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Judgment of the Court in Case C-5/22 | Green Network (Order for repayment of costs)

### **National regulatory authorities for energy may have the power to order electricity undertakings to repay sums received in breach of consumer protection requirements**

*Consumer protection falls within the remit of those authorities*

In 2019, the Autorità di Regolazione per Energia Reti e Ambiente (Regulatory Authority for Energy, Networks and the Environment, Italy) imposed on Green Network, an Italian electricity and natural gas distribution undertaking, an administrative fine of EUR 655 000 for having breached obligations relating to tariff transparency. That authority also ordered that undertaking to repay its final customers the sum of EUR 13 987 495.22, invoiced to them in respect of administrative management costs pursuant to a contractual term considered to be unlawful by that authority.

After unsuccessfully challenging that decision before an administrative court, Green Network brought an appeal before the Italian Council of State, before which it claimed that the power of the national regulatory authority to require the repayment of sums invoiced to customers, provided for under Italian law, was contrary to Directive 2009/72.<sup>1</sup>

In that context, the Council of State referred two questions to the Court of Justice for a preliminary ruling concerning Article 37(1) and (4) of Directive 2009/72, relating to the powers of regulatory authorities, and Annex I thereto, which sets out the measures to be taken by Member States to protect consumers.

In its judgment, **the Court states that Article 37(1)(i) and (n)<sup>2</sup> and Article 37(4)(d)<sup>3</sup> of Directive 2009/72 and Annex I thereto do not preclude a Member State from conferring on a national regulatory authority the power to order electricity undertakings to reimburse their final customers for the sums paid by those customers to cover 'administrative management costs' pursuant to a contractual term considered to be unlawful by that authority.** The same is true in cases where that order for repayment is based not on considerations of the quality of the relevant services provided by those undertakings, but on the breach of obligations relating to tariff transparency.

<sup>1</sup>Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

<sup>2</sup>Those provisions concern, respectively, the duties of regulatory authorities with regard to ensuring compliance with transparency obligations and consumer protection.

<sup>3</sup>That provision provides that regulatory authorities have the power to impose effective, proportionate and dissuasive penalties on electricity undertakings not complying with their obligations under Directive 2009/72 or any relevant legally binding decisions of the regulatory authority, or to propose that a competent court impose such penalties.

## Findings of the Court

The Court holds, first of all, that, in order to pursue the objectives of Directive 2009/72, that directive requires Member States to confer wide powers on their national regulatory authorities to regulate and monitor the market in electricity, in particular with a view to ensuring consumer protection.

Next, it notes that Article 37 of Directive 2009/72, concerning the duties and powers of the regulatory authority, does not mention the power to require electricity undertakings to repay any sums received as consideration under a contractual term considered to be unlawful. However, the use, in Article 37(4) of Directive 2009/72, of the words 'the regulatory authority shall have at least the following powers' indicates that powers other than those expressly mentioned in Article 37(4) may be conferred on such an authority in order to enable it to carry out the tasks referred to in Article 37(1), (3) and (6) of that directive.

Furthermore, ensuring compliance with the transparency obligations incumbent on electricity undertakings and protecting consumers fall within the scope of the duties of national regulatory authorities referred to in Article 37(1), (3) and (6) of that directive.

The Court therefore finds that **a Member State may grant such an authority the power to require those operators to repay sums received by them in breach of consumer protection requirements**, in particular those concerning the obligation of transparency and the accuracy of invoicing.

Such an interpretation is not called into question by the fact that Article 36 of Directive 2009/72 provides, in essence, that the national regulatory authority is to take the necessary measures 'in close consultation with other relevant national authorities including competition authorities, as appropriate, and without prejudice to their competencies', or that Article 37(1)(n) of that directive contains the words 'together with other relevant authorities'.

It is not apparent from those provisions that, in a case such as that in the main proceedings, only one of those other national authorities may order the repayment of sums unduly received from final customers by electricity undertakings. On the contrary, the use of the words 'as appropriate' implies that such consultation is only necessary where the measure whose adoption is envisaged is likely to have implications for other relevant authorities.

Last, the Court states that, in so far as consumer protection and compliance with transparency obligations fall within the scope of the duties referred to in Article 37 of Directive 2009/72, the exact reason why, in order to accomplish one of those duties, an electricity undertaking is ordered to reimburse its customers is irrelevant.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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