

The judgment under appeal misinterpreted Article 8(1)(b) of both Regulation No 40/94 ⁽¹⁾ and Regulation (EC) No 207/2009 ⁽²⁾ (the wording is the same in the two regulations), so infringing them.

The judgment under appeal failed to take into account those arguments raised in the action before the General Court, for it did not assess them.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

⁽²⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) (OJ 2009 L 78, p. 1).

Action brought on 23 November 2010 — European Commission v Czech Republic

(Case C-545/10)

(2011/C 38/06)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: M. Šimerdová and H. Støvlbæk, acting as Agents)

Defendant: Czech Republic

Form of order sought

— declare that the Czech Republic has failed to fulfil its obligations under Articles 4(1), 6(2), 7(3), 11 and 30(5) of Directive 2001/14/EC ⁽¹⁾ 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;

— and under Article 10(7) of Council Directive 91/440/EEC ⁽²⁾ of 29 July 1991 on the development of the Community's railways;

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

The Czech Republic has infringed Article 4(1) of Directive 2001/14/EC by laying down a maximum amount for charges for the use of infrastructure, which the infrastructure manager may not exceed. The infrastructure manager is required to carry out the imposition and levying of charges for the use of infrastructure in accordance with the provisions of Article 4(1) of Directive 2001/14/EC. Member States are entitled only to lay down the framework of charges for the use of infrastructure.

The Czech Republic has infringed Article 6(2) of Directive 2001/14/EC by failing to adopt measures providing infrastructure managers with incentives to reduce the costs of provision of infrastructure and the level of access charges.

The Czech Republic has infringed Article 7(3) of Directive 2001/14/EC by failing to ensure that charges for the minimum access package and track access to service facilities be set at the cost that is directly incurred as a result of operating the train service.

The Czech Republic has infringed Article 11 of Directive 2001/14/EC by failing to introduce a performance scheme encouraging railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the railway network.

The Czech Republic has infringed Article 30(5) of Directive 2001/14/EC by incorrectly transposing it into its domestic legal system.

The Czech Republic has infringed Article 10(7) of Directive 91/440/EEC by failing to ensure the establishment of an entity in relation to the Czech Republic which could be regarded as an entity in accordance with Article 10(7) and fulfil the functions laid down by that provision.

⁽¹⁾ OJ 2001 L 75, p. 29.

⁽²⁾ OJ 1991 L 237, p. 25.

Action brought on 26 November 2010 — European Commission v Federal Republic of Germany

(Case C-556/10)

(2011/C 38/07)

Language of the case: German

Parties

Applicant: European Commission (represented by G. Braun and H. Støvlbæk, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

— declare that, in transposing the first railway package, the Federal Republic of Germany has failed to fulfil its obligations under

— Article 6(3) of and Annex II to Directive 91/440/EEC ⁽¹⁾ and Articles 4(2) and 14(2) of Directive 2001/14/EC, ⁽²⁾