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Court of Justice of the European Union

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Judgment in Case C-121/15

Association nationale des opérateurs détaillants en énergie (ANODE) v
Premier Ministre and Others

Security of supply and territorial cohesion are objectives of general interest which may justify State intervention in fixing the price of supply of natural gas

However, the permanent regulation of tariffs at national level, imposed only on certain undertakings in the natural gas sector, might prove discriminatory and go beyond what is necessary

In France the authorities require the incumbent supplier of natural gas, GDF-Suez, and local distribution undertakings and Total Energie Gaz, to offer natural gas at regulated prices (maximum prices) to certain categories of consumers.¹ At the same time, all suppliers of natural gas (including the undertakings which have to supply natural gas at regulated tariffs) have the possibility of offering to supply natural gas at prices lower than the regulated tariffs.

The Association nationale des opérateurs détaillants en énergie (National Association of Energy Retailers, ANODE) contests the French authorities' intervention in the price of supply of natural gas. ANODE considers that the regulation of natural gas tariffs in France disregards the objectives of the directive on the internal market in natural gas,² as interpreted by the Court of Justice in a judgment of 20 April 2010.³ According to ANODE, the regulation of tariffs is an obstacle to the achievement of a competitive market in natural gas, especially as the conditions set out in the 2010 judgment are not satisfied.

The French Conseil d'État, which is hearing the case, asks the Court of Justice whether the regulation of natural gas tariffs in France is such an obstacle and, if so, whether the obstacle is justified.

In today's judgment the Court recalls that the objective of the directive is the free fixing of the price of supply of natural gas by the play of supply and demand. However, the regulated tariffs in the present case are not in any way the result of a free determination deriving from the play of supply and demand in the market. Quite the contrary, those tariffs are the result of a determination made on the basis of criteria imposed by the public authorities, which is thus outside the dynamics of market forces. The Court concludes that such regulation is by its very nature an obstacle to the achievement of a competitive natural gas market, and that obstacle exists even though competing offers can be made by suppliers at prices lower than the regulated tariffs.

The Court then examines whether the regulation of natural gas tariffs in France may be justified having regard to the principles identified in the *Federutility* judgment of 2010. According to that judgment, the Member States may intervene in the fixing of the price of supply of natural gas to final consumers only on condition that the intervention (1) pursues a general economic interest, (2) is proportionate, and (3) lays down public service obligations that are clearly defined, transparent, non-discriminatory and verifiable while guaranteeing equal access of EU gas undertakings to consumers.

¹ These are final consumers of natural gas who consume less than 30 000 kilowatt hours a year (essentially households and small and medium-sized undertakings). In 2014, 67.5% of all household sites and 40.2% of all non-household sites (such as small and medium-sized undertakings) were supplied at regulated tariffs.

² Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009 L 211, p. 94).

³ Judgment of the Court of 20 April 2010, *Federutility* (C-265/08).

As regards the objective in the general interest, the French authorities refer to the need to ensure security of supply and territorial cohesion. The Court acknowledges that the Member States may, in the general economic interest, impose public service obligations relating to the price of supply of natural gas on undertakings operating in the gas sector in order to ensure security of supply and territorial cohesion.

As regards the proportionality of the regulation in question, the Court observes that it will be for the Conseil d'État to assess whether such regulation is necessary for achieving the objectives of general interest referred to by the French authorities. In particular, the Court doubts whether the objective of territorial cohesion can be pursued by imposing regulated tariffs throughout national territory, particularly if it is possible to apply regulated tariffs to certain categories of customers in remote areas identified according to objective geographical criteria. Similarly, the fact that the tariff regulation in question is permanent could fail to comply with the criterion of proportionality. The Conseil d'État will also have to ascertain whether the method of intervention in prices does not go beyond what is necessary for achieving the objectives of general economic interest pursued and whether there are no appropriate measures that are less restrictive.

Finally, it must be determined whether such a system, which appears to benefit domestic customers and small and medium-sized undertakings in the same way, complies with the requirement of proportionality with respect to the personal scope of the measure, having regard to the objectives of general interest pursued.

As regards the third and last condition stated in the *Federutility* judgment, the Court notes that public service obligations (such as the obligation to supply gas at certain tariffs) must be imposed generally on undertakings in the gas sector, not on certain undertakings specifically. In addition, the system of designating the undertakings responsible for public service obligations may not exclude a priori any of the undertakings operating in the gas distribution sector. It will therefore be for the Conseil d'État to ascertain whether the disputed regulation of tariffs is not discriminatory.

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 European Union law or the validity of a European Union 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.

Press contact: Holly Gallagher ☎ (+352) 4303 3355