



## Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

12 November 2020\*

(Failure of a Member State to fulfil obligations – Directive 2007/59/EC – Certification of train drivers – Article 3(a) – Competent national authority – Directive 2004/49/EC – Article 16(1) – Safety authority – Designation of several authorities)

In Case C-796/19,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 29 October 2019,

**European Commission**, represented by W. Mölls and C. Vrignon, acting as Agents,

applicant,

v

**Republic of Austria**, represented by J. Schmoll and A. Posch, acting as Agents,

defendant,

THE COURT (Tenth Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, C. Lycourgos and I. Jarukaitis, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

### Judgment

- 1 By its application, the European Commission seeks a declaration from the Court that, by designating as ‘competent authority’, for the purposes of Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community (OJ 2007 L 315, p. 51), an authority other than the safety authority referred to in Article 16 of Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community’s railways and amending Council Directive

\* Language of the case: German.

95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) (OJ 2004 L 164, p. 44, and corrigendum OJ 2004 L 220, p. 16), the Republic of Austria has failed to fulfil its obligations under Article 3(a) of Directive 2007/59.

## Legal framework

### *EU law*

#### *Directive 2004/49*

2 Recitals 13 and 22 of Directive 2004/49 state:

‘(13) In carrying out their duties and fulfilling their responsibilities, infrastructure managers and railway undertakings should implement a safety management system, fulfilling Community requirements and containing common elements. Information on safety and the implementation of the safety management system should be submitted to the safety authority in the Member State concerned.

...

(22) As part of the new common regulatory framework for railway safety, national authorities should be set up in all Member States to regulate and supervise railway safety. To facilitate cooperation between them at Community level, they should be given the same minimum tasks and responsibilities. The national safety authorities should be granted a high degree of independence. They should carry out their tasks in an open and non-discriminatory way to help to create a single Community rail system and cooperate to coordinate their decision-making criteria, in particular concerning safety certification of railway undertakings operating international transport services.’

3 Article 1 of Directive 2004/49 provides that ‘the purpose of this Directive is to ensure the development and improvement of safety on the Community’s railways and improved access to the market for rail transport services by:

...

(d) requiring the establishment, in every Member State, of a safety authority and an accident and incident investigating body;

...’

4 Article 3 of that directive, entitled ‘Definitions’, states:

‘For the purpose of this Directive, the following definitions shall apply:

...

(g) “safety authority” means the national body entrusted with the tasks regarding railway safety in accordance with this Directive or any binational body entrusted by Member States with these tasks in order to ensure a unified safety regime for specialised cross-border infrastructures;

...’

5 Article 9(4) of Directive 2004/49 provides:

‘Each year all infrastructure managers and railway undertakings shall submit to the safety authority before 30 June an annual safety report concerning the preceding calendar year. The safety report shall contain:

- (a) information on how the organisation’s corporate safety targets are met and the results of safety plans;
- (b) the development of national safety indicators, and of the [common safety indicators (CSIs)] laid down in Annex I, as far as it is relevant to the reporting organisation;
- (c) the results of internal safety auditing;
- (d) observations on deficiencies and malfunctions of railway operations and infrastructure management that might be relevant for the safety authority.’

6 Article 10(3) and (4) of that directive reads as follows:

‘3. The safety authority in the Member State where the railway undertaking first establishes its operation shall grant the certification in accordance with paragraph 2.

The certification granted in accordance with paragraph 2 must specify the type and extent of the railway operations covered. The certification granted in accordance with paragraph 2(a) shall be valid throughout the Community for equivalent rail transport operations.

4. The safety authority in the Member State in which the railway undertaking is planning to operate additional rail transport services shall grant the additional national certification necessary in accordance with paragraph 2(b).’

7 In Article 16 of Directive 2004/49, entitled ‘Tasks’, paragraph 1 provides:

‘Each Member State shall establish a safety authority. This authority may be the Ministry responsible for transport matters and shall be independent in its organisation, legal structure and decision making from any railway undertaking, infrastructure manager, applicant and procurement entity.’

8 Paragraph 2 of that article lists the tasks which, as a minimum, are to be entrusted to the safety authority referred to in paragraph 1 thereof.

9 Article 18 of Directive 2004/49, entitled ‘Annual report’, provides:

‘Each year the safety authority shall publish an annual report concerning its activities in the preceding year and send it to the [European Union Agency for Railways] by 30 September at the latest. The report shall contain information on:

- (a) the development of railway safety, including an aggregation at Member State level of the CSIs laid down in Annex I;

...’

10 In Article 25 of that directive, entitled ‘Safety recommendations’, paragraphs 2 and 3 provide:

‘2. Recommendations shall be addressed to the safety authority and, where needed by reason of the character of the recommendation, to other bodies or authorities in the Member State or to other Member States. Member States and their safety authorities shall take the necessary measures to ensure that the safety recommendations issued by the investigating bodies are duly taken into consideration, and, where appropriate, acted upon.

3. The safety authority and other authorities or bodies or, when appropriate, other Member States to which recommendations have been addressed, shall report back at least annually to the investigating body on measures that are taken or planned as a consequence of the recommendation.’

11 Annex I to that directive sets out the common safety indicators to be reported by the safety authorities to the Commission.

*Directive 2007/59*

12 Recitals 17 and 19 of Directive 2007/59 state:

‘(17) In order to guarantee the necessary uniformity and transparency, the Community should establish a single certification model, mutually recognised by the Member States, attesting both to train drivers’ compliance with certain minimum conditions, and to their professional qualifications and linguistic knowledge, leaving it to the competent authorities in the Member States to issue licences and to railway undertakings and infrastructure managers to issue harmonised complementary certificates.

...

(19) All of the information contained in licences, harmonised complementary certificates and the registers of licences and harmonised complementary certificates should be used by the safety authorities to facilitate evaluation of the staff certification process provided for in Articles 10 and 11 of Directive 2004/49/EC and to speed up the issuing of the safety certificates provided for in those Articles.’

13 Article 1 of Directive 2007/59 is worded as follows:

‘This Directive lays down the conditions and procedures for the certification of train drivers operating locomotives and trains on the railway system in the Community. It specifies the tasks for which the competent authorities of the Member States, train drivers and other stakeholders in the sector, in particular railway undertakings, infrastructure managers and training centres, are responsible.’

14 Article 3 of that directive, entitled ‘Definitions’, states:

‘For the purposes of this Directive:

(a) “competent authority” means the safety authority referred to in Article 16 of Directive 2004/49/EC;

...’

15 Article 5 of that directive, entitled ‘Anti-fraud measures’, provides:

‘Competent authorities and issuing bodies shall take all necessary steps to avoid the risks of falsification of licences and certificates and tampering with the registers provided for in Article 22.’

- 16 In Article 19 of Directive 2007/59, entitled ‘Tasks of the competent authority’, paragraph 1 provides:
- ‘The competent authority shall fulfil the following tasks in a transparent and non-discriminatory manner:
- (a) issuing and updating licences, and providing duplicates, as provided for in Articles 6 and 14;
  - (b) ensuring periodic examinations and/or tests as provided for in Article 16(1);
  - (c) suspending and withdrawing licences, and notifying the issuing body of reasoned requests for the suspension of certificates, as provided for in Article 29;
- ...’
- 17 Article 22 of that directive lays down various obligations relating to registers and the exchange of information which must be fulfilled, inter alia, by the competent authorities.

### *Austrian law*

- 18 The Bundesgesetz über Eisenbahnen, Schienenfahrzeuge auf Eisenbahnen und den Verkehr auf Eisenbahnen (Federal Law on railways, railway rolling stock and rail traffic) (BGBl. 60/1957), as amended (‘the Eisenbahngesetz 1957’), entrusted the tasks of the safety authority within the meaning of Article 16 of Directive 2004/49, in principle, to the Federal Minister for Transport, Innovation and Technology (‘the Minister’).
- 19 Paragraph 130 of the Eisenbahngesetz 1957, in Chapter 9 of that law, relating to ‘train drivers’, lays down an exception in respect of those drivers. That paragraph is worded as follows:
- ‘(1) The power to issue, renew, withdraw and suspend licences, to update licence information and to issue duplicate licences shall lie with Schieneninfrastruktur-Dienstleistungsgesellschaft mbH. It shall apply the [Allgemeines Verwaltungsverfahrensgesetz 1991 (General Law on administrative procedure of 1991) (BGBl. 51/1991), as amended] to the administrative procedure.
- (2) The [Minister] may give Schieneninfrastruktur-Dienstleistungsgesellschaft mbH instructions concerning the exercise of its powers. In the areas referred to in subparagraph 1, the [Minister] shall be the higher reference authority, within the meaning of Paragraphs 5 and 68 of the General Law on administrative procedure of 1991, as amended.’
- 20 Paragraphs 3, 4, 6 and 10 of the Bundesgesetz über die Errichtung einer Schieneninfrastrukturfinanzierungs-Gesellschaft (Federal Law on the establishment of a railway infrastructure finance company) (BGBl. 201/1996) are worded as follows:
- ‘Tasks
- Paragraph 3
- (1) The tasks of Schieneninfrastruktur-Dienstleistungsgesellschaft mbH shall include:
- ...

3. the performance of all operations and activities necessary for the non-discriminatory development and improvement of the railway sector and of new railway technologies on the railway network, the performance of all operations and activities of a related nature which contribute to improving the results of Schieneninfrastruktur-Dienstleistungsgesellschaft mbH, participation in the coordination of all research and development in the railway sector;
4. the performance of all operations and activities of an accredited supervisory body (designated body) in the railway sector;
5. following the transfer by a railway infrastructure undertaking, the task of a charging body in accordance with Chapter 6 of the Eisenbahngesetz 1957;
6. the management of the expert committee in accordance with Paragraph 48(4) of the Eisenbahngesetz 1957;
7. the exercise of the power under Paragraph 130 of the Eisenbahngesetz 1957;
8. the assumption of the tasks relating to the establishment and management of registers, as transferred to Schieneninfrastruktur-Dienstleistungsgesellschaft mbH under the Eisenbahngesetz 1957 or under an order made pursuant to that law;

...

Management of equity interests

Paragraph 4

Equity interests in Schieneninfrastruktur-Dienstleistungsgesellschaft mbH shall be managed by the [Minister] on behalf of the Federal State. The [Minister] is entitled to issue general instructions to Schieneninfrastruktur-Dienstleistungsgesellschaft mbH relating to the performance of its tasks for the purpose of this federal law and to request sight of its business accounts. The company's articles of association must stipulate that its corporate bodies are required to follow those instructions and make available the accounts.

...

Expenses of Schieneninfrastruktur-Dienstleistungsgesellschaft mbH

Paragraph 6

Schieneninfrastruktur-Dienstleistungsgesellschaft mbH must be managed in a way that is cost-effective, prudent and consistent with its purpose. The Federal State shall meet the staffing and material costs of Schieneninfrastruktur-Dienstleistungsgesellschaft mbH in so far as those costs arise from the performance of the tasks entrusted to it by this federal law and cannot be borne by third parties. Schieneninfrastruktur-Dienstleistungsgesellschaft mbH must draw up an annual financing plan for that purpose and obtain the consent of the Federal Minister for Finance and the [Minister].

...

Exemption from tax

## Paragraph 10

(1) Schieneninfrastruktur-Dienstleistungsgesellschaft mbH shall be exempt from taxes levied under federal legislation, with the exception of turnover tax, court costs, court administration fees and taxes related to the federal government, in so far as those taxes, costs and fees arise from the performance of the company's tasks under this federal law.

...'

- 21 Paragraph 20 of the Gesetz über Gesellschaften mit beschränkter Haftung (Law on limited liability companies) (RGrBl. 58/1906) is worded as follows:

'(1) In the exercise of their powers of representation of the company, the managers are required to comply with all restrictions binding upon them laid down in the articles of association, the minutes of shareholders' meetings or any order of the supervisory board.

...'

## Pre-litigation procedure

- 22 By letter of formal notice of 20 November 2015, the Commission informed the Republic of Austria of its concerns regarding the compatibility with Directive 2007/59, particularly Article 3(a) thereof, of the designation as competent authority for the purposes of that directive of an entity other than the competent authority referred to in Article 16 of Directive 2004/49.
- 23 In its reply of 22 January 2016 to that letter of formal notice, the Republic of Austria stated that the legislation at issue was consistent with EU law. It pointed out, inter alia, that in accordance with the principle of Member States' institutional autonomy, Directive 2007/59 did not preclude that Member State from entrusting a federal body, such as Schieneninfrastruktur-Dienstleistungsgesellschaft mbH, with the performance – under the supervision of the Minister – of certain tasks for which the competent authority, within the meaning of that directive, is responsible.
- 24 Taking the view that the Republic of Austria's replies were unsatisfactory, the Commission sent it a reasoned opinion on 28 April 2017 in which it affirmed the complaint set out in its letter of formal notice.
- 25 The Republic of Austria responded to the reasoned opinion by letter of 21 June 2017. In its letter, that Member State essentially restated the view set out in its reply of 22 January 2016 to the Commission's letter of formal notice.
- 26 Since it was not satisfied with the responses provided by the Republic of Austria, the Commission brought the present action.

## The action

### *Arguments of the parties*

- 27 The Commission observes that Article 3(a) of Directive 2007/59 defines the competent authority for the purposes of that directive as 'the safety authority referred to in Article 16 of Directive 2004/49/EC'. It concludes from this that it is that authority alone which Member States may entrust with the tasks of the competent authority for the purposes of Directive 2007/59; the national legislature is not free to designate another body to that end.

- 28 While the Republic of Austria designated the Minister as ‘safety authority’ for the purposes of Directive 2004/49, it is Schieneninfrastruktur-Dienstleistungsgesellschaft mbH which is the ‘competent authority’ for the purposes of Directive 2007/59, in particular for the performance of the tasks entrusted to that authority which are listed in Article 19(1)(a) to (c) of the latter directive.
- 29 In those circumstances, the Commission claims that the Republic of Austria has failed to fulfil its obligations under Directive 2007/59.
- 30 In that connection, the Commission contends that the arguments relied on by the Republic of Austria to demonstrate that it has correctly transposed Directive 2007/59 must be rejected.
- 31 In the first place, according to the Commission, the argument that Article 16 of Directive 2004/49 does not require that the tasks of the safety authority be entrusted to a single authority cannot be accepted.
- 32 First, in Article 1(d) and Article 16(1) of Directive 2004/49, the EU legislature used the singular form to designate the safety authority. Similarly, Article 3(g) of that directive defines, using the singular form, the ‘safety authority’ as the ‘national body’ entrusted with the tasks regarding railway safety, within the meaning of that directive. Article 16(2) of that directive is along the same lines, as it provides that the ‘safety authority’ is to be entrusted with the tasks listed therein. It is true that some of the provisions of Directive 2004/49 refer, using the plural form, to ‘safety authorities’. However, in doing so, that directive is referring collectively to the safety authorities of all the Member States.
- 33 Second, the Commission submits that the context of which those provisions form part confirms that the EU legislature deliberately chose the singular form and that there is no scope for allocating the tasks among several authorities. Thus, Article 10(3) and (4) of Directive 2004/49 automatically associates a Member State with one safety authority. Likewise, Article 25(2) and (3) of that directive draws a distinction, for each Member State, between ‘the safety authority’ and ‘other bodies or authorities’. The same is true of Article 18 of that directive, which provides that ‘the safety authority’ is to publish an annual ‘report’ concerning ‘its’ activities in the preceding year and is to send the report to the European Union Agency for Railways. That report must include a relevant overview of the situation in the Member State concerned.
- 34 Third, the Commission maintains that the literal and contextual interpretation of the provisions concerned should primarily take into account the wording of Article 3(a) of Directive 2007/59 – which provides that the ‘competent authority’, within the meaning of that directive, is to be ‘the safety authority referred to in Article 16 of Directive 2004/49/EC’ – and must therefore necessarily be based on the premiss that the tasks listed in Article 16 are to be performed by a single authority, which should also perform the tasks of the safety authority for the purposes of Directive 2007/59.
- 35 In the second place, as regards the Republic of Austria’s argument that Article 35 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55) and Article 55 of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ 2012 L 343, p. 32), respectively, require Member States to designate ‘a single national regulatory authority’ and to establish ‘a single national regulatory body’, with the result that, *a contrario*, it should be found that Directive 2004/49, which does not use such terms, permits the designation of several authorities, the Commission contends that since those provisions replaced previous provisions requiring the designation of several disparate authorities or bodies, it was necessary to identify clearly those differences as compared with the measures thus amended.
- 36 In the third place, as regards the Republic of Austria’s argument that Member States may, in the absence of specific requirements in EU law, apply domestic rules when they implement EU law, the Commission submits that Directive 2007/59 does in fact contain such specific requirements.



Furthermore, the fact that Schieneninfrastruktur-Dienstleistungsgesellschaft mbH is a company that was directly established by federal legislation, the equity interests of which are managed by the Minister and which performs tasks for the Federal State in close cooperation and under the supervision of the Minister as the competent safety authority at central level, confirms the existence of two separate authorities. Thus, the Minister is not the authority itself, but the higher reference authority within the meaning of Paragraphs 5 and 68 of the General Law on administrative procedure of 1991, as amended, namely the authority which rules on ‘conflicts of jurisdiction between authorities’ and is also empowered to annul, vary or declare null and void the decisions of subordinate authorities, in very limited circumstances. According to the Commission, it must therefore be concluded that those authorities are ‘other authorities’.

- 37 The Republic of Austria disputes the claim that it has failed to fulfil its obligations.
- 38 It states, in the first place, that Directives 2004/49 and 2007/59 refer, using the plural form, to the ‘safety authorities’ and ‘competent authorities’ of the Member States. In that regard, Article 16(2) of Directive 2004/49 does not preclude multiple tasks being allocated to several authorities, since that article provides only that a ‘safety authority’ is required to perform a set of tasks relating to railway safety. Furthermore, the obligation on the safety authority to publish an annual report concerning its activities, laid down in Article 18 of Directive 2004/49, does not preclude several authorities, acting in a coordinated manner, from drawing up such a single report.
- 39 In the second place, the Republic of Austria points to differences between the terminology used, on the one hand, in Directive 2004/49 and, on the other, in Directives 2009/72 and 2012/34 (the last two directives provide, respectively, for the establishment of ‘a single national regulatory authority’ and ‘a single national regulatory body’) to argue that Directive 2004/49 should be interpreted *a contrario* as permitting the designation of several authorities.
- 40 In the third place, the Republic of Austria submits that in Member States with a federal structure, it may be necessary, for reasons relating to the organisation of the State or the division of powers at national level, to have certain tasks carried out in a decentralised manner. In that regard, the principles of Member States’ institutional autonomy, proportionality and subsidiarity should be observed, which require the Commission to respect established national rules and the structure and functioning of the legal systems of the Member States.
- 41 According to the Republic of Austria, no criticism can therefore be levelled at its organisational approach to the transposition of Directives 2004/49 and 2007/59, whereby it entrusted tasks to the Minister, as the central safety authority responsible for the whole of Austria, and entrusted Schieneninfrastruktur-Dienstleistungsgesellschaft mbH, subordinate to the Minister, with the performance of operational tasks relating to the certification of train drivers. That is the case a fortiori as Schieneninfrastruktur-Dienstleistungsgesellschaft mbH is a company that was directly established by a federal law, its equity interests are managed by the Minister, its staffing and material costs are borne by the Federal State, and its field of activity is regulated by law. Moreover, Schieneninfrastruktur-Dienstleistungsgesellschaft mbH is, in a number of respects, bound by the Minister’s instructions.

### *Assessment of the Court*

- 42 The Commission complains that the Republic of Austria infringed Article 3(a) of Directive 2007/59 by designating as ‘competent authority’, for the purposes of that directive, an authority other than the ‘safety authority’ referred to in Article 16 of Directive 2004/49.

- 43 It is common ground in the present case that, in the Republic of Austria, the safety authority referred to in Article 16 of Directive 2004/49 is the Minister, while the ‘competent authority’, which was designated to perform certain tasks listed, in particular, in Article 19(1)(a) to (c) of Directive 2007/59, is Schieneninfrastruktur-Dienstleistungsgesellschaft mbH, a company established by a federal law.
- 44 Article 3(a) of Directive 2007/59 defines the ‘competent authority’ as ‘the safety authority referred to in Article 16 of Directive 2004/49/EC’.
- 45 In order to determine whether, as the Republic of Austria claims, those provisions allow a Member State to entrust separate authorities with the tasks assigned respectively to the ‘competent authority’ and the ‘safety authority’ by those directives, account must be taken not only of the wording of the provisions at issue, but also of their context, the objectives pursued by the rules of which they are part and, where appropriate, their origins (see, to that effect, judgment of 19 December 2019, *Nederlands Uitgeversverbond and Groep Algemene Uitgevers*, C-263/18, EU:C:2019:1111, paragraph 38 and the case-law cited).
- 46 At the outset, as regards the wording of the provisions at issue, it should be noted that Article 3(a) of Directive 2007/59 states that the competent authority, for the purposes of that directive, is the safety authority referred to in Article 16 of Directive 2004/49.
- 47 Article 16 of Directive 2004/49 requires each Member State to establish ‘a safety authority’, which, according to that article, may be the ministry responsible for transport matters. The concept of ‘safety authority’ for the purposes of that directive is specifically defined in Article 3(g) thereof as ‘the national body entrusted with the tasks regarding railway safety in accordance with this Directive or any binational body entrusted by Member States with these tasks in order to ensure a unified safety regime for specialised cross-border infrastructures’.
- 48 It is thus apparent from a combined reading of Article 3(g) and Article 16(1) of Directive 2004/49, particularly from the EU legislature’s decision to use the singular form to designate the safety authority alongside the qualifier ‘national’, that those provisions provide for the designation, in each Member State, of a single national body responsible for tasks relating to railway safety, although two Member States may, where appropriate, entrust a binational body with the performance of those tasks.
- 49 That interpretation is supported by the general scheme of Directive 2004/49, from which it is apparent that information on railway safety in the European Union must, in each Member State, be transmitted centrally to a single safety authority, which is responsible for issuing the required certifications or for drawing up and publishing safety indicators for the Member State concerned.
- 50 Thus, first of all, Article 9(4) of Directive 2004/49, read in the light of recital 13 of that directive, requires all infrastructure managers and railway undertakings to submit to ‘the safety authority in the Member State concerned’ an annual report containing information on safety and the implementation of the safety management system. That safety report must also cover, among other things, the development of ‘national’ safety indicators.
- 51 Next, under Article 10(3) and (4) of that directive, it is ‘the safety authority in the Member State’ where the railway undertaking first establishes its operation or is planning to operate additional rail transport services which is to grant the required certifications.
- 52 Last, in accordance with Article 18 of Directive 2004/49, the safety authority is to publish an annual report each year concerning its activities in the previous year, which must include in particular, under point (a) of that article, an ‘aggregation at Member State level’ of the common safety indicators defined in Annex I to that directive.

- 53 It may also be pointed out that the legislative work preceding the adoption of both Directive 2004/49 and Directive 2007/59 lends further support to the interpretation based on the wording of the provisions in question, set out in paragraph 48 above.
- 54 Thus, the explanatory memorandum in the Proposal for a Directive of the European Parliament and of the Council on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (COM(2002) 21 final), which preceded the adoption of Directive 2004/49, stated, in the section dealing with national safety authorities, that 'the directives currently in force allow for a variety of bodies dealing with safety regulation. ... This is not in the long run compatible with the execution of regulatory authority for safety. Fair and transparent regulation requires equal treatment of all actors in the sector under a public authority ... In order to facilitate the coordination of safety regulation on the European level it is necessary to establish harmonised structures in all Member States. ... For the same reason it is important to concentrate all crucial safety regulatory functions, such as adoption of legally binding safety rules, to one body'.
- 55 Furthermore, the explanatory memorandum in the Proposal for a Directive of the European Parliament and of the Council on the certification of train crews operating locomotives and trains on the Community's rail network (COM(2004) 142 final), which preceded the adoption of Directive 2007/59, states that the decision to make the safety authority the authority responsible for issuing the licence was taken 'in order to ensure that the Community legislative framework on rail safety is as consistent as possible'.
- 56 Last, it should be observed that the interpretation set out in paragraph 48 above appears to be consistent with the objective pursued by Directive 2004/49. As noted in paragraph 54 above, one of the aims of that directive is to concentrate essential railway safety regulatory functions within a single body, thereby ensuring the development and improvement of safety on the railways, in accordance with Article 1 thereof.
- 57 The arguments put forward by the Republic of Austria to challenge the interpretation of the provisions at issue set out in paragraphs 44 to 55 above cannot be accepted.
- 58 First, it must be stated that the fact, as pointed out by the Republic of Austria, that several provisions of Directives 2004/49 and 2007/59 use the plural form when mentioning the 'safety authorities' and the 'competent authorities' of the Member States is not decisive, since such provisions clearly refer in a collective manner to such authorities in the various Member States of the European Union. That is the case as regards recital 22 of Directive 2004/49, which states that 'national authorities should be set up in all Member States to regulate and supervise railway safety', and Annex I to that directive, which refers to 'Common Safety Indicators to be reported by the safety authorities', those indicators being the subject of an aggregation 'at Member State level' in accordance with Article 18 of that directive. Moreover, concerning the provisions of Directive 2007/59, recital 17 thereof makes mention of the 'competent authorities in the Member States', while recital 19 refers, in a generic way, to the safety authorities established by Directive 2004/49. Similarly, Articles 1, 5 and 22 of Directive 2007/59 merely mention the tasks to be performed by the 'competent authorities of the Member States' and the 'competent authorities'.
- 59 Second, the fact relied on by the Republic of Austria that the EU legislature has been careful in other instruments of secondary legislation to specify the 'singular' nature of the authorities to be established pursuant to those instruments is irrelevant for the purposes of interpreting Directives 2004/49 and 2007/59.

- 60 Third, as for the argument based on the principles of Member States' institutional autonomy, proportionality and subsidiarity, suffice it to note that although it follows from Article 288 TFEU that Member States, when transposing a directive, retain a broad discretion as to the choice of ways and means of ensuring that it is implemented, that freedom of choice does not affect the obligation imposed on all Member States to which the directive is addressed to adopt all the measures necessary to ensure that the directive concerned is fully effective in accordance with the objective which it seeks to attain (see, to that effect, judgment of 29 July 2019, *Fashion ID*, C-40/17, EU:C:2019:629, paragraph 49 and the case-law cited).
- 61 In those circumstances, the institutional autonomy enjoyed by Member States as regards the organisation and structuring of regulatory authorities established pursuant to a directive must be exercised in accordance with the objectives and obligations laid down in that directive (see, by analogy, judgment of 19 October 2016, *Ormaetxea Garai and Lorenzo Almendros*, C-424/15, EU:C:2016:780, paragraph 30 and the case-law cited).
- 62 As is apparent from paragraphs 44 to 55 above, the obligation on each Member State to designate a single safety authority for the purposes of Directive 2004/49, which must be regarded as the 'competent authority' within the meaning of Article 3(a) of Directive 2007/59, arises from the relevant provisions of those directives.
- 63 In view of that obligation, whether or not Schieneninfrastruktur-Dienstleistungsgesellschaft mbH is subordinate to the Minister – as the Republic of Austria claims it is – is irrelevant in the present case. Even if that were true, such a relationship of subordination between two entities with separate legal personality would not ensure the correct transposition of the obligation referred to in the preceding paragraph.
- 64 In the light of all the foregoing considerations, the Commission's action must be upheld and the Court must find that, by designating as 'competent authority', for the purposes of Directive 2007/59, an authority other than the safety authority referred to in Article 16 of Directive 2004/49, the Republic of Austria has failed to fulfil its obligations under Article 3(a) of Directive 2007/59.

## Costs

- 65 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 66 Since the Commission has applied for costs to be awarded against the Republic of Austria and the Republic of Austria has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission.

On those grounds, the Court (Tenth Chamber) hereby:

- 1. Declares that, by designating as 'competent authority', for the purposes of Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community, an authority other than the safety authority referred to in Article 16 of Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive), the Republic of Austria has failed to fulfil its obligations under Article 3(a) of Directive 2007/59;**

**2. Orders the Republic of Austria to bear its own costs and to pay those incurred by the European Commission.**

[Signatures]