



Reports of Cases

OPINION OF ADVOCATE GENERAL
PITRUZZELLA
delivered on 4 June 2020¹

Case C-360/19

Crown Van Gelder BV
v
Autoriteit Consument en Markt,
intervener:
TenneT TSO BV

(Request for a preliminary ruling
from the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and
Industry, Netherlands))

(Reference for a preliminary ruling – Internal market in electricity – Directive 2009/72/EC –
Article 37 – Duties and powers of the regulatory authority – Definition of ‘party having a complaint’ –
Action brought before the regulatory authority against a national transmission system operator –
Admissibility – Need for a direct or contractual relationship with that operator – No such need)

1. In order for a complaint to be lodged with the national electricity regulatory authority against the national transmission system operator, is it necessary to be connected to that system by virtue of a direct contractual relationship with that operator?
2. That is, in essence, the question referred to the Court in the present case, which concerns a request for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands) regarding the interpretation of Article 37(11) of 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.²
3. The question referred for a preliminary ruling by the national court arose in proceedings relating to an action brought by the company Crown Van Gelder BV (‘Crown’) against a decision of the Autoriteit Consument en Markt (Consumer and Market Authority, Netherlands; ‘the ACM’), in which the ACM dismissed as inadmissible the complaint lodged by Crown that, as a result of a large-scale power failure, the Netherlands transmission system operator had failed to fulfil its obligations under Directive 2009/72. The ACM declared the action inadmissible on the ground that there was no direct relationship between Crown, which is connected to a regional distribution system, and that transmission system operator.
4. This case provides the Court with an opportunity to clarify the individual scope of the right to lodge a complaint with national electricity regulatory authorities under Article 37(11) of Directive 2009/72.³

¹ Original language: Italian.

² OJ 2009 L 211, p. 55. Directive 2009/72 will be repealed with effect from 1 January 2021 by Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast) (OJ 2019 L 158, p. 125). In this respect, see Article 72(1) of Directive 2019/944.

³ The wording of Article 37(11) of Directive 2009/72 matches that of Article 60(2) of Directive 2019/944.

I. Legal framework

A. *EU law*

5. Recitals 34, 37, 42, 51 and 54 of Directive 2009/72 state:

‘(34) Energy regulators need to be able to take decisions in relation to all relevant regulatory issues if the internal market in electricity is to function properly, and to be fully independent from any other public or private interests. This precludes neither judicial review ...

...

(37) Energy regulators should have the power to issue binding decisions in relation to electricity undertakings and to impose effective, proportionate and dissuasive penalties on electricity undertakings which fail to comply with their obligations or to propose that a competent court impose such penalties on them. Energy regulators should also be granted the power to decide ... on appropriate measures ensuring customer benefits ... Energy regulators should also be granted the power to contribute to ensuring high standards of universal and public service in compliance with market opening, to the protection of vulnerable customers, and to the full effectiveness of consumer protection measures ...

...

(42) All [EU] industry and commerce, including small and medium-sized enterprises, and all citizens of the Union that enjoy the economic benefits of the internal market should also be able to enjoy high levels of consumer protection, and in particular household customers ... Those customers should also have access to choice, fairness, representation and dispute settlement mechanisms.

...

(51) Consumer interests should be at the heart of this Directive ... Existing rights of consumers need to be strengthened and guaranteed, and should include greater transparency. Consumer protection should ensure that all consumers in the wider remit of the [European Union] benefit from a competitive market. Consumer rights should be enforced by Member States or, where a Member State has so provided, the regulatory authorities.

...

(54) Greater consumer protection is guaranteed by the availability of effective means of dispute settlement for all consumers. Member States should introduce speedy and effective complaint handling procedures.’

6. According to Article 1 of Directive 2009/72, ‘this Directive establishes common rules for the generation, transmission, distribution and supply of electricity, together with consumer protection provisions, with a view to improving and integrating competitive electricity markets in the [European Union]. ... It also lays down universal service obligations and the rights of electricity consumers and clarifies competition requirements’.

7. Article 2 of Directive 2009/72, entitled ‘Definitions’, provides:

‘For the purposes of this Directive, the following definitions apply:

...

4. “transmission system operator” means a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity;

...

9. “final customer” means a customer purchasing electricity for his own use;

...’

8. Article 3(7) of Directive 2009/72 provides:

‘Member States shall take appropriate measures to protect final customers, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers. ... They shall ensure high levels of consumer protection, particularly with respect to ... dispute settlement mechanisms. ...’

9. Article 12 of Directive 2009/72, entitled ‘Tasks of transmission system operators’, provides:

‘Each transmission system operator shall be responsible for:

- (a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under economic conditions secure, reliable and efficient transmission systems with due regard to the environment;
- (b) ensuring adequate means to meet service obligations;
- (c) contributing to security of supply through adequate transmission capacity and system reliability;
- (d) managing electricity flows on the system, taking into account exchanges with other interconnected systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services, including those provided by demand response, in so far as such availability is independent from any other transmission system with which its system is interconnected;
- (e) providing to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation, coordinated development and interoperability of the interconnected system;

...’

10. Article 32(2) of the directive provides:

‘The transmission or distribution system operator may refuse access where it lacks the necessary capacity ... The regulatory authorities where Member States have so provided or Member States shall ensure that those criteria are consistently applied and that the system user who has been refused access can make use of a dispute settlement procedure. ...’

11. Article 37 of Directive 2009/72, entitled ‘Duties and powers of the regulatory authority’, provides:

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

...

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

...

- (h) monitoring compliance with and reviewing the past performance of network security and reliability rules ...;

...

- (m) monitoring the time taken by transmission and distribution system operators to make connections and repairs;

- (n) helping to ensure, together with other relevant authorities, that the consumer protection measures, including those set out in Annex I, are effective and enforced;

...

4. Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraphs 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 electricity undertakings;

...

- (d) to impose effective, proportionate and dissuasive penalties on electricity undertakings not complying with their obligations under this Directive or any relevant legally binding decisions of the regulatory authority or of the Agency, or to propose that a competent court impose such penalties. This shall include the power to impose or propose the imposition of penalties ... for non-compliance with their respective obligations pursuant to this Directive; and

...

11. 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. That period may be extended by two months where additional information is sought by the regulatory authority. That extended period may be further extended with the agreement of the complainant. The regulatory authority's decision shall have binding effect unless and until overruled on appeal.

12. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to this Article or, where the regulatory authority has a duty to consult, concerning the proposed tariffs or methodologies, may, at the latest within two months, or a shorter time period as provided by Member States, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

...

17. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of a regulatory authority has a right of appeal to a body independent of the parties involved and of any government.'

B. Netherlands law

12. Article 37(11) of Directive 2009/72 was transposed into Netherlands law by Article 51(1) of the *Wet houdende regels met betrekking tot de productie, het transport en de levering van elektriciteit* (*Elektriciteitswet 1998*) (Electricity Generation, Supply and Transmission Act (Electricity Act 1998)) of 2 July 1998.⁴

II. Facts, main proceedings and questions referred for a preliminary ruling

13. On 27 March 2015, a large-scale power failure occurred due to an outage at the high-voltage (380 kV) Diemen power plant (Netherlands). The plant is part of the Netherlands high-voltage transmission system, of which TenneT TSO BV ('TenneT') is the operator. That outage led to a complete failure at the power plant, as a result of which a large part of the province of Noord-Holland (North Holland) and a small part of the province of Flevoland were left without power for several hours.

14. Crown operates a paper factory in the Noord-Holland province of the Netherlands. The factory is connected to the distribution system operated by Liander NV, which in turn is fed by the national high-voltage grid operated by TenneT. Due to the power failure, the electricity supply at the Crown factory was interrupted for several hours on 27 March 2015.

15. Crown lodged a complaint with the ACM seeking a declaration that TenneT had not done everything reasonably possible to prevent the interruption of the electricity supply and that the network configuration of the Diemen high-voltage plant did not comply with the legal requirements. In substance, Crown argued that the interruption of the power transmission was due to TenneT's failure to comply with those obligations as the operator of the national transmission system on which the outage occurred.

16. By decision of 30 April 2018, the ACM dismissed Crown's complaint against TenneT as inadmissible, owing to the absence of a direct relationship between Crown and TenneT, Crown's factory being connected only to the distribution system operated by Liander and not to the transmission system operated by TenneT. On that basis, therefore, the ACM ruled that Crown did not qualify as a 'party' as defined in Article 51(1) of the Electricity Act 1998 and Article 37(11) of Directive 2009/72.

17. In the light of the foregoing, Crown appealed against the ACM's decision before the referring court.

18. The referring court notes that the parties disagree as to the correct interpretation of the term 'party having a complaint' in Article 37(11) of Directive 2009/72 and, more specifically, the precise extent of the category of persons entitled to lodge a complaint. The referring court has doubts as to the meaning to be attributed to that term and questions whether, in a situation such as that in the case pending before it, a company such as Crown is able to bring a complaint before the ACM.

⁴ Stb. 1998, No 427.

19. In those circumstances, the referring court decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 37(11) of Directive 2009/72 ... be interpreted as meaning that that provision also makes the right of complaint with regard to the operator of the national grid (transmission system operator) available to a party if that party has no connection to the grid of that national grid operator (transmission system operator) but has a connection only to a regional grid (distribution system) to which the transmission of electricity is interrupted as a result of a power cut on the national grid (transmission system) that feeds the regional grid (distribution system)?’

III. Legal analysis

20. By its question for a preliminary ruling, the referring court asks the Court whether the term ‘party having a complaint’ in Article 37(11) of Directive 2009/72 must be interpreted as meaning that a final customer has the right to lodge a complaint with the national regulatory authority against the national transmission system operator, where that final customer is not directly connected to that transmission system, but is connected only to a distribution system fed by that transmission system and where the transmission of electricity is interrupted on the transmission system that feeds the distribution system to which the final customer is connected.

21. Under Article 37(11) of Directive 2009/72, any party having a complaint against a transmission or distribution system operator in relation to that operator’s obligations under the directive may refer the complaint to the regulatory authority which, acting as dispute settlement authority, is required to issue a decision within a period of two months after receipt of the complaint.

22. The question referred by the national court concerns the individual scope of that provision and, more specifically, the scope of the term ‘party having a complaint’ in that provision.

23. The parties that have submitted observations to the Court, disagree on the interpretation to be given to that term. On the one hand, Crown and the European Commission propose a broad interpretation and consider that a final customer has the right to lodge a complaint against a transmission system operator even in the absence of a direct or contractual relationship between them. On the other hand, the Netherlands Government, the Finnish Government and TenneT propose a more restrictive interpretation of that term and consider that the right to lodge a complaint, provided for in Article 37(11) of Directive 2009/72, presupposes a direct relationship between the person lodging the complaint and the transmission system operator against whom the complaint is directed.

24. In order to answer the question referred by the national court, it is therefore necessary to interpret the term ‘party having a complaint’ as defined in Article 37(11) of Directive 2009/72.

25. As a preliminary point, I would point out that the directive does not contain a definition of either that term taken as a whole, or of the words of which it is formed, namely ‘party’ and ‘complaint’, taken individually.⁵

⁵ In that regard, see judgment of 23 January 2020, *Energiavirasto* (C-578/18, EU:C:2020:35, paragraph 29).

26. It is the Court's established case-law that it follows from the requirement for the uniform application of EU law and from the principle of equality that the terms of a provision of EU 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, and 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.⁶

27. As regards, first of all, the wording of Article 37(11) of Directive 2009/72, it should be noted that that provision uses a very broad formulation, which provides that *any* party having a complaint against a transmission or distribution system operator with regard to its obligations under that directive may refer the complaint to the regulatory authority.

28. It is clear from the wording of that provision that the regulatory authority's competence to hear a complaint is subject to two conditions: first, the complaint must be made against a transmission or distribution system operator, and second, the complaint must concern the obligations of that operator under Directive 2009/72. However, that provision does not provide that the right to lodge a complaint conferred by Directive 2009/72⁷ is conditional on the existence of a direct relationship between the party intending to make a complaint and the operator against whom the complaint is made. On the contrary, the explicit use of the term 'any' is indicative of the broad individual scope of the provision in question.

29. Admittedly, the use in the provision in question of the term 'party' may give rise to some ambiguity, in so far as that term could be interpreted as meaning that the right to make a complaint lies exclusively with persons who are parties to a contract.

30. However, I would challenge that interpretation.

31. First, it must be observed that, from a literal point of view, the term 'party' does not necessarily mean only the party to a contract, but can also be understood, in a 'procedural' sense, as referring to persons having an interest in referring the matter to the regulatory authority.

32. Second, it should be noted that not all language versions of the provision in question use a word that could give rise to the abovementioned ambiguity. For example, while the English, French, Spanish and Dutch versions use a term corresponding to the Italian word 'parte',⁸ other versions, such as, for instance, the German and Portuguese versions, use words that have no possible contractual connotation, and instead refer unambiguously to the interest of the person concerned in referring a complaint to the regulatory authority.⁹ This supports an interpretation of the word 'party' in a sense other than 'contractual party'. It therefore militates in favour of an interpretation of the provision in question to the effect that it does not make the possibility of lodging a complaint conditional on the existence of a contractual relationship between the person bringing the complaint and the transmission or distribution system operator against whom the complaint is lodged.

33. Such an interpretation appears to be confirmed by the contextual analysis.

⁶ See, inter alia, judgment of 19 December 2019, *GRDF* (C-236/18, EU:C:2019:1120, paragraph 30 and the case-law cited). See also judgment of 23 January 2020, *Energiavirasto* (C-578/18, EU:C:2020:35, paragraph 24 and the case-law cited).

⁷ As regards the categorisation of the possibility of lodging a complaint as a personal right, see the judgment of 29 October 2009, *Commission v Belgium* (C-474/08, not published, EU:C:2009:681, paragraph 20), with reference to Article 23(5) of Directive 2003/54, subsequently repealed by Directive 2009/72.

⁸ The words 'party', 'partie', 'parte' and 'partijen', respectively.

⁹ Thus, the German version contains the word 'Betroffene' and the Portuguese version the word 'interessado', both of which can be rendered in Italian by 'interessato' (person concerned).

34. To begin with, the word ‘party’ is used not only in Article 37(11) of Directive 2009/72, but also in two other paragraphs of that article, namely paragraphs 12 and 17.¹⁰

35. Article 37(12) of Directive 2009/72 provides for a procedure allowing any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to Article 37 of that directive, or, where the regulatory authority has a duty to consult, concerning the proposed tariffs or methodologies, to submit a complaint for review of the decision.¹¹

36. Article 37(17) of Directive 2009/72 provides, however, that Member States are to ensure that suitable mechanisms exist at national level under which a party affected by a decision of a regulatory authority has a right of appeal to a body independent of the parties involved and of any government.

37. On the basis of the above analysis, neither of those provisions suggests that the term ‘party’ used in Article 37 of Directive 2009/72 – which, as mentioned in point 26 above, must be interpreted uniformly – is to be interpreted in the sense that its scope is limited only to persons who have a direct or contractual relationship with a transmission or distribution system operator.

38. On the contrary, Directive 2009/72 specifically provides for at least one case where a person without an existing contractual relationship with the transmission or distribution system operator should be able to refer a complaint against that operator to the regulatory authority pursuant to Article 37(11) of that directive. Indeed, Article 32(2) of Directive 2009/72 provides that where a transmission or distribution system operator refuses access to the system it operates, the user concerned must be able to make use of a dispute settlement procedure in respect of that operator.

39. In that regard, the Court clarified in its judgment of 29 October 2009, *Commission v Belgium* (C-474/08, not published, EU:C:2009:681), that Member States have an obligation to provide that cases in which access to the distribution or transmission network is refused may be referred to the regulatory authority by lodging a complaint in accordance with Article 37(11) of Directive 2009/72.¹²

40. Therefore, the contextual analysis also supports an interpretation of the provision in question to the effect that the right to submit a complaint to the regulatory authority against the transmission or distribution system operator must not be made subject to the existence of a contractual relationship with that operator.

41. Moreover, from a teleological point of view, I consider the restrictive interpretation of the term ‘party having a complaint’ within the meaning of Article 37(11) of Directive 2009/72, as proposed by the Netherlands and Finnish Governments and by TenneT, to be at odds with the purpose of Article 37(11) of Directive 2009/72 and with the role and tasks assigned by that directive to the regulatory authorities, and that it may also be inconsistent with the general aim of the directive of ensuring high levels of consumer protection.

42. First, with regard to the purpose of Article 37(11) of Directive 2009/72, that provision seeks to enable parties affected by an action or omission on the part of a transmission or distribution system operator to refer the matter to an extrajudicial, independent and specialist body with a view to obtaining a decision that is binding on the operator, establishing and, where appropriate, ending and penalising infringements of Directive 2009/72.

10 The wording of those two provisions matches that of Article 60(3) and (8) of Directive 2019/944.

11 See judgment of 23 January 2020, *Energiavirasto* (C-578/18, EU:C:2020:35, paragraph 26).

12 See point 23. That judgment referred to Article 23(5) of Directive 2003/54, repealed by Directive 2009/72. That article corresponds to Article 37(11) of Directive 2009/72.

43. As the Commission has rightly pointed out, a restrictive interpretation of the term ‘party having a complaint’ as proposed by the Netherlands and Finnish Governments and by TenneT risks undermining the effectiveness of the dispute settlement mechanism provided for in Article 37(11) of Directive 2009/72. By making the possibility of lodging a complaint subject to the existence of a contractual relationship between the complainant and the transmission or distribution system operator in question, such an interpretation would have the effect of excluding from the scope of the right to lodge a complaint with the regulatory authority a significant number of users. This would affect all users who, while not having a contractual relationship with the transmission or distribution system operator, have nevertheless suffered the consequences of any infringement by that operator of its obligations under Directive 2009/72.

44. In the same vein, I also consider that restrictive interpretation to be incompatible with the tasks and functions conferred by Directive 2009/72 on regulatory authorities, which, as can be seen from recitals 34 and 37 and from Article 37 of the directive, play a fundamental role in the overall scheme of the directive.

45. More specifically, that interpretation undermines, in my view, the fundamental task assigned to the regulatory authorities by Article 37(1)(b) of Directive 2009/72 of ensuring that transmission and distribution system operators comply with their obligations under the directive and other provisions of relevant EU legislation.

46. Indeed, by limiting the possibility for users to submit a complaint to the regulatory authority solely to cases where there is a direct connection to the system in question or a contractual relationship between the parties concerned would necessarily reduce the ability of the regulatory authorities to ensure compliance by transmission and distribution system operators with their obligations under Directive 2009/72. Such an approach would, in fact, limit the ability of those authorities to take cognisance of and establish any infringements by those operators of the relevant EU legislation and, therefore, the possibility of adopting binding and punitive decisions under Article 37(4)(a) and (d) of Directive 2009/72 in respect of operators who infringe that legislation.

47. In that regard, in my view it is important to emphasise that, contrary to the arguments made by TenneT in its observations, Directive 2009/72 does not merely impose on transmission system operators functions and obligations solely in respect of users connected to their system. Indeed, it is clear from Article 12 of the directive, which specifically lists the tasks of transmission system operators, that they perform systemic functions as they are subject to obligations relating, for example, to the security of electricity supply or to the security and efficiency of the operation of interconnected systems, which far exceed the obligations arising from contractual relations with their customers connected to the transmission network. Therefore, the extent of the obligations which transmission system operators are under cannot be relied on in support of such a restrictive interpretation of the scope of the right to lodge complaints under Article 37(11) of Directive 2009/72.

48. Second, with regard in particular to the case pending before the referring court, I would also point out that Article 37(1)(h) and (m) of Directive 2009/72 specifically assigns to the regulatory authorities the tasks, respectively, of ‘monitoring compliance with and reviewing the past performance of network security and reliability rules’ and ‘monitoring the time taken by transmission ... system operators to make connections and repairs’.

49. Third, I consider that the restrictive interpretation of the term ‘party having a complaint’ proposed by the Netherlands and Finnish Governments and by TenneT may prove to be inconsistent with the objective of Directive 2009/72 of ensuring a high level of consumer protection, which is central to the directive.¹³

¹³ See judgment of 23 January 2020, *Energiavirasto* (C-578/18, EU:C:2020:35, paragraph 33).

50. As is apparent from recitals 37, 42, 51 and 54 and Article 1 of Directive 2009/72, one of the principal objectives of the directive is to lay down provisions in the field of consumer protection and to establish the rights of electricity consumers by ensuring that they enjoy high levels of protection. In that regard, the Court has previously held that Article 3(7) of the directive requires the Member States to ensure a high level of consumer protection, in particular as regards dispute settlement mechanisms.¹⁴

51. Accordingly, the Court has held that, where a Member State chooses to confer on the regulatory authority jurisdiction for out-of-court settlement of consumer disputes, it is clear from Article 37(11), (16) and (17) of the directive that it must be recognised that a household customer has the status of a party and the right to bring legal proceedings against the decision of the regulatory authority.¹⁵

52. In the situation referred to in the preceding paragraph, in which the regulatory authority is recognised as having jurisdiction for out-of-court settlement of consumer disputes, a restrictive interpretation of Article 37(11) of Directive 2009/72 – as observed in point 43 above – would result in limiting the possibility of lodging a complaint with the regulatory authority solely to consumers who have a contractual relationship with the transmission or distribution system operator that has allegedly failed to fulfil its obligations under the directive, denying that remedy to all those consumers who, even though they do not have such a contractual relationship, nevertheless have suffered the consequences of that infringement. An interpretation that imposes that type of restriction on consumer access to the dispute settlement mechanisms provided for in Directive 2009/72 would be inconsistent with the objective, reaffirmed by the Court's case-law, of ensuring a high level of consumer protection, particularly with regard to dispute settlement mechanisms.

53. Similarly, such an interpretation is inconsistent with the function expressly assigned by several provisions of Directive 2009/72¹⁶ to regulatory authorities of ensuring consumer protection and the full effectiveness of the measures laid down in the directive for that purpose.¹⁷

54. In conclusion, it is apparent from the foregoing analysis that the term 'party having a complaint' in Article 37(11) of Directive 2009/72 must be interpreted, in my opinion, as meaning that the right to lodge a complaint against a transmission or distribution system operator provided for in that provision is not conditional on the existence of a direct or contractual relationship between the final customer wishing to make a complaint and the operator against whom the complaint is directed.

55. In that respect, I also note that, as confirmed by the discussion which took place at the hearing, where the two conditions set out in point 28 above are met – namely that the complaint must be lodged against a transmission or distribution system operator and must concern the obligations of that operator under Directive 2009/72 – the individual reason that led the final customer to lodge the complaint is irrelevant for the purposes of the admissibility of the complaint. Specifically, there is nothing to prevent a final customer who believes that he or she has incurred loss as a result of an infringement of Directive 2009/72 by the transmission system operator from lodging a complaint against that operator before the competent regulatory authority in order to obtain evidence to be used, where appropriate, in an action for damages brought before the competent national courts.

56. On that point, I note, incidentally, that Directive 2009/72 makes no provision for determining the evidentiary value of any decision by a regulatory authority taken pursuant to the directive in an action for damages before the civil courts. Such evidentiary value is therefore governed by the national law of each Member State. However, as the Commission observed at the hearing, those authorities have specific sectoral and technical knowledge which places them in a more advantageous position to be

14 In this regard, see judgment of 23 January 2020, *Energiavirasto* (C-578/18, EU:C:2020:35, paragraph 34).

15 See judgment of 23 January 2020, *Energiavirasto* (C-578/18, EU:C:2020:35, paragraph 40).

16 See, in particular, Article 36, and specifically paragraph (g), Article 37(1)(n), and recitals 37, 51 *in fine* and 54 of Directive 2009/72.

17 In that regard, see judgment of 23 January 2020, *Energiavirasto* (C-578/18, EU:C:2020:35, paragraph 35).

able to establish infringements of the obligations under Directive 2009/72. The possibility of referring a matter to those authorities by lodging a complaint therefore facilitates access to the national courts for claims for damages, which ultimately makes judicial protection against infringements of EU law more effective.

IV. Conclusion

57. In the light of the foregoing, I propose that the Court answer the question referred for a preliminary ruling by the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands) to the effect that:

Article 37(11) of 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 must be interpreted as meaning that a final customer has the right to lodge a complaint with the national regulatory authority against the national transmission system operator where that final customer is not directly connected to that transmission system but is connected only to a distribution system fed by that transmission system and the transmission of electricity is interrupted on the transmission system that feeds the distribution system to which the final customer is connected.