



Press and Information

Court of Justice of the European Union

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Judgment in Case C-512/10
Commission v Poland

Poland failed to fulfil some of its obligations under EU law in the area of rail transport

On 26 October 2010, the Commission brought proceedings before the Court of Justice for a declaration that Poland¹ had failed to fulfil certain obligations under EU law in the area of rail transport. That action is one of a series of similar proceedings² brought by the Commission against a number of Member States for non-compliance with their obligations under the relevant directives.

EU law requires Member States to lay down conditions to ensure that the accounts of an infrastructure manager at least balance income from infrastructure charges, surpluses from other commercial activities and State funding on the one hand, and infrastructure expenditure on the other³.

In its judgment today, the Court, first, dismisses the Commission's claim that Poland has failed to take appropriate measures to ensure, in good time, that the accounts of the infrastructure manager, PLK SA (PKP Polskie Linie Kolejowe Spółka Akcyjna), balance.

In that regard, the Court states that, if PLK's profit and loss account does not balance, that is not sufficient, in itself, to conclude that Poland has failed to fulfil its obligations under EU law. To reach such a conclusion, it would also be necessary to establish that the failure to balance the accounts occurs 'under normal business conditions and over a reasonable time period'.

The Court notes that the independent management of the railway infrastructure in Poland began only recently (the first State subsidy having been granted in 2006). At the same time, even though the Polish State has financed the infrastructure manager, its income has fallen, in part because of the major economic crisis faced by the EU. **The Court therefore rejects the Commission's allegations and finds that Poland has laid down appropriate measures to ensure, in good time and under normal business conditions, that the accounts of the infrastructure manager balance.**

However, secondly, the Court upholds the Commission's claim that Poland, in breach of EU law, has failed to introduce an incentive scheme to reduce the costs of the provision of infrastructure and the level of access charges for use of the infrastructure.

While Polish legislation on rail transport lays down the objective of reducing expenditure and the level of the charges for use, it nevertheless fails to define the incentive mechanism by which that objective is to be achieved.

¹ Supported by Italy and the Czech Republic.

² 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 Press Release 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 Press Release No [49/13](#)); [C-627/10](#) Commission v Slovenia; [C-369/11](#) Commission v Italy, and [C-412/11](#) Commission v Luxembourg.

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 (OJ 2001 L 75, p. 29), as amended by Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 (OJ 2004 L 164, p. 44).

Moreover, that legislation does not establish regulatory measures with adequate powers requiring the infrastructure manager to be accountable for its management to a competent authority.

Similarly, the measures referred to by Poland do not form part of a multi-annual funding agreement, required by EU law. Consequently, the Court finds that Poland has failed to fulfil its obligations under EU law.

Finally, the Court upholds the Commission's claim concerning the calculation of charges for the minimum access package and track access to service facilities. Under EU law, those charges must be set at the cost directly incurred as a result of operating the train service.

In that regard, the Court finds that the proportion of the maintenance and traffic management costs representing fixed costs which the manager must bear, even in the absence of train movements, and depreciation, which is determined, not on the basis of the actual wear of the infrastructure attributable to traffic, but with reference to accounting rules, cannot be viewed as being directly incurred as a result of operating the train service. Furthermore, indirect costs and financial costs clearly do not have any direct link with the operation of the train service.

Consequently, **Poland has failed to fulfil its obligations under EU law by permitting the inclusion, in the calculation of charges, of costs which cannot be regarded as costs directly incurred as a result of operating the train service.**

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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