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Court of Justice of the European Union

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Judgments in Case C-473/10, C-483/10, C-555/10 and C-556/10
Commission v Hungary, Spain, Austria and Germany

Hungary and Spain have failed to comply with their obligations under EU law in the field of rail transport

On the other hand, Austrian and German rail transport legislation complies with EU law

As a result of the liberalisation of the railway sector in the EU, Member States are required to ensure that undertakings operating in that sector enjoy equitable and non-discriminatory access to the rail network. In that context, the exercise of functions regarded as essential may no longer be performed by the Member States' railway undertakings that have traditionally done so but must be entrusted to independent managers. Those functions comprise, essentially, the granting of licences to railway undertakings giving them access to the rail network, the allocation of train paths and the determination of the charges to be paid by transport undertakings for use of the network.

The present cases form part of a series of actions for failure to fulfil obligations¹ brought by the Commission against a number of Member States for failure to comply with their obligations under directives governing the functioning of the railway sector². In the present cases, the Court of Justice is required to examine the actions brought against Hungary, Spain, Austria and Germany.

Case C-473/10 Commission v Hungary

In connection with the allocation of train paths, the Commission criticises Hungary for entrusting traffic management to two railway undertakings that were traditionally responsible for that task, namely the MÁV and the GySEV, not to an independent body.

In its judgment today, the Court finds that the essential function of allocating train paths includes activities of an administrative nature concerning essentially the planning and establishment of the working timetable and the ad hoc allocation of individual train paths. On the other hand, traffic management includes activities forming part of infrastructure management and consists not in the adoption of decisions concerning the allocation of train paths but in implementing or carrying out such decisions. Consequently, **traffic management cannot be regarded as an essential function and may therefore be entrusted, as is the case in Hungary, to railway undertakings**. Similarly, while the determination of the charge to be paid by transport undertakings for use of the network constitutes an essential function, the simple collection and invoicing of the charge may be entrusted to the operators which traditionally carried out that task.

On the other hand, the Court points out that Hungary has failed to comply with its obligations under Directive 2001/14 in so far as it has not laid down conditions to ensure that the accounts of infrastructure managers are balanced or adopted incentives to reduce the costs and charges connected with the operation and use of infrastructure. Similarly, the Court concludes that Hungary

¹ Cases [C-473/10 Commission v Hungary](#), [C-483/10 Commission v Spain](#), [C-512/10 Commission v Poland](#), [C-528/10 Commission v Greece](#), [C-545/10 Commission v Czech Republic](#), [C-555/10 Commission v Austria](#), [C-556/10 Commission v Germany](#), [C-557/10 Commission v Portugal](#), [C-625/10 Commission v France](#), [C-627/10 Commission v Slovenia](#), [C-369/11 Commission v Italy](#) and [C-412/11 Commission v Luxembourg](#).

² Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ 1991 L 237, p. 25), as amended by Directive 2001/12, and 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 (OJ 2001 L 75, p. 29), as amended by Directives 2004/49/EC and 2007/58/EC.

has infringed that directive by failing to ensure that the charges paid to infrastructure managers are set at the cost directly incurred as a result of operating the train service.

Case C-483/10 *Commission v Spain*

The Court observes, first of all, with regard to this case that, while it falls to the Member States to establish the legislative framework for charging, they must nevertheless respect the management independence of the infrastructure manager and entrust it with the task of determining the charge to be paid for use of the rail network. In that regard, the Court finds that by reserving to the State the right to determine that charge, Spain has failed to comply with Directive 2001/14.

Next, the Court points out that Member States are required to establish, as part of the charging scheme, a performance scheme to minimise disruption and improve the performance of the railway network. However, while Spanish legislation provides for the possibility of taking account of factors relating to improvements in the network's performance and the development of the network, that is not sufficient for the purpose of satisfying the requirement to set up a genuine performance scheme.

The Court also finds that Spanish legislation, which provides that, if there is more than one application for the same train path or if the network is congested, the public authorities have the right to establish allocation priorities for the different types of service on each line, taking account in particular of freight services, is contrary to Directive 2001/14. Indeed, that directive expressly provides that the Member States are to establish specific capacity allocation rules and that the infrastructure manager alone may, in certain cases, give priority to specific services.

Lastly, the Court finds that, by adopting the criterion of actual use of the network as the criterion for the allocation of infrastructure capacity where there is more than one application for the same train path or the network is congested, Spanish legislation is contrary to Directive 2001/14, in so far as it does not lay down any requirement for a framework agreement to be concluded if account is to be taken of the operator's actual use of the network. Under Directive 2001/14, the maximum duration of use of train paths is one working timetable period, unless a framework agreement has been concluded between the infrastructure manager and the railway undertaking in accordance with the terms laid down in the directive. Moreover, the Court finds that such an allocation criterion is discriminatory in that it leads to advantages being maintained for the incumbent users and access to the most attractive train paths being denied to new entrants.

Case C-555/10 *Commission v Austria* and Case C-556/10 *Commission v Germany*

The Commission argued that, under the directives in question, the independent manager cannot form part of a holding company which also comprises railway undertakings, unless additional measures are in place to ensure management independence. According to the Commission, Austria and Germany failed to adopt such measures when those States incorporated their infrastructure managers – ÖBB-Infrastruktur and Deutsche Bahn Netz – in a holding company.

However, the Court rejects that complaint. It points out that, in order to perform charging and allocation functions, ÖBB-Infrastruktur and Deutsche Bahn Netz must be independent of their respective holding companies in their legal form, organisation and decision-making. It is apparent that both those companies have separate legal personality as well as their own bodies and resources which are different from those of their respective holding companies. Moreover, the Court notes that there is no mention in the directives cited of the additional measures alluded to by the Commission and Member States cannot therefore be required to adopt such measures.

The Court also rejects the Commission's argument that Germany has failed to fulfil its charging obligations with regard to the requirement to introduce a mechanism to limit the costs of provision of infrastructure and reduce the level of access charges.

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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