



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

10 July 2019*

(Reference for a preliminary ruling — Transport — Single European Railway Area — Directive 2012/34/EU — Article 3 — Concept of ‘railway infrastructure’ — Annex II — Minimum access — Inclusion of the use of passenger platforms)

In Case C-210/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Schienen-Control Kommission (Railway Supervisory Commission, Austria), made by decision of 19 February 2018, received at the Court on 23 March 2018, in the proceedings

WESTbahn Management GmbH

v

ÖBB-Infrastruktur AG,

THE COURT (Eighth Chamber),

composed of F. Biltgen, President of the Chamber, J. Malenovský and L.S. Rossi (Rapporteur), Judges,
Advocate General: M. Campos Sánchez-Bordona,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 17 January 2019,

after considering the observations submitted on behalf of

- WESTbahn Management GmbH, by R. Schender, Rechtsanwalt,
- ÖBB-Infrastruktur AG, by K. Retter, Rechtsanwalt,
- the French Government, by D. Colas and by I. Cohen and A.-L. Desjonquères, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by G. Braun and J. Hottiaux, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 March 2019,

gives the following

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Annex II to 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).
- 2 The request has been made in proceedings between WESTbahn Management GmbH and ÖBB-Infrastruktur AG concerning the lawfulness of the charges which WESTbahn Management is required to pay for the use, by WESTbahn Management, of passenger platforms in railway stations.

Legal context

Regulation (EEC) No 2598/70

- 3 Part A of Annex I to Regulation (EEC) No 2598/70 of the Commission of 18 December 1970 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Council Regulation (EEC) No 1108/70 of 4 June 1970 (OJ English Special Edition 1970 (III), p. 899), provided:

‘Railway infrastructure consists of the following items, provided they form part of the permanent way, including sidings, but excluding lines situated within railway repair workshops, depots or locomotive sheds, and private branch lines or sidings:

...

– ... passenger and goods platforms; ...

...’

Directive 91/440/EEC

- 4 Article 3 of Council Directive 91/440/EEC of 29 July 1991 on the development of the Community’s railways (OJ 1991 L 237, p. 25), provided:

‘For the purpose of this Directive:

...

– “railway infrastructure” shall mean all the items listed in Annex I.A to [Regulation No 2598/70] ...

...’

Directive 2001/14/EC

- 5 Annex II to 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), was worded as follows:

‘Services to be supplied to the railway undertakings

1. The minimum access package shall comprise:
 - (a) handling of requests for infrastructure capacity;
 - (b) the right to utilise capacity which is granted;
 - (c) use of running track points and junctions;
 - (d) train control including signalling, regulation, dispatching and the communication and provision of information on train movement;
 - (e) all other information required to implement or operate the service for which capacity has been granted.

2. Track access to services facilities and supply of services shall comprise:

...
(c) passenger stations, their buildings and other facilities;

...'

Directive 2012/34

- 6 Recitals 3, 7, 8, 26 and 65 of Directive 2012/34 state:

‘(3) The efficiency of the railway system should be improved, in order to integrate it into a competitive market, whilst taking account of the special features of the railways.

...

(7) The principle of freedom to provide services should be applied to the railway sector, taking into account that sector’s specific characteristics.

(8) In order to boost competition in railway service management in terms of improved comfort and the services provided to users, Member States should retain general responsibility for the development of the appropriate railway infrastructure.

...

(26) In order to ensure fair competition between railway undertakings and to guarantee full transparency and the non-discriminatory access to and supply of services, a distinction should be made between the provision of transport services and the operation of service facilities. ...

...

(65) It is desirable to define those components of the infrastructure service which are essential to enable an operator to provide a service and which should be provided in return for minimum access charges.’

- 7 Article 3 of that directive, entitled ‘Definitions’, provides, in paragraphs 1 to 3:

‘For the purposes of this Directive, the following definitions apply:

- (1) “railway undertaking” means any public or private undertaking licensed according to this Directive, 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 ensure traction; this also includes undertakings which provide traction only;

- (2) “infrastructure manager” means any body or firm responsible in particular for establishing, managing and maintaining railway infrastructure, including traffic management and control-command and signalling; the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or firms;
- (3) “railway infrastructure” means the items listed in Annex I;’
- 8 Article 13 of that directive, entitled ‘Conditions of access to services’, provides as follows in paragraphs 1, 2 and 4:
- ‘1. Infrastructure managers shall supply to all railway undertakings, in a non-discriminatory manner, the minimum access package laid down in point 1 of Annex II.
2. Operators of service facilities shall supply in a non-discriminatory manner to all railway undertakings access, including track access, to the facilities referred to in point 2 of Annex II, and to the services supplied in these facilities.
- ...
4. Requests by railway undertakings for access to, and supply of services in the service facility referred to in point 2 of Annex II shall be answered within a reasonable time limit set by the regulatory body referred to in Article 55. Such requests may only be refused if there are viable alternatives allowing them to operate the freight or passenger service concerned on the same or alternative routes under economically acceptable conditions. ...’
- 9 Article 31 of that directive, entitled ‘Principles of charging’, provides in paragraphs 3 and 7 thereof:
- ‘3. Without prejudice to paragraph 4 or 5 of this Article or to Article 32, the charges for the minimum access package and for access to infrastructure connecting service facilities shall be set at the cost that is directly incurred as a result of operating the train service.
- ...
7. The charge imposed for track access within service facilities referred to in point 2 of Annex II, and the supply of services in such facilities, shall not exceed the cost of providing it, plus a reasonable profit.’
- 10 Annex I to Directive 2012/34, entitled ‘List of railway infrastructure elements’, is worded as follows:
- ‘Railway infrastructure consists of the following items, provided they form part of the permanent way, including sidings, but excluding lines situated within railway repair workshops, depots or locomotive sheds, and private branch lines or sidings:
- ...
- ... passenger and goods platforms, including in passenger stations and freight terminals ...
- ...’

- 11 Annex II to that directive, containing the list of ‘Services to be supplied to the railway undertakings (referred to in Article 13)’, is worded as follows:

‘1. The minimum access package shall comprise:

...

(c) use of the railway infrastructure, including track points and junctions;

...

2. Access, including track access, shall be given to the following services facilities, when they exist, and to the services supplied in these facilities:

(a) passenger stations, their buildings and other facilities, including travel information display and suitable location for ticketing services;

...’

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

- 12 ÖBB-Infrastruktur is an ‘infrastructure manager’, within the meaning of Article 3(2) of Directive 2012/34, and manages most of the Austrian railway network.
- 13 WESTbahn Management, which is a ‘railway undertaking’ within the meaning of Article 3(1) of that directive, requests ÖBB-Infrastruktur to stop trains at railway stations of the Austrian railway network.
- 14 Considering that the fee charged by ÖBB-Infrastruktur for the use of those railway stations was too high, WESTbahn Management lodged a complaint concerning the legality of that charge before the Schienen-Control Kommission (Railway Regulatory Commission, Austria) as a regulatory body for the Austrian railway sector.
- 15 The parties to the main proceedings disagree as to whether the use of passenger platforms falls within the scope of the minimum access package and, in particular, the use of the railway infrastructure, within the meaning of point 1(c) of Annex II to Directive 2012/34, or access to service facilities within the meaning of point 2(a) of Annex II to that directive.
- 16 According to the referring court, that point is decisive in determining the authorised amounts of the fee charged for the use of passenger platforms. The charges levied for the minimum access package are, for the purposes of Article 31(3) of Directive 2012/34, equal to the cost directly incurred as a result of operating the train service. By contrast, in accordance with Article 31(7) of that directive, the charges levied for track access in respect of the service facilities referred to in point 2 of Annex II to that directive do not exceed the cost of providing it plus a reasonable profit.
- 17 The referring court considers that a literal interpretation of the relevant provisions of Directive 2012/34 favours the interpretation that the use of passenger platforms falls within the scope of the minimum access package and, in particular, the use of the rail infrastructure, as provided for in point 1(c) of Annex II to Directive 2012/34. That provision qualifies as minimum access the ‘use of the railway infrastructure’ which, in accordance with the second indent of Annex I to that directive, consists, in particular, of ‘passenger ... platforms, including in passenger stations’.

- 18 However, the situation would be different if a systematic interpretation of Directive 2012/34 were adopted, according to which passenger platforms are included in the category comprising ‘passenger stations, their buildings and other facilities’ as service facilities within the meaning of point 2(a) of Annex II to that directive, and thus not covered by the minimum access package defined in point 1 of Annex II to that directive.
- 19 Moreover, until the entry into force of Directive 2012/34, Directive 2001/14 included an Annex II, similar to Annex II to Directive 2012/34. However, unlike the latter Annex, Annex II to Directive 2001/14 did not include the use of railway infrastructure as part of the minimum access, so that, according to the referring court, it was clear that ‘passenger platforms’ should be included in the category comprising ‘passenger stations, their buildings and other facilities’ referred to in point 2(c) of Annex II to Directive 2001/14. Consequently, that court considers that, if the EU legislature had wanted to amend the principle of charging for the use of passenger platforms, it would have announced that in the recitals of Directive 2012/34, particularly since such an amendment would have significant financial consequences.
- 20 In those circumstances, the Schienen-Control Kommission (Railway Supervisory Commission, Austria) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Is paragraph 2(a) of Annex II to [Directive 2012/34] to be interpreted as meaning that the notion of “passenger stations, their buildings and other facilities” referred to therein covers the railway infrastructure “passenger ... platforms” listed in the second indent of Annex I to that directive?
- (2) If Question 1 is answered in the negative:
- Is paragraph 1(c) of Annex II to [Directive 2012/34] to be interpreted as including the use of passenger platforms provided for in the second indent of Annex I to that directive within the notion of “use of the railway infrastructure” referred to therein?’

Consideration of the questions referred

- 21 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Annex II to Directive 2012/34 must be interpreted as meaning that the ‘passenger platforms’ referred to in Annex I to that directive are part of the railway infrastructure the use of which falls within the scope of the minimum access package in accordance with point 1(c) of that Annex II or constitute a service facility within the meaning of point 2(a) of that Annex II.
- 22 In order to answer those questions, it should be recalled that, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgments of 7 October 2010, *Lassal*, C-162/09, EU:C:2010:592, paragraph 49, and of 11 April 2019, *Tarola*, C-483/17, EU:C:2019:309, paragraph 37).
- 23 In that regard, it should be noted that Article 3(3) of Directive 2012/34 defines railway infrastructure as all the elements referred to in Annex I to that directive.
- 24 In accordance with that Annex I, the railway infrastructure consists, in particular, of ‘passenger and goods platforms, including in passenger stations and freight terminals’.
- 25 Accordingly, if passenger platforms are part of the railway infrastructure, it necessarily follows that their use falls, in accordance with point 1(c) of Annex II to that directive, under the heading ‘use of the railway infrastructure’.

- 26 As the referring court has found, it is thus clear from the actual wording of those provisions of Directive 2012/34 that the use of passenger platforms is covered by the minimum access package defined in point 1 of Annex II to that directive.
- 27 Such an interpretation is confirmed both by the historical context of the relevant provisions of Directive 2012/34 and by the objectives pursued by it.
- 28 With regard to the historical context of those provisions, it should first be recalled that ‘passenger platforms’ were already included in the definition of rail infrastructure before the adoption of Directive 2012/34. The third indent of Article 3 of Directive 91/440 defined ‘railway infrastructure’ by reference to all the elements referred to in Part A of Annex 1 to Regulation No 2598/70, including ‘passenger platforms’.
- 29 It is true that, in so far as, under Annex II to Directive 2001/14, ‘use of the railway infrastructure’ was not included in the minimum access, the use of passenger platforms was likely to fall within the scope of access to ‘passenger stations, their buildings and other facilities’, within the meaning of point 2(c) of Annex II to Directive 2001/14.
- 30 However, since the EU legislature, in point 1 of Annex II to Directive 2012/34, added the ‘use of the railway infrastructure’ as part of the minimum access, it must be held that the use of those platforms now falls within the scope of that access.
- 31 Next, the fact that, when Directive 2012/34 was adopted, the legislature stated, in Annex I to that directive, that the railway infrastructure consists, inter alia, of passenger platforms, ‘including in passenger stations’, shows the intention to draw a distinction between passenger platforms, on the one hand, and passenger stations on the other, with only the latter constituting service facilities within the meaning of point 2(a) of Annex II to that directive.
- 32 Furthermore, the fact that this Annex II has not been amended in any way by Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016 amending Directive 2012/34 as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure (OJ 2016 L 352, p. 1), supports the conclusion that the EU legislature had intended to extend the minimum access package in order to include the use of passenger platforms as a component of rail infrastructure.
- 33 Finally, it is true that, as the referring court points out, the extension of the minimum access package brought about by Directive 2012/34 in order to include in it the use of the railway infrastructure has not been the subject of a specific statement of reasons in the recitals of that directive. However, that does not preclude Annex II to that directive from being interpreted as meaning that the use of passenger platforms falls within the scope of minimum access within the meaning of that annex, since it has already been clarified by settled case-law that, if an act of general application discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for the various technical choices made (judgment of 7 February 2018, *American Express*, C-304/16, EU:C:2018:66, paragraph 76 and the case-law cited).
- 34 In that regard, it must be held that the choice made by the EU legislature is consistent with the achievement of the objectives of Directive 2012/34.
- 35 It is apparent in particular from recitals 3, 7, 8 and 26 of that directive that it aims to improve the efficiency of the railway system in order to integrate it into a competitive market, by stimulating, inter alia, fair competition in the area of the operation of rail transport services and by ensuring the application of the principle of the freedom to provide services to the railway sector.

- 36 It is precisely for those purposes that Directive 2012/34, in accordance with its recital 65, defines the components of the infrastructure service which are essential to enable an operator to provide a service and which should be provided in return for minimum access charges.
- 37 The regulation of the conditions for access and charging reserved for the minimum access package is, in particular in view of its essential nature, particularly favourable to the railway undertakings to which infrastructure managers are required to provide those services. Article 13(1) and Article 31(3) of Directive 2012/34 provide that infrastructure managers are required to provide all railway undertakings with the minimum access package in a non-discriminatory manner, in return for charges equal to the cost that is directly incurred as a result of operating the train service.
- 38 By contrast, in accordance with Article 13(2) and (4) and Article 31(7) of that directive, access to the service facilities referred to in point 2 of Annex II to that directive may only be refused if there are viable alternatives and the fee charged for that access may not exceed the cost of providing it, plus a reasonable profit.
- 39 It follows that the choice made by the EU legislature to add the use of the railway infrastructure, including therefore passenger platforms, to the minimum access package, favours the conditions of access of railway undertakings to the rail transport market and thus meets the objectives of that directive.
- 40 Consequently, a restrictive reading of the wording of point 1(c) of Annex II to Directive 2012/34 would render ineffective the amendment, by that directive, of the earlier legislation in order to include the use of railway infrastructure in the minimum access package.
- 41 In the light of all the foregoing considerations, the answer to the questions referred is that Annex II to Directive 2012/34 must be interpreted as meaning that ‘passenger platforms’, referred to in Annex I to that directive, are an element of the railway infrastructure the use of which is part of the minimum access package, in accordance with point 1(c) of Annex II.

Limitation of the temporal effects of the present judgment

- 42 In its written observations, ÖBB-Infrastruktur asks the Court to limit the temporal effects of the present judgment in the event that Annex II to Directive 2012/34 is interpreted as meaning that the use of passenger platforms falls within the scope of the minimum access package within the meaning of point 1(c) of that annex.
- 43 In support of its request, ÖBB-Infrastruktur observes, on the one hand, the risk of serious economic disruption resulting from the even partial termination of contracts concluded in good faith by it with rail transport undertakings and, on the other hand, the fact that Member States and the European Commission have contributed to rendering objectively uncertain the scope of the provisions which are the subject of the request for a preliminary ruling.
- 44 In that regard, it should be recalled that, according to settled case-law, the interpretation which the Court, in the exercise of the jurisdiction conferred on it by Article 267 TFEU, gives to a rule of EU law clarifies and defines the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its entry into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships which arose and were established before judgment is delivered on the request for interpretation, provided that in other respects the conditions for bringing a dispute relating to the application of that rule before the courts having jurisdiction are satisfied (judgment of 14 March 2019, *Skanska Industrial Solutions and Others*, C-724/17, EU:C:2019:204, paragraph 55 and the case-law cited).

- 45 It is only quite exceptionally that the Court may, in application of the general principle of legal certainty inherent in the EU legal order, be moved to restrict, for any person concerned, the opportunity of relying on a provision which it has interpreted with a view to calling into question legal relationships established in good faith. Two essential criteria must be fulfilled before such a limitation can be imposed, namely that those concerned should have acted in good faith and that there should be a risk of serious difficulties (judgment of 14 March 2019, *Skanska Industrial Solutions and Others*, C-724/17, EU:C:2019:204, paragraph 56 and the case-law cited).
- 46 More specifically, the Court has taken that step only in quite specific circumstances, notably where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force and where it appeared that individuals and national authorities had been led to adopt practices which did not comply with EU law by reason of objective, significant uncertainty regarding the implications of European Union provisions, to which the conduct of other Member States or the Commission may even have contributed (judgment of 14 March 2019, *Skanska Industrial Solutions and Others*, C-724/17, EU:C:2019:204, paragraph 57 and the case-law cited).
- 47 In the present case, it is sufficient to note that, as the Advocate General notes, in essence, in point 75 of his Opinion, ÖBB-Infrastruktur merely argues that, if the use of passenger platforms were to fall within the scope of minimum access, within the meaning of point 1(c) of Annex II to Directive 2012/34, that would have consequences for the legal relations it had concluded in good faith with railway undertakings, the resolution of which would entail an excessive economic burden for it. In so far as ÖBB-Infrastruktur does not provide the Court with any specific information as to the number of legal relationships concerned or as to the nature and scale of that economic burden, such an argument is not sufficient to establish the existence of exceptional circumstances justifying the limitation of the temporal effects of the present judgment.
- 48 It is therefore not appropriate to limit those temporal effects.

Costs

- 49 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 (Eighth Chamber) hereby rules:

Annex II to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area must be interpreted as meaning that ‘passenger platforms’, referred to in Annex I to that directive, are an element of the railway infrastructure the use of which is part of the minimum access package, in accordance with point 1(c) of Annex II.

[Signatures]