



C/2026/442

2.2.2026

**Request for a preliminary ruling from the Bundesverwaltungsgericht (Austria) lodged on  
12 September 2025 – ES v Energie-Control Austria für die Regulierung der Elektrizitäts- und  
Erdgaswirtschaft**

**(Case C-605/25, Energie-Control Austria II)**

(C/2026/442)

*Language of the case: German*

**Referring court**

Bundesverwaltungsgericht

**Parties to the main proceedings**

*Applicant:* ES

*Respondent:* Energie-Control Austria für die Regulierung der Elektrizitäts- und Erdgaswirtschaft

**Questions referred**

1. Must Article 41(1)(a) and (6) of Directive 2009/73/EC<sup>(1)</sup>, in conjunction with Article 17(1) of Regulation (EU) 2024/1789<sup>(2)</sup> (formerly Article 13(1) of Regulation (EU) No 715/2009), be interpreted as meaning that the national legislature, in transposing Article 41(1) and (6) of Directive 2009/73/EC, in conjunction with Article 17(1) of Regulation (EU) 2024/1789, must clearly determine, as regards the methodologies to be approved or fixed for calculating the transmission tariffs, whether
  - (a) the national regulatory authority may approve a methodology within the meaning of Article 41(1) and (6) of Directive 2009/73/EC, in conjunction with Article 17(1) of Regulation (EU) 2024/1789, only upon the request of the TSO,
  - (b) or whether the regulatory authority may also fix such a methodology unilaterally and ex officio, irrespective of whether a request has been submitted.
2. If the answer to Question 1 is that the national legislature must, in transposing Article 41(1)(a) and (6)(a) of Directive 2009/73/EC, opt for one of the abovementioned variants (a) or (b): Must Paragraph 69(2) of the Gaswirtschaftsgesetz 2011 (Law on the gas industry 2011) be brought into line with the abovementioned provisions of EU law if that provision provides that the regulatory authority is to 'periodically approve, by way of decision, the methodologies submitted by the transmission system operator (TSO) either upon request of the transmission system operator or ex officio'?
3. If the answer to Question 1 is that no definitive choice of model needs to be made by the national legislature: Is a provision of national law which allows the regulatory authority, despite a request submitted by the TSO for the approval of a methodology, to nevertheless fix ex officio and with final effect a different methodology from that requested by the TSO, where the regulatory authority considers the methodology submitted by the TSO and already modified at its request not to be capable of approval, compatible with the aforementioned provisions of EU law, in the light of Article 41(1)(a) and (6)(a) of Directive 2009/73/EC?

<sup>(1)</sup> 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).

<sup>(2)</sup> Regulation (EU) 2024/1789 of the European Parliament and of the Council of 13 June 2024 on the internal markets for renewable gas, natural gas and hydrogen, amending Regulations (EU) No 1227/2011, (EU) 2017/1938, (EU) 2019/942 and (EU) 2022/869 and Decision (EU) 2017/684 and repealing Regulation (EC) No 715/2009 (OJ L, 2024/1789).

4. Is a provision of national procedural law (regard being had to the relevant case-law of the supreme courts issued in this regard) compatible with EU law if it requires that a court reviewing, in appeal proceedings, a decision of a regulatory authority within the meaning of Article 41(1) and (6) of Directive 2009/73/EC must rule on the substance of the case itself, both where the facts relevant to the decision have been established and where they have not, including by substituting (its) regulatory discretion for that of the regulatory authority?
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