adverse consequences for Ireland and that would probably have worsened the threat to the financial stability of other Member States and of the EU.

<sup>1</sup> Council Implementing Decision 2011/77/EU of 7 December 2010 on granting Union financial assistance to Ireland (OJ 2011 L 30, p. 34).

<sup>2</sup> Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of [the second paragraph of Article 54 TFEU], in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ 1977 L 26, p. 1).

In those circumstances, the High Court asks the Court of Justice whether the directive precludes the adoption of a Direction Order, such as that adopted in this case.

In today's judgment, the Court draws attention to the circumstances which led to the adoption of that Direction Order. The Court states, in particular, that the referring court, **after weighing the competing interests**, came to the conclusion that, once the decision of ILPGH's extraordinary general meeting of 20 July 2011 was made to reject the Minister's proposed recapitalisation, the Direction Order was **the only means of ensuring, by 31 July 2011, the recapitalisation of ILP that was necessary to prevent the failure of that financial institution and thereby to forestall a serious threat to the financial stability of the EU.**

The Court states that the aim of the directive is to achieve minimum equivalent protection for both shareholders and creditors of public limited liability companies. **The measures provided for by that directive** relating to the formation of public limited liability companies and to the maintenance, increase or reduction of their capital **guarantee such protection against acts taken by the governing bodies of those companies and relate, therefore, to their normal operation.** The Court notes however that the Direction Order is an exceptional measure that is adopted in a situation where there is a serious disturbance of the economy and financial system of a Member State and that is designed to overcome a systemic threat to the financial stability of the EU.

The Court concludes that **the directive does not preclude the adoption by the national authorities of an exceptional measure (such as the Direction Order) without the approval of the general meeting of that company, where there is a serious disturbance of the economy and financial system of a Member State, with the objective of preventing a systemic risk and ensuring the financial stability of the EU.**

**Although there is a clear public interest in ensuring, throughout the EU, a strong and consistent protection of shareholders and creditors, that interest cannot be held to prevail in all circumstances** over the public interest in ensuring the stability of the financial system established by the EU Treaties.

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**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 judgment is published on the CURIA website on the day of delivery.

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