



Reports of Cases

Judgment of the Court (Sixth Chamber) of 13 February 2014 — *Commission v Bulgaria*

(Case C-152/12)

(Failure of a Member State to fulfil obligations — Transport — Directive 2001/14/EC — Development of the Union's railways — Charging scheme for access to railway infrastructure — Articles 7(3) and 8(1) — Possibility of levying a mark-up on charges — Costs directly incurred as a result of operating the train service)

1. *Actions for failure to fulfil obligations — Subject-matter of the dispute — Determination during the pre-litigation procedure — Initial complaints set out in greater detail in the application instituting proceedings — Lawfulness (Art. 258 TFEU) (see paras 30, 31, 34)*
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) (see para. 60)*
3. *Transport — Rail transport — Directive 2001/14 — Allocation of railway infrastructure capacity and the levying of charges to that end — Levying of charges for the use of railway infrastructure — Establishment of charges on the basis of the direct costs — Cost that is directly incurred as a result of operating the train service — Definition — Transposition and application — Discretion of the Member States (European Parliament and Council Directive 2001/14, Arts 7(3) to (5), and 8) (see paras 62, 63)*
4. *Actions for failure to fulfil obligations — Proof of failure — Burden of proof on Commission — Presumptions — Unlawful (Art. 258 TFEU) (see para. 74)*

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 7(3) and 8(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. 1) — Charging scheme for access to railway infrastructure — Notion of 'cost directly incurred as a result of operating the train service' — Income exceeding the costs directly incurred as a result of operating the train service — Conditions for the application of Article 8(1) of Directive 2001/14/EC.

Operative part

The Court:

1. Declares that, by allowing to be included in the calculation of charges incurred for all of the minimum services and for access by the network to the service infrastructure costs, namely staff remuneration and social security contributions, which cannot be considered to be directly incurred as a result of operating the train service, the Republic of Bulgaria has failed to fulfil its obligations under Article 7(3) 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, as amended by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007;
2. Dismisses the action as to the remainder;
3. Orders the European Commission, the Republic of Bulgaria and the Republic of Poland to bear their own costs.