Union law, in particular the fundamental freedoms under the TFEU, the Charter of Fundamental Rights of the European Union and the European Convention for the protection of human rights and fundamental freedoms ('Driving licence tourism')?

(1) OJ 1991 L 237, p. 1.
(2) OJ 2006 L 403, p. 18.

Action brought on 28 September 2010 — European Commission v Portuguese Republic

(Case C-470/10)

(2010/C 328/34)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: M. França and I.V. Rogalski, acting as Agents)

Defendant: Portuguese Republic.

Form of order sought

— Declare that, by maintaining a requirement of registration and accreditation by the Portuguese authorities for any temporary provision of services by Community patent agents who are already established in another Member State and by checking the professional qualifications of Community patent agents who travel to Portugal, even in relation to a temporary service, the Portuguese Republic has failed to fulfil its obligations under Article 56 TFEU and Articles 5 to 7 of Directive 2005/36/EC (1) on the recognition of professional qualifications.

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Portuguese legislation at issue prevents a patent and trade mark agent, legally established in another Member State, from exercising his activities of representation before the National Institute of Industrial Property (INPI — Instituto Nacional da Propriedade Industrial) in Portugal, when he travels there to provide services to clients located in another Member State, if he has not previously undergone a test examination to be accredited or recognised by that institute.

(1) OJ 2005 L 255, p. 22

Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat Salzburg lodged on 28 September 2010 — Martin Wohl and Ildiko Veres v Magistrat der Stadt Salzburg, Other party: Finanzamt Salzburg-Stadt

(Case C-471/10)

(2010/C 328/35)

Language of the case: German

Referring court

Unabhängiger Verwaltungssenat Salzburg

Parties to the main proceedings

Applicants: Martin Wohl and Ildiko Veres

Defendant: Magistrat der Stadt Salzburg

Other party: Finanzamt Salzburg-Stadt

Question referred

Is Annex X of the list referred to in Article 24 of the Act of Accession of the Republic of Hungary to the European Union (1. Freedom of movement for persons) (1) to be interpreted as meaning that the leasing of workers from Hungary to Austria cannot be regarded as a posting of those workers and that national restrictions concerning the employment of Hungarian/Slovakian workers in Austria apply equally, in Austria, in respect of Hungarian/Slovak workers (regularly employed in Hungary) leased by Hungarian undertakings?

(1) OJ 2003 L 236, p. 846.

Action brought on 29 September 2010 — European Commission v Republic of Hungary

(Case C-473/10)

(2010/C 328/36)

Language of the case: Hungarian

Parties

Applicant(s): European Commission (represented by: H. Støvlbæk and B.D. Simon, agents)

Defendant(s): Republic of Hungary

Form of order sought

The Commission claims that the Court should

1. declare that the Republic of Hungary:

— Failed to fulfil its obligations under Article 6(3) of and Annex II to Directive 91/440/EEC, as amended, ([1]) and by Article 14(2) of Directive 2001/14/EC ([2]) in that it did not ensure the independence from the railway companies of the allocation of train paths,

— Failed to fulfil its obligations under Article 6(3) of and Annex II to Directive 91/440/EEC, as amended, and by Article 4(2) of Directive 2001/14/EC in that it did not ensure the independence from the railway companies of the establishment of charges,

— Failed to fulfil its obligations under Article 6(1) of Directive 2001/14/EC in that it did not ensure the financial balance of infrastructure managers,

— Failed to fulfil its obligations under Article 6(2) of Directive 2001/14/EC in that it did not provide infrastructure managers with incentives to reduce the costs of provision of infrastructure and the level of access charges,

— Failed to fulfil its obligations under Article 7(3) of Directive 2001/14/EC in that it did not ensure that charges for the minimum access package and track access to service facilities were set at the cost that is directly incurred as a result of operating the train service,

— Failed to fulfil its obligations under Article 11 of Directive 2001/14/EC in that it did not implement a scheme to encourage railway undertakings and infrastructure managers to minimise disruption and improve the performance of the railway network;

2. order the Republic of Hungary to pay the costs.

Pleas in law and main arguments

The purpose of Directive 91/440/EEC and Directive 2001/14/EC is to guarantee equitable and non-discriminatory access to rail infrastructure for the railway undertakings. In order to achieve that objective those directives provide that bodies providing rail transport services may not take decisions relating to the allocation of train paths and distributing bodies must allocate capacity independently. If a railway undertaking manages transport this inevitably results in a competitive advantage as, in order to provide the tasks involved in the management of transport, detailed knowledge is required regarding the services offered by the railway undertakings, their frequency and their times.

The need to bring the present application arose inter alia because in Hungary — in breach of the provisions of the above directives — transport management is carried out by bodies offering transport services.

It is not possible to regard transport management as an infrastructure management activity which does not involve the allocation of train paths or supply of capacity as transport management is necessarily involved in the decision making process concerning the supply of capacity or the allocation of train paths. On the one hand, the transport manager must be fully informed of the decisions regarding designation of capacity in order to pursue its management activities; on the other hand, in the event of disruption of transport or emergency it must take the steps necessary to restore the operation of transport as scheduled, which necessarily requires a reallocation of network capacity and available train paths.

The principle of the independence of transport management has been infringed in that, in Hungary, railway undertakings send detailed invoices setting out the charges for access to infrastructure. Given that the detailed invoices necessarily refer, inter alia, to the services used by certain railway undertakings and their frequency and times, they confer a competitive advantage on the undertakings which issue them.

In addition to the failure to fulfil the requirement of the independence of the allocation of train paths, the Republic of Hungary has also failed to fulfil its obligations under Directives 91/440 and 2001/14 in so far as:

— It has not laid down the conditions necessary to guarantee the financial balance of infrastructure management;

— It has not adopted the necessary measures to require all infrastructure managers to reduce charges for access to the network and management costs;

— It has not adopted the implementing measures necessary to guarantee the application of the principle of direct cost in determining the charges to be paid for track access to service facilities, and finally

— It has not adopted a system of measures to encourage railway undertakings and infrastructure management to minimise disruption and improve the performance of the railway network.

(1) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ 1991 L 237, Special edition in Hungarian, Chapter 7, Volume 1, p. 341).

(2) 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, Special edition in Hungarian, Chapter 7, volume 5, p. 404).

Appeal brought on 1 October 2010 by the Federal Republic of Germany against the order of the General Court (First Chamber) of 14 July 2010 in Case T-571/08 Federal Republic of Germany v European Commission

(Case C-475/10 P)

(2010/C 328/37)

Language of the case: German

Parties

Appellant: Federal Republic of Germany (represented by: T. Henze, J. Möller and N. Graf Vitzthum, acting as Agents)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the order of the General Court of the European Union of 14 July 2010 in Case T-571/08 *Federal Republic of Germany* v *European Commission*;

— order the European Commission to pay the costs.

Pleas in law and main arguments

This appeal has been brought against the order of the General Court on a procedural issue dismissing as inadmissible the appellant's action against the Commission's information injunction of 30 October 2008 in proceedings concerning State aid to Deutsche Post AG ('DPAG').

By the decision at issue, the Commission ordered the appellant to supply information about all of DPAG's costs and revenue in the period 1989 to 2007, even though the privatisation of DPAG — in the context of which the transfers at issue were largely made — had already been concluded in 1994. Instead of resolving the preliminary legal issue as to which periods of time are, in fact, to be taken into account, the Commission proceeded to request information about DPAG's revenue and costs situation in respect of the entire period from privatisation until the present, without giving any consideration to the time and expenditure involved. The Commission thereby placed an unreasonable burden on the appellant and on the undertaking concerned.

The Court of Justice is required to clarify, fundamentally, whether the Commission may in fact require a Member State to supply any information at all in State aid proceedings without being subject to direct judicial review. If the General Court's legal assessment that such decisions are unchallengeable is correct, the Member States and undertakings concerned would always be required to go to considerable — also financial — lengths in order to comply with such injunctions, even though they regard them as unlawful. Moreover, there is a risk of proliferation of business secrets, knowledge of which may in certain circumstances be entirely irrelevant to the State aid proceedings.

The General Court's order under appeal is erroneous in law in a number of respects.

First, the General Court erred in law in its interpretation of the concept of a challengeable act and failed to have regard to the relevant case-law in so far as it considered the act being challenged 'on the basis of its substance'. An assessment of an act on the basis of its material legal effects is relevant only if there is no decision available which is binding on the basis of its legal form alone. Given that the binding nature of the Commission decision at issue, adopted pursuant to Article 10(3) of Regulation No 659/1999, derives from its legal form alone, there is no need to examine further whether the measure was specifically intended by its author to produce legal effects with regard to the appellant.

Second, the General Court erred in law in its assessment of the provisional nature of the information injunction in that, by reference to case-law concerning the admissibility of an action brought against the initiation of an investigation procedure under competition law, it erroneously concluded that the definitive nature of the decision is relevant also to the admissibility of the action against the Commission's information injunction at issue.

Third, the General Court erred in law in its assessment of the legal effects of the information injunction in that it failed to recognise that a measure produces binding legal effects if it is capable of affecting the interests of the person to whom