



## Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

19 December 2019\*

(Reference for a preliminary ruling — Common rules for the internal market in natural gas — Directive 2009/73/EC — Article 41(11) — Settlement of disputes concerning the obligations imposed on a system operator — Temporal effects of decisions of the dispute settlement authority — Legal certainty — Legitimate expectations)

In Case C-236/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (France), made by decision of 21 March 2018, received at the Court on 29 March 2018, in the proceedings

**GRDF SA**

v

**Eni Gas & Power France SA,**

**Direct énergie,**

**Commission de régulation de l'énergie,**

**Procureur général at the Cour d'appel de Paris,**

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, T. von Danwitz and C. Vajda (Rapporteur),  
Judges,

Advocate General: E. Tanchev,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 6 March 2019,

after considering the observations submitted on behalf of:

- GRDF SA, by F. Boucard, H. Savoie, and D. Théophile, avocats,
- Eni Gas & Power France SA, by J. Rousseau and F. Prunet, avocats,
- Direct énergie, by F. Molinié, O. Fréget and L. Eskenazi, avocats,

\* Language of the case: French.

- the French Government, by S. Horrenberger and D. Colas and by A.-L. Desjonquères and C. Mosser, acting as Agents,
- the European Commission, by O. Beynet and Y.G. Marinova, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 May 2019,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 20 of 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, and, more specifically, Article 41(11) of that directive).
- 2 The request has been made in proceedings between GRDF SA, operator of the natural gas distribution system in France, on the one hand, and Eni Gas & Power France SA ('Eni Gas') and Direct énergie, natural gas suppliers, the Commission de régulation de l'énergie (France) (the Energy Regulatory Commission, 'CRE') and the procureur général près la cour d'appel de Paris (Public Prosecutor attached to the Court of Appeal Paris) (France), on the other, concerning contracts for the transmission of gas which have the effect of passing on to suppliers the risk of unpaid bills by final customers and the burden of customer management.

### **Legal context**

#### ***European Union law***

##### *Directive 2003/55*

- 3 Article 18(1) of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57) provided:

'Member States shall ensure the implementation of a system of third party access to the transmission and distribution system, and [liquefied natural gas] facilities based on published tariffs, applicable to all eligible customers, including supply undertakings, and applied objectively and without discrimination between system users. Member States shall ensure that these tariffs, or the methodologies underlying their calculation shall be approved prior to their entry into force by a regulatory authority referred to in Article 25(1) and that these tariffs — and the methodologies, where only methodologies are approved — are published prior to their entry into force.'

- 4 By virtue of Article 33(1) of that directive, the Member States had to bring into force the laws, regulations and administrative provisions necessary to comply with the directive by 1 July 2004 at the latest.

*Directive 2009/73*

5 Recitals 4, 6, 25, 30, 32 and 40 of Directive 2009/73 state:

(4) However, at present, there are obstacles to the sale of gas on equal terms and without discrimination or disadvantages in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist.

...

(6) Without effective separation of networks from activities of generation and supply (effective unbundling), there is an inherent risk of discrimination not only in the operation of the network but also in the incentives for vertically integrated undertakings to invest adequately in their networks.

...

(25) Non-discriminatory access to the distribution network determines downstream access to customers at retail level. The scope for discrimination as regards third party access and investment, however, is less significant at distribution level than at transmission level where congestion and the influence of production interests are generally greater than at distribution level. Moreover, legal and functional unbundling of distribution system operators was required, pursuant to Directive [2003/55], only from 1 July 2007 and its effects on the internal market in natural gas still need to be evaluated. The rules on legal and functional unbundling currently in place can lead to effective unbundling provided they are more clearly defined, properly implemented and closely monitored. To create a level playing field at retail level, the activities of distribution system operators should therefore be monitored so that they are prevented from taking advantage of their vertical integration as regards their competitive position on the market, in particular in relation to household and small non-household customers.

...

(30) Energy regulators need to be able to take decisions in relation to all relevant regulatory issues if the internal market in natural gas is to function properly, and to be fully independent from any other public or private interests. This precludes neither judicial review nor parliamentary supervision in accordance with the constitutional laws of the Member States. ...

...

(32) National regulatory authorities should be able to fix or approve tariffs, or the methodologies underlying the calculation of the tariffs, on the basis of a proposal by the transmission system operator or distribution system operator(s) or liquefied natural gas (LNG) system operator, or on the basis of a proposal agreed between those operator(s) and the users of the network. In carrying out these tasks, national regulatory authorities should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective, and should take account of the long-term, marginal, avoided network costs from demand-side management measures.

...

(40) In the interests of security of supply, the balance between supply and demand in individual Member States should be monitored, and such monitoring should be followed by a report on the situation at Community level, taking account of interconnection capacity between areas. Such monitoring should be carried out sufficiently early to enable appropriate measures to be

taken if security of supply is compromised. The construction and maintenance of the necessary network infrastructure, including interconnection capacity, should contribute to ensuring a stable gas supply.’

6 Article 1(1) of that directive defines its subject matter as follows:

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

7 Article 32 of that directive, entitled ‘Third-party access’, provides in paragraph 1:

‘Member States shall ensure that a system of third party access to transmission and distribution networks and LNG facilities is in place for all eligible customers, including supply companies. This system, based on published tariffs, must be applied objectively and without discrimination between network users. Member States shall ensure that those tariffs, or the methodologies underlying their calculation are approved prior to their entry into force in accordance with Article 41 by a regulatory authority referred to in Article 39(1) and that those tariffs — and the methodologies, where only methodologies are approved — are published prior to their entry into force.’

8 Article 40 of that directive, entitled ‘General objectives of the regulatory authority’, provides:

‘In carrying out the regulatory tasks specified in this Directive, the regulatory authority shall take all reasonable measures in pursuit of the following objectives within the framework of their duties and powers as laid down in Article 41, in close consultation with other relevant national authorities, including competition authorities, as appropriate, and without prejudice to their competencies:

(a) promoting, in close cooperation with the Agency, regulatory authorities of other Member States and the Commission, a competitive, secure and environmentally sustainable internal market in natural gas within the Community, and effective market opening for all customers and suppliers in the Community, and ensuring appropriate conditions for the effective and reliable operation of gas networks, taking into account long-term objectives;

...

(d) helping to achieve, in the most cost-effective way, the development of secure, reliable and efficient non-discriminatory systems that are consumer oriented, and promoting system adequacy and, in line with general energy policy objectives, energy efficiency as well as the integration of large and small scale production of gas from renewable energy sources and distributed production in both transmission and distribution networks;

...’

9 Article 41 of Directive 2009/73, entitled ‘Duties and powers of the regulatory authority’, provides:

‘1. The regulatory authority shall have the following duties:

(a) fixing or approving, in accordance with transparent criteria, transmission or distribution tariffs or their methodologies;

(b) ensuring compliance of transmission and distribution system operators, and where relevant, system owners, as well as of any natural gas undertakings, with their obligations under this Directive and other relevant Community legislation, including as regards cross-border issues;

...

4. Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraph 1, 3 and 6 in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:

(a) to issue binding decisions on natural gas undertakings;

...

6. The regulatory authorities shall be responsible for fixing or approving sufficiently in advance of 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, and terms, conditions and tariffs for access to LNG facilities. Those tariffs or methodologies shall allow the necessary investments in the networks and LNG facilities to be carried out in a manner allowing those investments to ensure the viability of the networks and LNG facilities;

...

10. Regulatory authorities shall have the authority to require transmission, storage, LNG and distribution system operators, if necessary, to modify the terms and conditions, including tariffs and methodologies referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner. ...

11. Any party having a complaint against a transmission, storage, LNG or distribution system operator in relation to that operator's obligations under this Directive may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within a period of two months after receipt of the complaint. ...

...'

#### *Directive 2009/72*

- 10 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), provides in Article 37(11) that 'any party having a complaint against a transmission or distribution system operator in relation to that operator's obligations under this Directive may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within a period of two months after receipt of the complaint. ...'.

#### *French law*

- 11 Article L.134-20 of the code de l'énergie (Energy Code), in the version applicable on the date of the facts in the main proceedings, provides in paragraphs 2 and 3:

'The decision of the committee, which may be combined with penalties, shall contain a statement of reasons and shall specify the technical and financial terms imposed upon settlement of the dispute to govern, where applicable, access to or use of the networks, works and installations referred to in Article L. 134-19.

Where it is necessary in order to settle the dispute, the committee may determine, in an objective, transparent, non-discriminatory and proportionate manner, the arrangements for access to such networks, works and installations or the conditions applicable to their use.'

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 12 Poweo and Direct énergie, two companies supplying natural gas, entered into two contracts for the transmission of gas with GRDF, the operator of the natural gas distribution system in France, on 21 June 2005 and 21 November 2008 respectively (hereinafter the 'relevant contracts'). Poweo and Direct énergie later became Poweo-Direct énergie, then Direct énergie.
- 13 The contracts at issue contained an intermediation clause which required suppliers to supply, in the context of 'single' contracts with the final customer, that is to say contracts combining the supply and distribution aspects, intermediation services on behalf of GRDF to final customers, without being able to negotiate the price or the conditions for performing those services. It appears from the file submitted to the Court that the suppliers had to collect from the final customers the amounts due from those customers by way of the tariff for distribution services that GRDF had provided and then pay those amounts to those suppliers. However, the suppliers would have been required to pay those amounts even if the final customer had not paid them. Thus, through the intermediation clause, GRDF would have transferred the risk of non-payment to Direct énergie.
- 14 On 22 July 2013, Direct énergie referred the matter to the Comité de règlement des différends et des sanctions (Dispute Resolution and Sanctions Committee) set up with the CRE ('Cordis'), taking the view that the intermediation clause was contrary to the applicable national legislation. It requested, first, that Cordis instruct GRDF to bring its contracts into line with the legislation applicable to the energy sector and, second, that it set the tariff for intermediation services performed by the supplier on behalf of the system operator in the context of the single contract concluded with the final customer. During the proceedings, Cordis heard from Eni Gas, another company that supplies natural gas.
- 15 Taking the view that the intermediation clause was contrary to the applicable national legislation, by decision of 19 September 2014, Cordis directed GRDF to provide Direct énergie with 'an amendment [to the contracts at issue] putting the contractual situation in the state in which it should have been if [those contracts] had been *ab initio* in accordance with the legislation in force.' Cordis stated that its competence extended, subject to the applicable rules of limitation, to the whole of the period to which the dispute before it related, regardless of the date on which that dispute arose between the parties.
- 16 GRDF, Direct énergie and Eni Gas have each brought an appeal against that decision before the Court of Appeal of Paris (France).
- 17 By judgment of 2 June 2016, the Court of Appeal Paris, in essence, confirmed Cordis' decision. It directed GRDF to propose an amendment to the contracts at issue stipulating that the intermediation clause was deemed never to have existed. In addition, that court required GRDF to pay fair and proportionate remuneration to Direct énergie having regard to the costs avoided for the provision of intermediation services which Direct énergie had supplied to its customers from the date of signature of those contracts.
- 18 GRDF brought an appeal against that judgment before the referring court, the Cour de cassation (France). Among GRDF's objections to the judgment of the Paris Court of Appeal is a ground of appeal according to which it takes the view, in essence, that Union law precludes the retroactive nature of the decision taken by Cordis prior to the dispute arising.

- 19 The referring court states, by referring to the judgment of 13 March 2008, *Vereniging Nationaal Overlegorgaan Sociale Werkvoorziening and Others*, (C-383/06 to C-385/06, EU:C:2008:165, paragraph 55), that the Court of Justice enshrined the principle of legal certainty and accepted that it may take precedence over the effectiveness of EU law.
- 20 In those circumstances, the Cour de cassation (Court of Cassation, France) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Directive 2009/73 ..., and in particular Article 41(11) thereof, to be interpreted as requiring that a regulatory authority, when settling a dispute, must have power to issue a decision which applies to the whole of the period to which the dispute relates, regardless of the date on which the dispute arose between the parties, in particular by drawing the consequences of the non-conformity of a contract with the provisions of the directive by means of a decision taking effect as regards the whole of the contractual period?’

### **The jurisdiction of the Court of Justice**

- 21 At the hearing before the Court of Justice, GRDF claimed that the present dispute concerned a service by a natural gas supplier to a distribution system operator and that such a service did not come within the scope of Directive 2009/73. That directive governs solely the services of a natural gas distribution system operator for the benefit of suppliers.
- 22 That argument cannot be accepted.
- 23 Under Article 1, Directive 2009/73 establishes common rules for the transmission, distribution, supply and storage of natural gas. It lays down the rules relating to the organisation and functioning of the natural gas sector, access to the market, the criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of natural gas and the operation of systems.
- 24 Article 32(1) of Directive 2009/73 provides that Member States are to ensure the implementation of a system of third party access to the distribution system, applicable to all eligible customers, including supply undertakings. That system, based on published tariffs, must be applied objectively and without discrimination between system users. To that end, Article 41(1)(a) and (b) of that directive requires the regulatory authority to fix or approve, in accordance with transparent criteria, distribution tariffs or their methodologies, and to ensure compliance of distribution system operators with their obligations under that directive. Under Article 41(10) of that directive, the regulatory authority is authorised to require system operators, if necessary, to modify the terms and conditions for connection and access to the system and tariffs. Furthermore, under Article 41(11) of Directive 2009/73, any party having a complaint against a distribution system operator in relation to that operator’s obligations under that directive is able to refer the complaint to the regulatory authority, acting as the dispute settlement authority (‘the dispute settlement authority’), which is to issue a binding decision within a period of two months after receipt of the complaint.
- 25 However, it appears from the order for reference that the dispute before Cordis between Direct énergie, a natural gas supplier, and GRDF, the operator of the distribution system for that energy in France, in essence concerned the obligation which GRDF had imposed on Direct énergie, as a condition for access to the French distribution system, to bear the risk of unpaid amounts due from final customers by way of the tariff for the distribution of natural gas. The request for a preliminary ruling is based on the consideration that such a practice is incompatible with the provisions of Directive 2009/73. The dispute therefore properly falls within the scope of Directive 2009/73.
- 26 It follows from the foregoing that the Court has jurisdiction to answer the question referred.

## Consideration of the question referred

- 27 At the outset, it should be noted that the application for a preliminary decision is based on the premiss that the contractual practice of a distribution system operator, which imposes on the gas supplier, as a condition of access to the national distribution system, the obligation to bear the risk of unpaid amounts owed by final customers by way of the tariff for the distribution of natural gas, is incompatible with Directive 2009/73. To the extent that that premiss has not been challenged before the Court of Justice, the examination of the question referred is based on that premiss.
- 28 By its question, the national court asks, in essence, whether Directive 2009/73 must be interpreted as precluding that the effects of a decision of a dispute settlement authority, referred to in Article 41(11) of that directive, extend to the situation of the parties to the dispute before that authority which prevailed between them before the emergence of that dispute, *inter alia*, as regards a contract for the transmission of natural gas, by requiring a party to that dispute to bring that contract into conformity with Union law for the entire contractual period.
- 29 It should be borne in mind that, under Article 41(11) of Directive 2009/73, any party having a complaint against a distribution system operator in relation to that operator's obligations under that directive may refer the complaint to the regulatory authority which, acting as the dispute settlement authority, is to issue a decision within a period of two months after receipt of the complaint.
- 30 It is the Court's established case-law that it follows from the requirement for the uniform application of Union law and from the principle of equality that the terms of a provision of Union law which does not contain any express reference to the law of the Member States for the purpose of determining its meaning and scope, must be given an autonomous and uniform interpretation throughout the European Union, that interpretation must take into account not only the wording of that provision but also its context and the objective pursued by the legislation in question (judgment of 23 May 2019, *WB*, C-658/17, EU:C:2019:444, paragraph 50 and the case-law cited).
- 31 As the referring court rightly states, the wording of Article 41(11) of Directive 2009/73 does not specify the temporal effects of decisions taken by the dispute settlement authority and in particular whether they may have an effect before the dispute arises.
- 32 As regards the context of that provision, it should be recalled that Article 41(1)(b) of Directive 2009/73 vests the regulatory authority with the duty of ensuring compliance of distribution system operators with their obligations under that Directive. The obligations of the system operator include in particular that resulting from Article 32(1) of that directive to apply the system of third-party access to distribution systems objectively and without discrimination between system users.
- 33 In order to enable those regulatory authorities to carry out that duty, Member States are to ensure, pursuant to Article 41(10) of Directive 2009/73, that those authorities have the necessary authority, including the authority to take binding decisions in respect of natural gas undertakings, for the purpose of modifying, if necessary, the terms and conditions for connection and access to the system, including in particular tariffs, to ensure that they are proportionate and applied in a non-discriminatory manner.
- 34 As regards the aim of Directive 2009/73, it is to pursue the achievement of an internal market in natural gas that is entirely and effectually open and competitive and in which all consumers can freely choose their suppliers and all suppliers can freely supply their products to their customers (see, to that effect, judgment of 7 September 2016, *ANODE*, C-121/15, EU:C:2016:637, paragraph 26). To that end, as it is apparent from Article 1 thereof, that directive aims to establish common rules on transmission, distribution, supply and storage of natural gas (see, to that effect, order of 14 May 2019, *Acea Energia and Others*, C-406/17 to C-408/17 and C-417/17, not published, EU:C:2019:404, paragraph 54). In that



regard, recitals 4, 6, 25 and 40 of that directive disclose the wish of the EU legislature to ensure non-discriminatory access to gas distribution systems (see, to that effect, judgment of 22 October 2013, *Essent and Others*, C-105/12 to C-107/12, EU:C:2013:677, paragraph 65).

- 35 In that regard, it is necessary, first of all, to reject GRDF's argument that the decisions of the dispute settlement authority are administrative decisions which cannot produce effects before the dispute between the parties has arisen. Such an interpretation would run counter to the objectives of Directive 2009/73 and would undermine its useful effect. Like the European Commission in its written submissions, it is worth recalling the Court's consistent case-law that the obligation to give full effect to EU law, including by erasing the consequences of an infringement of EU law, is imposed on national courts, but also, within the framework of their respective powers, on all the organs of the Member State concerned, including the administrative authorities (see, to that effect, judgments of 12 June 1990, *Germany v Commission*, C-8/88, EU:C:1990:241, paragraph 13; of 7 January 2004, *Wells*, C-201/02, EU:C:2004:12, paragraph 64, and of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, paragraphs 38 and 39).
- 36 Next, admittedly, under Article 41(11) of Directive 2009/73, the dispute settlement authority must take a decision within two months of receipt of the complaint. However, contrary to what GRDF claims in its written observations, that does not imply that that authority cannot take decisions whose effects would extend to a period prior to the emergence of the dispute between the parties. The procedural time limits have no bearing on the possible adjustment of the effects in time of the decision of the dispute settlement authority.
- 37 Finally, as regards the effect of the fact that, in the present case, the contracts at issue have been concluded before the entry into force of Directive 2009/73, it should be recalled that the latter does not create a new scheme, but is a direct continuation of Directive 2003/55, which Directive 2009/73 repealed and replaced. Accordingly, the latter directive has the same objectives as Directive 2003/55 and leaves unchanged the content of its substantive provisions, including those concerning access to the distribution system, provided for, respectively, in Article 18 of Directive 2003/55 and Article 32 of Directive 2009/73 (see, in that effect, judgment of 26 March 2015, *Commission v Moravia Gas Storage*, C-596/13 P, EU:C:2015:203, paragraph 37).
- 38 In the present case, it appears from the order for reference that the contracts at issue have been concluded in 2005 and 2008, that is after 1 July 2004, the date on which the Member States were required to implement Directive 2003/55 pursuant to Article 33(1) thereof.
- 39 It follows from the foregoing that the effects of a decision of a dispute settlement authority, referred to in Article 41(11) of that directive, extend to the situation of the parties to the dispute before that authority which prevailed between them before that dispute arose. Accordingly, that article does not preclude a decision requiring a party to that dispute to bring the contract for transmission into compliance with Union law for the entire contractual period.
- 40 That interpretation of Article 41(11) of Directive 2009/73 is not affected by the principle of legal certainty or the principle of protection of legitimate expectations relied on by GRDF.
- 41 When Member States adopt measures implementing Union law, they are required to respect the general principles of Union law (judgment of 7 August 2018, *Ministru kabinets*, C-120/17, EU:C:2018:638, paragraph 48 and case-law cited).
- 42 It should be recalled that the principle of legal certainty requires, on the one hand, that rules of law must be clear and precise and, on the other, that their application must be foreseeable by those subject to them (see, to that effect, judgment of 11 September 2019, *Călin*, C-676/17, EU:C:2019:700, paragraph 50 and the case-law cited).

- 43 In that regard, the Court of Justice has, admittedly, held, first, that it may, in exceptional cases and for overriding considerations of legal certainty, allow temporary suspension of the ousting effect of a rule of EU law with respect to national law that is contrary thereto, and, second, that a national court may, in the circumstances which only the Court of Justice may determine, exceptionally be authorised to make use of a national provision empowering it to maintain certain effects of an annulled national measure, due to compelling considerations relating to the protection of the environment and the security of the electricity supply of the Member State concerned (see, to that effect, judgment of 29 July 2019, *Inter-Environment Wallonia and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraphs 177 to 179).
- 44 However, even if GRDF's claim is to be understood as a request to that effect, the possibility of a referring court to limit in time the effects of the annulment of an act of national law contrary to Union law should be excluded from the outset. Indeed, the referring court has not referred to any specific evidence that could establish specific risks of legal uncertainty that would result from the fact that the effects of Cordis decisions, under Article 41(11) of Directive 2009/73, extend to the situation of the parties to the dispute before it and which prevailed between them before the emergence of that dispute (see, by analogy, judgment of 27 June 2019, *Belgisch Syndicaat van Chiropraxie and Others*, C-597/17, EU:C:2019:544, paragraph 59 and the case-law cited).
- 45 Finally, GRDF relies on the principle of the protection of legitimate expectations, in that, in the present case, the economic operators could legitimately place their confidence in the legality of contracts for the transmission of gas, based on the negotiation of those contracts under the aegis and control of the CRE, pursuant to Article 41(6)(a) of Directive 2009/73.
- 46 In that regard, the right to rely on the principle of the protection of legitimate expectations extends to any person in a situation in which a national administrative authority has caused that person to entertain expectations which are justified by precise assurances provided to him (judgment of 7 August 2018, *Ministru kabinetu*, C-120/17, EU:C:2018:638, paragraph 50 and the case-law cited).
- 47 It is therefore necessary to determine whether the conduct of the administrative authority in question gave rise to a reasonable expectation on the part of the person concerned and, if it did, it must then be established whether that expectation was legitimate (judgment of 7 August 2018, *Ministru kabinetu*, C-120/17, EU:C:2018:638, paragraph 51 and the case-law cited).
- 48 However, in the present case, although GRDF claims that the contracts at issue in the main proceedings were negotiated under the aegis and supervision of the CRE, it has not given any specific assurances from that national authority as to the conformity of the intermediation clause at issue in the main proceedings.
- 49 In addition, it appears from the order for reference and the written comments submitted by Eni Gas that Cordis, which is also the electricity dispute settlement authority referred to in Article 37(11) of Directive 2009/72, took decisions in the electricity sector from 2008 comparable to that at issue in the case in the main proceedings as regards the natural gas sector. Thus, and subject to determination by the national court, Cordis appears to have decided that Directive 2009/72 would preclude a contractual clause by which the electricity distribution system operator transfers the risk of unpaid amounts relating to the tariff for electricity distribution to electricity suppliers. In that regard, it must be borne in mind that Directives 2009/72 and 2009/73 have identical objectives, inter alia, to ensure non-discriminatory access to electricity or gas distribution systems (see, to that effect, judgment of 22 October 2013, *Essent and Others*, C-105/12 to C-107/12, EU:C:2013:677, paragraph 65).

- 50 Moreover, according to the Court's case-law, the principle of the protection of legitimate expectations cannot be relied upon against an unambiguous provision of EU law; nor can the conduct of a national authority responsible for applying EU law, which acts in breach of that law, give rise to a legitimate expectation on the part of a person of beneficial treatment contrary to EU law (judgment of 7 August 2018, *Ministru kabinets*, C-120/17, EU:C:2018:638, paragraph 52 and the case-law cited).
- 51 In those circumstances, it appears, subject to determination by the national court, that the acts of the regulatory authority, namely the approval of the conditions of distribution, including tariffs, pursuant to Article 41(6)(a) of Directive 2009/73, have not been able to create a legitimate expectation on the part of GRDF that the intermediation clause itself complied with the principle of non-discriminatory access to the distribution system provided for by that directive.
- 52 It follows from the foregoing considerations that the answer to the question referred is that Directive 2009/73 must be interpreted as not precluding that the effects of a decision of a dispute settlement authority, referred to in Article 41(11) of that directive, extend to the situation of the parties to the dispute before that authority which prevailed between them before the emergence of that dispute, *inter alia*, as regards a contract for the transmission of natural gas, by requiring a party to that dispute to bring that contract into conformity with Union law for the entire contractual period.

### Costs

- 53 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 (Second Chamber) hereby rules:

**It follows from the foregoing considerations that the answer to the question referred is that 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 must be interpreted as not precluding that the effects of a decision of a regulatory authority, referred to in Article 41(11) of that directive, extend to the situation of the parties to the dispute before that authority which prevailed between them before the emergence of that dispute, *inter alia*, as regards a contract for the transmission of natural gas, by requiring a party to that dispute to bring that contract into conformity with Union law for the entire contractual period.**

[Signatures]