



Press and Information

Court of Justice of the European Union

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Judgment in Case C-378/19
President of the Slovak Republic

The fact that in the Slovak Republic, the power to appoint and to dismiss the president of the national regulatory authority passed from the President of the Republic to the government does not in itself constitute an infringement of the electricity market directive

Similarly, subject to respecting the regulatory authority's independence, the Slovak Republic may, to ensure the public interest is protected, prescribe that representatives of its ministries participate in certain procedures before that authority

In October 2017, the President of the Slovak Republic brought an action before the Ústavný súd Slovenskej republiky (Constitutional Court of the Slovak Republic) seeking a declaration that certain national provisions concerning the Úrad pre reguláciu sieťových odvetví (Network Industries Regulatory Authority, Slovak Republic),¹ which constitutes a 'national regulatory authority' in particular within the meaning of the electricity market directive,² are incompatible with the Slovak constitution, read in conjunction with EU law.

The current President of the Slovak Republic, who continued the proceedings brought by her predecessor, takes the view that the Slovak legislature twice interfered with the independence, which is ensured by that directive, of the Slovak regulatory authority. The first interference comprised the transfer from the President of the Republic, directly elected by citizens, to the government, of the power to appoint and dismiss the president of that authority. The second resulted from the increase in the number of parties to the price-setting procedure before that authority to include representatives of national ministries who, in that procedure, are supposed to protect the public interest.

In that context, the Ústavný súd Slovenskej republiky asked the Court of Justice whether the directive, which specifically refers to strengthening the regulatory authority's independence, precludes the national provisions at issue.

By today's judgment, the Court observes that the directive requires the Member States to ensure, through requirements concerning members of the national regulatory authority's staff and the persons responsible for its management, that that authority carries out its regulatory tasks free from any external influence. However, the Court points out that the directive does not prescribe the Member State authority/ies which is/are to be responsible for appointing and dismissing the board members or senior management of the national regulatory authority, in particular its president.

Consequently, and in light of the broad discretion of the Member States in choosing the ways and means of ensuring that directives adopted by the EU are implemented, **the directive does not prohibit the government of a Member State from being able to appoint and dismiss the president of the national regulatory authority**, to the extent that that authority's independence is duly safeguarded, which, in the present case, it is for the Ústavný súd Slovenskej republiky to review by reference to Slovak law.

¹ Those provisions are found in Law No 250/2012, as amended by Law No 164/2017.

² 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).

As regards the alleged second interference by the Slovak legislature with the independence of the national regulatory authority, the Court points out that that authority must adopt its decisions autonomously and based solely on the public interest, to ensure compliance with the objectives of the directive, without being subject to external instructions from other public or private bodies.

In that regard, the Court states however that **the directive does not prohibit representatives of national ministries participating in certain procedures concerning price setting**, which relate in particular to access to the network for transmission and distribution of electricity as well as to transmission and distribution of electricity. Accordingly, Member States can adopt rules permitting such participation, to the extent that the national regulatory authority's independence in decision-making is safeguarded, which, in the present case, it is for the Ústavný súd Slovenskej republiky to review.

The fact, therefore, that the provisions at issue prescribe participation by representatives of national ministries in certain procedures concerning price setting does not necessarily, and on that basis alone, mean that the regulatory authority at issue is not carrying out its pricing functions independently. Similarly, the directive does not preclude the government of a Member State, in particular through representatives of its ministries participating in the procedures previously mentioned, from setting out before that authority its position on how it considers that authority could take account of the public interest when exercising its regulatory functions.

However, that participation and, in particular, **the opinions expressed by those representatives** in the course of the procedures at issue **cannot be binding nor in any case be regarded** by the national regulatory authority **as instructions** which it is required to follow when carrying out its functions and its powers. Further, if the functions and powers of that authority, which are set out in the directive, make its decisions binding and directly applicable, participation by those representatives in the procedures at issue cannot affect the nature of those decisions mentioned above. In particular, the rules for participation by representatives of the national ministries cannot require that decisions of the regulatory authority, prior to their implementation, be subject to prior approval or authorisation by those representatives.

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.

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