

Judgment of the Court (First Chamber) of 25 October 2012
— European Commission v Portuguese Republic

(Case C-557/10) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Transport — Development of the Community's railways — Directive 91/440/EEC — Article 5(3) — Rail transport undertakings — Freedom of management — Decisions on staff, assets and own procurement — Article 7(3) — Grant of financing to the infrastructure manager — Directive 2001/14/EC — Article 6(1) — Balancing the accounts — Appropriate conditions — Incomplete transposition)

(2012/C 399/03)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: H. Støvlbæk and M. França, Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes and A. Pereira de Miranda, Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period specified, all the measures necessary to comply with Article 5(3) of 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 (OJ 2001 L 75, p. 1), Article 7(3) of Directive 91/440 and Article 6(1) of 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)

Operative part of the judgment

The Court:

1. Declares that, by making individual decisions to acquire or transfer holdings in the capital of companies by the public rail transport undertaking CP Comboios de Portugal EPE subject to government approval and by failing to adopt the national measures necessary to comply with the obligation to lay down appropriate conditions to ensure that the accounts of the infrastructure manager *la Rede Ferroviária Nacional* — REFER EP are balanced, the Portuguese Republic has failed to fulfil its obligations under Article 5(3) of Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways, as amended by Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001, and, second, Article 7(3) of Directive 91/440 and Article 6(1) of 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, as amended by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007;

2. Orders the Portuguese Republic to pay the costs.

⁽¹⁾ OJ C 38, 5.2.2011.

Judgment of the Court (Grand Chamber) of 23 October 2012 (references for a preliminary ruling from the *Amtsgericht Köln* — Germany, High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court) — United Kingdom) — *Emeka Nelson, Bill Chinazo Nelson, Brian Cheimezie Nelson v Deutsche Lufthansa AG (C-581/10), TUI Travel plc, British Airways plc, easyJet Airline Company Ltd, International Air Transport Association v Civil Aviation Authority (C-629/10)*

(Joined Cases C-581/10 and C-629/10) ⁽¹⁾

(Air transport — Regulation (EC) No 261/2004 — Articles 5 to 7 — Montreal Convention — Articles 19 and 29 — Right to compensation in the event of delay of flights — Compatibility)

(2012/C 399/04)

Languages of the case: German and English

Referring courts

Amtsgericht Köln, High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicants: Emeka Nelson, Bill Chinazo Nelson, Brian Cheimezie Nelson (C-581/10), TUI Travel plc, British Airways plc, easyJet Airline Company Ltd, International Air Transport Association (C-629/10)

Defendants: Deutsche Lufthansa AG (C-581/10), Civil Aviation Authority (C-629/10)

Re:

(Case C-581/10)

Reference for a preliminary ruling — *Amtsgericht Köln* — Interpretation of Article 7 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1) — Right to compensation if a flight is delayed — Whether that right is compatible with the prohibition of punitive or exemplary damages set out in Article 29 of the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention), approved by Council Decision of 5 April 2001 (OJ 2001 L 194, p. 38)