Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

19 March 2026*

(Reference for a preliminary ruling – Rail transport – Directive 2012/34/EC – Railway infrastructure – Management independence – Article 4(2) – Independence of the infrastructure managers – Infrastructure and services charges – Article 29(1) – Establishing, determining and collecting charges – Charging scheme for charges for the use of the German railway infrastructure – Short-distance rail passenger transport – Calculation of the amount of the charges – Multiplication of the amount of the average charges levied during a reference period by a fixed annual rate of increase laid down by law)

In Case C-770/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Köln (Administrative Court, Cologne, Germany), made by decision of 6 November 2024, received at the Court on 7 November 2024, in the proceedings

DB InfraGO AG,

DB RegioNetz Infrastruktur GmbH

v

Bundesrepublik Deutschland,

intervening parties:

DB Fernverkehr AG,

DB Cargo AG,

Land Berlin,

Bayerische Eisenbahngesellschaft mbH,

Zweckverband Nahverkehr Westfalen-Lippe,

Land Brandenburg,

Land Baden-Württemberg,

* Language of the case: German.

Land Sachsen-Anhalt,

BBL Logistik GmbH,

boxXpress.de GmbH,

DeltaRail GmbH,

Eisenbahngesellschaft Potsdam mbH,

Havelländische Eisenbahn AG,

HSL Logistik GmbH,

Hupac Intermodal SA,

ITL Eisenbahngesellschaft mbH,

Lineas NV,

METRANS Rail (Deutschland) GmbH,

Rheincargo GmbH & Co. KG,

SBB Cargo Deutschland GmbH,

TX Logistik AG,

Verkehrsbetriebe Peine-Salzgitter GmbH,

FlixTrain GmbH,

Zweckverband go.Rheinland,

RDC Autozug Sylt GmbH,

BTE BahnTouristikExpress GmbH,

THE COURT (Fourth Chamber),

composed of I. Jarukaitis, President of the Chamber, M. Condinanzi, N. Jääskinen, R. Frendo and A. Kornezov (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: F. Cathagne, Administrator,

having regard to the written procedure and further to the hearing on 4 December 2025,

after considering the observations submitted on behalf of:

– DB RegioNetz Infrastruktur GmbH and DB InfraGO AG, by R. Etzold, acting as Agent, and by H.R.J. Krüger, Rechtsanwalt,

– the Bundesrepublik Deutschland, by U. Geers, C. Mögelin and V. Schmidt, acting as Agents,

– DB Fernverkehr AG and DB Cargo AG, by C. Leitzke,

– Bayerische Eisenbahngesellschaft mbH, by L. Kohlberg and T. Stockmann, Rechtsanwälte,

– BBL Logistik GmbH, boxXpress.de GmbH, DeltaRail GmbH, Eisenbahngesellschaft Potsdam mbH, Havelländische Eisenbahn AG, HSL Logistik GmbH, Hupac Intermodal SA, ITL Eisenbahngesellschaft mbH, Lineas NV, METRANS Rail (Deutschland) GmbH, Rheincargo GmbH & Co. KG, SBB Cargo Deutschland GmbH, TX Logistik AG, Verkehrsbetriebe Peine-Salzgitter GmbH, by J. Bethge, M. Dästner and D. Stachurski, Rechtsanwälte,

– FlixTrain GmbH, by C. Maurer and D. Scholz, Rechtsanwälte,

– the Kingdom of Norway, by H. Schulstad, acting as Agent, and by L. Tvedt, advokat,

– the European Commission, by M. Noll-Ehlers and K. Walkerová, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of Article 4(2) and Article 29(1) 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').

2 That request has been made in proceedings between DB InfraGO AG and DB RegioNetz Infrastruktur GmbH and the Bundesrepublik Deutschland (Federal Republic of Germany), represented by the Bundesnetzagentur (Federal Network Agency, Germany), concerning the determination, by a decision of that agency, of the amount of the charges applicable for the use of the railway infrastructure managed by the applicants in the main proceedings.

Legal context

European Union law

3 Recitals 5, 43 and 66 of Directive 2012/34 state:

‘(5) In order to render railway transport efficient and competitive with other modes of transport, Member States should ensure that railway undertakings have the status of independent operators behaving in a commercial manner and adapting to market needs.

…

(43) Within the framework set out by Member States, charging and capacity-allocation schemes should encourage railway infrastructure managers to optimise use of their infrastructure.

…

(66) Investment in railway infrastructure is necessary and infrastructure charging schemes should provide incentives for infrastructure managers to make appropriate investments economically attractive.’

4 Article 3(2f) of that directive provides:

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

…

“essential functions” of infrastructure management means decision-making concerning train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths, and decision-making concerning infrastructure charging, including determination and collection of charges, in accordance with the charging framework and the capacity allocation framework established by the Member States pursuant to Articles 29 and 39’.

5 Article 4 of Directive 2012/34, entitled ‘Independence of railway undertakings and infrastructure managers’, provides, in paragraph 2:

‘While respecting the charging and allocation framework and the specific rules established by the Member States, the infrastructure manager shall be responsible for its own management, administration and internal control.’

6 Article 7a of Directive 2012/34, entitled ‘Independence of the essential functions’, provides, in paragraph 1 and 2(a) thereof:

‘1. Member States shall ensure that the infrastructure manager has organisational and decision-making independence within the limits set out in Article 4(2), and Articles 29 and 39, as regards the essential functions.

2. For the application of paragraph 1, Member States shall ensure in particular that:

(a) a railway undertaking or any other legal entity does not exercise a decisive influence on the infrastructure manager in relation to the essential functions, without prejudice to the role of the Member States as regards the determination of the charging framework and the capacity allocation framework and specific charging rules in accordance with Articles 29 and 39'.

7 Article 8 of that directive, entitled 'Financing of the infrastructure manager', provides, in paragraphs 2 and 4 thereof:

'2. Having due regard to Articles 93, 107 and 108 TFEU, Member States may also provide the infrastructure manager with financing consistent with its functions as referred to in point (2) of Article 3, the size of the infrastructure and financial requirements, in particular in order to cover new investments. Member States may decide to finance those investments through means other than direct State funding. In any case, Member States shall comply with the requirements referred to in paragraph 4 of this Article.

…

4. Member States shall ensure that, under normal business conditions and over a reasonable period which shall not exceed a period of five years, the profit and loss account of an infrastructure manager shall at least balance income from infrastructure charges, surpluses from other commercial activities, non-refundable incomes from private sources and State funding, on the one hand, including advance payments from the State, where appropriate, and infrastructure expenditure, on the other hand.'

8 In Chapter IV of Directive 2012/34, entitled 'Levying of charges for the use of railway infrastructure and allocation of railway infrastructure capacity', in Section 2, entitled 'Infrastructure and services charges' and comprising Articles 29 to 37 thereof, Article 29, entitled 'Establishing, determining and collecting charges', provides, in paragraph 1 thereof:

'Member States shall establish a charging framework while respecting the management independence laid down in Article 4.

Subject to that condition, Member States shall also establish specific charging rules or delegate such powers to the infrastructure manager.

Member States shall ensure that the network statement contains the charging framework and charging rules or indicates a website where the charging framework and charging rules are published.

The infrastructure manager shall determine and collect the charge for the use of infrastructure in accordance with the established charging framework and charging rules.'

9 Article 30 of that directive, entitled 'Infrastructure cost and accounts', provides, in paragraph 1 thereof:

'Infrastructure managers shall, with due regard to safety and to maintaining and improving the quality of the infrastructure service, be given incentives to reduce the costs of providing infrastructure and the level of access charges.'

10 Article 31 of Directive 2012/34, entitled 'Principles of charging', provides, in paragraph 3 thereof:

'Without prejudice to paragraph 4 or 5 of this Article or to Article 32, the charges for the minimum access package and for access to infrastructure connecting service facilities shall be set at the cost that is directly incurred as a result of operating the train service.'

11 Article 32 of that directive, entitled 'Exceptions to charging principles', provides in paragraphs 1 and 3:

'1. In order to obtain full recovery of the costs incurred by the infrastructure manager a Member State may, if the market can bear this, levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing optimal competitiveness of rail market segments. The charging system shall respect the productivity increases achieved by railway undertakings.

The level of charges shall not, however, exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.

Before approving the levy of such mark-ups, Member States shall ensure that the infrastructure managers evaluate their relevance for specific market segments, considering at least the pairs listed in point 1 of Annex VI and retaining the relevant ones. The list of market segments defined by infrastructure managers shall contain at least the three following segments: freight services, passenger services within the framework of a public service contract and other passenger services.

Infrastructure managers may further distinguish market segments according to commodity or passengers transported.

…

3. For specific future investment projects, or specific investment projects that have been completed after 1988, the infrastructure manager may set or continue to set higher charges on the basis of the long-term costs of such projects if they increase efficiency or cost-effectiveness or both and could not otherwise be or have been undertaken. …'

12 Article 33 of that directive, entitled 'Discounts', provides in paragraph 3 thereof:

'Infrastructure managers may introduce schemes available to all users of the infrastructure, for specified traffic flows, granting time limited discounts to encourage the development of new rail services, or discounts encouraging the use of considerably underutilised lines.'

German law

13 Paragraph 36 of the Eisenbahnregulierungsgesetz (Law Regulating Railways) of 29 August 2016 (BGBl. 2016 I, p. 2082), as amended by Paragraph 2 of the Gesetz zur Weiterentwicklung des Eisenbahnregulierungsrechts (Law on the development of railway regulations) of 9 June 2021 (BGBl. 2021 I, p. 1737) ('the ERegG'), entitled 'Charging structure', provides, in subparagraph 2 thereof:

'A railway infrastructure manager shall examine the extent to which the mark-ups can be applied to specific transport services or market segments. In doing so, it shall examine the pairs of transport services or market segments … and select the appropriate ones, which must include at least:

1. Freight transport services,

2. Short-distance rail passenger services and other passenger transport services under a public service contract and

3. Long-distance rail passenger transport services.

The charges applied should not exclude the use of railways by transport services or market segments which can cover at least the costs directly related to rail operations and generate a return that the market can bear. Mark-ups must be chosen in such a way that freight and passenger transport services cover all the costs borne by the railway infrastructure manager.'

14 Paragraph 37 of the ERegG, entitled 'Charging structure for railway facilities and passenger stations for passenger transport services provided under a public service contract; cost-coverage report'), provides in subparagraphs 1 and 2 thereof:

'(1) If the Federation provides the Länder with funds for short-distance public passenger transport services, in particular for short-distance rail passenger transport services (regionalisation funds), for the timetable period concerned, the Federation's railway infrastructure undertakings shall determine, for transport services[,] … the amount of the charge for use of the railway facilities by Land and for the use of passenger stations by transport authority area.

(2) The amount of the charges referred to in subparagraph 1 shall be calculated for each Land or, in the case of charges for the use of passenger stations, for each transport authority area, in such a manner that it corresponds to that of the average charges for the transportation services in question, in the Land concerned in the 2020/2021 working timetable period in the case of railway facilities, and in the corresponding transport authority area in the 2021 calendar year in the case of passenger stations. If the total amount of the regionalisation funds to which the Länder are entitled has changed between 2021 and the year in which the charge is actually payable, the amount of the charges pursuant to subparagraph 1 shall be adjusted by applying the annual rate of change specified in Paragraph 5(3) of the [Gesetz zur Regionalisierung des öffentlichen Personennahverkehrs (Regionalisierungsgesetz – RegG) (Law on the regionalisation of short-distance public passenger transport) of 27 December 1993 (BGBl. 1993 I, p. 2378, 2395)].'

15 Paragraph 45 of the ERegG, entitled 'Approval of charges and charging principles', provides, in subparagraph 1 thereof:

'The charges levied by a railway infrastructure manager for provision of the minimum access package, inclusive of the charging principles referred to under point 2 of Annex 3, must be approved by the regulatory authority. The approval shall be granted if the charges calculation complies with the requirements laid down in Paragraphs 24 to 40 and 46, and if the charging principles comply with the requirements set out in point 2 of Annex 3. If the charges calculation is not compliant with the requirements laid down in Paragraphs 24 to 40 and 46, the regulatory authority may adapt the charges calculation to the extent necessary and approve the resulting charges.'

16 Paragraph 5 of the Law on the regionalisation of short-distance public passenger transport, as amended by Paragraph 1 of the Neuntes Gesetz zur Änderung des Regionalisierungsgesetzes (Ninth Law amending the Law on regionalisation) of 20 April 2023 (BGBl. 2023 I, Nr. 107) ('the RegG'), entitled 'Financing and distribution', provides, in subparagraphs 1 to 3 and 10 thereof:

'(1) For short-distance public passenger transport services, the Länder shall be entitled to receive an annual amount from the Federation's tax revenues in accordance with the following provisions. The Federation shall therefore make a financial contribution towards those Länder tasks. Within the framework of their budgetary autonomy, the Länder shall make appropriate annual contributions of their own towards the funding of short-distance public passenger transport services.

(2) For 2016, the amount is set at EUR 8 thousand million.

(3) From 2017 up to and including 2022, the amount specified in subparagraph 2 shall increase by 1.8% per year. From 2023 up to and including 2031, the amount specified in subparagraph 2 shall increase by 3% per year.

…

(10) The dynamic of the increase in infrastructure charges, in particular the station and track charges levied by the federally owned railway infrastructure undertakings in the area of short-distance rail passenger transport services, shall be limited in accordance with railway regulatory law. By way of derogation from Paragraph 37(2) of the ERegG, the charges for use of railway facilities and for use of passenger stations shall increase by 1.8% in the years 2023 to 2025.'

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

17 DB InfraGO, one of the applicants in the main proceedings, is a legal person governed by private law and organised in the form of a public limited company. It is a wholly owned subsidiary of Deutsche Bahn AG, a mobility and transport group owned by the Federal Republic of Germany. DB RegioNetz Infrastruktur, the other applicant in the main proceedings, is a legal person governed by private law and organised in the form of a private limited company. It is a wholly owned subsidiary of DB InfraGO. As infrastructure managers, the applicants in the main proceedings collectively manage the greater part of the rail network in Germany.

18 For the use of their railway infrastructure, the applicants in the main proceedings require railway undertakings which have access to their networks to pay usage charges which must be approved in advance by the Federal Network Agency, in accordance with Paragraph 45(1) of the ERegG.

19 By decision of 22 March 2024, the Federal Network Agency granted the applicants in the main proceedings its approval in respect of the charges referred to in Annex 1 to that decision for the provision of the minimum access package for the 2024/2025 working timetable period ('the decision at issue in the main proceedings').

20 By the decision at issue in the main proceedings, the Federal Network Agency, first of all, approved the proposal of the applicants in the main proceedings to divide the sector of short-distance rail passenger transport services ('the SPNV sector') and other passenger transport services provided under a public service contract into two segments for each Land, namely one for load and one for no-load transportation, for the purpose of determining the amount of the charges applicable to each segment.

21 Next, the Federal Network Agency considered that the amount of the charges for the SPNV sector, as requested primarily by the applicants in the main proceedings, could not be approved since, in accordance with Paragraph 37(2) of the ERegG, that amount had to be calculated for each of the two segments in respect of each Land, in such a manner that they correspond to the average charges for the relevant transport services in respect of each Land in the 2020/2021 working timetable period plus the fixed annual rate of increase of 1.8%, provided for in Paragraph 5(3) and (10) of the RegG. Consequently, the Federal Network Agency recalculated the amount of the charges for each of those two segments of the SPNV sector in accordance with the requirements of those national provisions, which resulted in the approval of charges lower than those primarily requested by the applicants in the main proceedings.

22 Lastly, the Federal Network Agency decided to increase the amount of the charges applicable in the long-distance rail passenger transport services sector ('the SPFV sector') and in the rail freight services sector ('the SGV sector') by comparison with that primarily requested by the applicants in the main proceedings, in order to comply with the obligation, laid down by German law, that the charges must cover the full costs incurred by the railway infrastructure manager.

23 The applicants in the main proceedings brought an action against the decision at issue in the main proceedings before the Verwaltungsgericht Köln (Administrative Court, Cologne, Germany), which is the referring court.

24 The referring court notes that the decision at issue in the main proceedings provides for an increase, compared with the previous year, of 0.6% in the charges for the SPNV sector, of 17.7% for the SPFV sector and of 16.2% for the SGV sector. In its view, the divergence between those increases can be explained by the fact that the SPNV sector is financed by public regionalisation funds and that the determination of the amount of the charges applicable in the latter sector takes account of the availability of those funds, whereas the SPFV and SGV sectors are financed by users.

25 For the SPNV sector, the amount of the charges applicable should be calculated, pursuant to Paragraph 37(2) of the ERegG and to Paragraph 5(3) and (10) of the RegG ('the German legislation on charging'), by multiplying two values, determined and laid down by the law on railway infrastructure managers, namely the average charge applicable during the 2020/2021 reference period in the Land concerned and a fixed annual rate of increase of 1.8%.

26 Since the German legislature, at the same time, imposed on those managers an obligation that the charges must cover the full costs which they incur, actual cost increases in the SPNV sector, of 6% for 2025 and therefore significantly higher than that fixed annual rate of increase of 1.8%, can be

offset only by an increase in the amount of the charges applicable distributed between the SPFV and SGV sectors, which would lead to a disproportionate burden on those sectors. Those managers must cover their full costs by means of increases in the charges, linked to the operation of the train services, which they are to levy.

27 The referring court is uncertain whether the German legislation on charging undermines the management independence of the railway infrastructure manager, as provided for in Article 29(1) and Article 4(2) of Directive 2012/34.

28 It considers that it follows from the case-law of the Court that the Member States cannot encroach on the management independence of the railway infrastructure manager, which requires that the latter retain at least a certain degree of flexibility for the purpose of calculating the amount of the usage charges, in particular by taking decisions concerning the choice and assessment of the factors or parameters on which those calculations are to be based.

29 According to the referring court, the German legislation on charging requires the application of a mathematical formula for the calculation of the amount of charges applicable in the SPNV sector, which leaves the railway infrastructure manager no degree of flexibility to take decisions as to the amount of those charges. Accordingly, that legislation deprives that manager of the possibility of taking into account, for the purpose of calculating the amount of those charges, a greater increase in its costs or, conversely, of passing on cost reductions. It also forces that manager to offset the coverage shortfalls resulting from the insufficient amount of those charges by an increase in the amounts of the charges applicable in the SPFV and SGV sectors, even though that may be contrary to the interests of that manager.

30 In those circumstances the Verwaltungsgericht Köln (Administrative Court, Cologne) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Are Article 4(2) and Article 29(1) of [Directive 2012/34] to be interpreted as precluding national provisions that require the infrastructure manager, in the area of short-distance rail passenger transport, to calculate the charges subject to approval by multiplying the average charges for the relevant transport services in a statutory base year by an annual dynamisation rate prescribed by law?’

Consideration of the question referred

31 By its question, the referring court asks, in essence, whether Article 4(2) and Article 29(1) of Directive 2012/34 must be interpreted as precluding national legislation which requires the railway infrastructure manager to calculate the amount of the charges applicable in the SPNV sector by means of a mathematical formula consisting of multiplying the amount of the average charges levied during a reference period by a fixed annual rate of increase laid down by law.

32 It should be noted, first, that Article 4 of that directive establishes the principle of independence, in particular, of the railway infrastructure manager. Article 4(2) of Directive 2012/34 provides that ‘while respecting the charging and allocation framework and the specific rules established by the Member States, the infrastructure manager shall be responsible for its own management, administration and internal control’.

33 The scope of that principle of independence of the railway infrastructure manager is specified in Article 7a(1) of that directive, which provides that the infrastructure manager is to have organisational and decision-making independence within the limits set out in Article 4(2), and Articles 29 and 39 of that directive, as regards the 'essential functions'. In particular, under Article 7a(2)(a), Member States are to ensure that a railway undertaking or any other legal entity does not exercise a decisive influence on that manager in relation to those 'essential functions', without prejudice to the role of the Member States as regards the determination of the charging framework and the capacity allocation framework and specific charging rules in accordance with Articles 29 and 39.

34 The concept of 'essential functions of infrastructure management' covers, inter alia, as is apparent from Article 3(2f) of Directive 2012/34, decision-making concerning railway infrastructure charging, including the determination of the amount of charges and collection of charges, in accordance with the charging framework established by the Member States pursuant, inter alia, to Article 29 of that directive.

35 Second, it follows from the first and fourth subparagraphs of Article 29(1) of that directive, first, that the Member States are required to respect the management independence laid down in Article 4 of that directive when they establish a charging framework and, second, that the railway infrastructure manager is to determine the amount of the charge applicable for the use of that infrastructure and collect it in accordance with the established charging framework and charging rules.

36 Article 29(1) of Directive 2012/34 thus establishes a division of powers between Member States and the infrastructure manager with regard to charging schemes (judgment of 22 May 2025, *ÖBB-Infrastruktur and WESTbahn Management*, C-538/23, EU:C:2025:367, paragraph 35 and the case-law cited).

37 On the one hand, it is for the Member States to establish a charging framework, taking into account the charging principles laid down in Article 31 of Directive 2012/34 and, in particular, the principle that the charges for the minimum access package and for access to infrastructure connecting service facilities are to be set at the cost that is directly incurred as a result of operating the train service.

38 By way of exception to those principles, in order to obtain full recovery of the costs incurred by the railway infrastructure manager, Member States may, in accordance with the first paragraph of Article 32(1) of Directive 2012/34 and if the market can bear this, levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing optimal competitiveness of rail market segments. However, as the Court has stated, the determination of such mark-ups does not derogate from the rule on the division of powers established in Article 29(1) of that directive (see, to that effect, judgment of 22 May 2025, *ÖBB-Infrastruktur and WESTbahn Management*, C-538/23, EU:C:2025:367, paragraph 36).

39 On the other hand, the determination of the amount of the charges and their collection falls, in principle, to the infrastructure manager, who must comply with the charging framework and the charging rules established by the Member State concerned.

40 It follows from the foregoing that the charging scheme established by Directive 2012/34 is based on the principle that it is for the Member State to establish a framework for levying charges covering, inter alia, the general charging rules and that it is for the railway infrastructure

manager to implement that framework by determining and collecting the amount of the charges for the use of that infrastructure and service facilities and any mark-ups imposed on those charges (judgment of 22 May 2025, *ÖBB-Infrastruktur and WESTbahn Management*, C-538/23, EU:C:2025:367, paragraph 41).

41 In that regard, it should be borne in mind that the system established by Directive 2012/34 seeks to ensure the management independence of the railway infrastructure manager. In order for such independence to be guaranteed, it is necessary for that infrastructure manager to enjoy a degree of flexibility, within the charging framework established by the Member States, in determining the amount of the charges so as to enable it to use that flexibility as a management tool (judgments of 28 February 2013, *Commission* v *Spain*, C-483/10, EU:C:2013:114, paragraph 49, and of 22 May 2025, *ÖBB-Infrastruktur and WESTbahn Management*, C-538/23, EU:C:2025:367, paragraph 48 and the case-law cited).

42 That independence of the railway infrastructure manager in determining the amount of the charges has been recognised by the Court inter alia in the infrastructure manager's relationship with the Member State concerned and is to be assessed in the light of the balances which the EU legislature intended to establish, in particular in the exercise by that manager of its essential functions referred to in Article 7a(1) of Directive 2012/34 (see, to that effect, judgment of 9 September 2021, *LatRailNet and Latvijas dzelzceļš*, C-144/20, EU:C:2021:717, paragraphs 42 and 43 and the case-law cited).

43 More specifically, the Court has had occasion to point out that national legislation which limits the exercise of the powers of the railway infrastructure manager to determine the amount of the specific charges in each particular case, by applying a formula established in advance by ministerial order, does not comply with the requirement of the management independence of that manager (see judgment of 28 February 2013, *Commission* v *Spain*, C-483/10, EU:C:2013:114, paragraph 50).

44 If their role were to be confined to calculating the amount of the charge in each individual case, by applying a formula established in advance by ministerial order and therefore without having a degree of flexibility in setting the amount of charges, first of all, railway infrastructure managers would not be able to optimise the use of that infrastructure, by means, inter alia, of charging schemes, within the framework established by the Member States, referred to in recital 43 of Directive 2012/34 (see, to that effect, judgment of 28 February 2013, *Commission* v *Spain*, C-483/10, EU:C:2013:114, paragraph 44).

45 Next, those managers would neither be encouraged by the infrastructure charging schemes to invest in the railway infrastructure, as referred to in recital 66 of Directive 2012/34, nor to reduce the costs of provision of that infrastructure and the level of access charges, in accordance with Article 30(1) of that directive (see, to that effect, judgment of 28 February 2013, *Commission* v *Spain*, C-483/10, EU:C:2013:114, paragraphs 45 and 46).

46 Lastly, those managers would not be able to set or continue to set higher charges on the basis of the long-term costs of certain investment projects, as envisaged in Article 32(3) of Directive 2012/34, or to introduce a system of discounts on the charges levied on operators, as permitted by Article 33(3) of that directive (see, to that effect, judgment of 28 February 2013, *Commission* v *Spain*, C-483/10, EU:C:2013:114, paragraph 46).

47 Those considerations can be applied to national legislation such as the German legislation on charging at issue in the main proceedings. As stated by the referring court and confirmed at the hearing before the Court, inter alia, by the Federal Network Agency, that legislation requires railway infrastructure managers, in essence, to determine, in each Land, the amount of the charges applicable in each of the two segments of the SPNV sector by means of a mathematical formula over which they have no control, and which consists of multiplying the amount of the average charges for a reference period determined by that legislation, namely the 2020/2021 working timetable period, by a fixed annual rate, also determined by that legislation, namely a rate of 1.8%.

48 In those circumstances, it appears that the role of the railway infrastructure manager is limited to applying that mathematical formula, without having any degree of flexibility in that regard.

49 That conclusion is not called into question by the arguments put forward before the Court by the Federal Network Agency and the Bayerische Eisenbahngesellschaft mbH, according to which, in the first place, the railway infrastructure manager still has a certain degree of flexibility, in that it could (i) create additional market sub-segments in each of the two segments of the SPNV sector of each Land, (ii) influence the value of the average charges for the 2020/2021 reference period, included in the mathematical formula serving as a basis for calculating the amount of the charges for the 2024/2025 period and (iii) determine, with greater latitude, the amount of the charges applicable in the SPFV and SGV sectors.

50 In that regard, first, as regards the possibility for the railway infrastructure manager to create additional market sub-segments in each of the two segments of the SPNV sector of each Land, it emerged from the hearing before the Court that that mathematical formula would then be applicable in each of those possible additional sub-segments. It follows that such a possibility would not be such as to provide that manager with a certain degree of flexibility for the purpose of determining the amount of the charges applicable in the SPNV sector.

51 Second, as regards the argument that the railway infrastructure manager was able to influence the amount of the average charges for the 2020/2021 reference period, which is one of the two values of that mathematical formula, it is sufficient to note that that fact, even if it were established, does not in any way permit the inference that that manager had any degree of flexibility for the purpose of determining the amount of the charges applicable to the 2024/2025 working timetable, especially since that manager could not have known, at the time when the amount of the charges applicable during the 2020/2021 period was determined, that those charges would be taken into account in determining the amount of the charges for the 2024/2025 period.

52 Third, as regards the argument of the Federal Network Agency and the Bayerische Eisenbahngesellschaft, based on an alleged ‘large’ degree of flexibility that the railway infrastructure manager has in determining the amount of the charges applicable in the SPFV and SGV sectors, which ‘compensates’ for the lack of flexibility in determining the amount of the charges applicable in the SPNV sector, it should be noted that such ‘compensation’, even if it could be taken into consideration, is not sufficient to guarantee the management independence of that manager.

53 It is apparent from the order for reference that, in the present case, the SPNV sector represents more than 50% of the total volume of charges paid to the applicants in the main proceedings and that, even in the SPFV and SGV sectors, the degree of flexibility of those railway infrastructure managers appears to be limited by the obligation imposed by the national legislation under which

that total volume of charges must cover the total costs incurred by them. As pointed out by the referring court, where the charges applicable in the SPNV sector do not cover, as in the present case, the total costs incurred by those managers in that sector, the latter are obliged to pass on the identified coverage shortfall to the charges applicable in the SPFV and SGV sectors, which in turn results in a significant reduction in the degree of flexibility which those managers have in determining the amount of the charges applicable in those sectors.

54 In addition, at the hearing before the Court, DB Fernverkehr AG and DB Cargo AG, as well as BBL Logistik GmbH, boxXpress.de GmbH, DeltaRail GmbH, Eisenbahngesellschaft Potsdam mbH, Havelländische Eisenbahn AG, HSL Logistik GmbH, Hupac Intermodal SA, ITL Eisenbahngesellschaft mbH, Lineas NV, METRANS Rail (Deutschland) GmbH, Rheincargo GmbH & Co. KG, SBB Cargo Deutschland GmbH, TX Logistik AG and Verkehrsbetriebe Peine-Salzgitter GmbH stated that the amounts of the charges applicable in the SPFV and SGV sectors had, for that reason, increased to such an extent that their levels could no longer be reconciled with the objective of making rail transport efficient and competitive compared to other modes of transport, set out in particular in recital 5 of Directive 2012/34.

55 In the second place, contrary to what the Federal Network Agency and the Bayerische Eisenbahngesellschaft claim, the fact that the transport activity in the SPNV sector is financed, principally or even exclusively, by means of public funds does not justify the railway infrastructure manager being deprived, in that sector, of any degree of flexibility in determining the amount of the charges for the use of infrastructure.

56 It is true that it follows from Article 8(2) and (4) of that directive that the Member States have several possibilities, including the provision of public funds, to ensure the financial balance of railway infrastructure managers in relation to their functions, the size of their infrastructure and their financial needs for the maintenance, renewal and development of that infrastructure, including new investments. Accordingly, public funds may contribute to the financing of those managers, in particular if the charges and other revenue are not sufficient to ensure their financial balance.

57 However, no provision of Directive 2012/34 provides that it is possible to derogate from the principle of the independence of the railway infrastructure manager, established in Article 4(2) and Article 29(1) of Directive 2012/34, on the ground that the sector concerned benefits from public funding.

58 In the light of all the foregoing considerations, the answer to the question referred is that Article 4(2) and Article 29(1) of Directive 2012/34 must be interpreted as precluding national legislation which requires the railway infrastructure manager to calculate the amount of the charges applicable in the SPNV sector by means of a mathematical formula consisting of multiplying the amount of the average charges levied during a reference period by a fixed annual rate of increase laid down by law.

Limitation of the temporal effects of the present judgment

59 The Federal Network Agency, representing the Federal Republic of Germany, in its written observations, and the applicants in the main proceedings, at the hearing before the Court, ask the Court to limit the temporal effects of the present judgment solely to contracts for the use of train paths which will be concluded in the future.

60 In that regard, they state that Paragraph 37(2) of the ERegG governs all the approvals of charges applicable in the SPNV sector since 2016. The charges approved since then, which, considering all sectors together, amount to a total of almost EUR 7 billion per year, served as the basis for the contracts concluded between the applicants in the main proceedings and the railway undertakings. The charge approvals granted were not challenged in the light of EU law in the past and those contracts were concluded in good faith. Moreover, a recalculation of the charge approvals which are not yet definitive would risk causing systemic disruptions affecting, beyond the SPNV sector, also the SPFV and SGV sectors and, therefore, giving rise to a risk of serious economic repercussions. Consequently, according to those parties, the conditions for limiting the temporal effects of the present judgment are satisfied.

61 In that regard, it should be recalled that the interpretation which, in the exercise of the jurisdiction conferred on it by Article 267 TFEU, the Court gives to rules of EU law clarifies and defines the meaning and scope of those rules as they must be or ought to have been understood and applied from the time of their entry into force. It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the EU legal order, be moved to restrict for any person concerned the opportunity of relying on a provision which it has interpreted with a view to calling into question legal relationships established in good faith. Two essential criteria must be fulfilled before such a limitation can be imposed, namely that those concerned should have acted in good faith and that there should be a risk of serious difficulties, with those criteria being cumulative (judgment of 22 June 2021, *Latvijas Republikas Saeima (Penalty points)*, C-439/19, EU:C:2021:504, paragraphs 132 and 136 and the case-law cited).

62 Accordingly, the Court has taken that step only in quite specific circumstances, notably where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force and where it appeared that individuals and national authorities had been led to adopt practices which did not comply with EU law by reason of objective, significant uncertainty regarding the implications of provisions of EU law, to which the conduct of other Member States or the European Commission may even have contributed (judgment of 26 October 2021, *PL Holdings*, C-109/20, EU:C:2021:875, paragraph 60).

63 As regards, more specifically, the criterion relating to the existence of a risk of serious difficulties, it should be recalled that it is for the Member State seeking to limit the temporal effects of a judgment on a preliminary ruling to produce, before the Court, figures showing the risk of such repercussions (judgment of 20 December 2017, *Erzeugerorganisation Tiefkühlgemüse*, C-516/16, EU:C:2017:1011, paragraph 91 and the case-law cited).

64 In the present case, while it is true that the circumstances summarised in paragraph 60 above indicate the existence of a risk of economic repercussions owing in particular to the large number of legal relationships liable to be affected, directly or indirectly, by the consequences arising from the present judgment, it nevertheless appears that that risk must be significantly qualified.

65 It is settled case-law that, in accordance with the principle of legal certainty, EU law does not require that administrative bodies be placed under an obligation, in principle, to reopen an administrative decision which has become final upon expiry of reasonable periods for legal remedies or by the exhaustion of remedies and that the full effectiveness of EU law and effective protection of the rights which individuals derive from it may, where appropriate, be ensured by

the principle of State liability for loss or damage caused to individuals as a result of breaches of EU law for which the State can be held responsible (judgment of 18 November 2021, *État belge (Pilot training)*, C-413/20, EU:C:2021:938, paragraphs 57 and 60).

66 In the present case, the Federal Network Agency and the applicants in the main proceedings do not claim that that agency is obliged to reconsider the authorisation of the charges approved by decisions which have become final, with the result that it has not been established that the present judgment could affect all the contracts concluded between those applicants and the railway undertakings since 2016. Indeed, the Federal Network Agency and those applicants stated at the hearing before the Court that only the administrative decisions approving the charges for the 2023/2024 and 2024/2025 working timetables were open to dispute and that, as regards the dispute relating to 2023/2024 working timetable, the question of the compatibility of the German legislation on charging with Directive 2012/34 had not been raised.

67 In addition, the Federal Network Agency stated, at the hearing before the Court, that the implementation of the present judgment would lead, in essence, to a reallocation, by means of the reduction of certain charges and the increase in other charges, of approximately EUR 800 to 850 million for the 2024/2025 working timetable, which means that the economic repercussions to be expected are, in reality, much more limited than those initially relied on by that agency and noted in paragraph 60 above.

68 In any event, the mere reliance at the hearing before the Court on the figures cited in the preceding paragraph is insufficient to establish the existence of a risk of serious repercussions, within the meaning of the case-law cited in paragraphs 62 and 63 above.

69 In those circumstances, it must be held that the second criterion referred to in paragraph 61 above is not satisfied, with the result that it is not necessary to ascertain whether the criterion relating to the good faith of those concerned is satisfied.

70 It follows from the foregoing that it is not appropriate to limit the temporal effects of the present judgment.

Costs

71 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

Article 4(2) and Article 29(1) of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, as amended by Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016, must be interpreted as

precluding national legislation which requires the railway infrastructure manager to calculate the amount of the charges applicable in the sector of short-distance rail passenger transport services by means of a mathematical formula consisting of multiplying the amount

of the average charges levied during a reference period by a fixed annual rate of increase laid down by law.

[Signatures]