Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

3 May 2022 *

(Reference for a preliminary ruling – Article 267 TFUE – Concept of 'court or tribunal' – Criteria relating to the constitution and function of that body – Exercise of judicial or administrative functions – Directive 2012/34/EU – Articles 55 and 56 – Single national regulatory body for the railway sector – Independent regulatory authority for the sector – Entitlement to act on an *ex officio* basis – Power to impose penalties – Decisions that are open to challenge before the courts – Inadmissibility of the request for a preliminary ruling)

In Case C-453/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Úřad pro přístup k dopravní infrastruktuře (Transport infrastructure access authority, Czech Republic), made by decision of 23 September 2020, received at the Court on the same day, in the proceedings

CityRail a.s.

v

Správa železnic, státní organizace,

intervening parties:

ČD Cargo a.s.,

JUDGMENT OF THE COURT (Grand Chamber)

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, K. Jürimäe and S. Rodin, Presidents of Chambers, M. Ilešič, J.-C. Bonichot (Rapporteur), T. von Danwitz, M. Safjan, D. Gratsias, M.L. Arastey Sahún, M. Gavalec, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Czech.

after considering the observations submitted on behalf of:

– CityRail, a.s., by J. Hruška,

– Správa železnic, státní organizace, by J. Svoboda,

– ČD Cargo, a.s., by T. Tóth and Z. Škvařil,

– the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

– the Spanish Government, by L. Aguilera Ruiz, acting as Agent,

– the Netherlands Government, initially by M.K. Bulterman and M. Noort, acting as Agents, and subsequently by M.K. Bulterman, acting as Agent,

– the European Commission, initially by J. Hradil and C. Vrignon, acting as Agents, and subsequently by J. Hradil, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 16 December 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 288 TFEU and Articles 3, 27 and 31 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), as amended by Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016 (OJ 2016 L 352, p. 1) ('Directive 2012/34'), and of Annexes I, II and IV thereto.

2 The request has been made in proceedings between CityRail, a.s., a railway undertaking, and Správa železnic, státní organizace ('Správa železnic'), a railway infrastructure manager in the Czech Republic, concerning the conditions laid down by Správa železnic for access to the network and certain related facilities.

Legal context

European Union law

3 Recital 76 of Directive 2012/34 states:

'The efficient management and fair and non-discriminatory use of rail infrastructure require the establishment of a regulatory body that oversees the application of the rules set out in this Directive and acts as an appeal body, without prejudice to the possibility of judicial review. Such a regulatory body should be able to enforce its information requests and decisions by means of appropriate penalties.'

4 Article 3 of that directive, entitled ‘Definitions’, is worded as follows:

‘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 …

(2) “infrastructure manager” means any body or firm responsible for the operation, maintenance and renewal of railway infrastructure on a network, as well as responsible for participating in its development …

…

(3) “railway infrastructure” means the items listed in Annex I;

…

(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;

…

(19) “applicant” means a railway undertaking … with a public-service or commercial interest in procuring infrastructure capacity;

…

(26) “network statement” means the statement which sets out in detail the general rules, deadlines, procedures and criteria for charging and capacity-allocation schemes, including such other information as is required to enable applications for infrastructure capacity;

…’

5 Article 55 of that directive, entitled ‘Regulatory body’, provides in paragraph 1:

‘Each Member State shall establish a single national regulatory body for the railway sector. Without prejudice to paragraph 2, this body shall be a stand-alone authority which is, in organisational, functional, hierarchical and decision-making terms, legally distinct and independent from any other public or private entity. It shall also 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.’

6 Article 56 of that directive, entitled 'Functions of the regulatory body', provides:

'1. Without prejudice to Article 46(6), an applicant shall have the 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 or the operator of a service facility concerning:

(a) the network statement in its provisional and final versions;

…

(j) compliance with the requirements, including those regarding conflicts of interest, set out in Article 2(13) and Articles 7, 7a, 7b, 7c, and 7d.

2. Without prejudice to the powers of the national competition authorities …, the regulatory body shall have the power to monitor the competitive situation in the rail services markets, including in particular the market for high-speed passenger services, and the activities of infrastructure managers in relation to points (a) to (j) of paragraph 1. In particular, the regulatory body shall verify compliance with points (a) to (j) of paragraph 1 on its own initiative and with a view to preventing discrimination against applicants. It shall, in particular, check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager that may be used to discriminate against applicants.

…

6. The regulatory body shall ensure that charges set by the infrastructure manager comply with Section 2 of Chapter IV and are non-discriminatory. Negotiations 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 Chapter.

…

8. 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.

… The regulatory body shall be able to enforce such requests with appropriate penalties, including fines. …

9. The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within 1 month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision … Without prejudice to the powers of the national competition authorities …, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.

A decision of the regulatory body shall be binding on all parties covered by that decision, and shall not be subject to the control of another administrative instance. The regulatory body shall be able to enforce its decisions with the appropriate penalties, including fines.

…

10. Member States shall ensure that decisions taken by the regulatory body are subject to judicial review. The appeal may have suspensive effect on the decision of the regulatory body only when the immediate effect of the regulatory body's decision may cause irretrievable or manifestly excessive damages for the appellant. This provision is without prejudice to the powers of the court hearing the appeal as conferred by constitutional law, where applicable.

…'

Czech law

7 Under Paragraph 2(15) of the zákon č. 2/1969 Sb., o zřízení ministerstev a jiných ústředních orgánů státní správy [České republiky] (Law No 2/1969 on the organisation of ministries and other central authorities of the State administration of the [Czech Republic]):

'In the Czech Republic, the central authorities of the administration of the State are the following: … 15. the Úřad pro přístup k dopravní infrastruktuře [(Transport infrastructure access authority)].'

8 The Úřad pro přístup k dopravní infrastruktuře (Transport infrastructure access authority, Czech Republic; 'the Authority') was created by zákon č. 320/2016 Sb., o Úřadu pro přístup k dopravní infrastruktuře (Law No 320/2016 on the Transport infrastructure access authority; 'the Law on the Authority').

9 Under Paragraph 3(2) of the Law on the Authority, 'in the exercise of its powers, the Authority is independent, it shall act in an impartial manner and shall be subject only to legislation and other rules of law'.

10 Paragraph 4 of that law lays down the conditions for the appointment, in the form of a renewable term of office for six years, of the Chairperson of the Authority, a set of rules on incompatibility and the conditions under which they may be revoked.

11 Paragraphs 71 to 75, 77, 80, 81 and 85 of the zákon č. 234/2014 Sb., o státní službě (Law No 234/2014 on the civil service) contain different provisions applicable to the officials of the Authority, aimed at insuring their impartiality. Under Paragraph 11(5) of that law, those officials are not subject to the statutory provisions adopted by the Deputy Minister responsible for the civil service.

12 The Authority adopts binding decisions on the basis of the zákon č. 266/1994 Sb., o dráhách (Law No 266/1994 on railways and cable transport; 'the Law on railways') and on the basis of the general rules on administrative procedure arising from the zákon č. 500/2004 Sb., správní řád (Law No 500/2004 establishing the Code of Administrative Procedure; 'the Code of Administrative Procedure').

13 Paragraph 67 of the Code of Administrative Procedure provides in subparagraph 1:

'By decision, the administrative authority shall, in a given case, impose, amend or withdraw the rights or obligations of the person designated by name or, in a given case, declare that such a person has, or does not have, rights or obligations or, in the cases provided for by law, decide on procedural matters.'

14 Under Paragraph 73(2) of that code, 'a final decision shall be binding on the parties and on all administrative authorities'.

15 Paragraphs 152 and 153 of that code govern the procedure for complaints against decisions of the Authority before the Chairperson of the Authority.

16 As is apparent from the Authority's reply to a request for information addressed to it by the Court, under Paragraphs 23c, 23d, 34d, 34e, 34f, 34g and 58 of the Law on railways, the Authority is competent to:

– approve a draft plan of restrictions in the operation of a national or regional railway track or publicly accessible railway sidings (Paragraph 23c);

– take decisions concerning the conclusion of an agreement on the provision of services (Paragraph 23d);

– take a decision concerning threats to the economic balance of railway transport operated on the basis of a public service contract (Paragraph 34d);

– take a decision concerning the compliance of a network statement with the Law (Paragraph 34e);

– take a decision concerning the compliance of the process of capacity allocation (including framework contracts) with the Law (Paragraph 34f);

– evaluate the compliance of an agreement on the operation of railway transport with the Law (Paragraph 34g), and

– remedy shortcomings in state oversight (Paragraph 58).

17 When making a decision pursuant to Paragraphs 34e, 34f and 34g of the Law on railways, the Authority may decide upon application or *ex officio*. On the other hand, in the cases referred to in Paragraphs 23c, 23d and 34d of that law, it may decide only upon application. In the proceedings referred to in Paragraph 58 of that law, the Authority is to give its decision only *ex officio*. Moreover, all *ex officio* proceedings may be initiated on the basis of a complaint pursuant to Paragraph 42 of the Code of Administrative Procedure.

18 Decisions adopted by the Authority may be subject to judicial review. It is apparent from the rules on the allocation of jurisdiction contained, inter alia, in Part Five, entitled 'Procedure in cases decided by another authority' of the zákon č. 99/1963 Sb., občanský soudní řád (Law No 99/1963 on the Code of Civil Procedure; 'the Code of Civil Procedure') and in Paragraph 46 of the zákon č. 150/2002 Sb., soudní řád správní (Law No 150/2002 on the Code of Administrative Justice; 'the Code of Administrative Justice') that cases which by their nature come under private law must be brought before the civil courts, while the administrative courts are to rule on public law cases.

19 Paragraph 250c(2) of the Code of Civil Procedure provides that the civil courts are to allow the Authority to 'provide a written statement with respect to the application'.

20 In particular in proceedings leading to the adoption of a decision under Paragraph 34e(1) of the Law on railways, the Authority applies, in addition to the Code of Administrative Procedure, the zákon č. 250/2016 Sb., o odpovědnosti za přestupky a řízení o nich (Law No 250/2016 on liability for infringements and related proceedings). Under Paragraph 78(1) of that law, 'the Authority shall initiate proceedings concerning each infringement that comes to its attention and shall act in accordance with an *ex officio* procedure'.

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

21 Správa železnic is a public body set up by law. As the infrastructure manager and the operator of service facilities, that body is responsible for the management of a railway network and the associated service facilities in the Czech Republic.

22 Správa železnic drew up and published a network statement within the meaning of Article 3(26) of Directive 2012/34, which sets out, inter alia, the conditions governing access to certain installations as of 1 April 2020.

23 CityRail, a railway undertaking, challenged those conditions before the Authority in its capacity as the national regulatory body for the railway sector, on the basis of Paragraph 34e of the Law on railways, on the ground that they are contrary to the rules laid down by Directive 2012/34.

24 The Authority has doubts as to whether those conditions are compatible with Directive 2012/34 and as to whether the national law applicable to the dispute in the main proceedings is compatible with that directive.

25 In particular, first, the Authority expresses doubts as to the classification of the places of loading and unloading, including adjoining tracks, as service facilities within the meaning of Article 3(11) of Directive 2012/34. According to the Authority, those places should be regarded more as railway infrastructure within the meaning of Article 3(3) of that directive. Secondly, the Authority takes the view that that directive may preclude an infrastructure manager or an operator of the service facilities from altering, at any time, the amount of the railway infrastructure or service facilities charges. Thirdly, the question arises as to whether the provisions of Directive 2012/34 may be relied on by the railway undertakings against Správa železnic. Fourthly, the Authority seeks to ascertain whether the conditions for access in the network statement drawn up by Správa železnic may be regarded as discriminatory in so far as they are contrary to the requirements of that directive.

26 It is in those circumstances that the Authority decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the place of loading and unloading for the transport of goods, including related tracks, constitute part of railway infrastructure as defined by Article 3(3) of Directive 2012/34?

(2) Is it in accordance with Directive 2012/34 that an infrastructure manager may at any time change prices for the use of railway infrastructure or service facilities to the detriment of freight forwarders?

(3) Is Directive 2012/34 binding for [Správa železnic] pursuant to Article 288 [TFEU]?

(4) Can the rules set out in a network statement be deemed discriminatory if they are not consistent with the EU legislation to which [Správa železnic] is obliged to adhere?'

Admissibility of the request for a preliminary ruling

27 In its request for a preliminary ruling and in its replies to the request for information sent to it by the Court on 26 October 2020, the Authority sets out the reasons why it considers that it is a 'court or tribunal' within the meaning of Article 267 TFEU.

28 In that regard, it relies on the judgment of 22 November 2012, Westbahn Management (C-136/11, EU:C:2012:740), from which it follows that the regulatory body for the Austrian railway sector, the Schienen-Control Kommission (Railway Supervisory Board), must be classified as a 'court or tribunal' within the meaning of that provision. Since the independence of national regulatory bodies stems directly from Article 55 of Directive 2012/34, the principles of equality of the Member States and of non-discrimination require the Court to recognise the Authority as having the same status.

29 In addition, the Authority states that it follows from the Court's case-law, illustrated in particular in the judgment of 22 November 2012, Westbahn Management (C-136/11, EU:C:2012:740), that, in order to determine whether a body is a 'court or tribunal' within the meaning of Article 267 TFEU, account must be taken of a number of factors, such as whether the body in question is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent.

30 In the light of those criteria, the Authority states that it was established by the national legislature as the central administrative authority. It also follows from the Law on the Authority that it is independent in the exercise of its powers, that it acts impartially and that it is subject only to legislation and other rules of law. In particular, its acts are not reviewed by other authorities forming part of the executive.

31 The independence of the Chairperson of the Authority is also guaranteed. In particular, the Law on the Authority provides that its Chairperson may be dismissed by the government only under certain specific conditions listed in that law and that he or she has a right of appeal against dismissal decisions.

32 Since the grounds for the dismissal of the Chairperson of the Authority are laid down by law, his or her situation is not comparable to that of the Chairperson of the Úřad průmyslového vlastnictví (Industrial Property Office, Czech Republic), whose independence was called into question by the Court in its order of 14 November 2013, MF 7 (C-49/13, EU:C:2013:767). Furthermore, unlike officials of the latter organisation, those of the Authority are not subject to the statutory provisions adopted by the Deputy Minister for the Civil Service.

33 As regards the conduct of proceedings before the Authority, this is governed by the Code of Administrative Procedure, which ensures that both parties are heard.

34 When giving its decision under Paragraphs 34e, 34f and 34g of the Law on railways, the Authority is to decide upon application or *ex officio*. However, in the situations referred to in Paragraphs 23c, 23d and 34d of the Law on railways, proceedings may be initiated only upon application.

35 Furthermore, the Authority has the power to investigate and pursue, on its own initiative, infringements of the relevant legislation in the course of a particular procedure, and it may impose fines. Irregularities which it discovers during an administrative procedure may give rise to infringement proceedings.

36 Decisions adopted by the Authority must take account of the public interest and are binding.

37 The Code of Administrative Procedure provides that those decisions may be re-examined in the course of a complaints procedure. Where such a complaint is made, it is for the Chairperson of the Authority to decide on that complaint.

38 In accordance with Article 56(10) of Directive 2012/34, decisions of the Authority may be subject to judicial review. Depending on the nature of the proceedings before the Authority, the action is brought either before the administrative courts or before the civil courts.

39 As regards the procedure for reviewing the legality of the network statement at issue in the main proceedings, which forms part of a 'statement on the railways', the Authority states that that procedure is the one referred to in Paragraph 34e of the Law on railways. It could be initiated *ex officio* or, as was the situation in the present case, upon application by a party. The decision that is delivered may be the subject of an action before the national civil courts whose decisions, in accordance with the rules of civil procedure, and unlike the decisions of the administrative courts, replace those of the Authority. Moreover, if the Authority discovers irregularities during its examination, it may initiate infringement proceedings.

40 In their written observations, the Czech and Spanish Governments and the European Commission submit that the Authority is not a 'court or tribunal', within the meaning of Article 267 TFEU, permitted to make a request for a preliminary ruling to the Court. In particular, they submit, first, that the Authority is not comparable to the Austrian Rail Supervisory Commission, with the result that the considerations developed by the Court in relation to that body in the judgment of 22 November 2012, Westbahn Management (C-136/11, EU:C:2012:740), cannot be transposed to the situation of the Authority and, secondly, that the Authority performs functions of an administrative nature.

41 According to settled case-law, in order to determine whether the body making a reference is a 'court or tribunal' within the meaning of Article 267 TFEU, which is a question governed by EU law alone, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent (see, to that effect, judgments of 30 June 1966, Vaassen-Göbbels, EU:C:1966:39, p. 273, and of 29 March 2022, Getin Noble Bank, EU:C:2022:235, paragraph 66 and the case-law cited).

42 It is also clear from the settled case-law of the Court that a national court may refer a question to the Court only if there is a case pending before it and if it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature (order of 26 November 1999, ANAS, C-192/98, EU:C:1999:589, paragraph 21; and judgments of 31 January 2013, Belov,

C-394/11, EU:C:2013:48, paragraph 39; and of 6 October 2021, W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment), C-487/19, EU:C:2021:798, paragraph 84 and the case-law cited).

43 Therefore, it is appropriate to determine whether a body may refer a case to the Court on the basis of criteria relating both to the constitution of that body and to its function. In that regard, a national body may be classified as a 'court or tribunal', within the meaning of Article 267 TFEU, when it is performing judicial functions, but not when exercising other functions, inter alia functions of an administrative nature (order of 26 November 1999, ANAS, C-192/98, EU:C:1999:589, paragraph 22, and judgment of 31 January 2013, Belov, C-394/11, EU:C:2013:48, paragraph 40).

44 It follows that, in order to establish whether a national body, entrusted by law with different categories of function, must be classified as a 'court or tribunal' within the meaning of Article 267 TFEU, it is necessary to ascertain the specific nature of the functions which it exercises in the particular legal context in which it is called upon to make a reference to the Court (order of 26 November 1999, ANAS, C-192/98, EU:C:1999:589, paragraph 23, and judgment of 31 January 2013, Belov, C-394/11, EU:C:2013:48, paragraph 41).

45 This is particularly important in the case of administrative authorities whose independence is a direct consequence of the requirements arising under EU law which confers on them powers of scrutiny in the sector and powers to supervise markets. Although those authorities may satisfy the criteria listed in paragraph 41 above, arising from the judgment of 30 June 1966, Vaassen-Göbbels (61/65, EU:C:1966:39), the activity of regulating the sector and supervising the markets is essentially administrative in nature (see, by analogy, judgment of 12 November 1998, Victoria Film, C-134/97, EU:C:1998:535, paragraph 15), inasmuch as it involves the exercise of powers which are unrelated to those conferred on the courts.

46 Therefore, the Authority cannot maintain that, in so far as it satisfies those criteria, in particular the criterion relating to independence, it must necessarily be classified as a 'court or tribunal' within the meaning of Article 267 TFEU. Such an interpretation of that provision would disregard the case-law of the Court, referred to in paragraphs 42 to 44 above, from which it follows that a national body, even where its establishment by law, its permanent nature, the adversarial nature of the proceedings before it, its application of rules of law and its independence are not in doubt, can make a reference to the Court for a preliminary ruling only if, in the context of the case pending before it, it exercises functions of a judicial nature.

47 In the judgment of 22 November 2012, Westbahn Management (C-136/11, EU:C:2012:740), relied on by the Authority, the Court, when giving a preliminary ruling on a reference made by the Austrian Rail Supervisory Commission, examined only the criteria arising from the judgment of 30 June 1966, Vaassen-Göbbels (61/65, EU:C:1966:39), and thus did not examine whether that body exercised functions of a judicial nature in the context of the proceedings which gave rise to that request.

48 In that regard, the power to initiate infringement proceedings *ex officio* (see, to that effect, judgment of 31 January 2013 in Case C-394/11 Belov, EU:C:2013:48, paragraph 47, and order of 14 November 2013 in Case C-49/13 MF 7, EU:C:2013:767, paragraph 18) and the power to impose, also *ex officio*, penalties in matters within its jurisdiction (see, to that effect, judgment of 16 September 2020, Anesco and Others, C-462/19, EU:C:2020:715, paragraph 44) constitute evidence that the body in question exercises not judicial but administrative functions.

49 Moreover, the question whether the proceedings which gave rise to a request for a preliminary ruling were brought on the initiative of an interested party is not of decisive importance. The fact that a body can bring specific proceedings upon application, even though that body may also, in any event, exercise the relevant jurisdiction *ex officio*, is not such as to call into question the administrative nature of that competence.

50 The role and place of a body in the national legal system are also relevant for the purposes of assessing the nature of its functions.

51 Thus, the Court has described as 'administrative' the activities of bodies whose task is not to review the legality of a decision but to adopt a position for the first time on a complaint lodged by a person, against whose decisions there is a judicial remedy (see, to that effect, judgment of 12 November 1998, Victoria Film, C-134/97, EU:C:1998:535, paragraphs 16 and 18; orders of 24 March 2011, Bengtsson, C-344/09, EU:C:2011:174, paragraphs 22 and 23; of 14 November 2013, MF 7, C-49/13, EU:C:2013:767, paragraphs 19 and 21; and of judgment of 16 September 2020, Anesco and Others, C-462/19, EU:C:2020:715, paragraph 49).

52 Furthermore, the Court has repeatedly held that the concept of 'court or tribunal' within the meaning of Article 267 TFEU, by its very nature, can designate only an authority acting as a third party in relation to the authority which adopted the decision forming the subject matter of the proceedings (judgments of 30 March 1993, Corbiau, C-24/92, EU:C:1993:118, paragraph 15; of 30 May 2002, Schmid, C-516/99, EU:C:2002:313, paragraph 36; and of 16 September 2020, Anesco and Others, C-462/19, EU:C:2020:715, paragraph 37).

53 In the present case, it is necessary first to examine, in essence, the nature and function of a regulatory body, such as the Authority, in the system for managing and regulating rail activities established by Directive 2012/34. Articles 55 and 56 of that directive make provision for the existence, in all the Member States, of national regulatory bodies in the railway sector, lay down the principles governing their organisation and determine the powers conferred on them.

54 In that regard, it is apparent from Article 55(1) of that directive that the regulatory body is a stand-alone authority which is, in organisational, functional, hierarchical and decision-making terms, legally distinct and independent from any other public or private entity.

55 As regards the powers of that body, it follows from Article 56(1), (2), (6) and (9) of Directive 2012/34 that it is to rule not only on actions brought but it may also act *ex officio*.

56 In that regard, it is for the Commission to 'monitor the competitive situation in the rail services markets' and to review, in that context, the decisions taken by the stakeholders in the railway sector, in particular in the light of the various factors set out in Article 56(1) of Directive 2012/34. In addition, that body ensures, inter alia, that infrastructure charges are non-discriminatory and intervenes in negotiations between 'applicants' within the meaning of Article 3(19) of that directive, including, in particular, railway undertakings, and an infrastructure manager concerning the level of those charges in order to ensure compliance with the applicable legislation. Finally, on its own initiative, it takes appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in those markets.

57 Thus, the regulatory body's power to monitor the application of the rules laid down by that directive is not subject to the lodging of a complaint or an action and may therefore be exercised *ex officio* (judgment of 9 September 2021, LatRailNet and Latvijas dzelzceļš, C-144/20, EU:C:2021:717, paragraph 37).

58 Furthermore, for the purposes of its monitoring activities, the regulatory body must have, in accordance with Article 56(8) of Directive 2012/34, powers of investigation in order to collect all necessary information. It may enforce its information requests with appropriate penalties.

59 Similarly, under the second subparagraph of Article 56(9) of that directive, that body may enforce the decisions which it adopts with the appropriate penalties, including fines.

60 It thus follows from Articles 55 and 56 of Directive 2012/34, read in the light of recital 76, that the efficient management and fair and non-discriminatory use of railway infrastructure, provided for by that directive, require the establishment of an authority which is responsible, at the same time, for overseeing, on its own initiative, the application by the stakeholders in the railway sector of the rules laid down by that directive and for acting as an appeal body.

61 That combination of functions means that, where an action is brought before a regulatory body established pursuant to Article 55 of Directive 2012/34, that fact is without prejudice to the competence of that body to take, if necessary *ex officio*, appropriate measures to remedy any infringement of the applicable rules and to enforce its decisions with penalties, if it deems this necessary, which confirms the administrative nature of its functions.

62 Furthermore, Article 56(10) of Directive 2012/34 provides that Member States are to ensure that decisions taken by the regulatory body are open to judicial review, which, as has been pointed out in paragraph 51 above, is indicative of the administrative nature of such decisions (see, to that effect, order of 14 November 2013, MF 7, C-49/13, EU:C:2013:767, paragraph 19).

63 It is in the light of the foregoing considerations that it is necessary to examine next whether, notwithstanding the administrative nature of a regulatory body such as the Authority, it must be regarded, in the specific context of the functions which it carries out in the main proceedings, as a 'court or tribunal' within the meaning of Article 267 TFEU.

64 In that regard, it is apparent from the documents before the Court and, in particular, from the replies provided by the Authority to the Court's request for information, which refer to the Law on railways and to the Code of Administrative Procedure, that, in the context of its powers, with the exception of the procedures laid down in Paragraphs 23c, 23d and 34d of the Law on railways which may be implemented only 'upon application', the Authority rules both 'upon application' from an applicant and *ex officio*. Thus, Paragraph 34e(1) of the Law on railways expressly provides that the procedure to which it refers may be initiated *ex officio* or 'upon application' from an applicant.

65 The purpose of the main proceedings, which were brought by an applicant, CityRail, on the basis of Paragraph 34e(1), is to review whether a network statement forming part of a 'statement on the railways' complies with that law. According to the Authority, that provision transposes Article 56(1)(a) of Directive 2012/34. It is in the context of those proceedings that the Authority is called upon to rule on the conditions for access to certain facilities operated by Správa železnic which appear in the network statement at issue in the main proceedings.

66 According to the information provided by the Authority, under Paragraph 78(1) of Law No 250/2016 on liability for infringements and related proceedings, the Authority is to pursue, on its own initiative, any irregularities which it discovers in the course of an administrative procedure, such as that referred to in Paragraph 34e of the Law on railways. Where appropriate, it initiates separate infringement proceedings.

67 As has been pointed out in paragraphs 48 and 49 above, the Authority's power to initiate the proceedings which gave rise to the present request for a preliminary ruling, also of its own motion, like its power to investigate irregularities discovered during those proceedings on its own initiative, are particularly relevant indications, capable of supporting the finding that that body, in the main proceedings, exercises not judicial but administrative functions.

68 Furthermore, it is also apparent from the information provided by the Authority that the decisions of that body may be subject to judicial review. Where, in accordance with the rules on the division of powers set out in the Codes of Civil Procedure and Administrative Justice, the administrative courts have jurisdiction to hear an action against a decision of the Authority, the latter has the status of defendant. Furthermore, it is apparent from Paragraph 250c(2) of the Code of Civil Procedure that, before the civil courts, which, according to the Authority, have jurisdiction inter alia to hear actions against decisions adopted in the procedure referred to in Paragraph 34e of the Law on railways, the Authority has the right to submit observations, without being a party to the proceedings.

69 Such participation by the Authority in review proceedings, calling into question its own decision, is evidence that, where it adopts that decision, the Authority does not have the status of a third party in relation to the interests involved, within the meaning of paragraph 52 above (see, to that effect, judgments of 9 October 2014, TDC, C-222/13, EU:C:2014:2265, paragraph 37 and the case-law cited, and of 24 May 2016, MT Højgaard and Züblin, C-396/14, EU:C:2016:347, paragraph 25).

70 The above analysis is without prejudice to the fact that, in line with the case-law referred to in paragraph 43 above, a body performing functions of both an administrative and judicial nature and satisfying the structural criteria referred to in paragraph 41 above may be regarded as a 'court or tribunal' within the meaning of Article 267 TFEU where the judicial functions which it carries out are objectively and strictly separated from its administrative functions. That is particularly the case where certain proceedings may be brought before that body only where an action is brought and not *ex officio*, and where that body cannot be the defendant in the court action against the decisions which it takes at the end of those proceedings.

71 Nevertheless, the view must be taken that, in view of the matters set out paragraphs 64 to 69 above, the Authority in the dispute in the main proceedings does not exercise functions of a judicial nature but of an administrative nature. It cannot, therefore, be regarded as a 'court or tribunal' within the meaning of Article 267 TFEU, with the result that the request for a preliminary ruling which it has made is inadmissible.

Costs

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

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

The request for a preliminary ruling from the Úřad pro přístup k dopravní infrastruktuře (Transport infrastructure access authority, Czech Republic) is inadmissible.

[Signatures]