

**Case C-499/20**

**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

1 October 2020

**Referring court:**

Symvoulío tis Epikrateias (Greece)

**Date of the decision to refer:**

27 August 2020

**Applicant:**

DIMCO Dimovasili M.I.K.E.

**Defendant:**

Ypourgos Perivallontos kai Energeias (Minister for the Environment and Energy)

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**Subject matter of the main proceedings**

Application for annulment of provisions of the Technikos Kanonismos Esoterikon Egkatasaseon Fysikou Aeriou me piesi leitourgias eos kai 0.5 bar (Technical Regulation for Gas Installations with an operating pressure of up to 0.5 bar) concerning gas pipes.

**Subject matter and legal basis for the request for a preliminary ruling**

Article 267 TFEU, interpretation of Directive 97/23/EC

**Question referred for a preliminary ruling**

- Must Articles 4(1.1), 7(4) and 8 of Directive 97/23/EC of the European Parliament and of the Council of 29 May 1997 on the approximation of the laws of the Member States concerning pressure equipment, (OJ 1997 L 181), read in combination with Annex I to that Directive, be interpreted as

meaning that they preclude national regulations, such as the contested paragraphs 1.2.4, P9.5.6.9 and P9.5.8.2 of the Greek Technical Regulation for Gas Installations with an operating pressure of up to 0.5 bar, which impose conditions and restrictions as to the installation method used for pressure equipment (gas pipes), such as compulsory ventilation and a ban on underfloor pipe lines, in order to protect persons, primarily from earthquakes, especially where those conditions and restrictions also apply indiscriminately to pipes which, as in this case, have the CE marking and which the manufacturer guarantees can be safely installed and used without complying with the abovementioned conditions and restrictions?

- Or, conversely, must the above provisions of Directive 97/23/EC, read in combination with Article 2 of the Directive, be interpreted as meaning that they do not preclude conditions and restrictions as to the installation method used for pressure equipment (gas pipes), such as those at issue in this case?

### **Relevant provisions of EU law**

Directive 97/23/EC of the European Parliament and of the Council of 29 May 1997 on the approximation of the laws of the Member States concerning pressure equipment (OJ 1997 L 181, p. 1): Articles 1, 2, 3, 4, 7, 8 and 16 and Annex I

### **Relevant provisions of national law**

- 1 Directive 97/23/EC was transposed into Greek law by Joint Ministerial Decision of the Minister for Economy and the Deputy Minister for Development (Government Gazette, Series II, No 987, 27.5.1999).
- 2 On 28 March 2012, a decision adopted by the Deputy Minister for the Environment, Energy and Climate Change was published (Government Gazette, Series II, No 976, 28.3.2012), approving the Technical Regulation for Gas Installations with an operating pressure of up to 0.5 bar ('the contested technical regulation') and laying down guidelines for the design, materials, installation, inspection, testing, safety and operation of internal systems and domestic gas installations.
- 3 Paragraph 1.2.3 of the contested technical regulation stipulates, inter alia, that internal gas installations, that is all pipes, instruments, apparatus, sumps, structural elements and other accessories between the point of delivery/acceptance of the gas and the exhaust flue outlet of the installation must also meet the requirements of the corresponding directives including, with regard to pressure equipment, the requirements of Directive 97/23/EC where the equipment has been manufactured for a maximum permissible pressure (PS) greater than 0.5 bar.
- 4 The contested technical regulation contains installation rules for gas pipes. To be precise, paragraph 1.2.4 states that the 'installation method for gas pipes does not

fall within the scope of a directive or directives and is laid down in the [contested technical regulation], having regard to the specific characteristics of the country (e.g. earthquakes)'. That rule is further specified in Annex 9 to the contested technical regulation entitled 'Specifications for pipe systems'.

- 5 Although that Annex is described as being 'for information purposes', point 9.5 (headed 'Handling and installing pipes') contains mandatory rules, including in point P9.5.6.9 ('Pipe conduits in structural cavities') of paragraph P9.5.6 on the installation of unburied pipes, which states that 'where pipe lines are installed in structural cavities, e.g. in false ceilings, the cavity must be ventilated, e.g. via

– peripheral openings in the surrounding walls;

– two diagonally opposed ventilation apertures each measuring 20 cm<sup>2</sup> [...]',

and in point P9.5.8.2 of paragraph P9.5.8, which states that 'gas pipe lines must not be placed beneath concrete slabs or within flooring or paving. They may be installed in conduits, in cavities in a false ceiling or within a layer of sound insulation (or similar) above a false ceiling, provided measures are taken to protect them against corrosion as required for buried pipes'.

#### **Brief summary of the facts and proceedings**

- 6 The applicant in the main proceedings imports and distributes flexible stainless steel pipes in Greece.
- 7 On 16 May 2012, the applicant in the main proceedings lodged an application with the referring court seeking annulment of various provisions of the contested technical regulation concerning gas pipes.
- 8 The referring court delivered a final ruling on the grounds for annulment of other provisions of the contested technical regulation, whereby that court upheld the application in part and dismissed it as to the remainder. It did not deliver a final ruling on the grounds for annulment of the rules in the contested technical regulation set out in paragraphs 4 and 5 above.

#### **Principal arguments of the parties to the main proceedings**

- 9 The applicant in the main proceedings submits that the contested technical regulation promotes the use of other types of pipes, namely conventional rigid steel and copper gas pipes, but not the pipes which the applicant sells, and that, at the same time, it creates barriers and hindrances to use and the freedom to place goods on the market, making it impossible in practice to use, market and distribute the pipes sold by the applicant on the relevant market.
- 10 The applicant in the main proceedings argues that the conditions and restrictions imposed (paragraphs 1.2.4, P9.5.6.9 and P9.5.8.2), namely the obligation to

ventilate the cavity via openings where pipe conduits are installed in a structural cavity (such as a false ceiling), on the one hand, and the ban on the installation of gas pipe lines inside concrete slabs or within floors, in so far as they the goods (pipes) which the applicant sells, on the other, infringe Article 4(1.1) of Directive 97/23/EC. That is because, as confirmed by the manufacturer of the above goods, which have a CE marking certifying that they has duly undergone ‘conformity assessment’ in accordance with Article 10 of the Directive, use of the pipes sold by the applicant in the main proceedings is possible in natural gas installations without complying with the contested conditions and restrictions.

- 11 As regards the general provision in paragraph 1.2.4 of the contested technical regulation, which states that the installation method for gas pipes does not fall within the scope of an EU directive, the applicant in the main proceedings relies on Annex I to Directive 97/23/EC which, in several of its individual provisions (such as points 1.1 and 1.2), also refers to the ‘installation’ of pressure equipment. With regard to the additional requirements of the identical provision in the contested technical regulation, namely that the ‘installation method for gas pipes ... is laid down in the [contested technical regulation], having regard to the specific characteristics of the country (e.g. earthquakes)’, the applicant in the main proceedings again cites Annex I to the Directive, which includes the requirement that pressure equipment must be designed for ‘traffic, wind, earthquake loading’ (point 2.2.1).
- 12 The applicant in the main proceedings submits in that regard that it follows from the provisions of Annex I to the Directive, read in combination with Article 4(1.1) thereof, that it is not permitted, in order to protect against earthquakes, to impose additional conditions and restrictions, such as the contested restrictions concerning the installation of gas pipes (such as the products which the applicant sells), which have a CE marking and which the manufacturer has certified in its instructions can be (safely) installed and used without complying with those restrictions. Such restrictions can be imposed only with the involvement of the European Commission and in accordance with the procedure laid down in Articles 7(4) and 8 of Directive 97/23/EC.
- 13 The applicant in the main proceedings further argues that the above provisions of the contested technical regulation are also inconsistent with the guidelines of the Working Group ‘Pressure’ set up with the aim of ensuring compliance with the provisions of Directive 97/23/EC, which, in its view, ‘made an authoritative interpretation’ of that Directive.
- 14 The defendant contends that, on the contrary, the contested rules have their basis in Article 2 of the Directive.

#### **Brief summary of the basis of the order for reference**

- 15 The referring court considers that the guidelines of the Working Group concerned are not a legally binding instrument of interpretation, let alone an ‘authentic

interpretation' of Directive 97/23/EC. That court therefore rejects the complaints based on the contrary contention, irrespective of the fact that Guideline 9/24 adopted by the Working Group on 18 March 2004 states in Note 3 that national requirements can address installation conditions of the pressure equipment or assembly, e.g. in order to protect operators, environment or the pressure equipment / assembly itself.

- 16 The referring court is of the opinion that it follows from the provisions of Directive 97/23/EC that it applies to the design, manufacture and conformity assessment of pressure equipment and assemblies with certain technical properties (Article 1) and imposes obligations on the Member States relating to the placing on the market and putting into service of that equipment. However, the Directive expressly recognises the right of the national authorities to lay down, with due regard for the Treaty establishing the European Community (now the Treaty on the Functioning of the European Union), the 'requirements' they deem necessary on safety grounds, provided that does not mean modifications to the equipment (see Article 2 of the Directive).
- 17 That being so, the contested provisions of the contested technical regulation (paragraphs 1.2.4, P9.5.6.9 and P9.5.8.2) imposing conditions and restrictions as to the installation method for the gas pipes in light of the specific characteristics of the country, especially its susceptibility to earthquakes, have their basis in Article 2 of the Directive provided, first, that the restrictions imposed, which comply with the principle of proportionality and were deemed technically necessary in the authority's opinion, primarily to protect human life and health, do not infringe the provisions of the Treaty on the Functioning of the European Union (in particular Article 36) and apply to all types of pipes irrespective of their material and country of origin and, second, that the above restrictions do not entail modifications to the equipment sold by the applicant in the main proceedings, on the other. Consequently, the ground for annulment under consideration should be dismissed as unfounded. However, the provisions of Articles 4(1), 7(4) and 8 of Directive 97/23/EC, read in combination with the Annexes thereto (in particular Annex I), give rise to reasonable doubts that make it necessary to refer the question to the Court for a preliminary ruling.