



Press and Information

Court of Justice of the European Union

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Judgment in Case C-369/11
Commission v Italy

Italy has failed to comply with EU law by not ensuring the independence of the railway infrastructure manager

However, the Commission has failed to establish that the regulatory body is not independent

The liberalisation of the railway sector in the EU¹ is aimed at requiring Member States to ensure that undertakings operating in that sector enjoy equitable and non-discriminatory access to the rail network. The exercise of functions regarded as essential (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) may no longer be performed by the Member States' railway undertakings that have traditionally done so but must be entrusted to independent managers.

The present case forms part of a series of actions for failure to fulfil obligations² brought by the Commission against a number of Member States for failure to comply with their obligations.

Italian law allocates the management of 'essential functions' amongst Rete Ferroviaria Italiana SpA ('RFI'), which is the designated *infrastructure manager* on the basis of a concession from the Ministry of Transport, and the Ministry itself. RFI, whilst having independent legal personality, is part of the group Ferrovie dello Stato Italiane ('the FS group'), which also includes Trenitalia SpA ('Trenitalia'), the principal railway undertaking operating on the Italian market. RFI is responsible for the calculation of the charges for network access for each operator and for the collection of those charges on the basis of the charges set by the Minister.

The Ufficio per la Regolazione dei Servizi Ferroviari (Office for the regulation of railway services, 'the URSF') is *the regulatory body*, which has organisational and accounting autonomy within the limits of the economic and financial resources allocated to it.

By its action the Commission has argued, first of all, that the Italian rules do not ensure **managerial independence of the infrastructure manager**. Under European Union law, the Member States are to establish a framework for levying charges, whilst respecting the management independence of the infrastructure manager, who must determine the charge for the use of the infrastructure and also collect it. However, in reserving for itself the power to set charges, Italy deprives the manager of an essential management tool, in the Commission's submission.

In its judgment today, the Court observes, firstly, that one of the objectives pursued by European Union law is to ensure the management independence of the infrastructure manager through the

¹ 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 Directives 2004/51/EC and 2007/58/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](#).

² Case [C-528/10 Commission v Greece](#), Case [C-557/10 Commission v Portugal](#); Case [C-473/10 Commission v Hungary](#); Case [C-483/10 Commission v Spain](#); Case [C-555/10 Commission v Austria](#); Case [C-556/10 Commission v Germany](#) (for these four cases, see Press Release No [20/13](#)); Case [C-625/10 Commission v France](#) (see Press Release No [49/13](#)); Case [C-512/10 Commission v Poland](#) (see Press Release No [64/13](#)); [Case C-545/10 Commission v Czech Republic](#); Case [C-627/10 Commission v Slovenia](#); and Case [C-412/11 Commission v Luxembourg](#) (for these three cases, see Press Release No [88/13](#)).

charging system. The charging and capacity-allocation schemes should encourage railway infrastructure managers to optimise use of the infrastructure within the framework established by the Member States. Their role cannot therefore be confined to calculating the amount of the charge in each individual case, applying a formula established in advance by ministerial order. On the contrary, they must be given a degree of flexibility in setting the amount of charges.

The Court notes that the Italian rules provide that the manager is bound by the calculation of the charge, which is fixed in collaboration with the Minister. Although the Minister merely ensures compliance with legal requirements, the check of lawfulness should be carried out by the regulatory body, in this case the URSF. **The Court infers therefrom that the Italian legislation does not ensure the infrastructure manager's independence.**

By its second plea, the Commission complains that the Italian legislation does not comply with the requirement of **independence of the regulatory body**, because the URSF consists of officials of the Ministry and the Ministry continues to have influence over the FS group, which owns Trenitalia.

The Court holds, however, that by its successive legislative interventions the Italian authorities have had an influence over the constitution of the regulatory body and have gradually redefined its organisational and accounting independence. It also observes that, under the Directive, the regulatory body may be the ministry responsible for transport.

Accordingly the Commission may not rely solely on the fact that the URSF is part of that ministry in order to conclude that it is not independent.

The Court concludes that **the Commission has failed to adduce the evidence necessary to establish that the regulatory body is not independent.**

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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