

JUDGMENT OF THE COURT (Third Chamber)

9 October 2008*

In Case C-239/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Lietuvos Respublikos Konstitucinis Teismas (Lithuania), made by decision of 8 May 2007, received at the Court on 14 May 2007, in proceedings for the review of the constitutionality of legislation brought by

Julius Sabatauskas and Others,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, A. Ó Caoimh, J.N. Cunha Rodrigues, U. Löhmus and P. Lindh (Rapporteur), Judges,

Advocate General: J. Kokott,
Registrar: C. Strömholm, Administrator,

* Language of the case: Lithuanian.

having regard to the written procedure and further to the hearing on 24 April 2008,

after considering the observations submitted on behalf of:

— Mr Sabatauskas and Others, by G. Kaminskas, advokatas,

— the Lithuanian Government, by D. Kriauciūnas and R. Mackevičienė, acting as Agents,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by W. Ferrante, avvocato dello Stato,

— the Finnish Government, by J. Heliskoski and A. Guimaraes-Purokoski, acting as Agents,

— the Commission of the European Communities, by B. Schima and A. Steiblytė, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 June 2008,

gives the following

Judgment

- ¹ This reference for a preliminary ruling relates to the interpretation of Article 20 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 (OJ 2003 L 176, p. 37, ‘the Directive’).

- ² The reference was made in proceedings before the Lietuvos Respublikos Konstitucinis Teismas (Constitutional Court of the Republic of Lithuania), brought by Mr Sabatauskas and others, members of the Lithuanian Parliament, to review the constitutionality of Article 15(2) of the Law on Electricity, in the version resulting from Law No IX-2307 of 1 July 2004 (Lietuvos Respublikos elektros energetikos įstatymo pakeitimo įstatymas No IX-2307, Žin., 2004, No 107-3964).

Legal context

Community legislation

3 Article 1 of the Directive states:

‘This Directive establishes common rules for the generation, transmission, distribution and supply of electricity. It lays down the rules relating to the organisation and functioning of the electricity sector, access to the market, the criteria and procedures applicable to calls for tenders and the granting of authorisations and the operation of systems.’

4 Recitals 2, 4 to 7, 13, 15 and 17 in the preamble to the Directive are worded as follows:

‘(2) Experience in implementing [Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity (OJ 1997 L 27, p. 20)] shows the benefits that may result from the internal market in electricity, in terms of efficiency gains, price reductions, higher standards of service and increased competitiveness. However, important shortcomings and possibilities for improving the

functioning of the market remain, notably concrete provisions are needed to ensure a level playing field in generation and to reduce the risks of market dominance and predatory behaviour, ensuring non-discriminatory transmission and distribution tariffs, through access to the network on the basis of tariffs published prior to their entry into force...

...

- (4) The freedoms which the [EC] Treaty guarantees European citizens — free movement of goods, freedom to provide services and freedom of establishment — are only possible in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.

- (5) The main obstacles in arriving at a fully operational and competitive internal market relate amongst other things to issues of access to the network, tariffication issues and different degrees of market opening between Member States.

- (6) For competition to function, network access must be non-discriminatory, transparent and fairly priced.

- (7) In order to complete the internal electricity market, non-discriminatory access to the network of the transmission or the distribution system operator is of paramount importance...

...

- (13) Further measures should be taken in order to ensure transparent and non-discriminatory tariffs for access to networks. Those tariffs should be applicable to all system users on a non-discriminatory basis.

...

- (15) The existence of effective regulation, carried out by one or more national regulatory authorities, is an important factor in guaranteeing non-discriminatory access to the network. Member States specify the functions, competences and administrative powers of the regulatory authorities. It is important that the regulatory authorities in all Member States share the same minimum set of competences. Those authorities should have the competence to fix or approve the tariffs, or at least, the methodologies underlying the calculation of transmission and distribution tariffs. In order to avoid uncertainty and costly and time consuming disputes, these tariffs should be published prior to their entry into force.

...

- (17) In order to ensure effective market access for all market players, including new entrants, non-discriminatory and cost-reflective balancing mechanisms are necessary. As soon as the electricity market is sufficiently liquid, this should be achieved through the setting up of transparent market-based mechanisms for the supply and purchase of electricity needed in the framework of balancing requirements. In the absence of such a liquid market, national regulatory authorities should play an active role to ensure that balancing tariffs are non-discriminatory and cost-reflective. At the same time, appropriate incentives should be provided to balance in-put and off-take of electricity and not to endanger the system.'

5 Article 2 of the Directive, headed 'Definitions', states:

'For the purposes of this Directive:

...

3. "transmission" means the transport of electricity on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but not including supply;

...

5. “distribution” means the transport of electricity on high-voltage, medium voltage and low voltage distribution systems with a view to its delivery to customers, but not including supply;

...

7. “customers” means wholesale and final customers of electricity;

...

9. “final customers” means customers purchasing electricity for their own use;

10. “household customers” means customers purchasing electricity for their own household consumption, excluding commercial or professional activities;

...

12. “eligible customers” means customers who are free to purchase electricity from the supplier of their choice within the meaning of Article 21 of this Directive;

...

18. “system users” means any natural or legal persons supplying to, or being supplied by, a transmission or distribution system;

19. “supply” means the sale, including resale, of electricity to customers;

...’

⁶ It is clear from Article 21(1)(c) of the Directive that from 1 July 2007 Member States are to ensure that all customers are eligible customers within the meaning of the Directive.

7 Article 3 of the Directive, headed ‘Public service obligations and customer protection’, states:

‘ ...

3. Member States shall ensure that all household customers, and, where Member States deem it appropriate, small enterprises (namely enterprises with fewer than 50 occupied persons and an annual turnover or balance sheet not exceeding EUR 10 million), enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable and transparent prices. To ensure the provision of universal service, Member States may appoint a supplier of last resort. Member States shall impose on distribution companies an obligation to connect customers to their grid under terms, conditions and tariffs set in accordance with the procedure laid down in Article 23(2). Nothing in this Directive shall prevent Member States from strengthening the market position of the domestic, small and medium-sized consumers by promoting the possibilities of voluntary aggregation of representation for this class of consumers.

The first subparagraph shall be implemented in a transparent and non-discriminatory way and shall not impede the opening of the market provided for in Article 21.

...’

8 Article 5 of the Directive, headed 'Technical rules', states:

'Member States shall ensure that technical safety criteria are defined and that technical rules establishing the minimum technical design and operational requirements for the connection to the system of generating installations, distribution systems, directly connected consumers' equipment, interconnector circuits and direct lines are developed and made public. These technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory...'

9 Article 20 of the directive, headed 'Third party access', states:

'1. Member States shall ensure the implementation of a system of third party access to the transmission and distribution systems based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users. Member States shall ensure that these tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 23 and that these tariffs, and the methodologies — where only methodologies are approved — are published prior to their entry into force.

2. The operator of a transmission or distribution system may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3. Member States shall ensure, where appropriate and when refusal of access takes place, that the transmission or distribution system operator provides relevant information on measures that would be necessary to reinforce the network. The party requesting such information may be charged a reasonable fee reflecting the cost of providing such information.'

10 Article 23 of the Directive, headed ‘Regulatory authorities’, states:

‘1. Member States shall designate one or more competent bodies with the function of regulatory authorities. These authorities shall be wholly independent from the interests of the electricity industry. They shall, through the application of this Article, at least be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market, monitoring in particular:

...

(c) the time taken by transmission and distribution undertakings to make connections and repairs;

...

(f) the terms, conditions and tariffs for connecting new producers of electricity to guarantee that these are objective, transparent and non-discriminatory, in particular taking full account of the costs and benefits of the various renewable energy sources technologies, distributed generation and combined heat and power;

...

2. The regulatory authorities shall be responsible for fixing or approving, prior to their entry into force, at least the methodologies used to calculate or establish the terms and conditions for:

- (a) connection and access to national networks, including transmission and distribution tariffs. These tariffs, or methodologies, shall allow the necessary investments in the networks to be carried out in a manner allowing these investments to ensure the viability of the networks;

...'

National legislation

- 11 It is apparent from the order for reference that, on 1 July 2004, the Lithuanian Parliament adopted Law No IX-2307 amending the Law on Electricity. The purpose of Law No IX-2307 of 1 July 2004 was, inter alia, to transpose the Directive into national law. That law came into force on 10 July 2004.

- 12 Article 15(2) of the Law on Electricity, in the version resulting from Law No IX-2307 of 1 July 2004, is worded as follows:

‘A transmission system operator shall ensure that the conditions for connection to the transmission network of the equipment of electricity generating installations, of distribution network operators and of customers are in conformity with the requirements laid down in legislation and are non-discriminatory. A customer’s equipment may be connected to a transmission network only in cases where the distribution network operator refuses, on account of established technical or operating requirements, to connect to the distribution network the equipment of the customer which is on the territory indicated in the distribution network operator’s licence.’

The main proceedings and the question referred for a preliminary ruling

- 13 It is apparent from the order for reference that, in Lithuania, the equipment of most electricity customers (also known as electricity consumers) is connected to distribution systems operated by two distribution system operators. Those two operators are the principal users of the transmission systems. In addition, five companies operate local distribution systems designed to meet their own needs and those of persons living in quite a small area. Lastly, six companies operating industrial undertakings are connected directly to transmission systems. These connections date from the Soviet era when no distinction was made between the generation, transmission and distribution of electricity. Thus, a situation has arisen in which some electricity consumers remain connected to the equipment of those industrial undertakings and

the supply to those consumers depends on the technical and financial capacity of the undertakings.

- 14 Following the amendment, by Law No IX-2307 of 1 July 2004, of the Law on Electricity and, in particular, of Article 15(2) thereof, new customers are unable to choose freely the type of system to which they may connect their equipment and must connect to a distribution system. The customer concerned may connect his equipment to a transmission system only where the distribution system operator refuses connection to its system on account of technical or operating constraints.
- 15 Proceedings were brought before the Lietuvos Respublikos Konstitucinis Teismas by a group of Members of Parliament seeking review of the constitutionality of Article 15(2) of the Law on Electricity, in the version resulting from Law No IX-2307 of 1 July 2004. That court observes that, in accordance with Article 102 of the Constitution, it is entrusted with the task of reviewing whether laws comply with the Constitution. It states that proceedings may be brought *inter alia* by a group of Members of Parliament. When examining whether a law is constitutional, it decides a dispute between the person or persons bringing the action and the institution which has adopted the contested law, namely the Lithuanian Parliament. Its decisions are not subject to appeal.
- 16 The Lietuvos Respublikos Konstitucinis Teismas states that, according to the Constitution, provisions of European Union law are to be a constituent part of the legal system of the Republic of Lithuania and that, where this follows from the Treaties founding the European Union, those provisions are to be applied directly and, in the case of conflict, take precedence over national provisions. As the Directive was adopted on the basis of Articles 45 EC, 55 EC and 95 EC, the national court is of the view that it is necessary to interpret Article 15(2) of the Law on Electricity, in the version resulting from Law No IX-2307 of 1 July 2004, in the light of the Directive.

17 The Members of Parliament who brought the proceedings before the national court claim that Article 15(2) fails to ensure that customers are free to choose between a transmission or distribution system for the purpose of connecting their equipment. They state that Article 20 of the Directive does not expressly restrict the ability of an electricity customer to connect his equipment to a transmission system nor does it oblige him to connect only to a distribution system.

18 It is apparent from the order for reference that, in contrast, the Lithuanian Parliament contends that Member States are free to determine the rules for connecting to the electricity system. Before the national court, a letter of 21 December 2005 from Mr Piebalgs, Member of the Commission of the European Communities with responsibility for energy was relied on, in which it was stated that the Directive ‘does not require that the customer be granted a right to choose at his discretion between connection to a transmission system or connection to a distribution system. The customer has the right to be connected to an electricity system; thus, its detailed implementation is left to be decided on the basis of subsidiarity’.

19 The national court states that, accordingly to the wording of Article 20(1) of the Directive, Member States are to create a system in which customers will be granted, at their request, access to either the transmission or to the distribution system. However, the national court also notes that the question of connection to the electricity system must also be considered in the light of the provisions of the Directive, in particular Article 3 thereof, which pursue objectives of a social nature, namely the provision of universal service, consumer protection and environmental protection. Article 15(2) of the Law on Electricity, in the version resulting from Law No IX-2307 of 1 July 2004, also appears to pursue those objectives.

20 Against that background, the Lietuvos Respublikos Konstitucinis Teismas decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 20 of [the] Directive ... to be interpreted as obliging Member States to establish legal rules whereby any third party has the right, at his discretion, provided that the electricity system has ‘the necessary capacity’, to choose the system — electricity transmission system or electricity distribution system — to which he wishes to be connected and the operator of that system has an obligation to grant access to the network?’

The question referred

21 By its question, the national court seeks to ascertain whether Article 20 of the Directive must be interpreted as obliging Member States to lay down rules which provide, first, that any third party may choose at his discretion the type of system (also referred to in the Directive as ‘network’) — a transmission system or a distribution system — to which he wishes to connect and, second, that the system operator is required to allow him to access or connect to its system where the latter has the necessary capacity.

Observations submitted to the Court

- 22 The applicants in the main proceedings claim that Article 20 of the Directive requires Member States to create a system of network access which allows all customers who apply access to either the transmission or the distribution system. The only exception to that principle is set out in Article 20(2) of the Directive. It follows from the definition of the term ‘transmission’ given in Article 2 of the Directive that the transmission of electricity to the customer may be direct without using the distribution system.
- 23 Article 15(2) of the Law on Electricity, in the version resulting from Law No IX-2307 of 1 July 2004, does not grant the customer the freedom to choose the system to which his equipment will be connected. That provision is, thus, discriminatory and runs counter to the objectives of the Directive. That lack of choice infringes the rights of consumers.
- 24 The Lithuanian and Finnish Governments, joined at the hearing by the Commission, contend that, in order to interpret Article 20 of the Directive, it is necessary to distinguish between the concepts of ‘access’ and ‘connection’. Access to the system covers the possibility of using the system on the basis of the published tariff. Connection to the network means physical connection to the system. Article 20 concerns only those obligations which Member States are to fulfil in order to enable third parties freely to access the electricity transmission and distribution systems and does not concern connection to those networks.
- 25 The Lithuanian Government is of the view that, with the exception of the universal service obligations provided for in Article 3(3), the Directive does not impose any obligation on Member States regarding the connection of customers to networks.

- 26 It contends that, in connecting to the electricity network, the customer accesses that network. The national legislation at issue in the main proceedings thus does ensure access for him to the electricity system and, in addition, guarantees compliance with public service obligations and the obligation to provide universal service, laid down in Article 3(2) and (3) of the Directive.
- 27 As to the remainder, Member States remain free to lay down that customers are to be connected primarily to the distribution system and only in the alternative to the transmission system. The access system introduced by the national legislation at issue in the main proceedings has inter alia the objective of preventing large customers from connecting directly to the transmission systems, which would result in the costs burden connected with distribution systems falling exclusively on small customers and thus raising the price of electricity by between 10% and 30%. In addition, the freedom to choose to connect to a transmission system would prejudice the optimal development of the systems.
- 28 In the Finnish Government's view, the term 'third party' referred to in Article 20 of the Directive describes an electricity supplier other than a unit of a vertically integrated undertaking ensuring the generation and supply of electricity. The provision does not therefore concern consumer access to the systems.
- 29 According to the Italian Government, the Directive does not afford a customer the right to choose, at will, the network to which he wishes to connect. He must, first, comply with the 'system of access' introduced by the national legislation. The customer thus enjoys a conditional right of access to the system. However, if

Member States could require customers to address their request first to a distribution system operator, there would be infringement of the consumer's freedom of choice and a risk of discriminatory application of the access rules by the distribution system operator.

30 According to the Commission, as the issue of connection does not have a direct impact on the liberalisation of the internal market, it is left within the competence of Member States, with the exception of the connection of the most vulnerable customers, for whom Member States are to implement universal service, in accordance with Article 3(3) of the Directive.

The Court's reply

31 The aim of the Directive is to improve the operation of the internal market in electricity. According to recitals 6 and 7 in its preamble, non-discriminatory, transparent and fairly priced network access is necessary for competition to function and is of paramount importance in completing the internal electricity market (see Case C-439/06 *citiworks* [2008] ECR I-3913, paragraphs 38 and 40).

32 Recital 4 in the preamble to the Directive states that a fully open market must enable consumers freely to choose their suppliers and suppliers freely to deliver to their customers.

33 The Court has inferred from this, first, that, in order for eligible customers to be able freely to choose their suppliers, it is necessary that suppliers should have the right to

access the transmission and distribution systems which carry electricity to customers and, second, that open third party access to transmission and distribution systems constitutes one of the essential measures which the Member States are required to implement in order to bring about completion of the internal market in electricity (see *citiworks*, paragraphs 43 and 44).

34 In order to provide an answer to the question referred, it is necessary to investigate what ‘access to the system’ and ‘third party’ mean for the purposes of Article 20 of the Directive and to determine the obligations which Article 20 imposes on Member States in order to ensure third party access to the systems.

35 Article 20(1) of the Directive provides that Member States are to ensure the implementation of ‘a system of third party access to the transmission and distribution systems ..., applicable to all eligible customers’ and that that system is to be ‘applied objectively and without discrimination between system users’.

36 First, with regard to the concept of ‘access to the system’, it is necessary to investigate whether, as asserted by the Lithuanian and Finnish Governments, as well as by the Commission at the hearing, a distinction must be drawn between the concepts of ‘access’ and ‘connection’.

37 In that regard, differences between certain language versions of the Directive should be noted. In a number of language versions, both the first sentence of Article 20(1) and the first sentence of Article 20(2) use the word ‘access’. This is, for example, the case in the following language versions: Spanish (‘acceso’), German (‘Zugang’), English (‘access’), French (‘accès’) and Italian (‘accesso’). However, in the Lithuanian version of the Directive the word ‘prieiga’ (‘access’) is used in Article 20(1) whilst Article 20(2) uses the word ‘prisijungti’ which may be translated into English by

‘connect’. The word ‘prisijungti’ is also used in recitals 2 and 6 of the Lithuanian version of the Directive, whereas the other language versions referred to use the word ‘access’ or its equivalent.

38 It is settled case-law that the wording used in one language version of a Community provision cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Such an approach would be incompatible with the requirement for uniform application of Community law (see Case C-149/97 *Institute of the Motor Industry* [1998] ECR I-7053, paragraph 16, and Case C-187/07 *Endendijk* [2008] ECR I-2115, paragraph 23).

39 Where there is divergence between the various language versions of a Community text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (Case C-437/97 *EKW and Wein & Co* [2000] ECR I-1157, paragraph 42; Case C-1/02 *Borgmann* [2004] ECR I-3219, paragraph 25; and *Endendijk*, paragraph 24).

40 The terms ‘access’ and ‘connection’ appear in the Directive with different meanings. The term ‘access’ is linked to the supply of electricity, including inter alia the quality, regularity and cost of the service. It is often used in the context of guaranteeing non-discriminatory tariffs. Thus, it is stated in recitals 2 and 13 in the preamble to the Directive that access to the network on the basis of tariffs published prior to their entry into force guarantees non-discriminatory transmission and distribution tariffs, in recital 6 that that access must be non-discriminatory, transparent and fairly priced, in recital 15 that the intervention of regulatory authorities guarantees non-discriminatory access to the network and in recital 17 that non-discriminatory and cost-

reflective balancing mechanisms are necessary in order to ensure effective market access for all market players.

41 The term ‘connection’ is used, in particular, in a technical context and relates to physical connection to the system. Thus, Article 5 of the Directive provides that Member States are to ensure that technical rules establishing the minimum technical design and operational requirements for the connection to the system of generating installations, distribution systems, directly connected consumers’ equipment, interconnector circuits and direct lines are developed and made public. Likewise, Article 23(1)(c) of the Directive states that the regulatory authorities are to be responsible for ensuring non-discrimination and effective competition, particularly as regards the time taken by transmission and distribution undertakings to make connections. Moreover, according to Article 23(2)(a) of the Directive, those authorities are to fix or approve the methodologies used to calculate or establish the terms and conditions for connection to networks. In that regard, and as the Advocate General rightly observed at point 33 of her Opinion, Article 23(2)(a) uses the terms ‘access’ and ‘connection’ in the same sentence. It follows that the two terms cover different meanings. In addition, it is appropriate to mention Article 3(3) of the Directive which states that, in order to ensure the provision of universal service, Member States may impose on distribution companies an obligation to connect customers to their grid.

42 Thus, it is apparent from that examination of the provisions of the Directive that, as the Advocate General indicated at points 34 and 36 of her Opinion, access to the system includes the right to use electricity systems and that connection corresponds to physical connection to the system. Article 20 of the Directive imposes obligations on Member States only in respect of access to the system and not in respect of connection thereto.

43 Since, first, transmission and distribution do not include the supply of electricity and, second, eligible customers must be able to freely choose their suppliers and those suppliers must be able to access the systems, as noted at paragraph 33 above,

it follows that, for eligible customers, the right to access the systems is exercised through a supplier whom customers must be able freely to choose. That freedom of choice is, as the Advocate General stated at point 41 of her Opinion, guaranteed whether the supplier connects them to a transmission system or to a distribution system.

⁴⁴ With regard, next, to the concept of ‘third party’, it should be pointed out that the text of Article 20(1) of the Directive itself explains that term by also using the term ‘system users’, defined in Article 2(18) of the Directive as meaning any natural or legal persons supplying to, or being supplied by, a transmission or distribution system. Customers are included among such persons.

⁴⁵ It follows that, by including system users within its purview, Article 20(1) of the Directive also confers on eligible customers a right of non-discriminatory access to the systems.

⁴⁶ It is one of the objectives of the Directive that access to the system should be open — which, as noted in paragraph 33 above, constitutes an essential measure for bringing about the completion of the internal market in electricity — and that it should be based on objective, non-discriminatory and transparent criteria and on tariffs published prior to their entry into force, and not that it should be at the customer’s discretion.

⁴⁷ It follows from this that Member States retain a certain flexibility in steering system users towards one or another type of system, provided, however, that they do so for non-discriminatory reasons and in accordance with objective considerations. System users thus have a right of access to the electricity system but Member States may decide that the connection is to be made on one or another type of system. It is

necessary however to verify that the criteria chosen by Member States are objective and non-discriminatory.

48 In that respect, the wish to prevent large customers from connecting directly to transmission systems, which would result in the costs related to the distribution systems falling on small customers alone and thus in an increase in the price of electricity, may justify the obligation to connect primarily to a distribution system. It is, however, for national courts alone to verify the truth of those grounds and whether they are based on objective and non-discriminatory criteria.

49 It follows from all of the foregoing that the answer to the question referred must be that Article 20 of the Directive is to be interpreted as defining the Member States' obligations only in respect of the access and not the connection of third parties to the electricity transmission and distribution systems and as not laying down that the system of network access that the Member States are required to establish must allow an eligible customer to choose, at his discretion, the type of system to which he wishes to connect. Article 20 must also be interpreted as not precluding national legislation which lays down that an eligible customer's equipment may be connected to a transmission system only where the distribution system operator refuses, on account of established technical or operating requirements, to connect to its system the equipment of the eligible customer which is on the territory included in its licence. It is, however, for national courts to verify that the implementation and application of that access system takes place in accordance with criteria which are objective and do not discriminate between the users of the transmission and distribution systems.

Costs

50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that

court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 20 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 is to be interpreted as defining the Member States' obligations only in respect of the access and not the connection of third parties to the electricity transmission and distribution systems and as not laying down that the system of network access that the Member States are required to establish must allow an eligible customer to choose, at his discretion, the type of system to which he wishes to connect.

Article 20 must also be interpreted as not precluding national legislation which lays down that an eligible customer's equipment may be connected to a transmission system only where the distribution system operator refuses, on account of established technical or operating requirements, to connect to its system the equipment of the eligible customer which is on the territory included in its licence. It is, however, for national courts to verify that the implementation and application of that access system takes place in accordance with criteria which are objective and do not discriminate between the users of the transmission and distribution systems.

[Signatures]