



Press and Information

Court of Justice of the European Union

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Judgment in Case C-625/10
Commission v France

France has breached its obligations under EU law in the area of rail transport

On 29 December 2010, the Commission brought proceedings before the Court of Justice for a declaration that France had failed to fulfil certain obligations under EU law in the area of rail transport. That action is one of a series of similar proceedings¹ brought by the Commission against a number of Member States for non-compliance with their obligations under the relevant directives.

The Commission alleged, first, that France did not make provision for the separation of SNCF, the entity providing rail transport services, from RFF, the organisation responsible for managing the infrastructure in particular as regards the performance of functions deemed essential, which included the allocation of train paths (Directive 91/440/EEC)². It claimed that the SNCF, through the Direction des circulations ferroviaires ('DCF'), which at the time was not independent of SNCF, remained in charge of the allocation of train paths. The Commission alleged, second, that French legislation did not fully transpose the requirements for setting up a performance scheme relating to the charges made for access to the railway infrastructure. Furthermore, French legislation did not make sufficient provision for incentives to reduce the costs of providing infrastructure and the level of access charges (Directive 2001/14/EC)³.

France considered that it has now fully transposed Directive 91/440 on the development of the Community's railways as a result of the adoption of new legislation in 2011. However, in its judgment today, the Court of Justice points out that the existence of the breach in question must be determined by reference to the legislative situation prevailing in France at the end of the period laid down in the reasoned opinion (that is, 9 December 2009) sent by the Commission to France during the pre-litigation procedure. Therefore, amendments made to French legislation after that date cannot be taken into consideration for the purposes of examining the merits of this action.

As regards the merits of the case, the Court finds that, on that date, French legislation did not comply with the criterion that the function of allocating rail paths must be performed independently.

The Court points out that Directive 91/440 instigated the liberalisation of rail transport so as to ensure equitable and non-discriminatory access for railway undertakings to the rail network infrastructure. In order to guarantee that access, the Directive requires Member States to take the measures necessary to ensure that 'the essential functions' are entrusted to bodies or firms that do not themselves provide any rail transport services, and that this must be shown to have been

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; see also press release [No 20/13](#).

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 of the European Parliament and of the Council of 26 February 2001 (OJ 2001 L 75, p. 1). The essential functions are listed in Annex II to that directive.

³ 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 and safety certification (OJ 2001 L 75, p. 29), as amended by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 (OJ 2007 L 315, p. 44).

achieved, regardless of the organisational structures envisaged. According to Directive 91/440, essential functions include, inter alia, decision-making related to path allocation, including the definition and assessment of their availability and the allocation of individual train paths.

Consequently, a railway undertaking may not be entrusted with conducting the technical implementation studies necessary for scrutinising applications for train paths which must be carried out before a decision is taken and for the last-minute allocation of train paths, because those studies form part of the definition and assessment of the availability of train paths and the last-minute allocation of train paths constitutes an allocation of individual train paths for the purposes of Directive 91/440. Therefore, those functions must, in accordance with Directive 2001/14⁴, be entrusted to a body that is independent in its legal form, organisation and decision-making functions. Although it is supervised by RFF, DCF does not have separate legal personality from SNCF and forms an integral part of its structure, a fact which was not disputed by France. Consequently, **since the criterion of legal independence was not fulfilled**, there was no need to examine the criteria of organisational and decision-making independence, as all three criteria must be met.

Similarly, the Court finds that French legislation does not provide for a performance scheme as required under Directive 2001/14.

It follows from the above directive that the Member States must include in infrastructure charging schemes a performance scheme the purpose of which is to encourage both railway undertakings and the infrastructure manager to improve network performance. Incentives must be introduced by the Member States, which remain free to choose the specific measures, provided such measures constitute a coherent and transparent whole which may be described as a 'performance scheme'.

The French rail network statement containing all the information necessary for exercising the rights of access to that network for 2011 and 2012 provides only for a specific charge to be levied on the fee for reserving freight paths, provided the total length is greater than 300 km and the speed is greater than 70 km/h. Therefore, that scheme does not form a coherent and transparent whole which can be described as a genuine performance scheme within the meaning of the directive in question.

Similarly, it is true that the RFF general terms and conditions contain provisions for compensating the infrastructure manager for non-use of a train path, responsibility for which may be attributed to the railway undertaking, and for compensating the railway undertaking as a result of the withdrawal of train paths for which the manager is responsible. Those provisions do not, however, constitute a performance scheme within the meaning of the directive, as they contain only clauses determining liability in the event of damage, and make provision only for the consequences, in terms of compensation, in the event of the withdrawal of train paths by RFF.

Finally, the introduction, on an experimental basis, of a specific performance scheme mechanism as provided for by the performance contract is solely the responsibility of RFF. Therefore, that contract does not constitute a performance scheme that is likely to provide the infrastructure manager and the railway undertakings with incentives. Moreover, the provisions of the performance contract are limited to the freight network, whereas the directive provides that the basic principles of the performance scheme are to apply to the entire network.

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

⁴ Article 14(2) of Directive 2001/14/EC.

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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