

**Action brought on 29 March 2012 — European Commission v Republic of Bulgaria**

(Case C-152/12)

(2012/C 174/26)

*Language of the case: Bulgarian*

**Parties**

*Applicant:* European Commission (represented by: R. Vasileva and H. Støvlbæk, acting as Agents)

*Defendant:* Republic of Bulgaria

**Form of order sought**

- Declare that the **Republic of Bulgaria** has infringed its obligations under Articles 7(3) and 8(1) of Directive 2001/14/EC; <sup>(1)</sup>
- Order the **Republic of Bulgaria** to pay the costs.

**Pleas in law and main arguments**

By its application of 16 March 2012 the European Commission (‘the Commission’) seeks to obtain a declaration that the Republic of Bulgaria has failed to fulfil its obligations under Articles 7(3) and 8(1) of Directive 2001/14/EC by not basing the charging scheme of the infrastructure manager in Bulgaria on the costs directly incurred as a result of operating the train service, in accordance with Article 7(3) of Directive 2001/14/EC. Also, Bulgaria has not provided information that it based the charges on a scheme which aims at full recovery of the costs, in accordance with Article 8(1) of that directive. For that reason Bulgaria should in any case have complied with the conditions set out in that article.

The Commission relies on the following essential arguments:

1. By the expression ‘cost that is directly incurred as a result of operating the train service’ are to be understood marginal costs incurred directly as a result of the actual use of the railway infrastructure, that is ‘direct costs’ which arose from a specific train service operation. Accordingly, those are variable costs and dependent on whether the railway infrastructure is used or not. Following that logic, costs arising independently of the actual use of the railway infrastructure could not be regarded as direct costs, even if they concern activities or goods necessary for operating rail traffic on certain routes. Those costs are fixed costs in the sense that they are also incurred when the railway infrastructure is not used.
2. That interpretation is supported by the wording of Article 7(3) which applies to the cost ‘... that is *directly* incurred as

a result of *operating the train service*’. Fixed costs, which are linked to the whole railway infrastructure would not therefore be incurred ‘directly’ as a result of a specific train service operation. The expression ‘incurred directly’ therefore applies to additional costs arising from a specific train service operation. The suggested interpretation is also based on the schematic context of Article 7(3). Article 7 governs the principles of charging whereas Article 8 addresses the possible exceptions to those principles. Article 8(1) refers to ‘full recovery of the costs incurred by the infrastructure manager’ which means that the cost referred to by Article 7(3) cannot be the infrastructure manager’s final costs but must refer to the costs incurred as a result of a specific train service operation, that is to say, lower costs than the final costs. That interpretation is supported by recital 7 in the preamble to Directive 2001/14/EC which encourages optimal use of the railway infrastructure by as many transport undertakings as possible, requiring charges to be kept low.

3. The Commission is of the opinion that the infrastructure manager is to make the infrastructure available to railway undertakings at its own cost, those undertakings having to pay charges equivalent to the direct costs. That can be explained by the need to make the railway infrastructure more attractive for use by a large number of railway undertakings and to increase its optimal use by each one of them. It is possible to apply Article 8(1) of Directive 2001/14/EC only when the conditions laid down in that article are fulfilled: for all market segments, in respect of which the infrastructure manager wishes to levy mark-ups, it must establish whether they could bear such mark-ups. That interpretation follows from the wording of the first subparagraph of Article 8(1), in particular from the formulation ‘if the market can bear this ...’, and from the wording of the second subparagraph of Article 8(1) which reads: ‘The level of charges must not, however, exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, ...’.
4. The complete analysis of the costs and income of the Bulgarian infrastructure manager for the years 2005-2008 shows that 60 % to 70 % of the direct operating costs budgeted for in Bulgaria were based on fixed elements, in particular employment charges and social security payments. In accordance with the foregoing, the Commission comes to the conclusion that those costs cannot be regarded as direct cost within the meaning of Article 7(3), because they did not vary according to use of the train service. Thus the income from the infrastructure charges greatly exceeds the general direct operating costs. The Commission therefore concludes that the charges in Bulgaria were not only framed on the basis of costs incurred directly as a result of operating the train service.

5. On the basis of the information received, the Commission finds that the method used in Bulgaria for levying charges for the use of the railway infrastructure is not clearly in accordance with the concept of direct cost within the meaning of Article 7(3) of Directive 2001/14/EC.

<sup>(1)</sup> 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. 1).

**Reference for a preliminary ruling from the Tribunal de première instance de Bruxelles (Belgium) lodged on 29 March 2012 — Isera & Scaldis Sugar SA, Philippe Bedoret and Co SPRL, Jean Rigot, Mathieu Vrancken v Bureau d'intervention et de restitution belge (BIRB)**

(Case C-154/12)

(2012/C 174/27)

*Language of the case: French*

#### Referring court

Tribunal de première instance de Bruxelles

#### Parties to the main proceedings

*Applicants:* Isera & Scaldis Sugar SA, Philippe Bedoret and Co SPRL, Jean Rigot, Mathieu Vrancken

*Defendant:* Bureau d'intervention et de restitution belge (BIRB)

#### Questions referred

Is Article 16 of Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector, <sup>(1)</sup> now Article 51 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products, <sup>(2)</sup> in imposing on the sugar-beet sector a charge of EUR 12 per tonne of the quota sugar, invalid:

— inasmuch as the legal basis used by the legislature for the introduction of this provision is former Article 37(2)(3) EC, now Article 43(2) TFEU;

— inasmuch as the legislature, which justified the charge as a measure intended to finance the expenditure of the common organisation of the market in sugar even though it actually funds direct aid and/or is intended to preserve the budget neutrality of the '2006 sugar reform', did not clearly and unequivocally set out the reasons for the introduction of the charge as is required by Article 296 TFEU (former Article 253 EC);

— inasmuch as the 'sugar-beet' industry is the only sector on which such a charge contributing to the general budget of the European Union has been imposed, the charge should be considered as discriminatory both between growers having maintained beet production and those having ceased beet production and between the 'sugar-beet' industry and any other agricultural or non-agricultural sector;

— inasmuch as the charge should be considered as breaching the principle of proportionality in being neither appropriate nor necessary to finance the expenditure of the common organisation of the market in sugar, nor proportionate in relation to the real expenditure and the prospective future expenditure of the common organisation of the market in sugar?

<sup>(1)</sup> OJ 2006 L 58, p. 1.

<sup>(2)</sup> OJ 2007 L 299, p. 1.

**Action brought on 30 March 2012 — European Commission v Ireland**

(Case C-158/12)

(2012/C 174/28)

*Language of the case: English*

#### Parties

*Applicant:* European Commission (represented by: S. Petrova, K. Mifsud-Bonnici, Agents)

*Defendant:* Ireland

#### The applicant claims that the Court should:

— declare that, by not issuing permits in accordance with Articles 6 and 8 or Directive 2008/1/EC <sup>(1)</sup> or, as appropriate, by not reconsidering and, where necessary, by not updating permit conditions, in respect of 13 existing pig rearing installations and poultry rearing installations in Ireland, and thereby by failing to ensure that those existing installations operate in accordance with Articles, 3, 7, 9, 10 and 13, Article 14(a) and (b) and Article 15(2) of the IPPC Directive by not later than 30 October 2007, Ireland has failed to fulfil its obligation pursuant to Article 5(1) of the IPPC Directive.

— order Ireland to pay the costs.

#### Pleas in law and main arguments

Pursuant to Article 5(1) of the IPPC Directive, Member States were obliged to ensure that their competent authorities either issue permits in accordance with Articles 6 and 8 or, as appropriate, reconsider and, where necessary, update the existing permit conditions by not later than 30 October 2007.