



Reports of Cases

Case C-369/11

European Commission v Italian Republic

(Failure of a Member State to fulfil obligations — Transport — Directive 2001/14/EC — Articles 4(1) and 30(3) — Allocation of railway infrastructure capacity — Levying of charges — Infrastructure fees — Independence of infrastructure managers)

Summary — Judgment of the Court (First Chamber), 3 October 2013

1. *Transport — Rail transport — Directive 2001/14 — Allocation of railway infrastructure capacity and levying of charges — Levying of infrastructure charges — Obligations of the Member States — Scope — Setting of charges for infrastructure access — Not included — Lack of independence of the infrastructure manager — Failure to fulfil obligations*

(European Parliament and Council Directive 2001/14, Arts 4(1) and 30(3))

2. *Actions for failure to fulfil obligations — Examination of the merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion*

(Art. 258 TFEU)

3. *Actions for failure to fulfil obligations — Proof of failure — Burden of proof on the Commission — Production of evidence showing failure — Presumptions — Not permissible*

(Art. 258 TFEU)

1. A Member State that fails to ensure the independence of the infrastructure manager with regard to the setting of charges for access to the infrastructure and the allocation of railway infrastructure capacity fails to fulfil its obligations under Articles 4(1) and 30(3) of Directive 2001/14 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.

Article 4(1) of that directive provides that the Member States are to establish a charging framework and may also establish specific charging rules, while respecting the management independence of the infrastructure manager. Under that provision, it is the latter's responsibility, first, to determine the charge for use of the infrastructure and, second, to collect that charge.

In that regard, charging and capacity-allocation schemes should encourage railway infrastructure managers to optimise use of their infrastructure within the framework established by the Member States. Those managers could not achieve such optimal use by means of the charging system if their

role were confined to calculating the amount of the charge in each individual case, applying a formula established in advance by ministerial order. Infrastructure managers must therefore be given a degree of flexibility in setting the amount of charges.

(see paras 41, 43, 70, operative part 1)

2. See the text of the decision.

(see para. 63)

3. See the text of the decision.

(see para. 68)