Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

8 July 2021 *

(Reference for a preliminary ruling – Rail transport – Allocation of railway infrastructure capacity and levying of charges for the use of railway infrastructure – Directive 2001/14/EC – Article 4(5) – Charging – Article 30 – National regulatory body tasked with ensuring that infrastructure charges comply with that directive – Contract for the use of infrastructure concluded between the infrastructure manager and a railway undertaking – Incorrect transposition – State liability – Claim for damages – Prior referral to the national regulatory body)

In Case C-120/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Najwyższy (Supreme Court, Poland), made by decision of 28 November 2019, received at the Court on 3 March 2020, in the proceedings

Koleje Mazowieckie – KM sp. z o.o.

v

Skarb Państwa – Minister Infrastruktury i Budownictwa, now Minister Infrastruktury, and Prezes Urzędu Transportu Kolejowego,

PKP Polskie Linie Kolejowe S.A.,

other party to the proceedings:

Rzecznik Praw Obywatelskich (RPO),

THE COURT (Fifth Chamber),

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

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Polish.

after considering the observations submitted on behalf of:

– Koleje Mazowieckie – KM sp. z o.o., by P. Duda, adwokat,

– Skarb Państwa – Minister Infrastruktury i Budownictwa, now Minister Infrastruktury, and Prezes Urzędu Transportu Kolejowego, by P. Dobroczek,

– PKP Polskie Linie Kolejowe S.A., by J. Kowalczyk, adwokat, and by C. Wiśniewski and M. Szrajer, radcowie prawni,

– the Polish Government, by B. Majczyna, acting as Agent,

– the Spanish Government, by J. Rodríguez de la Rúa Puig, acting as Agent,

– the European Commission, by W. Mölls, P.J.O. Van Nuffel, C. Vrignon and B. Sasinowska, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(5) and Article 30(1), (2), (3), (5) and (6) 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 (OJ 2001 L 75, p. 29), as amended by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 (OJ 2007 L 315, p. 44) ('Directive 2001/14').

2 The request has been made in proceedings between Koleje Mazowieckie – KM sp. z o.o. ('KM'), on the one hand, and the Skarb Państwa – Minister Infrastruktury i Budownictwa, now Minister Infrastruktury, and Prezes Urzędu Transportu Kolejowego (Public Treasury, in the person of I. the Minister for Infrastructure and Construction, now the Minister for Infrastructure, and II. the President of the Rail Transport Office, Poland), as well as PKP Polskie Linie Kolejowe S.A. ('PKP PLK'), on the other, concerning a claim for damages made by KM on the basis of an incorrect transposition of Directive 2001/14.

Legal context

European Union law

3 Recitals 11, 16 and 46 of Directive 2001/14 state:

'(11) The charging and capacity allocation schemes should permit equal and non-discriminatory access for all undertakings and attempt as far as possible to meet the needs of all users and traffic types in a fair and non-discriminatory manner.

…

(16) Charging and capacity allocation schemes should allow for fair competition in the provision of railway services.

…

(46) The efficient management and fair and non-discriminatory use of rail infrastructure require the establishment of a regulatory body that oversees the application of these Community rules and acts as an appeal body, notwithstanding the possibility of judicial review.'

4 Article 2 of that directive, entitled 'Definitions', provides:

'For the purpose of this Directive:

…

(b) "applicant" means a licensed railway undertaking and/or an international grouping of railway undertakings, and, in Member States which provide for such a possibility, other persons and/or legal entities with public service or commercial interest in procuring infrastructure capacity, such as public authorities under Regulation (EEC) No 1191/69 [of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ 1969 L 156, p. 1)] and shippers, freight forwarders and combined transport operators, for the operation of railway service on their respective territories;

…

(f) "framework agreement" means a legally binding general agreement on the basis of public or private law, setting out the rights and obligations of an applicant and the infrastructure manager or the allocation body in relation to the infrastructure capacity to be allocated and the charges to be levied over a period longer than one working timetable period;

…

(h) "infrastructure manager" means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure. This may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings;

(i) "network" means the entire railway infrastructure owned and/or managed by an infrastructure manager;

…

(k) "railway undertaking" means any public or private undertaking, licensed according to applicable Community legislation, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction; this also includes undertakings which provide traction only;

(l) “train path” means the infrastructure capacity needed to run a train between two places over a given time-period;

…’

5 Chapter II of Directive 2001/14, entitled ‘Infrastructure charges’, contains Articles 4 to 12 of that directive.

6 Article 4 of that directive, entitled ‘Establishing, determining and collecting charges’, provides:

‘1. Member States shall establish a charging framework while respecting the management independence laid down in Article 4 of Directive 91/440/EEC.

Subject to the said condition of management independence, Member States shall also establish specific charging rules or delegate such powers to the infrastructure manager. The determination of the charge for the use of infrastructure and the collection of this charge shall be performed by the infrastructure manager.

…

5. Infrastructure managers shall ensure that the application of the charging scheme results in equivalent and non-discriminatory charges for different railway undertakings that perform services of equivalent nature in a similar part of the market and that the charges actually applied comply with the rules laid down in the network statement.

…’

7 Article 6 of the same directive, entitled ‘Infrastructure cost and accounts’, provides, in paragraph 2 thereof:

‘Infrastructure managers shall, with due regard to safety and to maintaining and improving the quality of the infrastructure service, be provided with incentives to reduce the costs of provision of infrastructure and the level of access charges.’

8 Article 7 of Directive 2001/14, entitled ‘Principles of charging’, states, in paragraphs 2 and 3 thereof:

‘2. Member States may require the infrastructure manager to provide all necessary information on the charges imposed. The infrastructure manager must, in this regard, be able to justify that infrastructure charges actually invoiced to each operator, pursuant to Articles 4 to 12, comply with the methodology, rules, and where applicable, scales laid down in the network statement.

3. Without prejudice to paragraphs 4 or 5 or to Article 8, the charges for the minimum access package and track access to service facilities shall be set at the cost that is directly incurred as a result of operating the train service.’

9 Article 9 of that directive, entitled ‘Discounts’, provides:

‘1. Without prejudice to Articles 81, 82, 86 and 87 of the Treaty and notwithstanding Article 7(3) of this Directive, any discount on the charges levied on a railway undertaking by the infrastructure manager, for any service, shall comply with the criteria set out in this Article.

…

4. Discounts may relate only to charges levied for a specified infrastructure section.

5. Similar discount schemes shall apply for similar services.'

10 Under Article 30 of that directive, entitled 'Regulatory body':

'1. Without prejudice to Article 21(6), Member States shall establish a regulatory body. This body, which can be the Ministry responsible for transport matters or any other body, shall be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. It shall furthermore be functionally independent from any competent authority involved in the award of a public service contract. The body shall function according to the principles outlined in this Article whereby appeal and regulatory functions may be attributed to separate bodies.

2. An applicant shall have a right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking concerning:

…

(d) the charging scheme;

(e) level or structure of infrastructure fees which it is, or may be, required to pay;

…

3. The regulatory body shall ensure that charges set by the infrastructure manager comply with chapter II and are non-discriminatory. Negotiation between applicants and an infrastructure manager concerning the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the regulatory body. The regulatory body shall intervene if negotiations are likely to contravene the requirements of this Directive.

…

5. The regulatory body shall be required to decide on any complaints and take action to remedy the situation within a maximum period of two months from receipt of all information.

Notwithstanding paragraph 6, a decision of the regulatory body shall be binding on all parties covered by that decision.

In the event of an appeal against a refusal to grant infrastructure capacity, or against the terms of an offer of capacity, the regulatory body shall either confirm that no modification of the infrastructure manager's decision is required, or it shall require modification of that decision in accordance with directions specified by the regulatory body.

6. Member States shall take the measures necessary to ensure that decisions taken by the regulatory body are subject to judicial review.'

Polish law

11 Article 417 of the Kodeks cywilny (Civil Code), (Dz. U. of 1964, No 16, item 93), provides:

'1. The Public Treasury, a regional authority or another legal person exercising State authority by virtue of the law shall be liable for damage caused by unlawful acts or omissions in the exercise of State authority.

2. If the performance of tasks connected with the exercise of State authority has been entrusted by contract to a regional authority or another legal person, joint liability for the damage caused shall be borne by the contractor and the contracting regional authority or the Public Treasury.'

12 Article 417^1 of that code provides:

'1. If the damage was caused by the adoption of a legislative act, compensation for that damage may be claimed once it has been established, in appropriate proceedings, that that act is incompatible with the Constitution, a ratified international agreement or a law.

2. If the damage was caused by a final ruling or a final decision, compensation for that damage may be claimed once it has been established, in appropriate proceedings, that that ruling or that decision is unlawful, save as otherwise provided. This shall also be the case where the final ruling or the final decision was adopted on the basis of a legislative act that is incompatible with the Constitution, a ratified international agreement or a law.

3. If the damage was caused by a failure to issue a ruling or a decision where the issuing of such a ruling or decision is required by law, compensation for that damage may be claimed once it has been established, in appropriate proceedings, that that failure to issue a ruling or a decision is unlawful, save as otherwise provided.

4. If the damage was caused by a failure to adopt a legislative act the adoption of which is required by law, the unlawfulness of the failure to adopt that act shall be established by the court seised of the action for damages.'

13 Article 33 of the Ustawa o transporcie kolejowym (Law on Rail Transport) of 28 March 2003 (Dz. U. No 86, item 789), in the version applicable to the facts in the main proceedings, provides:

'1. The manager shall set the amount of the charges for the use of the railway infrastructure by rail carriers.

2. The basic charge for the use of the railway infrastructure shall be set taking into consideration the costs borne by the manager which are directly incurred as a result of the rail carrier operating the train service.

3. The charge for the use of the railway infrastructure shall consist of the basic charge and additional charges.

3a. In connection with the basic charge, the manager shall apply a separate charge for:

(1) minimum access to the railway infrastructure, which encompasses the services listed in point 1 of Part I of the annex to this Law;

(2) access to the equipment connected with train maintenance, which encompasses the services listed in point 2 of Part I of the annex to this Law.'

14 Article 35 of the Law on Rail Transport provides that the power to issue regulations may be delegated to the Minister for Transport by means of a legislative act.

15 Paragraph 8 of the rozporządzenie Ministra Infrastruktury w sprawie warunków dostępu i korzystania z infrastruktury kolejowej (Regulation of the Minister for Infrastructure concerning the conditions for access to and the use of railway infrastructure) of 27 February 2009 (Dz. U. No 35, item 274), in the version applicable to the facts in the main proceedings, states:

'1. In calculating the rates for the planned provision of railway infrastructure, the manager shall take into account:

(1) the direct costs, which shall include:
(a) maintenance costs;
(b) rail traffic operating costs;
(c) depreciation;

(2) the indirect costs of the activity, which shall include reasonable costs incurred by the infrastructure manager other than those referred to in points 1 and 3;

(3) the financial costs relating to the repayment of loans taken out by the manager to develop and modernise the infrastructure provided;

(4) the operational work established for the different categories of lines and trains referred to in Paragraph 7.

2. The rate shall vary according to the category of railway line and the total gross mass of the train, with that rate increasing as those parameters increase.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

16 PKP PLK is, in Poland, the infrastructure manager within the meaning of Article 2(h) of Directive 2001/14. It was founded by Polskie Koleje Państwowe S.A., which, together with the Public Treasury, is its shareholder.

17 KM is a public rail transport undertaking, the shares of which are owned by the Województwo Mazowieckie (Regional Authority of Mazovia, Poland).

18 On 19 May 2009, KM concluded with the Regional Authority of Mazovia a framework agreement for the provision of public services in the field of regional passenger rail transport within the territory of that regional authority. That framework agreement provided, inter alia, that all the costs associated with the provision of the public service exceeding the railway undertaking's revenue would be covered by compensation paid by the Regional Authority of Mazovia, plus a reasonable profit also paid by that regional authority.

19 For the 2009/10 and 2010/11 timetable periods, PKP PLK and KM concluded agreements for the use of train paths, under which the former granted the latter access to the railway infrastructure. The unit rates of the charge payable by KM, which were calculated by PKP PLK, were approved by decision of the Rail Transport Office ('the RTO').

20 Since no agreement was concluded between PKP PLK and KM for the 2011/12 and 2012/13 timetable periods, the RTO laid down the conditions for the provision of the railway infrastructure.

21 By judgment of 30 May 2013, *Commission* v *Poland* (C-512/10, EU:C:2013:338), the Court held that, by failing to adopt incentives to encourage the railway infrastructure manager to reduce the costs of providing infrastructure and the level of access charges, and by permitting the inclusion, in the calculation of charges levied for the minimum access package and track access to service facilities, of costs which cannot be regarded as costs directly incurred as a result of operating the train service, the Republic of Poland had failed to fulfil its obligations under Article 6(2) of Directive 2001/14 and Article 7(3) of that directive respectively.

22 Following the delivery of that judgment, KM brought an action before the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland) requesting that the Public Treasury, in the person of the Minister for Infrastructure and the President of the RTO, as well as PKP PLK, be held jointly and severally liable to pay the sum of 220 204 408.72 Polish zlotys (PLN) (approximately EUR 48 million), plus interest, in respect of the damage suffered by it as a result of the improper invoicing of the basic charges for minimum access to the railway infrastructure during the 2009/10 to 2012/13 working timetable periods.

23 In support of its action, KM argued that the Regulation of the Minister for Infrastructure concerning the conditions for access to and the use of railway infrastructure was incompatible with Directive 2001/14, as interpreted by the Court in the judgment of 30 May 2013, *Commission* v *Poland* (C-512/10, EU:C:2013:338), in so far as that ministerial regulation had allowed the inclusion, in the calculation of charges levied for the minimum access package and track access to service facilities, of costs which could not be regarded as costs directly incurred as a result of operating the train service. KM also relied on the applicable provisions relating to undue consideration.

24 By judgment of 24 March 2016, the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) dismissed the action, inter alia on the grounds, first of all, that Directive 2001/14 had not conferred on railway undertakings a subjective right to pay charges up to a particular maximum amount in return for the use of the railway infrastructure; next, that the judgment of 30 May 2013, *Commission* v *Poland* (C-512/10, EU:C:2013:338), did not prejudice the unlawfulness of the public authorities' conduct, inasmuch as the provisions of Directive 2001/14 alleged to have been infringed were not sufficiently precise to trigger State liability; and, lastly, that KM had not argued that the unlawfulness of the contested decisions of the RTO had been established in appropriate proceedings.

25 By judgment of 18 December 2017, the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw, Poland) dismissed the appeal brought by KM.

26 In so doing, that court observed, inter alia, that Directive 2001/14 did not provide for a charge of a particular amount and that, in any case, it did not follow from the judgment of 30 May 2013, *Commission* v *Poland* (C-512/10, EU:C:2013:338), that the charges paid by KM were excessive.

27 KM lodged an appeal on a point of law against that judgment before the Sąd Najwyższy (Supreme Court, Poland).

28 The referring court states that, as regards the charges for the use of the infrastructure, it follows from the judgment of 30 May 2013, *Commission* v *Poland* (C-512/10, EU:C:2013:338), that the Republic of Poland incorrectly transposed Directive 2001/14, in particular Article 7(3) thereof, the possible harmful consequence of that incorrect transposition being the undue payment of part of that charge.

29 However, that court observes that, under Article 30 of that directive, the regulatory body has, inter alia, the task of ensuring that the charges set by the infrastructure manager comply with Chapter II thereof and are non-discriminatory.

30 It notes that the judgment of 9 November 2017, *CTL Logistics* (C-489/15, EU:C:2017:834), in particular paragraph 97 thereof, provided a significant clarification vis-à-vis the application of Directive 2001/14, inasmuch as the Court found, with regard to the reimbursement of charges under civil law, that such reimbursement could be envisaged only if, in accordance with the provisions of national law, the illegality of that charge was first found by the regulatory body or by a court authorised to review that body's decision. The involvement of other courts in the review of the charges levied would have the effect of undermining the unity of the review carried out by the regulatory body.

31 The referring court thus questions whether, in the context of a civil liability action seeking compensation for the damage resulting from an incorrect transposition of Directive 2001/14, which took the form of an overpayment of the railway charge, a railway undertaking may bring proceedings against the infrastructure manager and the State directly before the ordinary civil courts without the decision of the regulatory body having first been subject to judicial review.

32 Furthermore, with regard to State liability resulting from an incorrect transposition of Directive 2001/14, the referring court emphasises that the case-law of the Court resulting from, inter alia, the judgment of 5 March 1996, *Brasserie du pêcheur and Factortame* (C-46/93 and C-48/93, EU:C:1996:79), appears to allow such liability to be triggered on the basis of national law where the conditions laid down by that law are less strict than those under EU law.

33 The referring court emphasises that, under Polish law, non-contractual State liability is not restricted to cases of flagrant illegality, but may be triggered, pursuant to Article 417^1(1) and (4) of the Civil Code, where an act of national law is incompatible with the Polish Constitution, an international agreement or a law and, where the existence of damage has been caused by a failure to adopt a legislative act the adoption of which is required by law, by a finding that that act has not been adopted.

34 In addition, contrary to the case-law of the Court, State liability could, under Article 361(1) of the Civil Code, be triggered even if the causal link between the wrongful act or omission by the State and the harm suffered is indirect.

35 The referring court therefore questions whether EU law precludes national civil liability law from making the right of individuals to obtain compensation for damage suffered as a result of an infringement of EU law by a Member State subject to less stringent conditions than those laid down by EU law.

36 In those circumstances the Sąd Najwyższy (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are the provisions of [Directive 2001/14], and in particular Article 4(5) and Article 30(1), (3), (5) and (6) thereof, to be interpreted as precluding a railway undertaking from claiming, with no judicial review of the decision of a supervisory body, damages against a Member State on grounds of incorrect implementation of a directive in a situation where an element of the damages is an overpaid charge for the use of railway infrastructure?

(2) Does the assumption that a right to damages under Community law for misapplication of EU law, and in particular the incorrect implementation or non-implementation of a directive, exists only where the rule of law infringed is intended to confer rights on individuals, the infringement of the law is qualified in nature (in particular in the form of manifest and grave disregard of a Member State's discretion in implementing a directive), and the causal link between the infringement and the damage is direct in nature, preclude rules of law of a Member State which, in such cases, confer a right to damages where less stringent conditions are satisfied?'

The application to reopen the oral part of the procedure

37 By document lodged at the Registry of the Court of Justice on 1 July 2021, the Rzecznik Praw Obywatelskich (Commissioner for Human Rights, Poland) submitted a reasoned application, pursuant to Article 83 of the Rules of Procedure of the Court of Justice, requesting that the oral part of the procedure be reopened.

38 The Court takes the view, after hearing the Advocate General, that, on the date in question, that application could no longer be submitted. The application must therefore be dismissed.

Consideration of the questions referred

The first question

39 By its first question, the referring court asks, in essence, whether the provisions of Directive 2001/14, in particular Article 4(5) and Article 30 thereof, are to be interpreted as precluding an ordinary court of a Member State from ruling on an action for damages against the State, brought by a railway undertaking on the basis of an incorrect transposition of that directive resulting in an alleged overpayment of a charge to the infrastructure manager, where the regulatory body and, as the case may be, the court having jurisdiction to hear and determine appeals against the decisions of that body have not yet ruled on the legality of that charge.

40 It must be recalled from the outset that Article 4 of Directive 2001/14 provides, in the second subparagraph of paragraph 1 thereof, that the determination of the charge for the use of railway infrastructure and the collection of that charge are to be performed by the infrastructure manager, and clarifies, in paragraph 5 thereof, that it is for the infrastructure manager to ensure that the application of the charging scheme results in equivalent and non-discriminatory charges for different railway undertakings that perform services of equivalent nature in a similar part of the market and that the charges actually applied comply with the rules laid down in the network statement.

41 The provisions of Article 4(5) of Directive 2001/14 implement the principles set out in recitals 11 and 16 of that directive, according to which the charging and capacity allocation schemes must permit equal and non-discriminatory access for all undertakings and, as far as possible, meet the needs of all users and traffic types in a fair and non-discriminatory manner, in order to allow for fair competition in the provision of railway services.

42 That principle of equal treatment and of non-discrimination of railway undertakings, which is implemented by, inter alia, Article 9(5) of that directive, under which similar discount schemes are to apply for similar services, constitutes the central criterion for the determination and collection of the charge for use of the infrastructure (see, to that effect, judgment of 9 November 2017, *CTL Logistics*, C-489/15, EU:C:2017:834, paragraph 47).

43 Accordingly, it is for the infrastructure managers, who are required to set and collect the charges in a non-discriminatory manner, not only to apply the rail network conditions of use in an equal manner to all users of the network, but also to ensure that the charges actually received meet those conditions (judgment of 9 November 2017, *CTL Logistics*, C-489/15, EU:C:2017:834, paragraph 50).

44 With regard to the regulatory body, it must be observed that, according to recital 46 of Directive 2001/14, the efficient management and fair and non-discriminatory use of rail infrastructure require the establishment of a regulatory body that oversees the application of those rules of EU law and acts as an appeal body, notwithstanding the possibility of judicial review.

45 In accordance with Article 30(1) of that directive, Member States are required to establish such a body, before which, pursuant to Article 30(2) of that directive, an appeal may be brought by an applicant which believes that it has been 'unfairly treated, discriminated against or … in any way aggrieved'. According to the latter provision, an appeal brought in that regard is to relate to, inter alia, decisions of the infrastructure manager concerning the charging scheme or the level or structure of infrastructure fees which the applicant is, or may be, required to pay.

46 In addition, under Article 30(3) of the same directive, the regulatory body is to ensure that the charges set by the infrastructure manager comply with Chapter II and are non-discriminatory.

47 Lastly, pursuant to Article 30(5) of Directive 2001/14, the regulatory body is required to decide on any complaints made to it and its decisions are binding on all parties covered by those decisions, while under Article 30(6) of that directive Member States must ensure that those decisions are subject to judicial review.

48 In addition, in the context of a dispute in which the user of railway infrastructure had brought an action before an ordinary national court with a view to obtaining repayment of a proportion of the amount of the charges paid to the manager of that infrastructure, the Court held that those provisions must be interpreted as precluding the application of national legislation which provides for a review of the equity of charges for the use of railway infrastructure, on a case-by-case basis, by the ordinary courts and the possibility, if necessary, of amending the amount of those charges, independently of the monitoring carried out by the regulatory body provided for in Article 30 of that directive (judgment of 9 November 2017, *CTL Logistics*, C-489/15, EU:C:2017:834, paragraph 103).

49 The effect of national legislation of that kind would be that various decisions of independent courts, possibly not harmonised by the case-law of the higher courts, would take the place of the unity of the review carried out by the competent body, so that the result would be a juxtaposition of two non-coordinated routes to decisions, which would clearly be at odds with the objective referred to in Article 30 of Directive 2001/14 (see, to that effect, judgment of 9 November 2017, *CTL Logistics*, C-489/15, EU:C:2017:834, paragraph 87).

50 In addition, pursuant to Article 30(5) of Directive 2001/14, decisions of the regulatory body have effects for all parties involved in the railway sector, whether they are transport undertakings or infrastructure managers. By contrast, judgments delivered by the civil courts, if necessary on the basis of the criteria set by the legislation concerning the calculation of charges, have effects only on the parties to the disputes brought before those courts (see, to that effect, judgment of 9 November 2017, *CTL Logistics*, C-489/15, EU:C:2017:834, paragraph 94).

51 Thus, the holder of an access permit which brings an action against the infrastructure manager before the ordinary courts with a view to challenging the amount of the charges could gain an advantage over its competitors which have not brought such an action; this would undermine the objective of ensuring fair competition in the sector of the supply of railway services (see, to that effect, judgment of 9 November 2017, *CTL Logistics*, C-489/15, EU:C:2017:834, paragraphs 95 and 96).

52 The case-law set out in paragraphs 48 to 51 of this judgment is entirely applicable to the case at issue in the main proceedings.

53 Since KM is seeking the repayment of an alleged overpayment of charges to PKP PLK, the infrastructure manager in Poland, resulting from an incorrect transposition of Directive 2001/14, in particular Article 7(3) thereof, which concerns the principles of charging, its action before the ordinary civil courts must be regarded as being directly linked to the challenge to the amount of the individual charge previously set by the infrastructure manager.

54 Accepting that the ordinary courts may hear and determine such a dispute without the regulatory body – and, potentially, the court having jurisdiction to hear and determine appeals against the decisions of that body – having ruled, pursuant to Article 30(3), (5) and (6) of Directive 2001/14, on the legality of the charges at issue and, where appropriate, having taken the measures necessary to remedy any illegality with regard to those charges would be tantamount to calling into question the task of the regulatory body and, hence, the practical effect of Article 30 of that directive.

55 It follows that an ordinary court cannot rule on applications relating to an action for liability connected with the allegedly incorrect transposition of Directive 2001/14 unless the regulatory body or the court having jurisdiction to hear and determine appeals against that body's decisions has previously ruled on the legality of the decisions of the infrastructure manager that are being challenged before that ordinary court. That procedural rule – which provides the framework for legal proceedings intended to ensure that individuals can obtain, under EU law, compensation for damage suffered as a result of an infringement by a Member State of the provisions of that directive – thus falls within the scope of that directive and not the procedural autonomy enjoyed by that Member State.

56 In its written observations, KM argues, however, that it was in practice impossible for it to challenge the amount of its individual charge before the national regulatory body. Indeed, as the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland) has held, a complaint

lodged with that body could at the very most trigger a review on the part of that body, but could not entail the opening of an administrative procedure in which that body would have the power to rule on the dispute between the railway undertaking at issue, who would have the status of a party to the procedure, and the infrastructure manager. Thus, the railway undertakings, which could lodge an appeal in relation solely to the outcome of such a review, would be obliged to bring an action for damages before the ordinary civil courts.

57 Assuming such a situation were to be established, which is a matter for the referring court to determine, it must be recalled that, in the light of the foregoing considerations, Article 30(2), (5) and (6) of Directive 2001/14 enshrines the right of a railway undertaking to challenge before the regulatory body the amount of the individual charges set by the infrastructure manager and, as the case may be, to submit the decision taken by that body to judicial review by referring the matter to the court having jurisdiction to conduct such a review.

58 In that regard, it should also be emphasised that the provisions of Article 30(2), (5) and (6) of Directive 2001/14 are unconditional and sufficiently precise and that they therefore have direct effect (see, by analogy, judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 288). Accordingly, those provisions are binding on all the authorities of the Member States, that is to say, not merely the national courts but also all administrative bodies, including decentralised authorities, and those authorities are required to apply them (judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 90).

59 In the light of the foregoing, the answer to the first question is that the provisions of Directive 2001/14, in particular Article 4(5) and Article 30 thereof, must be interpreted as precluding an ordinary court of a Member State from ruling on an action for damages against the State, brought by a railway undertaking on the basis of an incorrect transposition of that directive resulting in an alleged overpayment of a charge to the infrastructure manager, where the regulatory body and, as the case may be, the court having jurisdiction to hear and determine appeals against the decisions of that body have not yet ruled on the legality of that charge. Article 30(2), (5) and (6) of that directive must be interpreted as requiring that a railway undertaking that has been granted an access permit has the right to challenge the amount of the individual charges set by the infrastructure manager before the regulatory body, that that body take a decision regarding such a challenge, and that that decision be amenable to review by the court having jurisdiction to conduct such a review.

The second question

60 By its second question, the referring court asks, in essence, whether EU law is to be interpreted as precluding national civil liability law from making the right of individuals to obtain compensation for damage suffered as a result of an infringement of EU law by a Member State subject to less stringent conditions than those laid down by EU law.

61 In that regard, it must be recalled that the Court has repeatedly held that, under EU law, a right to reparation exists if three conditions are met: the rule of law infringed must be intended to confer rights on individuals; the breach must be sufficiently serious; and, lastly, there must be a direct link between the breach of the obligation resting on the State and the damage sustained by the individuals who have been harmed (judgments of 5 March 1996, *Brasserie du pêcheur and*

Factortame, C-46/93 and C-48/93, EU:C:1996:79, paragraph 51, and of 29 July 2019, *Hochtief Solutions Magyarországi Fióktelepe*, C-620/17, EU:C:2019:630, paragraph 35 and the case-law cited).

62 It should be noted that, just as repeatedly, the Court has held that the three conditions mentioned in the previous paragraph do not mean that the liability of a Member State cannot be triggered under less stringent conditions on the basis of national law (see, to that effect, judgments of 5 March 1996, *Brasserie du pêcheur and Factortame*, C-46/93 and C-48/93, EU:C:1996:79, paragraph 66; of 12 September 2006, *Eman and Sevinger*, C-300/04, EU:C:2006:545, paragraph 69; and of 29 July 2019, *Hochtief Solutions Magyarországi Fióktelepe*, C-620/17, EU:C:2019:630, paragraphs 37 and 38 and the case-law cited).

63 In the light of the foregoing, the answer to the second question is that EU law must be interpreted as not precluding national civil liability law from making the right of individuals to obtain compensation for damage suffered as a result of an infringement of EU law by a Member State subject to less stringent conditions than those laid down by EU law.

Costs

64 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

1. **The provisions 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, in particular Article 4(5) and Article 30 thereof, must be interpreted as precluding an ordinary court of a Member State from ruling on an action for damages against the State, brought by a railway undertaking on the basis of an incorrect transposition of that directive resulting in an alleged overpayment of a charge to the infrastructure manager, where the regulatory body and, as the case may be, the court having jurisdiction to hear and determine appeals against the decisions of that body have not yet ruled on the legality of that charge.**

   Article 30(2), (5) and (6) of Directive 2001/14, as amended by Directive 2007/58, must be interpreted as requiring that a railway undertaking that has been granted an access permit has the right to challenge the amount of the individual charges set by the infrastructure manager before the regulatory body, that that body take a decision regarding such a challenge, and that that decision be amenable to review by the court having jurisdiction to conduct such a review.

2. **EU law must be interpreted as not precluding national civil liability law from making the right of individuals to obtain compensation for damage suffered as a result of an infringement of EU law by a Member State subject to less stringent conditions than those laid down by EU law.**

[Signatures]