Case C-60/20

Request for a preliminary ruling

Date lodged:

5 February 2020

Referring court:

Administratīvā apgabaltiesa (Regional Administrative Court) (Latvia)

Date of the decision to refer:

30 January 2020

Appellant:

VAS ‘Latvijas Dzelzceļš’

Respondent:

Valsts dzelzceļa administrācija (National Railway Administration)

THE ADMINISTRATĪVĀ APGABALTIESA

(Regional Administrative Court)

[…]

ORDER

[…] 30 January 2020

[…] [composition of the court]

[…]

examined at a public hearing the appeal lodged by VAS ‘Latvijas Dzelzceļš’ against the judgment of the Administratīvā rajona tiesa (District Administrative Court) of 25 January 2019 in the administrative-law proceedings instituted by way of the action for annulment brought by VAS ‘Latvijas Dzelzceļš’ against the decision of the Valsts dzelzceļa administrācija (National Railway Administration; [‘the Administration’]) […] of 5 December 2017[, and]

hereby states

Factual background

[1] The appellant, VAS ‘Latvijas Dzelzceļš’, has, since 2002, leased the locomotive depot building in Ventspils […], which it owns (‘the Ventspils depot building’), to a third party, AS ‘Baltijas Ekspresis’.

On 20 June 2016, the appellant renewed with AS ‘Baltijas Ekspresis’ the non-residential lease agreement (‘the lease agreement’) relating to the leasing of the non-residential property comprising the Ventspils depot building and the corresponding ground areas.

In 2017, the appellant, as the public railway infrastructure manager, needed to use those facilities for its own requirements (storage of rolling stock for infrastructure maintenance). Consequently, by letter of 5 September 2017 […], the appellant gave AS ‘Baltijas Ekspresis’ notice of termination of the lease agreement.

On 18 September 2017, AS ‘Baltijas Ekspresis’ filed with the Administration a complaint of infringement of competition and discrimination. According to the complaint, the discretion enjoyed by the appellant had given rise to discrimination against AS ‘Baltijas Ekspresis’ in its capacity as transport undertaking and service facility operator, in particular by impeding the effective and rational operation of, and access to, services. AS ‘Baltijas Ekspresis’ has been active on the rail freight market for 20 years. AS ‘Baltijas Ekspresis’ states that it uses the Ventspils depot premises as a service facility within the meaning of Article 1, point 26, of the Dzelzceļa likums (Law on Railways). On the leased premises, AS ‘Baltijas Ekspresis’ performs a self-supply of services, that is to say technical locomotive maintenance, maintenance of the thermal behaviour of locomotives on the storage sidings between two assignments, and organisation of standby sand and industrial-use water services to meet needs connected with the preparation and fitting of locomotives, those being regarded as services having to be provided by a service facility operator.

In the light of the foregoing considerations, the complaint raised by AS ‘Baltijas Ekspresis’ asked the Administration to put an end to the appellant’s behaviour, which was liable to jeopardise the continuity of the activities carried out at the service facility.

After examining that complaint, the Administration, by decision […] of 5 December 2017 (‘the contested decision’), ordered the appellant to guarantee access to the Ventspils depot building in its capacity as a service facility and to the services supplied there, as provided for in Article 12.[1](2), points 5 and 6, of the Law on Railways (access to maintenance and other technical facilities, including facilities for washing and cleaning railway rolling stock).

[2] That decision is based on a factual assessment to the effect that the Ventspils depot building is technically suitable for the repair and technical maintenance of locomotives. This is considered sufficient to support the view that the Ventspils depot building is a service facility, since Article 1, point 26, of the Law on Railways defines 'service facility' as the ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more of the services referred to in that law.

Furthermore, a self-supply of services, as defined in Article 3(8) of European Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services ('Regulation 2017/2177'), must also be regarded as a provision of services. According to the contested decision, it makes no difference that AS 'Baltijas Ekspresis' performs activities only for itself on the leased premises. This does not detract from the fact that a self-supply of services takes place on those premises. Given that AS 'Baltijas Ekspresis' performs a self-supply of services in the Ventspils depot building, the interruption of activities at that service facility must be analysed by reference to the rules limiting the right of a service provider to close a service facility.

Under Article 12.^{2}(8) of the Law on Railways, access to the service facility and to the services supplied there must be guaranteed for at least two years after the facility has ceased to be used. Closure of the service facility may not take place until after the aforementioned two-year period has expired. Consequently, the appellant is subject to the obligation to guarantee access to the Ventspils depot building in its capacity as a service facility and to the obligation to guarantee access to the services supplied on those premises.

[3] The appellant brought before the Administratīvā rajona tiesa (District Administrative Court) an action seeking to have the contested decision annulled.

The application stated that AS 'Baltijas Ekspresis' had not rented the premises at the Ventspils depot building as a service facility. Furthermore, AS 'Baltijas Ekspresis' was not registered as a service facility operator either at the time when the lease agreement was concluded or at the time when notice was given of the termination of that agreement. It stated that the Administration had misinterpreted the concepts of 'service facility' and 'self-supply of services' and misapplied Article 12.^{2}(7) and (8) of the Law on Railways.

The appellant maintained that the concept of 'service facility' within the meaning of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area includes the place where services are supplied to a number of railway undertakings. The classification of service facility cannot be attached to any place where certain economic activities are carried on.

The appellant argued that the operations performed by AS ‘Baltijas Ekspresis’, which the Administration classifies as a self-supply of services, could not be regarded as confirming the existence of a provision of services.

Article 3(8) of Regulation 2017/2177 contains a definition of the concept of ‘self-supply of services’. The wording of that provision indicates that this is a situation where a railway undertaking asks to use the premises of a self-supply of services that is under the control of another undertaking. Where, on the other hand, an undertaking carries out maintenance activities on railway infrastructure property which it owns or manages, the performance of those activities cannot be regarded as a self-supply of services. Given that the Administration misused the concepts of service facility and self-supply of services, the resulting conclusion — that it is appropriate to apply the provisions limiting closure of the service facility — is also unfounded.

[According to the appellant], the Administration is wrong to take the view that it is empowered to oblige the appellant to guarantee access to services at the facility concerned. The appellant has not provided services in the Ventspils depot building for a long time, as the property is leased to AS ‘Baltijas Ekspresis’. Consequently, the Administration cannot impose on the appellant obligations that are incumbent on a service facility operator.

[4] By judgment of 25 January 2019, the Administratīvā rajona tiesa (District Administrative Court) dismissed the appellant’s action.

In its judgment, that court stated that the appellant had to be regarded as a service facility operator, since it was responsible for managing [the facility in question]. It also held that the Ventspils depot building was suitable for providing maintenance services. Consequently, that court came to the conclusion that the Administration had correctly applied Article 12.[2](8) of the Law on Railways in imposing on the appellant the obligation to guarantee access to the service facility and to the services supplied there.

[5] The appellant lodged an appeal against the judgment at first instance.

On appeal, the appellant argues that the court of first instance wrongly concluded that the appellant was a service facility operator. It states that that court was mistaken in its view that the property was owned by the network operator. Consequently, that court also erred in concluding that the appellant was subject to the obligations laid down in Article 12.[1](2) of the Law on Railways.

It submits that the court of first instance wrongly concluded that the Ventspils depot building had to be regarded as a service facility simply because services can be supplied there. It takes the view that it must be considered relevant that the premises were not leased as a service facility and that the Ventspils depot building was not registered as a service facility in the network statement.

It goes on to say that the Administration and the court of first instance also erred in stating that AS ‘Baltijas Ekspresis’ performs a self-supply of services on the leased premises.

The appellant attached to the appeal a request that a request for a preliminary ruling be made to the Court of Justice of the European Union. The appellant asked that a reference be made for a preliminary ruling on how to interpret the concepts of ‘service facility’, ‘service facility operator’ and ‘self-supply of services’ as defined in Directive 2012/34. The appellant also asked for clarification as to whether the obligation imposed on the service facility operator in Article 13(2) of Directive 2012/34 to guarantee access to the service facility may be imposed on a person who does not provide service facility services. The appellant further submits that the contested decision limits the opportunities for using its property and it is sustaining losses as a result.

[6] In its response, the Administration states that the contested decision contains evidence to support the conclusion that the Ventspils depot building is a service facility. In this case, the limitation of the property owner’s rights is based on Article 13(6) of Directive 2012/34/EU, the content of which is reproduced in Article 12.^{2}(7) and (8) of the Law on Railways. There is therefore no doubt that the limitation of rights is justified. According to the Administration, there is no doubt about the interpretation of the legislation either. Consequently, it asks that the [appellant’s] request for a reference for a preliminary ruling to be made to the Court of Justice of the European Union be refused.

[7] In its written observations, AS ‘Baltijas Ekspresis’ submits that the appellant’s appeal is unfounded. The Ventspils depot building must be regarded as a service facility in which AS ‘Baltijas Ekspresis’, in its capacity as facility operator, supplies services consistent with a service facility. AS ‘Baltijas Ekspresis’ argues that the appellant devised arbitrary criteria for determining the existence of a service facility that are not provided for in Directive 2012/34. The provisions of that directive and those of the Law on Railways have as their object and purpose to limit the scope for refusing access to service facilities. It is not therefore appropriate for the [Administratīvā] apgabaltiesa (Regional Administrative Court) to make a reference for a preliminary ruling to the Court of Justice of the European Union. A service facility’s activities may be terminated where that facility has not been in use for at least two consecutive years. According to AS ‘Baltijas Ekspresis’, the interpretation of Article 13(6) of Directive 2012/34 is in no doubt whatsoever, inasmuch as it must first be established that the facility in question has not been in use for at least two consecutive years before any decision can be taken to close it. It does not therefore see any need to make a reference to the Court of Justice of the European Union for a preliminary ruling in this regard.

Rules of law applicable to the dispute

EU law

[8] Articles 3, 11, 12 and 13(2) and (6) of Directive 2012/34.

Articles 3(9) and 15(5) and (6) of Regulation 2017/2177.

Latvian law

[9] Article 1, points 26 and 27, of the Law on Railways […] provides that that Law uses the following terms:

26) service facility: the installation (including ground area, buildings and equipment), which has been specially arranged, as a whole or in part, to allow the supply of one or more services referred to in Article 12.[1](2),(3) and (4) of this Law;

27) service facility operator: any undertaking or department thereof that is responsible for managing one or more service facilities or providing to railway undertakings one or more of the services referred to in Article 12.[1](2), (3) and (4) of this Law.

Article 12.[1](2) of the Law on Railways provides that service facility operators are to guarantee for all carriers, on a non-discriminatory basis, access (including track access) to their service facilities and, where appropriate, to the services supplied in the following facilities:

[…]

5) maintenance facilities, with the exception of heavy maintenance facilities dedicated to other types of rolling stock requiring specific facilities;

6) other technical facilities, including railway rolling stock cleaning and washing facilities.

Article 12.[2](7) of the Law on Railways provides that, where one of the service facilities referred to in Article 12.[1](2) of that law has not been in use for at least two consecutive years and interest by a transport undertaking for access to that facility has been expressed to the operator of that service facility on the basis of demonstrated needs, the owner must publicise the operation of the facility as being for lease or rent as a rail service facility, as a whole or in part, unless the operator of that service facility demonstrates that an ongoing process of reconversion prevents its use by any railway undertaking.

Article 12.[2](8) of the Law on Railways provides that, if one of the facilities referred to in Article 12.[1](2) of that law is not in use for at least two consecutive years, its owner may publicise the fact that all or part of the service facility is to be

made available for rent, lease or alienation. If no offers are received within a period of three months from publication, the facility operator is to be authorised to close it, after giving at least three months' notice to that effect to the National Railway Administration and the public railway infrastructure manager.

Reasons why there are doubts as to the interpretation of EU law

[10] The Law on Railways (in the version thereof applicable from 10 March 2016) contains the rules set out in Directive 2012/34. The provisions of the Law on Railways reproduce the content of that directive. Therefore, the application of the provisions of the Law on Railways also entails, in essence, an interpretation of the provisions of Directive 2012/34.

So far as concerns access to service facilities and rail-related services, the European Commission adopted Regulation 2017/2177, applicable from 1 June 2019. The adoption of Regulation 2017/2177 confirms that the European Union has recognised that access to service facilities and rail-related services calls for the existence of uniform rules throughout the European Union. Although the [contested] decision was adopted prior to the date of entry into force of Regulation 2017/2177, the practical effects of that decision are still felt today, that is to say in a situation in which Regulation 2017/2177 is by now in force. Given that the adjudication on the substance of the dispute will principally affect a prospective situation, there is good reason to apply Regulation 2017/2177 for the purposes of analysing the content of the decision adopted by the Administration.

[11] The Administratīvā apgabaltiesa (Regional Administrative Court) notes that, in the operative part of the contested decision, the Administration required the appellant: 1) to guarantee access to the Ventspils depot building in its capacity as a service facility; and 2) to guarantee access to the services supplied in the Ventspils depot building.

The appellant owns the Ventspils depot building. It is common ground that the Ventspils depot building was not rented as a service facility, regard being had to the content of the lease agreement, and that it was also not mentioned in the network statement as a service facility either at the time when the lease agreement was concluded on 20 June 2016, or at the time when unilateral notice was given of termination of the leasehold. The leasehold dates back to the period prior to the accession by the Republic of Latvia to the European Union. The renewed lease agreement, signed on 20 June 2016, provided that the premises were to be leased to AS 'Baltijas Ekspresis' for use as office space and for the performance of economic activities (clause 1.2 of the agreement). The lease agreement was due to expire on 30 April 2028. Clause 7.3.7 of the lease agreement, for its part, provided that the appellant enjoyed a unilateral right to terminate the lease agreement in the event any unforeseen necessity on its part to avail itself of the premises in order to meet its own needs.

On 5 September 2017, the appellant gave AS ‘Baltijas Ekspresis’ notice of the unilateral termination of the lease agreement. AS ‘Baltijas Ekspresis’ did not say that the Ventspils depot building was a service facility until after it had received notice of termination of the lease agreement. Prior to then, therefore, the Ventspils depot building had not been regarded as a service facility under the leasehold and AS ‘Baltijas Ekspresis’ had not previously carried out activities characteristic of the services available in a service facility.

The contested decision was adopted in the context of the complaint raised by AS ‘Baltijas Ekspresis’ against the appellant’s decision to terminate the leasehold. The appellant is an undertaking responsible for managing the railway infrastructure. Consequently, the appellant does not provide services but takes on obligations to maintain the railway infrastructure.

It is common ground that the appellant expressed the wish to use the Ventspils depot building in future to store railway rolling stock (wagons). In this instance, therefore, terminating the leasehold with AS ‘Baltijas Ekspresis’ might prevent the appellant in future from being able to use the Ventspils depot building for its economic activities, including the maintenance of locomotives used for freight transport.

All of the foregoing considerations show that the dispute concerns the future use of the facilities at the Ventspils depot building. The regulatory body must assess whether there is good reason to impose a mandatory leasehold that would guarantee the interests of AS ‘Baltijas Ekspresis’ or to allow the appellant to use that place for purposes other than the provision of services.

The Administratīvā apgabaltiesa (Regional Administrative Court) also notes that, for as long as the proceedings are under way, the contested decision will make the continued existence of the leasehold with AS ‘Baltijas Ekspresis’ compulsory, which is to say that the leasehold between that undertaking and the appellant will continue in being on a mandatory basis.

[12] According to the appellant, the Court of Justice of the European Union should be asked, inter alia, whether the Ventspils depot building is to be regarded as a service facility, given that the premises comprising that property were leased for other purposes and the network statement does not mention them as a service facility.

Article 3(11) of Directive 2012/34/EU provides that a service facility is the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more of the services mentioned in points 2 to 4 of Annex II to that directive.

In the view of the [Administratīvā] apgabaltiesa (Regional Administrative Court), it should be recognised that the Ventspils depot building is a service facility in so far as it meets the technical requirements that characterise that space as being suitable for providing services.

[13] The opinion of the [Administratīvā] apgabaltiesa (Regional Administrative Court) that the place in question should be classified as a service facility is not undermined by the appellant's submissions to the effect that AS 'Baltijas Ekspresis' did not publish any information about the fact that it was providing services to other persons, namely that that place was accessible to the public for the provision of services[.]

It is true that designating the service facility as such and publishing that designation are actions that guarantee access to those services and ensure the transparent use of that resource. In the opinion of the [Administratīvā] abgabaltiesa (Regional Administrative Court), however, the fact that those actions were not taken does not in itself support the conclusion that the Ventspils depot building does not constitute a service facility. The failure to take those actions may also be regarded as an error to be corrected through the drafting and publication of that information.

Neither is the finding as a matter of fact that a service facility exists affected by the Administration's misinterpretation of the concept of 'self-supply of services'. The Administratīvā apgabaltiesa (Regional Administrative Court) recognises that AS 'Baltijas Ekspresis' does not perform a 'self-supply of services' within the meaning of Article 3(8) of Regulation 2017/2177 but uses the facilities for its economic needs. In the same way, the appellant likewise does not provide services to other railway undertakings (at least it did not until the [contested] decision was adopted). All of those circumstances show that the service facility in question must be regarded as an unused service facility. The leasing or reconversion of unused service facilities is governed by Article 13(6) of Directive 2012/34 and by Article 15 of Regulation 2017/2177. Consequently, the foregoing circumstances do not call into question the proposition that the aforementioned legislation, which provides for the continued use of unused service facilities, is of general application to the present case.

[14] The contested decision is based on Article 12.[1](2) of the Law on Railways, which essentially reproduces Article 13(2) of Directive 2012/34.

Under Article 13(2) of Directive 2012/34, operators of service facilities are to supply in a non-discriminatory manner to all railway undertakings access, including track access, to service facilities and to the services supplied in those facilities. That provision therefore provides that the *system operator* must ensure that railway undertakings have access to service facilities and to the services supplied in those facilities.

From 2002, the appellant leased the Ventspils depot building to AS 'Baltijas Ekspresis', which is neither directly nor indirectly subordinate to the appellant. Consequently, the appellant and AS 'Baltijas Ekspresis' are bound only by a leasehold.

According to recital 8 of Regulation 2017/2177, if a facility is owned, managed and operated by several entities, only the entities effectively responsible for providing the information and deciding on requests for access to the service facility and use of rail-related services should be considered as the operators of the service facility.

In the opinion of the [Administratīvā] apgabaltiesa (Regional Administrative Court), the factual circumstances of the dispute confirm that the appellant cannot be regarded as the operator of the service facility, in so far as it is not responsible for providing information or deciding on requests for access to the services provided in the Ventspils depot building.

[15] According to the Administration, the service facility operator's obligations as set out in Article 13(2) of Directive 2012/34 (to guarantee access to the services supplied in the facility) can be imposed on a property owner who is not the service facility operator. The Administration bases its position on Article 12.[2](7) of the Law on Railways, which essentially corresponds to Article 13(6) of Directive 2012/34. That interpretation of the legislation is founded on the view that termination of the lease may lead to a reconversion of the service facility. The Administration submits that the service facility may, in turn, be reconverted only if that facility has not been in use for two years and no offers to purchase it have been made.

[16] The [Administratīvā] apgabaltiesa (Regional Administrative Court) notes that the wording of Article 13(6) of Directive 2012/34 does not oblige a property owner to provide access to the services provided in the facility.

In the opinion of the [Administratīvā] apgabaltiesa (Regional Administrative Court), a schematic interpretation of the legislation does not support the inference, either, that, in the present case, the property owner is under an obligation to provide access to the services concerned.

The principal purpose of Directive 2012/34 is to ensure non-discriminatory access to services. Access to services does not entail control of an infrastructure against the will of the owner. Making the infrastructure available to the railway undertaking (in this case, AS 'Baltijas Ekspresis') does not mean that AS 'Baltijas Ekspresis' enjoys rights equivalent to those of other transport undertakings to receive services in that place, but that it enjoys a right of rental which the others do not. It should be noted that a leasehold on infrastructure effectively constitutes an exclusive right. Consequently, the grant of such rights does not equate to a right to receive services.

[17] Article 13(6) of Directive 2012/34 concerns the situation where a property owner leases an unused service facility to a person other than the facility operator, in other words to another leaseholder. That situation is not identical to the one at issue in the present case, where the leasehold between the property owner and the service facility leaseholder, who is not directly or indirectly linked to the property

owner, is terminated. Nonetheless, an analysis of the wording of that provision also leads to the conclusion that, in the context of the termination of a leasehold, the rail transport undertaking's interest in maintaining the lease must prevail over the interests of the property owner.

Article 13(6) of Directive 2012/34 does not provide that a person who shows an interest in renting an unused service facility enjoys an absolute right to take it on lease. That provision states that the service facility may be leased *unless the operator of that service facility demonstrates that an ongoing process of reconversion prevents its use by any railway undertaking.*

In the view of the [Administratīve] apgabaltiesa (Regional Administrative Court), it follows from the wording of that provision that the operator of a service facility may, notwithstanding that a railway undertaking expresses an interest in taking over a service facility (by taking it on lease), refuse access to the service facility if it can demonstrate that the railway undertaking will reconvert the service facility.

It should be noted that Directive 2012/34/EU also states, in recital 18 thereof, that any economic entity interested in operating that facility should be able to participate in the tendering procedure and submit an offer to take over the operation of the facility. However, a tender procedure does not have to be launched *if a formal process to withdraw the dedication of the site to railway purposes is ongoing and the facility is being redeveloped for purposes other than use as a service facility*.

Thus the content of recital 18 of Directive 2012/34 also indicates that a railway undertaking that has an interest in taking over a service facility does not have a priority right to obtain access to that facility where the operator is carrying out a reconversion of that service facility. Consequently, the wording of those provisions does not sustain the Administration's view that importance is to be attached only to the fact that AS 'Baltijas Ekspresis' had expressed an interest in continuing to operate that facility.

The second sentence of Article 15(5) of Regulation 2017/2177, which clarifies certain aspects of the provisions of Article 13(6) of Directive 2012/34, provides that the operator may object to the leasing of the service facility by submitting documents proving that there is an ongoing process of reconversion, launched before the expression of interest. Consequently, the wording of Article 15(5) of Regulation 2017/2177 also indicates that the facility operator may decide to close that particular facility.

[18] The Administration explains the wording of Article 13(6) of Directive 2012/34 as meaning that that provision applies only to situations in which the reconversion began prior to transposition of the Directive. The [Administratīvā] apgabaltiesa (Regional Administrative Court) finds that interpretation of the aforementioned provision to be unfounded, in so far as it is not consistent either with its wording or with the scheme of the Directive.

Article 15(5) of Regulation 2017/2177 states that, for the purposes of assessing the situation, account is to be taken of whether the reconversion process was launched prior to the expression of interest, but does not attach importance to any other criteria.

That provision says that the service facility may be reconverted if necessary and that the reconversion is not subject to the condition of having commenced prior to the date of transposition of Directive 2012/34/EU.

[19] In the view of the [Administratīvā] apgabaltiesa (Regional Administrative Court), if the service facility operator can reconvert the facility, there is no good reason why the owner of the facility cannot also terminate the leasehold in order to reconvert the service facility later. There is no material difference between those situations, since they are both concerned with the facility owner's right to dispose freely of his assets (by carrying out a reconversion).

There may be a number of objective reasons why the owner of a service facility would need to reconvert it. For example, it may be because carrying on the activities pursued in the facility requires major investment (full-scale renovation) or because the owner of the service facility needs the facility in order to perform other functions relating to rail transport.

In accordance with Article 15(5) of Regulation 2017/2177, the person empowered to adopt a decision relating to the reconversion of a service facility has to demonstrate to the regulatory body only that the reconversion will take place. However, that provision does not say that, where there is evidence of the genuineness of the owner's intention, the Administration may refuse to allow the operator (or owner) of the facility to reconvert it and impose an obligation to lease the premises to a person who has expressed an interest to that effect.

[20] In short, the Administratīvā apgabaltiesa (Regional Administrative Court) notes that, generally speaking, the legal position may be regarded as being subject to the provisions of Article 13(6) of Directive 2012/34 and Article 15(5) and (6) of Regulation 2017/2177. However, those provisions do not support the inference that the property owner cannot give the leaseholder notice of termination of the lease agreement on the ground that he wishes to use the property for his own needs.

In the opinion of the [Administratīvā] apgabaltiesa (Regional Administrative Court), Article 13(6) of Directive 2012/34 and Article 15(5) and (6) of Regulation 2017/2177 make provision, principally, for a slightly different situation, which is to say that they do not expressly determine the lawfulness of terminating the leasehold or the criteria for assessing the lawfulness of doing so.

Consequently, that legislation is not sufficiently clear with respect to the rights that are to be granted to a particular person in cases calling for an examination of the termination of a leasehold.

Recital 27 of Directive 2012/34 states that the main purpose of the legislation is to ensure non-discriminatory access to services. The leasing of infrastructure to a rail transport undertaking (in this case, AS 'Baltijas Ekspresis'), in this instance, confers on the transport undertaking not the right to receive services on the same terms as other transport undertakings, but the (exclusive) right to use the infrastructure in order to meet its own needs. It must also be taken into account that the mandatory transfer to another person of control over an item of infrastructure gives rise to a more significant restriction of the infrastructure owner's rights than a situation in which access must be granted to the services provided in the service facility. Consequently, the rules governing accessibility to services cannot be applied by analogy with a mandatory leasehold.

[21] Account being taken of the foregoing considerations, it is necessary to ask the Court of Justice of the European Union whether Article 13(2) and (5) of Directive 2012/34 and Article 15(5) and (6) of Regulation 2017/2177 allow the Administration, in the situation at issue, to require a property owner who is not responsible for providing services in a facility to grant access to those services.

It is also important to consider, in the course of the examination of the case, the lawfulness of the termination of the lease agreement that gave rise to the dispute. Consequently, it is necessary to ask the Court of Justice of the European whether Article 13(6) of Directive 2012/34/EU and Article 15(5) and (6) of Regulation 2017/2177 are to be interpreted as meaning that those provisions authorise a property owner to terminate a leasehold and reconvert a service facility if the owner needs the property for the purposes of his economic activities.

Consequently, the [Administratīvā] apgabaltiesa (Regional Administrative Court) considers […] it necessary to make a reference for a preliminary ruling to the Court of Justice of the European Union. An order must therefore be made to stay the proceedings in this case pending a ruling from the Court of Justice of the European Union on the questions hereby referred.

In accordance with Article 267 of the Treaty on the Functioning of the European Union, the Administratīvā apgabaltiesa (Regional Administrative Court)

hereby decides

To refer the following questions to the Court of Justice of the European Union for a preliminary ruling:

1) May Article 13(2) and (6) of Directive 2012/34 (Article 15(5) and (6) of Regulation 2017/2177) be applied in such a way that the regulatory body may impose on an infrastructure owner who is not the service facility operator the obligation to guarantee access to those services?

2) Must Article 13(6) of Directive 2012/34 (Article 15(5) and (6) of Regulation 2017/2177) be interpreted as meaning that it allows the owner of a building to terminate a leasehold and reconvert a service facility?

3) Must Article 13(6) of Directive 2012/34 (Article 15(5) and (6) of Regulation 2017/2177) be interpreted as meaning that it obliges the regulatory body to establish only whether the service facility operator (in this instance, the service facility owner) really has decided to reconvert it?

To stay the proceedings pending a ruling from the Court of Justice of the European Union.

[…]