

Press Release

Brussels, 6 September 2012

Directive 91/440 does not require institutional separation between the rail infrastructure manager and the incumbent operator

Today, the European Court of Justice (ECJ) Advocate General Mr Jääskinen delivered his opinions in the infringement actions brought against a number of Member States by the European Commission concerning rail transport. The Commission's applications have been partially accepted: Mr Jääskinen proposed that the Court declare that Spain, Hungary and Portugal have failed to fulfill their obligations under EU law in that field.

However, for the cases concerning Austria and Germany (C-555/10 and C-556/10) the Advocate General does not support the European Commission applications and considers that Directive 91/440 does not require Member States to have in place an institutional separation between the infrastructure manager and the incumbent operator.

On the contrary, that Directive allows those States to integrate them in a single holding company. Mr Jääskinen also rejects the Commission's arguments that Germany failed to fulfill its obligations as regards the fixing of charges and the implementation of a system to limit infrastructure costs and reduce the level of access charges. In those circumstances, Mr Jääskinen considers that the Commission's actions must be dismissed.

"We will definitely analyze the complete transcript of Mr Jääskinen's opinions; in any case we can certainly state that in general terms the ECJ Advocate General shed light on an important issue and confirmed what CER has been saying about separation requirements for a long time, also in the context of the Recast of the first railway package" said CER Executive Director Libor Lochman. *"And this is an important signal not only for the institutions that will receive soon the EC proposal of a fourth railway package, but also for all those Member States that recently took a decision to separate their rail holdings not because factual economic evidence suggested it, but because of the pressure of the European Commission services based on a biased interpretation of the rail acquis".*

Bearing in mind that the Advocate General's Opinion is not binding on the Court of Justice, CER will now wait for the Court judgment later this year.

The press release for the ECJ can be found here:

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2012-09/cp120109en.pdf>

The Annexes to the Communication on the implementation of the railway infrastructure package directives ('First Railway Package') can be found here:

http://ec.europa.eu/transport/rail/doc/communication_implementation_1st_rail_pack_annexes.pdf

For further information, please contact:

The Community of European Railway and Infrastructure Companies (CER)
brings together more than 70 European railway undertakings and

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infrastructure companies. CER represents the interests of its members towards the European institutions as well as other policy makers and transport actors. CER's main focus is promoting the strengthening of rail as essential to the creation of a sustainable transport system which is efficient, effective and environmentally sound. For more information, see www.cer.be

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