Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

15 July 2021 *

(Reference for a preliminary ruling – Rail transport – Directive 2012/34/EU – Single European railway area – Article 13(2) and (6) – Access to service facilities and to rail-related services – Regulation (EU) 2017/2177 – Reconversion of facilities – Powers of the regulatory body)

In Case C-60/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia), made by decision of 30 January 2020, received at the Court on 5 February 2020, in the proceedings

'Latvijas Dzelzceļš' VAS

v

Valsts dzelzceļa administrācija,

intervener:

'Baltijas Ekspresis' AS,

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: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– 'Latvijas dzelzceļš' VAS, by D. Driče, advokāte,

– Valsts dzelzceļa administrācija, by J. Zālītis and J. Zicāns,

– 'Baltijas Ekspresis' AS, by O. Jonāns, advokāts,

* Language of the case: Latvian.

– the European Commission, initially by L. Ozola, C. Vrignon and W. Mölls, and subsequently by L. Ozola and C. Vrignon, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 February 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 13(2) and (6) of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ 2012 L 343, p. 32) and of Article 15(5) and (6) of Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services (OJ 2017 L 307, p. 1).

2 The request has been made in proceedings between 'Latvijas Dzelzceļš' VAS and the Valsts dzelzceļa administrācija (National Railway Authority, Latvia) ('the Railway Authority') concerning the latter's decision imposing on Latvijas Dzelzceļš, in its capacity as manager of the public railway infrastructure in Latvia, an obligation to guarantee access for the railway undertaking 'Baltijas Ekspresis' AS to the depot in Ventspils (Latvia) as a 'service facility' within the meaning of the applicable rail transport legislation.

Legal context

EU law

Directive 2012/34

3 Article 3 of Directive 2012/34, entitled 'Definitions', provides:

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

…

(11) "service facility" means the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more services referred to in points 2 to 4 of Annex II;

(12) "operator of service facility" means any public or private entity responsible for managing one or more service facilities or supplying one or more services to railway undertakings referred to in points 2 to 4 of Annex II;

…'

4 Article 13 of that directive, entitled ‘Conditions of access to services’, provides as follows in paragraphs 2 and 6:

‘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.

…

6. Where a service facility referred to in point 2 of Annex II has not been in use for at least two consecutive years and interest by railway undertakings for access to this facility has been expressed to the operator of that service facility on the basis of demonstrated needs, its owner shall publicise the operation of the facility as being for lease or rent as a rail service facility, as a whole or in part, unless the operator of that service facility demonstrates that an ongoing process of reconversion prevents its use by any railway undertaking.’

5 Article 27 of that directive, entitled ‘Network statement’, provides:

‘1. The infrastructure manager shall, after consultation with the interested parties, develop and publish a network statement which shall be obtainable against payment of a fee which shall not exceed the cost of publication of that statement. The network statement shall be published in at least two official languages of the [European] Union. The content of the network statement shall be made available free of charge in electronic format on the web portal of the infrastructure manager and accessible through a common web portal. That web portal shall be set up by the infrastructure managers in the framework of their cooperation in accordance with Articles 37 and 40.

2. The network statement shall set out the nature of the infrastructure which is available to railway undertakings, and contain information setting out the conditions for access to the relevant railway infrastructure. The network statement shall also contain information setting out the conditions for access to service facilities connected to the network of the infrastructure manager and for supply of services in these facilities or indicate a website where such information is made available free of charge in electronic format. The content of the network statement is laid down in Annex IV.

3. The network statement shall be kept up to date and amended as necessary.

4. The network statement shall be published no less than four months in advance of the deadline for requests for infrastructure capacity.’

6 Annex II to Directive 2012/34, containing the list of ‘services to be supplied to railway undertakings (referred to in Article 13)’, provides in paragraph 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;

(b) freight terminals;

(c) marshalling yards and train formation facilities, including shunting facilities;

(d) storage sidings;

(e) maintenance facilities, with the exception of heavy maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities;

(f) other technical facilities, including cleaning and washing facilities;

(g) maritime and inland port facilities which are linked to rail activities;

(h) relief facilities;

(i) refuelling facilities and supply of fuel in these facilities, charges for which shall be shown on the invoices separately.'

Implementing Regulation 2017/2177

7 Implementing Regulation 2017/2177 was adopted on the basis of Article 13(9) of Directive 2012/34.

8 Article 17 of that regulation, entitled 'Entry into force', provides:

'This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 June 2019.

However, Article 2 shall apply from 1 January 2019.'

Latvian law

9 The Dzelzceļa likums (Law on Railways) of 1 April 1998 (*Latvijas Vēstnesis*, 1998, No 102/105), in the version applicable to the dispute in the main proceedings ('the Law on Railways'), is intended to transpose Directive 2012/34 into Latvian law.

10 Points (26) and (27) of Article 1 of the Law on Railways define the terms used in that law as follows:

'(26) "service facility": the installation (including ground area, buildings and equipment), which has been specially arranged, as a whole or in part, to allow the supply of one or more of the services referred to in Article 12.[1](2), (3) or (4) of this Law;

(27) "service facility operator": any undertaking or department thereof that is responsible for managing one or more service facilities or for providing to railway undertakings one or more of the services referred to in Article 12.[1](2), (3) or (4) of this Law;

…'

11 Article 12.[1](2) of the Law on Railways provides that service facility operators are to guarantee for all carriers, on a non-discriminatory basis, access (including track access) to their service facilities and, where appropriate, to the services supplied in the following facilities:

'(5) maintenance facilities, with the exception of heavy maintenance facilities dedicated to other types of rolling stock requiring specific facilities;

(6) other technical facilities, including railway rolling stock cleaning and washing facilities.'

12 Article 12.[2](7) of the Law on Railways provides that, in the case where one of the service facilities referred to in Article 12.[1](2) of that law has not been in use for at least two consecutive years and interest by a transport undertaking for access to that facility has been expressed to the operator of that service facility on the basis of demonstrated needs, the owner must publicise the operation of the facility as being for lease or rent as a rail service facility, as a whole or in part, unless the operator of that service facility demonstrates that an ongoing process of reconversion prevents its use by any railway undertaking.

13 Article 12.[2](8) of the Law on Railways provides that, if one of the facilities referred to in Article 12.[1](2) of that law is not in use for at least two consecutive years, its owner may publicise the fact that all or part of the service facility is to be made available for rent, lease or sale. If no offers are received within a period of three months following publication, the facility operator is to be authorised to close it, after giving at least three months' notice to that effect to the National Railway Authority and to the public railway infrastructure manager.

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

14 Since 2002, Latvijas Dzelzceļš has leased the locomotive depot building in Ventspils, which it owns, to Baltijas Ekspresis.

15 On 20 June 2016, the lease agreement for that building was renewed until 30 April 2028. That agreement provided that Latvijas Dzelzceļš had a unilateral right to terminate the lease agreement in the event of any unforeseen necessity on its part to avail itself of that building in order to meet its own needs.

16 Under that lease agreement, the building at issue in the main proceedings was leased as office space and for the performance of economic activities. Baltijas Ekspresis carried out maintenance and repair of locomotives there.

17 On 5 September 2017, wishing to re-allocate that building to its own use, in this case in order to store its rolling stock used for the maintenance of railway infrastructure, Latvijas Dzelzceļš, in its capacity as manager of the public railway infrastructure, notified Baltijas Ekspresis that it was unilaterally terminating the lease agreement at issue in the main proceedings.

18 On 18 September 2017, Baltijas Ekspresis lodged a complaint with the Railway Authority, arguing that, in view of its capacity as carrier and operator of a service facility within the meaning of Article 1(26) of the Law on Railways, that termination constituted an infringement of competition and of the principle of non-discrimination in that, inter alia, it hindered the efficient and rational operation of and access to the service, and called on that authority not to authorise the termination of that lease agreement.

19 By its decision of 5 December 2017, the Railway Authority ordered Latvijas Dzelzceļš to guarantee access to the Ventspils depot, as a service facility, and to the services supplied there, referred to in Article 12.[1](2)(5) and (2)(6) of the Law on Railways. According to that decision, it made no difference that Baltijas Ekspresis performed activities only for itself on the leased premises. That decision states that that company performed a self-supply of services, within the meaning of Article 3(8) of Implementing Regulation 2017/2177, with the result that the interruption of the activities of the service facility concerned had to be assessed in the light of the provisions limiting the right to close a service facility, which could take place only at the end of a period of two years after the service facility in question had ceased to be used.

20 Latvijas Dzelzceļš first brought an action for annulment of that decision before the Administratīvā rajona tiesa (District Administrative Court, Latvia), and then lodged an appeal against the dismissal of that action before the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia), the referring court in the present case.

21 That court takes the view that the Ventspils depot constitutes a 'service facility', within the meaning of Article 3(11) of Directive 2012/34, in so far as that depot meets the technical requirements enabling it to carry out a supply of services. By contrast, that court finds that Baltijas Ekspresis does not perform a self-supply of services, within the meaning of Article 3(8) of Implementing Regulation 2017/2177, and that it also does not provide services to other railway undertakings. The referring court infers from this that the building concerned must be regarded as an unused service facility, the leasing or reconversion of which is governed by Article 13(6) of Directive 2012/34 and by Article 15 of Implementing Regulation 2017/2177.

22 According to the referring court, Latvijas Dzelzceļš cannot be regarded as the operator of the service facility at issue in the main proceedings, since that company is not responsible for providing information or deciding on requests in respect of access to the services provided in the Ventspils depot.

23 While acknowledging that the situation at issue in the main proceedings differs from that referred to in Article 13(6) of Directive 2012/34 and in Article 15(5) and (6) of Implementing Regulation 2017/2177, the referring court is of the opinion that an analysis of those provisions nevertheless leads to the conclusion that, in the context of the termination of a lease agreement, the railway undertaking's interest in continuing to lease the premises must prevail over the interests of the owner of those premises. However, those provisions do not permit the inference that the owner of those premises cannot give the leaseholder notice of termination of the lease agreement on the ground that that owner wishes to use the premises for its own needs.

24 Furthermore, according to the referring court, if the operator of the service facility concerned can reconvert it, there is no convincing argument to justify why the owner of that facility cannot terminate the lease agreement for that facility and reconvert it later, since there is no relevant difference between those two situations.

25 In those circumstances, the Administratīvā apgabaltiesa (Regional Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) May Article 13(2) and (6) of Directive 2012/34 (Article 15(5) and (6) of [Implementing] Regulation 2017/2177) be applied in such a way that the regulatory body may impose on an infrastructure owner who is not the service facility operator the obligation to guarantee access to those services?

(2) Must Article 13(6) of Directive 2012/34 (Article 15(5) and (6) of [Implementing] Regulation 2017/2177) be interpreted as meaning that it allows the owner of a building to terminate a leasehold and reconvert a service facility?

(3) Must Article 13(6) of Directive 2012/34 (Article 15(5) and (6) of [Implementing] Regulation 2017/2177) be interpreted as meaning that it obliges the regulatory body to establish only whether the service facility operator (in this instance, the service facility owner) really has decided to reconvert it?'

Admissibility of the request for a preliminary ruling

26 According to Latvijas Dzelzceļš, the referring court erroneously classified the Ventspils depot as a 'service facility' within the meaning of Directive 2012/34. Baltijas Ekspresis and the Railway Authority argue, for their part, that it is incorrect to take the view, as the referring court has done, that that facility is unused within the meaning of Article 13(6) of that directive.

27 In that regard, it must be held that the assessment of such arguments requires the interpretation of provisions of EU law and thus is inextricably linked to the answer to be given to the request for a preliminary ruling. Therefore, those arguments cannot entail the inadmissibility of that request (see, by analogy, judgment of 3 December 2019, *Iccrea Banca*, C-414/18, EU:C:2019:1036, paragraph 30 and the case-law cited).

28 In those circumstances, the view must be taken that the request for a preliminary ruling is admissible.

The applicability of Implementing Regulation 2017/2177

29 The decision of the Railway Authority at issue in the main proceedings was adopted on 5 December 2017, whereas Implementing Regulation 2017/2177, in accordance with Article 17 thereof, entered into force on 13 December 2017 and applies from 1 June 2019, except for Article 2 thereof, which is applicable from 1 January 2019.

30 In that regard, the referring court considers that, although that decision was adopted before the date of entry into force of that implementing regulation, its practical effects continue beyond that date. However, since the dispute in the main proceedings relates to the annulment of that decision, it must be held that Implementing Regulation 2017/2177 is not applicable *ratione temporis* to that dispute.

Consideration of the questions referred

The first question

31 By its first question, the referring court asks, in essence, whether Article 13(2) and (6) of Directive 2012/34 must be interpreted as meaning that the obligation to supply all railway undertakings with non-discriminatory access to service facilities, within the meaning of Article 3(11) of that

directive, referred to in point 2 of Annex II thereto, may be imposed by the regulatory body not only on the operators of service facilities, but also on the owners of such facilities who are not the operators of those facilities.

32 In accordance with Article 13(2) of Directive 2012/34, operators of service facilities are required to 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 those facilities.

33 The concept of 'operator of service facility' is defined in Article 3(12) of Directive 2012/34 as any public or private entity responsible for managing one or more service facilities or supplying one or more services to railway undertakings referred to in points 2 to 4 of Annex II to that directive. Consequently, that definition takes into account only the nature of the activity of a service facility operator and a supplier of railway services, irrespective of whether or not the public or private entity which operates the service facility is the owner of that facility.

34 Therefore, contrary to the submissions of the Railway Authority, Article 13(2) of Directive 2012/34 cannot be interpreted as meaning that the obligation to guarantee non-discriminatory access to service facilities also applies to the owner of the facility concerned, where that owner cannot be regarded as its operator, within the meaning of Article 3(12) of that directive.

35 That finding is not contradicted by Article 13(6) of that directive. That provision requires only owners of such facilities, where the circumstances mentioned in that provision are present, to announce publicly that the operation of those facilities is available for lease or rent.

36 In the light of the foregoing considerations, the answer to the first question is that Article 13(2) and (6) of Directive 2012/34 must be interpreted as meaning that the obligation to supply all railway undertakings with non-discriminatory access to service facilities, within the meaning of Article 3(11) of that directive, referred to in point 2 of Annex II thereto, cannot be imposed on the owners of such facilities who are not operators of those facilities.

The second question

37 By its second question, the referring court asks, in essence, whether Article 13(6) of Directive 2012/34 must be interpreted as allowing the owner of a building housing a service facility, within the meaning of Article 3(11) of that directive, to terminate a lease agreement relating to that building in order to reallocate the latter to its own use.

38 As a preliminary point, it should be noted that, for the purposes of applying Directive 2012/34, 'service facility' means, pursuant to Article 3(11) of that directive, the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more services referred to in points 2 to 4 of Annex II to that directive.

39 That definition of the concept of 'service facility' is based on an objective criterion, namely that of the technical capacity of an infrastructure to provide specific services, and does not lay down any criterion relating to the beneficiaries of those services. Such a criterion is independent both of the nature or classification of the legal title under which such a facility is operated and of the identity of the beneficiaries of those services.

40 Thus, the fact that the railway undertaking operating the infrastructure alone benefits from those services does not preclude the view that that infrastructure constitutes a 'service facility' within the meaning of Article 3(11) of Directive 2012/34.

41 In the present case, it is apparent from the request for a preliminary ruling that the facility at issue in the main proceedings was set up so that Baltijas Ekspresis could there carry out maintenance and repair activities for locomotives, which come within the scope of the services referred to in points 2 to 4 of Annex II to that directive. Therefore, as the referring court found, the Ventspils depot constitutes a 'service facility' within the meaning of Article 3(11) of Directive 2012/34.

42 For the purposes of deciding whether an infrastructure has to be regarded as a 'service facility', the following matters are irrelevant: first, the classification given to that facility in a lease agreement and, second, the circumstance of whether or not that infrastructure appears in the network statement referred to in Article 27 of Directive 2012/34. That statement sets out certain data concerning the characteristics of the infrastructure made available to railway undertakings and specifies, in particular, as stated in paragraph 2 of that article, the conditions for access to the service facilities connected to the network of infrastructure manager and for the supply of services in those facilities. However, it does not follow from that provision or from Annex IV to that directive, which sets out the content of the network statement, that the inclusion of an infrastructure in that statement constitutes a necessary condition for such an infrastructure to be classified as a 'service facility' within the meaning of Article 3(11) of that directive. Although Article 27 requires that existing service facilities be indicated in the network statement, it cannot be maintained that an omission in that regard may have the effect of calling into question the existence of such a service facility.

43 It should be noted that the application of Article 13(6) of Directive 2012/34, as is clear from its wording, presupposes, inter alia, that the service facility concerned has not been in use for at least two consecutive years.

44 In that regard, the referring court takes the view, in essence, that, since Baltijas Ekspresis does not provide, in the service facility at issue in the main proceedings, services for other railway undertakings or give access to that facility to such undertakings, the infrastructure concerned must be regarded as an unused service facility within the meaning of Article 13(6) of Directive 2012/34.

45 However, as the Advocate General observed, in particular in points 63 and 67 of his Opinion, such considerations cannot lead to the conclusion that a service facility is unused, within the meaning of that provision, when services are provided there to the operator of that facility.

46 Although, as has been pointed out in paragraph 32 of the present judgment, Article 13(2) of that directive requires the operator of a service facility to guarantee that railway undertakings have non-discriminatory access to that facility and to the services provided there, it does not follow, however, that the use of the service facility can be established only on condition that railway undertakings other than that which is the operator of the facility concerned avail themselves of it.

47 Such an interpretation is supported by the objective of Article 13(6) of Directive 2012/34, as set out in paragraph 4.4 of the explanatory memorandum to the proposal for a Directive of the European Parliament and of the Council establishing a single European railway area of 17 September 2010 (COM(2010) 475 final). In the light of that explanatory memorandum, it should be noted that that provision seeks to prevent a situation in which a service facility, even

though it is capable of meeting proven needs, continues, beyond a certain period, not to be the subject of an activity. That cannot be the case with regard to a facility where services are supplied to its operator.

48 Having regard to the information submitted to the Court, from which it is apparent that, in the main proceedings, Baltijas Ekspresis has, since 2002, continuously operated the Ventspils depot for its own railway needs, that depot must be regarded as a service facility which is in use.

49 It follows that Article 13(6) of Directive 2012/34, in so far as that provision presupposes that the service facility concerned has not been in use for at least two consecutive years, does not govern a situation such as that at issue in the main proceedings.

50 It follows that the possibility for the owner of the infrastructure at issue in the main proceedings to terminate, on the basis of national law, the lease agreement relating to that infrastructure and to reconvert it cannot, in any event, be assessed on the basis of Article 13(6) of Directive 2012/34.

51 In the light of the foregoing, the answer to the second question is that Article 13(6) of Directive 2012/34 must be interpreted as not applying to a situation in which the owner of a building housing a service facility, within the meaning of Article 3(11) of that directive, which is in use, intends to terminate a lease agreement relating to that building in order to reallocate the latter to its own use.

The third question

52 Since the referring court asks the Court, by its third question, about the interpretation of Article 13(6) of Directive 2012/34, there is no need, in view of the answer given to the second question, to answer that third question.

Costs

53 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. **Article 13(2) and (6) of 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 the obligation to supply all railway undertakings with non-discriminatory access to service facilities, within the meaning of Article 3(11) of that directive, referred to in point 2 of Annex II thereto, cannot be imposed on the owners of such facilities who are not operators of those facilities.**

2. **Article 13(6) of Directive 2012/34 must be interpreted as not applying to a situation in which the owner of a building housing a service facility, within the meaning of Article 3(11) of that directive, which is in use, intends to terminate a lease agreement relating to that building in order to reallocate the latter to its own use.**

[Signatures]