



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

24 February 2022 *

(Reference for a preliminary ruling – Rail transport – Directive 2001/14/EC – Article 4 – Setting of infrastructure charges by decision of the manager – Article 30(2) – Railway undertakings’ right to bring an administrative action – Article 30(6) – Judicial review of the decisions of the regulatory body)

In Case C-563/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland), made by decision of 6 October 2020, received at the Court on 28 October 2020, in the proceedings

ORLEN KolTrans sp. z o.o.

v

Prezes Urzędu Transportu Kolejowego,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, S. Rodin, J.-C. Bonichot (Rapporteur), L.S. Rossi and O. Spineanu-Matei, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- ORLEN KolTrans sp. z o.o., by A. Salbert, radca prawny,
- Prezes Urzędu Transportu Kolejowego, by M. Trela, radca prawny,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by B. Sasinowska and C. Vrignon and by S.L. Kalèda, acting as Agents,

* Language of the case: Polish.

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 30(2), (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 and safety certification (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 ORLEN KolTrans sp. z o.o., a railway undertaking whose registered office is situated in Płock (Poland), and the Prezes Urzędu Transportu Kolejowego (President of the Office for rail transport; 'the president of the ORT') concerning the determination of the level of charges for the use of the railway infrastructure owned by PKP Polskie Linie Kolejowe S.A. in Poland ('PKP PLK').

Legal context

European Union law

- 3 Recitals 5, 11, 12, 16 and 20 of Directive 2001/14 state:

'(5) To ensure transparency and non-discriminatory access to rail infrastructure for all railway undertakings all the necessary information required to use access rights are to be published in a network statement.

...
(11) The charging and capacity allocation schemes should permit equal and non-discriminatory access for all undertakings and should attempt, as far as possible, to meet the needs of all users and traffic types in a fair and non-discriminatory manner.
(12) Within the framework set out by Member States charging and capacity-allocation schemes should encourage railway infrastructure managers to optimise use of their infrastructure.

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

...
(20) It is desirable to grant some degree of flexibility to infrastructure managers to enable a more efficient use to be made of the infrastructure network.'

4 According to Article 1(1) of that directive:

‘This Directive concerns the principles and procedures to be applied with regard to the setting and charging of railway infrastructure charges and the allocation of railway infrastructure capacity.

Member States shall ensure that charging and capacity allocation schemes for railway infrastructure follow the principles set down in this Directive and thus allow the infrastructure manager to market and make optimum effective use of the available infrastructure capacity.’

5 Article 2 of that directive contains definitions. It reads as follows:

‘For the purpose of this Directive:

...

(b) “applicant” means a licensed railway undertaking ... with public service or commercial interest in procuring infrastructure capacity ... for the operation of railway service on their respective territories;

...

(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;

...

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

...’

6 In Chapter II of that directive, relating to infrastructure charges, Article 4, 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.

...

4. Except where specific arrangements are made under Article 8(2), infrastructure managers shall ensure that the charging scheme in use is based on the same principles over the whole of their network.

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 an 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 5(1) of Directive 2001/14 provides:

'Railway undertakings shall, on a non-discriminatory basis, be entitled to the minimum access package and track access to service facilities that are described in Annex II. The supply of services referred to in Annex II, point 2 shall be provided in a non-discriminatory manner and requests by railway undertakings may only be rejected if viable alternatives under market conditions exist. If the services are not offered by one infrastructure manager, the provider of the "main infrastructure" shall use all reasonable endeavours to facilitate the provision of these services.'

8 Article 6 of that directive, relating to the cost of infrastructure and accounting, states:

'1. Member States shall lay down conditions, including where appropriate advance payments, to ensure that, under normal business conditions and over a reasonable time period, the accounts of an infrastructure manager shall at least balance income from infrastructure charges, surpluses from other commercial activities and State funding on the one hand, and infrastructure expenditure on the other.

...

2. Infrastructure managers shall ... be provided with incentives to reduce the costs of provision of infrastructure and the level of access charges.

3. Member States shall ensure that the provision set out in paragraph 2 is implemented, either through a contractual agreement between the competent authority and infrastructure manager covering a period of not less than three years which provides for State funding or through the establishment of appropriate regulatory measures with adequate powers.

...

5. A method for apportioning costs shall be established. Member States may require prior approval. This method should be updated from time to time to the best international practice.'

9 Under Article 7 of that directive, relating to principles of charging:

'1. Charges for the use of railway infrastructure shall be paid to the infrastructure manager and used to fund his business.

...

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.

...

7. The supply of services referred to in Annex II, point 2, shall not be covered by this Article. Without prejudice to the foregoing, account shall be taken, in setting the prices for the services set out in Annex II, point 2, of the competitive situation of rail transport.

...'

10 Articles 8 to 12 of that directive provide, respectively, for exceptions to charging principles, the possibility of granting discounts on infrastructure charges, a compensation scheme for certain costs, a performance scheme and the possibility of levying reservation charges.

11 Chapter III of Directive 2001/14, relating to the allocation of infrastructure capacity, contains Article 17, paragraph 1 of which is worded as follows:

'Without prejudice to Articles 81, 82 and 86 of the Treaty, a framework agreement may be concluded with an applicant. Such a framework agreement specifies the characteristics of the railway infrastructure capacity required by ... the applicant The framework agreement shall not specify a train path in detail, but should be such as to seek to meet the legitimate commercial needs of the applicant. A Member State may require prior approval of such a framework agreement by the regulatory body referred to in Article 30 of this Directive.'

12 Article 26 of that directive, entitled 'Capacity enhancement plan', provides:

'1. Within six months of the completion of a capacity analysis, the infrastructure manager shall produce a capacity enhancement plan.

2. A capacity enhancement plan shall be developed after consultation with users of the relevant congested infrastructure.

It shall identify:

...

(d) the options and costs for capacity enhancement, including likely changes to access charges.

It shall also, on the basis of a cost benefit analysis of the possible measures identified, determine what action shall be taken to enhance infrastructure capacity, including a calendar for implementation of the measures.

The plan may be subject to prior approval by the Member State.

...'

13 Article 30 of Directive 2001/14, entitled 'Regulatory body', provides:

'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.

4. The regulatory body shall have the power to request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned, which must be supplied without undue delay.

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.'

14 Points 1 and 2 of Annex II to that directive, entitled 'Services to be supplied to the railway undertakings', state:

'1. The minimum access package shall comprise:

(a) handling of requests for infrastructure capacity;

...

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

(a) use of electrical supply equipment for traction current, where available;

...'

Polish law

The Code of Administrative Procedure

- 15 The ustawa kodeks postępowania administracyjnego (Law establishing a Code of Administrative Procedure) of 14 June 1960 (Dz. U. 2013, item 267) ('the Code of Administrative Procedure'), provides in Article 28:

'A party is any person who is the subject of proceedings on account of a legal interest or obligation, or a person who, on account of his or her interest in bringing proceedings seeks the intervention of a body.'

- 16 According to Article 61 of that law:

'The administrative procedure shall be initiated at the request of a party or *ex officio*.'

- 17 Article 61a(1) of that law is worded as follows:

'Where the application referred to in Article 61 is made by a person who is not a party or where, for other legitimate reasons, a procedure cannot be initiated, the public administrative authority shall take a decision refusing to initiate the procedure. ...'

- 18 Article 157(2) of that law provides:

'The procedure for annulment of the decision shall be initiated at the request of a party or *ex officio*.'

Law on Rail Transport

- 19 The ustawa o transporcie kolejowym (Law on rail transport), of 28 March 2003 (Dz. U. of 2013, item 1594) ('the Law on rail transport') provides in Article 13(1) and (6):

'1. The President of [the Office for rail transport ('the ORT')] shall be responsible for the following in the field of rail transport regulation:

1. approving and coordinating the charges for the use of the allocated railway infrastructure paths, checking that they comply with the rules for setting those paths;

...

4. ascertaining whether the manager has correctly set the basic charges for the use of railway infrastructure and the additional charges for the provision of additional services;

5. examining actions brought by rail carriers relating to:

...

- (b) the allocation of train paths and railway infrastructure charges;

...

6. If it is found that there has been an infringement of the railway provisions, decisions or orders, the President of the ORT shall issue a decision specifying the extent of the infringement and the time limit for correcting the irregularity.'

20 Article 29(3) and (4) of that law is worded as follows:

'3. The rail carrier shall acquire the right to use train paths allocated and fixed in the working timetable after an agreement to that effect has been concluded with the manager.

4. For the provision of railway infrastructure, the manager of the railway infrastructure shall collect the charges referred to in Article 33.'

21 According to Article 33 of that law:

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

...

6. The manager shall publish ... the amount and types of rate of the basic charge and of additional charges.

7. The unit rates for the basic charge and additional charges, except charges for the use of traction current, shall be communicated, together with the calculations of the amounts, to the President of the ORT.

8. The President of the ORT shall approve the rates referred to in paragraph 7 within 30 days of receipt or refuse to approve them if any infringement of the rules set out in paragraphs 2 to 6, Article 34 or in the provisions adopted on the basis of Article 35 is ascertained.'

The Regulation on the conditions for access to and use of the railway infrastructure

22 The rozporządzenie Ministra Infrastruktury w sprawie warunków dostępu i korzystania z infrastruktury kolejowej (Regulation of the Minister for Infrastructure on the conditions for access to and the use of railway infrastructure) of 27 February 2009 (Dz. U. of 2009, No 35, item 274) provides in Article 16:

'1. The manager, no later than 9 months before the date of entry into force of the train service timetable, shall submit to the President of the ORT a proposal for approval:

1. of the unit rates of the basic charge;

2. of the charging rates for the services referred to in Part II of the annex to the law.

...

3. At the request of the carrier, the manager shall allow the carrier to take note of the proposal referred to in paragraph 1 and the list referred to in paragraph 2.

...'

23 Article 17(1) of that regulation is worded as follows:

‘The President of the ORT shall refuse to approve the project referred to in Article 16(1) only if it has been drawn up in breach of the provisions referred to in Article 33(8) of the Law [on rail transport].’

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

- 24 Orlen KolTrans is an undertaking whose registered office is situated in Poland and which, inter alia, transports goods by rail. To that end, it uses the railway infrastructure owned by the manager of that infrastructure, PKP PLK.
- 25 PKP PLK submitted to the Polish regulatory body, namely the ORT, established under Article 30 of Directive 2001/14, a proposal to amend the unit rates of the basic charge for minimum access to its infrastructure. Those rates constitute one of the variables which enable the infrastructure manager to determine the amount of the charges payable by a railway undertaking for use of the railway infrastructure. By decision of 29 September 2010 (‘the 2010 approval decision’), the president of the ORT approved that proposal.
- 26 On the basis of that decision, PKP PLK applied the new unit rates in order to determine the amount of the infrastructure charges to be paid by Orlen KolTrans, in accordance with the agreement concluded by those two undertakings.
- 27 In its judgment of 30 May 2013, *Commission v Poland* (C-512/10, EU:C:2013:338), the Court held, inter alia, that, 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) and Article 7(3), respectively, of Directive 2001/14.
- 28 After that judgment was delivered, ORLEN KolTrans reviewed the charges it paid to PKP PLK. Considering that their method of calculation was contrary to Directive 2001/14, by letter of 7 April 2014, it requested the president of the ORT to initiate an administrative procedure, within the meaning of the Code of Administrative Procedure, for the annulment of the 2010 approval decision.
- 29 By his order of 11 June 2014, the president of the ORT rejected that application on the ground that, under the Code of Administrative Procedure, ORLEN KolTrans was not a ‘party’ in the procedure for approving the unit rates for the basic charge and, consequently, was not entitled to seek annulment of the 2010 approval decision, even in the event that that decision was contrary to EU law.
- 30 ORLEN KolTrans brought an action against that order of 11 June 2014 before the referring court, namely the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland). In the context of that action, it seeks to obtain a review of the validity of the 2010 approval decision, which, in the light of the judgment of 30 May 2013, *Commission v Poland* (C-512/10, EU:C:2013:338), was adopted in breach of Directive 2001/14.
- 31 At the same time, that undertaking brought a claim for compensation against the Polish State on the ground that the incorrect transposition of Directive 2001/14 led to harm resulting from the payment of excessive infrastructure charges. Similar applications were also made by other railway undertakings. The Sąd Najwyższy (Supreme Court, Poland), hearing one of those cases, decided to

stay the proceedings and refer, on 3 March 2020, questions to the Court for a preliminary ruling, in particular to determine whether a railway undertaking is entitled, without the decision of the regulatory body having been subject to judicial review, to seek damages from a Member State for the incorrect implementation of Directive 2001/14. The Court answered those questions in its judgment of 8 July 2021, *Koleje Mazowieckie* (C-120/20, EU:C:2021:553).

- 32 The referring court notes, in addition, that, in its judgment of 9 November 2017, *CTL Logistics* (C-489/15, EU:C:2017:834), the Court held that Directive 2001/14 precludes 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 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.
- 33 It points out, in that context, that, under Polish law, it has jurisdiction to hear appeals against the regulatory body's decisions.
- 34 As regards the implementation of Directive 2001/14, the referring court notes that, in Poland, the railway infrastructure manager submits the unit rates of the basic charge for approval to the regulatory body. Railway undertakings are not parties to that procedure and may not challenge approval decisions adopted by the president of the ORT.
- 35 It is true that Article 13(1)(5)(b) of the Law on rail transport allows a complaint to be lodged with the regulatory authority in respect of the infrastructure charges required by the infrastructure manager. In addition, under paragraph 6 of that article, in the event of infringement of the provisions, decisions or orders in railway matters, the president of the ORT is to issue a decision specifying the extent of the infringement and the time limit for correction. However, the application of those provisions of Polish law cannot have the effect of overturning the unit rates of the basic charge approved by the regulatory body.
- 36 Furthermore, the referring court states that, under the Code of Administrative Procedure, only persons who have the status of party may seek the annulment of a decision. Since railway undertakings are not parties to the procedure for approving the unit rates for the basic charge, they do not, in its view, have an effective remedy available to challenge the level of those rates.
- 37 In the light of those considerations, the referring court seeks to ascertain whether Article 30 of Directive 2001/14 confers on railway undertakings the right to challenge decisions approving the unit rates for the basic charge taken by the president of the ORT. It considers that such a right could be inferred, first, from paragraph 2(e) of that article, if that provision were to be interpreted as requiring railway undertakings to be admitted as parties to the procedure for the approval of the unit rates of the basic charge. Second, if it were established that the approval decision was capable of infringing the rights of railway undertakings, a right to bring an action could arise under paragraphs 5 and 6 of that article.
- 38 In those circumstances, the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘1. Must Article 30(2)(e) of Directive [2001/14] be interpreted as conferring on a railway undertaking which uses or intends to use railway infrastructure the right to participate in the procedure conducted by a regulatory body for setting the level of charges for access to railway infrastructure by the railway infrastructure manager?’

2. If the first question is answered in the negative, must Article 30(5) and (6) of Directive [2001/14] be interpreted as conferring on a railway undertaking which uses or intends to use railway infrastructure the right to challenge the decision of the regulatory body approving the level of charges for access to railway infrastructure set by the railway infrastructure manager?

Consideration of the questions referred

Preliminary observations

- 39 It should be noted that it is apparent from the order for reference that the Law on rail transport provides, inter alia, that one of the variables which enable the infrastructure manager to determine the amount of infrastructure charges payable by a railway undertaking, namely the unit rates for the basic charge for minimum access to railway infrastructure, must be approved by the president of the ORT.
- 40 It is also apparent from that decision that, under Polish law, the right to seek annulment of a decision approving those rates is reserved solely for persons who, under the Code of Administrative Procedure, have the status of a party to the approval procedure.
- 41 It follows that railway undertakings which, like the applicant in the main proceedings, use or intend to use railway infrastructure cannot challenge the unit rates of the basic charge set by the regulatory body since they do not have the status of ‘party’ required by Polish law in order to be able to bring a legal action for that purpose. The referring court therefore seeks to ascertain whether Article 30 of Directive 2001/14 must be interpreted as meaning that they must be recognised as having the status of ‘party’ or whether the possibility of bringing such an action must be recognised for them without their having that status.

The first question

- 42 By its first question, the referring court asks, in essence, whether Article 30(2)(e) of Directive 2001/14 must be interpreted as meaning that a railway undertaking which uses or intends to use the railway infrastructure must be able to participate in a procedure conducted by the regulatory body for the purpose of adopting a decision approving or rejecting draft unit rates for the basic charge for minimum access to infrastructure submitted by an infrastructure manager, which would confer on it the status of party to such a procedure.
- 43 In that regard, it should be noted that neither Article 30 of Directive 2001/14 nor any other provision of that directive lays down a procedure for the approval of infrastructure fees or variables enabling those charges to be determined.
- 44 In particular, no provision in Chapter II of Directive 2001/14 on infrastructure charges establishes such an approval procedure.
- 45 It is true that Article 6(5) of that directive provides that Member States may require prior approval for the ‘method for apportioning costs’. However, as is apparent from the other paragraphs of that article, the method in question is established for accounting purposes in the context of financial support which the Member States may grant to infrastructure managers. It does not concern infrastructure charges.

- 46 Similarly, the approval procedure which may be established under Article 17 of Directive 2001/14, which is in Chapter III on the allocation of infrastructure capacity, does not concern the determination of infrastructure charges, but the framework agreements concluded by infrastructure managers in order to specify, for an applicant, the characteristics of the required railway infrastructure capacity.
- 47 The same applies to the prior approval of the capacity enhancement plans, referred to in Article 26 of that directive, which is also contained in Chapter III. Although that plan contains forecasts concerning the cost of enhancing infrastructure capacity and its likely impact on infrastructure charges, it cannot be inferred therefrom that it predetermines the setting of those charges.
- 48 As regards Article 30 of Directive 2001/14, that article, first, governs the powers of the regulatory body, established under paragraph 1, and, second, provides, as is apparent from paragraph 6, that decisions adopted by that body must be amenable to judicial review.
- 49 As regards the powers of the regulatory body, in accordance with Article 30(2) of Directive 2001/14, decisions adopted by the infrastructure managers, in particular those relating to the charging scheme or to the level and structure of infrastructure charges, may be challenged before that body. Paragraph 5 of that article states that the regulatory body is to be required to decide on any complaints submitted to it. In addition, it is apparent from paragraph 3 of that article that that body is responsible for ensuring that charges set by infrastructure managers comply with the provisions of that directive and for monitoring negotiations between those managers and railway undertakings. In order to carry out those tasks, the regulatory body is empowered, under Article 30(4) of Directive 2001/14, to request information, in particular from the infrastructure managers.
- 50 It follows from the foregoing that Article 30 of Directive 2001/14 does not lay down a procedure for the approval of infrastructure charges. In particular, paragraphs 2 to 5 of that article do not require infrastructure managers to subject the infrastructure charges that they intend to levy or variables used to calculate them to the regulatory body for approval. On the contrary, those provisions merely provide for a review of the charges already set, which is apparent, in particular, from paragraph 2 and the first sentence of paragraph 3 of that article. That review is a matter for the regulatory body which gives its decision either in the context of an appeal or on its own initiative.
- 51 Furthermore, the system established by Directive 2001/14 seeks to ensure the management independence of the infrastructure manager. The latter must use the charging scheme as a management tool. Thus, recital 12 in the preamble to that directive states that charging and capacity-allocation schemes must encourage railway infrastructure managers to optimise use of their infrastructure within the framework set out by Member States. In order to make such optimisation possible, those managers must have a certain degree of flexibility, as mentioned in recital 20 of that directive (judgment of 28 February 2013, *Commission v Germany*, C-556/10, EU:C:2013:116, paragraph 82).
- 52 In that regard, Article 4(1) of Directive 2001/14 establishes a division of powers as between the Member States and the infrastructure manager with regard to charging schemes. The Member States are to establish a charging framework, while the determination and collection of the charge are tasks to be performed by the infrastructure manager, who is required to ensure the application of uniform principles, as provided for in particular in Article 4(4) and (5) of that

directive (judgments of 9 November 2017, *CTL Logistics*, C-489/15, EU:C:2017:834, paragraph 49, and of 28 February 2013, *Commission v Germany*, C-556/10, EU:C:2013:116, paragraph 84).

- 53 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 that network, but also to ensure that the charges actually received meet those conditions (judgments of 9 November 2017, *CTL Logistics*, C-489/15, EU:C:2017:834, paragraph 50, and of 8 July 2021, *Koleje Mazowieckie*, C-120/20, EU:C:2021:553, paragraph 43).
- 54 Since, as is apparent from the foregoing considerations, Directive 2001/14 does not provide for a procedure for approving infrastructure charges or the variables used to determine those charges, it cannot determine whether one or another legal or natural person has the status of ‘party’ in such a procedure.
- 55 Furthermore, the concept of ‘party’, used in the Code of Administrative Procedure, falls outside the scope of that directive. In particular, appeals against decisions adopted by infrastructure managers, provided for in Article 30(2), are available to ‘applicants’. The latter concept, defined in Article 2(b) of Directive 2001/14, covers, inter alia, any licensed railway undertaking.
- 56 It should also be noted that, for the purposes of answering the first question, there is no need to examine whether Article 30 of Directive 2001/14 and, in particular, paragraphs 2 and 3 thereof, precludes an approval procedure such as that provided for by Polish law. In particular, it does not appear necessary to determine whether, in the light, in particular, of the objectives pursued by that directive and the principle of effectiveness, those provisions are contrary to the approval, by the president of the ORT, of one of the variables which allow the infrastructure manager to determine the amount of infrastructure charges payable by a railway undertaking, namely the unit rates of the basic charge for minimum access to railway infrastructure.
- 57 In the light of all the foregoing considerations, the answer to the first question is that Article 30(2)(e) of Directive 2001/14 must be interpreted as not governing the right of a railway undertaking, which uses or intends to use the railway infrastructure, to participate in any procedure conducted by the regulatory body for the purpose of adopting a decision approving or rejecting a draft unit rate for the basic charge for minimum access to infrastructure submitted by an infrastructure manager.

The second question

- 58 By its second question, the referring court asks, in essence, whether Article 30(5) and (6) of Directive 2001/14 must be interpreted as meaning that a railway undertaking which uses or intends to use the railway infrastructure must be able to challenge before the competent court the decision of the regulatory body approving the unit rates of the basic charge for minimum access to infrastructure established by the infrastructure manager.
- 59 As is apparent from paragraphs 48 and 49 above, Article 30(5) of Directive 2001/14, expressly referred to by the referring court, is not relevant for the purposes of answering the second question, since it concerns only the powers of the regulatory body. Only paragraph 6 of that article concerns judicial review of decisions adopted by that body.

- 60 In that regard, it should be noted that Article 30(6) of Directive 2001/14 requires Member States to provide for a judicial review of the decisions of the regulatory body in general and does not determine who must be recognised as having standing to bring proceedings.
- 61 Although it is, in principle, for national law to determine an individual's standing to bring legal proceedings, EU law nevertheless requires that the national legislation does not undermine the right to effective judicial protection, in accordance with the second subparagraph of Article 19(1) TEU (judgment of 21 November 2019, *Deutsche Lufthansa*, C-379/18, EU:C:2019:1000, paragraph 60 and the case-law cited).
- 62 Thus, it is for the courts of the Member States to ensure judicial protection of an individual's rights under EU law, in this case Directive 2001/14 (see, to that effect, judgments of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 38, and of 21 November 2019, *Deutsche Lufthansa*, C-379/18, EU:C:2019:1000, paragraph 59).
- 63 In the absence of EU rules, the Member States are responsible for designating the courts having jurisdiction and for determining the rules of procedure governing actions for safeguarding rights which individuals derive from EU law (judgments of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 39, and of 14 September 2017, *Petrea*, C-184/16, EU:C:2017:684, paragraph 58).
- 64 It is important to note that Directive 2001/14 confers rights on railway undertakings.
- 65 The objectives pursued by Directive 2001/14 include, in particular, that of ensuring non-discriminatory access to infrastructure, as is set out, inter alia, in recitals 5 and 11 of that directive. In addition, that directive pursues the objective of ensuring fair competition. Recital 16 of that directive states, to that end, that charging and capacity allocation schemes should allow for fair competition in the provision of railway services (see, to that effect, judgment of 9 November 2017, *CTL Logistics*, C-489/15, EU:C:2017:834, paragraphs 36 and 37).
- 66 It follows that the infrastructure manager must ensure, by virtue of Article 4(5) of Directive 2001/14, that the charging scheme is applied in such a way that different railway undertakings which perform services of an equivalent nature in a similar part of the market are subject to equivalent and non-discriminatory charges and that the charges actually applied comply with the rules laid down in the rail network statement (judgment of 9 November 2017, *CTL Logistics*, C-489/15, EU:C:2017:834, paragraph 45).
- 67 Conversely, under Article 5(1) of Directive 2001/14, railway undertakings are, on a non-discriminatory basis, to be entitled to the minimum access package and track access to service facilities that are described in Annex II. Access to the services referred to in point 2 of that annex must also be non-discriminatory, but may be rejected if viable alternatives under market conditions exist.
- 68 It should be noted that that right of access to railway infrastructure is supplemented by the charging rules contained in Chapter II of directive 2001/14, relating to infrastructure charges, in particular Article 7 thereof. Article 7(3) of Directive 2001/14 provides that the charges for the minimum access package, set out in point 1 of Annex II to that directive, and track access to service facilities must be set at the cost that is directly incurred as a result of operating the train

service, without prejudice to Article 7(4) or (5) or to Article 8 of that directive. In addition, as regards access to the services referred to in point 2 of that annex, Article 7(7) of Directive 2001/14 requires account to be taken of the competitive situation of rail transport.

- 69 It follows from the foregoing considerations that Directive 2001/14 and, in particular, Article 5(1) thereof, read in conjunction with Article 7(3) and (7) thereof, confer on railway undertakings which use or intend to use the railway infrastructure, such as the applicant in the main proceedings, rights which must be afforded judicial protection.
- 70 National legislation that does not provide for a judicial remedy enabling those undertakings to challenge a decision of the regulatory body capable of adversely affecting their rights under EU law is such as to render impossible the exercise of those rights.
- 71 So far as is relevant, it should also be recalled that the Court has already held that the provisions of Article 30(2) and (6) of Directive 2001/14 are unconditional and sufficiently precise and that they therefore have direct effect. Therefore, those provisions are binding on all the authorities of the Member States, that is to say, not only the national courts but also all the administrative bodies, including decentralised authorities, and those authorities are required to apply them (judgment of 8 July 2021, *Koleje Mazowieckie*, C-120/20, EU:C:2021:553, paragraph 58).
- 72 In the light of the foregoing considerations, the answer to the second question is that Article 30(6) of Directive 2001/14 must be interpreted as meaning that a railway undertaking which uses or intends to use the railway infrastructure must be able to challenge before the court having jurisdiction the decision of the regulatory body approving the unit rates of the basic charge for minimum access to infrastructure established by the infrastructure manager.

Costs

- 73 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 (Fourth Chamber) hereby rules:

- 1. Article 30(2)(e) of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, as amended by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007, must be interpreted as not governing the right of a railway undertaking, which uses or intends to use the railway infrastructure, to participate in any procedure conducted by the regulatory body for the purpose of adopting a decision approving or rejecting a draft unit rate for the basic charge for minimum access to infrastructure submitted by an infrastructure manager.**
- 2. Article 30(6) of Directive 2001/14, as amended by Directive 2007/58 must be interpreted as meaning that a railway undertaking which uses or intends to use the railway infrastructure must be able to challenge before the court having jurisdiction the decision of the regulatory body approving the unit rates of the basic charge for minimum access to infrastructure established by the infrastructure manager.**

[Signatures]