



Press and Information

Court of Justice of the European Union

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Judgment in Cases C-545/10, C-627/10 and C-412/11
Commission v Czech Republic, Slovenia and Luxembourg

The Czech Republic and Slovenia have failed to fulfil their obligations under EU law in the field of rail transport

The Court, however, rejects the Commission's action against Luxembourg

These cases form part of a series of actions for failure to fulfil obligations¹ brought by the Commission against several 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 was required to examine the actions brought against the Czech Republic, Slovenia and Luxembourg.

Case C-545/10 Commission v Czech Republic

The Court has pointed out, in the first place, that in order to attain the objective of management independence of the infrastructure manager within the charging framework established by the Member States, the manager must be given a certain latitude in determining the amount of the charges so as to enable it to use that flexibility as a management tool.

However, the setting, by an annual decision of the Ministry of Finance, of a maximum charge for the use of railway infrastructure has the effect of restricting the infrastructure manager's freedom of action to an extent incompatible with the objectives of Directive 2001/14. In accordance with what is laid down in that directive, the infrastructure manager must be in a position to set or to continue to set higher charges on the basis of the long-term costs of certain investment projects. The Court concludes from that that the Commission's first complaint is well founded.

Secondly, concerning the Commission's complaint that there are no measures encouraging managers to reduce the costs for the provision of infrastructure and the level of access charges, the Court examined the State funding of the infrastructure manager, relied on by the Czech Republic.

Although capable of reducing the costs of the provision of infrastructure and the level of access charges, that funding does not in itself have an incentive effect on that manager in that the funding does not entail any commitment on the part of the manager. The Court therefore finds that the second complaint also is well founded.

Thirdly, the Court examined the Commission's complaint that the charges collected for all minimum services and for access to infrastructure services by the network are not equal to the costs directly attributable to the operation of the railway service. The Court finds that the Commission has not provided any specific examples showing that access charges have been set by the Czech

¹ Cases [C-473/10](#), Commission v Hungary; [C-483/10](#), Commission v Spain; [C-555/10](#), Commission v Austria; [C-556/10](#), Commission v Germany (see PR No [20/13](#)); [C-512/10](#), Commission v Poland; [C-528/10](#), Commission v Greece; [C-545/10](#), Commission v Czech Republic; [C-557/10](#), Commission v Portugal; [C-625/10](#), Commission v France (see PR No [49/13](#)); [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/EC 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.

authorities in disregard of the requirements under the directive. Consequently, the Court declares that complaint to be unfounded.

Fourthly, the Commission claims that by failing to establish a performance scheme such as to encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the railway network, the Czech Republic has failed to fulfil its obligations under EU law. As the Court finds that the legislative and contractual provisions relied on by the Czech Republic cannot be regarded as constituting a coherent and transparent whole which may be described as a 'performance scheme', it has declared that complaint to be well founded.

Fifthly, the Commission claims that under Czech law decisions of the Office for Railways are to be challenged before the Ministry of Transport. However, such a prior administrative appeal is contrary to Directive 2001/14. In that regard, the Court has found that it is clear from that directive that the administrative decisions adopted by the regulatory body can be subject only to judicial review, and therefore the Czech legislation infringes EU law.

C-627/10 Commission v Slovenia

Directive 91/440 provides that, in order to ensure fair and non-discriminatory access to railway infrastructure, the essential functions must be entrusted to bodies or undertakings which are not themselves providers of rail transport services. Those functions include, in particular, the allocation of train paths to railway undertakings, that is to say, the allocation of time slots for train movements over part of the rail network.

In that context, the Commission alleges first that Slovenia has failed to fulfil its obligations in that the Slovenian infrastructure manager, which itself provides rail transport services, participates in the preparation of the service timetable and, therefore, the function of allocating train paths or infrastructure capacity.

The Court points out that, under Directive 91/440, decision making related to path allocation including the definition and assessment of availability is regarded as coming within the essential functions. The Court concludes from this that a railway undertaking cannot be entrusted with all the preparatory work for the adoption of such decisions. This being the case in Slovenia, the Court has declared that the Commission's complaint is well founded.

By contrast, the Court points out that traffic management cannot be regarded as an essential function, and it may therefore be assigned to an infrastructure manager which is also a railway undertaking, as is the case in Slovenia.

Next, the Commission claims that Slovenia has not made provision for measures encouraging managers to reduce the costs for the provision of infrastructure and the level of access charges, nor has it implemented the performance scheme for railway undertakings and the infrastructure manager which corresponds to the requirements of EU law. Finally, the Commission made a complaint relating to the calculation of the charge for minimum access to the rail infrastructure.

In that regard, the Court points out that the arguments relied on by Slovenia are based solely on amendments made to its national law after expiry of the period prescribed in the Commission's reasoned opinion which it sent to Slovenia in 2009. However, those amendments cannot be taken into account by the Court, and consequently it has declared the Commission's complaints to be well founded.

C-412/11 Commission v Luxembourg

The Commission alleges that Luxembourg failed to fulfil its obligations in that the railway undertaking, Chemins de fer luxembourgeois (CFL), is responsible for certain essential functions relating to the allocation of train paths in the event of traffic disruption.

The Court points out that in the event of disruption to the service or danger, the adoption of measures necessary for restoring normal operating conditions, including the withdrawal of train

paths, falls within traffic management. Since the adoption of measures is not subject to the requirement of independence, an infrastructure manager which is at the same time a railway undertaking may be entrusted with such functions.

Nevertheless, the Court states that although the withdrawal of train paths in the event of disruption of traffic is not regarded as an essential function, their re-allocation must be regarded as part of the essential functions which may be exercised only by an independent manager or by an allocation body.

Bearing in mind that, under Luxembourg legislation, a reallocation of train paths is made by the allocation body, namely, the Administration des Chemins de Fer (ACF), the Court has rejected the Commission's application.

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 judgments ([C-545/10](#), [C-627/10](#) and [C-412/11](#)) is published on the CURIA website on the day of delivery.

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