



Press and Information

Court of Justice of the European Union
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Judgment in Case C-28/09
Commission v Austria

The traffic prohibition for lorries carrying certain goods on the Inn valley motorway in the Tyrol is incompatible with the free movement of goods

It has not been clearly established that the principal alternative measures proposed by the Commission as less restrictive measures are inappropriate

The A12 motorway in the Inn valley in the Tyrol (Austria) is one of the principal routes between southern Germany and northern Italy. After finding that the annual limit value of nitrogen dioxide (NO₂) set by two European directives¹ had been exceeded on that motorway, Austria took measures to reduce pollution to the level laid down by those directives. To that end the Austrian authorities adopted in 2003 a traffic prohibition for lorries of over 7.5 tonnes carrying certain goods (waste, stones, earth, motor vehicles, logs, cereals) on a 46 km section of the A12 motorway.

However, by judgment of 15 November 2005², the Court of Justice, before which the case had been brought by the Commission, held that the prohibition was incompatible with the principle of the free movement of goods, because it was not proportionate to the objective sought, namely the protection of air quality.

Following that judgment, the Austrian authorities gradually implemented new measures to ensure that the limit value for nitrogen dioxide set by the directives was complied with. Those measures included a 100 km/h speed restriction on a section of the A12 motorway, which was later replaced by a variable speed limit, and a traffic prohibition for lorries in certain Euro classes³.

As air quality on the A12 motorway did not improve, the Austrian authorities adopted a traffic prohibition for lorries of over 7.5 tonnes carrying certain goods on a section of the motorway, this time of approximately 84 km. They took the view that those goods, largely identical to those covered by the prohibition introduced in 2003, should be transported in Austrian territory by more environment-friendly modes of transport such as rail.

However, the Commission considered that that new sectoral traffic prohibition on the A12 motorway was likewise an unjustified obstacle to the principle of the free movement of goods. In those circumstances, it brought an action before the Court of Justice, asking the Court to declare that there was an infringement.

In today's judgment the Court of Justice starts by recalling that the Member States are obliged to ensure that the limit value of nitrogen dioxide set by the directives is not exceeded in their territory. In this context the directives authorise the Member States to take the necessary measures for compliance with the limit value. However, while the Member States have discretion in adopting

¹ Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management (OJ 1996 L 296, p. 55) and Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (OJ 1999 L 163, p. 41), as amended by Commission Decision 2001/744/EC of 17 October 2001 (OJ 2001 L 278, p. 35). Those directives were repealed as from 11 June 2010 by Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1), but, in view of the date of the material facts, they remain applicable to the present proceedings.

² Case [C-320/03 Commission v Austria](#); see also Press Release [97/05](#).

³ European emission standards, known as 'Euro standards'.

those measures, they must exercise that discretion consistently with the rules of EU law, including the principle of the free movement of goods

In the present case, the Court finds that the sectoral traffic prohibition is an obstacle to the transport of certain goods by road in the Inn valley. **Such a measure is a restriction of the free movement of those goods.** Similarly, the Court emphasises that the existence of alternative solutions for the transport of those goods, such as rail transport or the use of other motorways, does not negate the existence of a restriction. By forcing the undertakings concerned to seek viable alternative solutions for the transport of the goods in question, the sectoral traffic prohibition is liable to have a substantial effect on the transit of goods between northern Europe and northern Italy.

The Court recalls, however, **that a restriction of the free movement of goods may be justified if it is a measure that is appropriate and necessary for attaining an objective in the public interest such as protection of the environment.** The Court observes that the Austrian regulations do actually contribute to the protection of the environment, as they make it possible to reduce emissions of atmospheric pollutants and bring about an improvement in air quality in the Inn valley. The contested prohibition is thus a measure that is appropriate for achieving the objective in the public interest.

The Court then examines whether that objective could have been attained by less restrictive measures. As the Court stated in its 2005 judgment, the Member States must, before adopting a measure so radical as a total traffic ban on a section of motorway constituting a vital route between certain of those States, examine carefully the possibility of using measures less restrictive of freedom of movement, and discount them only if their inappropriateness to the objective pursued is clearly established.

In this respect, as regards the Commission's suggestion that the traffic prohibition for lorries in certain Euro classes could be extended to lorries in other classes, the Court considers that those standards reliably reflect actual emissions of vehicles as regards nitrogen oxides. In the Court's view, it has not been established that such an extension would not have been able to contribute to the objective sought as effectively as the implementation of the sectoral traffic prohibition.

Finally, as regards the possibility of replacing the variable speed limit by a permanent 100 km/h speed limit, the Court does not accept the Austrian Government's argument that a permanent speed limit would not be observed in practice by road users. Austria cannot rely in this connection on the average speed actually measured in the zone in question, namely 103 km/h, for assessing the effect of introducing a permanent 100 km/h speed limit. On the contrary, it is obliged to ensure that the limit is actually complied with, by adopting compulsory measures, with penalties if need be. In those circumstances, the Court finds that the solution suggested by the Commission offers a potential for reducing nitrogen dioxide emissions which was not sufficiently taken into account by the Republic of Austria.

Consequently, **the Court holds that, by adopting a sectoral traffic prohibition without sufficiently examining the possibility of having recourse to other less restrictive measures, Austria has disproportionately restricted the free movement of goods.**

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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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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