

2. Or is the provision in question (Article 23) to be read in conjunction with Article 3 of Directive 2003/55/EC (which provides that Member States may impose on undertakings operating in the gas sector, in the general economic interest, public service obligations which may relate inter alia to the price of supplies) as meaning that it is not contrary to those provisions of Community law for a national provision which, having regard to the particular circumstances of the market, still characterised by an absence of conditions of 'effective competition', at least in the wholesale sector, to allow a public authority to set a reference price for natural gas which has to be quoted by every supplier in its commercial offers to its domestic customers within the scope of the universal service concept, despite the fact that all customers must be treated as 'free'?

(¹) OJ L 176, p. 57.

Action brought on 25 June 2008 — Commission of the European Communities v Kingdom of Sweden

(Case C-274/08)

(2008/C 236/10)

Language of the case: Swedish

Parties

Applicant: Commission of the European Communities (represented by: B. Schima and P. Dejmek, acting as Agents)

Defendant: Kingdom of Sweden

Form of order sought

— Declare that, by failing to adopt appropriate measures to ensure that the requirement for a functional division between distribution and production interests in a vertically integrated undertaking in accordance with Article 15(2)(b) and (c) of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (¹) and by failing to make the regulatory authorities responsible for approving, in advance, at least the methodologies used to calculate or establish the terms and conditions for access to national networks, including

transmission and distribution tariffs in accordance with Article 23(2)(a) thereof, the Kingdom of Sweden has failed to fulfil its obligations under that directive;

— order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

In support of its contention that Article 15(2)(b) and (c) has been implemented in Swedish law, Sweden has referred to various provisions in the Law on electricity (ellagen), from which, inter alia, it is apparent that network activity (distribution activity) is to be dealt with separately in the accounts and that the network undertaking's auditor is particularly to audit those separate accounts. Further, Sweden has submitted that costs which a network undertaking has in common with another undertaking are to be entered in the accounts only to the extent that they concern the network undertaking. In addition, the network undertaking is required to establish a supervisory plan and ensure that it is followed.

Nevertheless, the Commission takes the view that the clear requirement for organisation of the management structure under Article 15(2)(b) and (c) cannot be regarded as satisfied by general rules concerning, for example, separate accounting or generally applicable sanctions.

According to Sweden, the requirement for a functional division is also satisfied by the general company law provisions in the Law on limited companies (aktiebolaglagen), in accordance with which parent companies and subsidiaries are separate legal persons and legal entities.

The Commission takes the view that the parent company, in its capacity as majority shareholder, has a decisive influence over its subsidiary or subsidiaries, since certain important questions are reserved for decision by the shareholders. A distribution undertaking and its board of directors can thus never be independent of its majority shareholders on the basis only of general company law. Nor does the fact that an integrated undertaking complies with the provisions of the aktiebolaglagen concerning auditing and restrictions on the transfer of assets mean, in the Commission's view, that the requirement for an independent management structure is satisfied. According to the Commission, correct implementation of Article 15(2)(b) and (c) in national law presupposes that there are binding rules which clearly reflect the conditions laid down in those provisions, that is to say, a guarantee that the management of a distribution undertaking can act independently of the integrated electricity undertaking as regards distribution and the means necessary to guarantee the operation, maintenance and development of the network. That requirement is not satisfied by the provisions in the aktiebolaglagen.

As is apparent from the wording of Article 23(2)(a) of the Directive, that article requires a system of advance approval of network tariffs or, in any event, of the methodologies used to calculate them. Sweden has expressly stated that the present Swedish rules on the calculation of network tariffs and the criteria which network tariffs must satisfy are based on a system in which supervision is carried out after the event, but that inquiries are presently taking place regarding the introduction of a new system of advance approval and that a proposal would probably be put before parliament in June 2008.

In the abovementioned circumstances, the Commission takes the view that Sweden has not correctly implemented Directive 2003/54/EC in its national law, in particular Articles 15(2)(b) and (c) and 23(2)(a) thereof.

(¹) OJ 2003 L 176, p. 37.

Reference for a preliminary ruling from the Tribunal administratif (Luxembourg) lodged on 26 June 2008 — Miloud Rimoumi and Gabrielle Suzanne Marie Prick v Ministre des Affaires étrangères et de l'Immigration

(Case C-276/08)

(2008/C 236/11)

Language of the case: French

Referring court

Tribunal administratif

Parties to the main proceedings

Applicants: Miloud Rimoumi and Gabrielle Suzanne Marie Prick

Defendant: Ministre des Affaires étrangères et de l'Immigration

Question referred

Are Articles 2(2)(a), 3(1) and 7(2) of Directive 2004/38/EC on the right of citizens of the Union and their family members to

move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (¹) to be interpreted as applying only to those family members who acquired that status prior to the date on which the Union citizen, whom they intend to accompany or join, exercised his/her right of free movement conferred by Article 39 of the EC Treaty, or, on the contrary, is any citizen of the Union who has exercised his/her right of free movement and become established in a Member State other than that of which that person is a national entitled to be joined by a family member, without the latter having to satisfy a condition as to the time at which he/she acquired that status?

(¹) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

Reference for a preliminary ruling from the Cour de cassation (France) lodged on 30 June 2008 — Société Moteurs Leroy Somer v Société Dalkia France, Société Ace Europe

(Case C-285/08)

(2008/C 236/12)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant: Société Moteurs Leroy Somer

Respondents: Société Dalkia France, Société Ace Europe