



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

19 March 2015*

((Reference for a preliminary ruling — Internal market in natural gas — Directive 2003/55/EC — Article 25 — Directive 2009/73/EC — Articles 41 and 54 — Temporal application — Regulation (EC) No 1775/2005 — Article 5 — Capacity allocation mechanisms and congestion management procedures — Decision of a regulatory authority — Right to bring an action — Action brought by a company holding a natural gas transmission authorisation — Charter of Fundamental Rights of the European Union — Article 47 — Right to effective judicial protection against a decision of a regulatory authority)

In Case C-510/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kúria (Hungary), made by decision of 2 July 2013, received at the Court on 25 September 2013, in the proceedings

E.ON Földgáz Trade Zrt

v

Magyar Energetikai és Közmű-szabályozási Hivatal,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, K. Jürimäe (Rapporteur), J. Malenovský, M. Safjan and A. Prechal, Judges,

Advocate General: P. Cruz Villalón,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by A. Tokár and K. Herrmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 October 2014,

gives the following

* Language of the case: Hungarian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 25 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, and corrigendum OJ 2004 L 16, p. 74, ‘the second directive’), and of Articles 41 and 54 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, ‘the third directive’).
- 2 The request has been made in proceedings between E.ON Földgáz Trade Zrt. (‘E.ON Földgáz’) and the Magyar Energetikai és Közmű-szabályozási Hivatal (Hungarian energy and public utility service regulator, ‘the regulatory authority’), concerning the amendment by that authority of the rules of the gas network code (‘the network code’) relating to long-term reserve capacity and managing congestion.

Legal context

EU law

The second directive

- 3 Article 25 of the second directive, entitled ‘Regulatory authorities’, provided in paragraphs (5), (6) and (11) thereof :

‘(5) Any party having a complaint against a transmission, [liquid natural gas] or distribution system operator with respect to the issues mentioned in paragraphs 1, 2 and 4 and in Article 19 may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the regulatory authorities. This period may be extended with the agreement of the complainant. Such a decision shall have binding effect unless and until overruled on appeal.

(6) Any party who is affected and has a right to complain concerning a decision on methodologies taken pursuant to paragraphs 2, 3 or 4 or, where the regulatory authority has a duty to consult, concerning the proposed 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.

...

(11) Complaints referred to in paragraphs 5 and 6 shall be without prejudice to the exercise of rights of appeal under Community and national law.’

The third directive

- 4 Article 41 of the third directive reproduces in essence the contents of Article 25 of the second directive. Article 41(11), (12) and (15) are drafted in terms similar to those in Article 25(5), (6) and (11) of the second directive. Article 41(17) of the third directive did not have an equivalent in Article 25 of the second directive, and is worded as follows:

‘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.’

- 5 Article 54 of the third directive, entitled ‘Transposition’, provides:

‘(1) Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 3 March 2011. They shall forthwith inform the Commission thereof.

They shall apply those measures from 3 March 2011 with the exception of Article 11, which they shall apply from 3 March 2013.

...’

Regulation (EC) No 1775/2005

- 6 At the time of the facts of the main proceedings, Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks (OJ 2005 L 289, p. 1) was in force. That regulation was repealed by Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks (OJ 2009 L 211, p. 36 and corrigenda OJ 2009 L 229, p. 29 and OJ 2009 L 309, p. 87), applicable from 3 March 2011.

- 7 Recitals 17 and 23 in the preamble to Regulation No 1775/2005 were worded as follows:

‘(17) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the guidelines adopted pursuant to it.

...

(23) Since the objective of this Regulation, namely the setting of fair rules for access conditions to natural gas transmission systems, cannot be sufficiently achieved by the Member States and can therefore, by reason of the importance and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.’

- 8 Article 1 of that regulation, entitled ‘Subject matter and scope’, provided in paragraph (1):

‘(1) This Regulation aims at setting non-discriminatory rules for access conditions to natural gas transmission systems taking into account the specificities of national and regional markets with a view to ensuring the proper functioning of the internal gas market.

This objective shall include the setting of harmonised principles for tariffs, or the methodologies underlying their calculation, for access to the network, the establishment of third party access services and harmonised principles for capacity allocation and congestion management, the determination of transparency requirements, balancing rules and imbalance charges and facilitating capacity trading.’

9 According to Article 2(1) and (11) of that regulation:

‘(1) For the purpose of this Regulation, the following definitions shall apply:

...

(11) “network user” means a customer or a potential customer of a transmission system operator, and transmission system operators themselves in so far as it is necessary for them to carry out their functions in relation to transmission’.

10 Article 5 of that regulation, entitled ‘Principles of capacity-allocation mechanisms and congestion-management procedures concerning transmission system operators’, provided:

‘(1) The maximum capacity at all relevant points referred to in Article 6(3) shall be made available to market participants, taking into account system integrity and efficient network operation.

(2) Transmission system operators shall implement and publish non-discriminatory and transparent capacity allocation mechanisms, which shall:

(a) provide appropriate economic signals for efficient and maximum use of technical capacity and facilitate investment in new infrastructure;

(b) be compatible with the market mechanism including spot markets and trading hubs, while being flexible and capable of adapting to evolving market circumstances;

(c) be compatible with the network access systems of the Member States.

(3) When transmission system operators conclude new transportation contracts or renegotiate existing transportation contracts, these contracts shall take into account the following principles:

(a) in the event of contractual congestion, the transmission system operator shall offer unused capacity on the primary market at least on a day-ahead and interruptible basis;

(b) network users who wish to re-sell or sublet their unused contracted capacity on the secondary market shall be entitled to do so. Member States may require notification or information of the transmission system operator by network users.

(4) When capacity contracted under existing transportation contracts remains unused and contractual congestion occurs, transmission system operators shall apply paragraph 3 unless this would infringe the requirements of the existing transportation contracts. Where this would infringe the existing transportation contracts, transmission system operators shall, following consultation with the competent authorities, submit a request to the network user for the use on the secondary market of unused capacity in accordance with paragraph 3.

(5) In the event that physical congestion exists, non-discriminatory, transparent capacity-allocation mechanisms shall be applied by the transmission system operator or, as appropriate, by the regulatory authorities.’

11 Article 9 of Regulation No 1775/2005, entitled ‘Guidelines’, provided in paragraphs (1) and (2) thereof:

‘(1) Where appropriate, Guidelines providing the minimum degree of harmonisation required to achieve the aim of this Regulation shall specify:

...

(b) details of the principles underlying capacity allocation mechanisms and on the application of congestion management procedures in the event of contractual congestion, in accordance with Article 5;

...

(2) Guidelines on the issues listed in paragraph 1 are laid down in the Annex. They may be amended by the Commission; this shall be done in accordance with the procedure referred to in Article 14(2).

...’

12 Article 10 of that regulation, entitled ‘Regulatory authorities’, set out in its first subparagraph:

‘When carrying out their responsibilities under this Regulation, the regulatory authorities of the Member States established under Article 25 of Directive 2003/55/EC shall ensure compliance with this Regulation and the Guidelines adopted pursuant to Article 9 of this Regulation.’

13 The annex to Regulation No 1775/2005 contains the guidelines referred to in Article 9 of that regulation. Paragraph 2 of that annex defines, inter alia, the ‘[p]rinciples underlying the capacity allocation mechanisms, congestion management procedures and their application in the event of contractual congestion’.

14 In accordance with the second subparagraph of Article 17 thereof, Regulation No 1775/2005 is to apply from 1 July 2006.

Hungarian law

15 The relevant provisions of domestic law relating to *locus standi* and a legal interest in bringing proceedings are laid down in Law No III of 1952 establishing the Code of Civil Procedure (A polgári perrendtartásról szóló 1952. évi III. törvény), and Law No CXL of 2004 laying down general rules relating to administrative procedures and services (A közigazgatási hatósági eljárás és szolgáltatás általános szabályairól szóló 2004. évi CXL. törvény).

16 Article 110 of Law No XL of 2008 concerning the supply of natural gas (A földgázellátásról szóló 2008. évi XL törvény), provides:

‘(1) The manager shall draw up the rules, procedures and *modus operandi* of the interconnected natural gas network, the minimum content of commercial agreements, accounting and measuring, and exchange of data, as well as the network code containing the detailed rules relating to daily balancing.

...

(2) The network code shall be established by taking account of security of supply, quality requirements, competitive neutrality and free access to the interconnected network. During the establishment of that code, the manager shall consult a network code committee, made up and operating in accordance with legislative provisions or special regulations.

(3) The manager shall every year review the network code established in accordance with Paragraph (2). For that purpose, he shall consult the network code committee and, in the event of amendment, he shall send [the proposed amendment/s] for approval, before 31 October every year, to the regulatory authority, accompanied by opinions received. The regulatory authority shall refuse to approve the network code where it is unlawful or where it hinders effective competition or the implementation of the principles and rules of price regulation, or also where it permits the discriminatory treatment of certain customers. It shall oblige the manager, setting out its grounds, to amend the draft and resubmit it within a time-limit to be determined by it. The holders of an authorisation, the natural gas producers, the network users and the customers are required to respect the relevant rules of the network code which has been approved.

(4) In the event of amendment of the law or a regulation, or where the network code hinders effective competition or the implementation of principles and rules of price regulation, or also where it permits the discriminatory treatment of certain customers, the regulatory authority, after consulting with the holders of an authorisation and the network users, shall oblige the manager, setting out its grounds, to amend the code within a time-limit to be determined by it. Failing any amendment, it may impose a fine and amend the code on its own initiative.

(5) The network code and its amendments shall be published in a consolidated version on the Internet site of the holders of an authorisation, accompanied by the approval decisions of the regulatory authority.

...'

The facts of the dispute in the main proceedings and the questions referred for a preliminary ruling

- 17 E.ON Földgáz, holder of a gas transmission authorisation, lodged four requests for long-term capacity allocation at the entry point of the gas interconnector between Hungary and Austria (Hungarian-Austrian gas interconnector) with the Hungarian manager of the gas transmission network, namely: the FGSZ Földgázszállító Zrt. ('the network manager').
- 18 Given that those requests clearly exceeded the capacity available at that entry point after 1 July 2010, that network manager requested the regulatory authority to inform him what position had to be adopted in order for a reply to be given to those requests.
- 19 Following the network manager's request, the regulatory authority adopted Decision No 98/2010 of 22 February 2010, which amended the decision of 25 January 2010, approving the network code.
- 20 Decision No 98/2010 thus redefined the rules of the network code governing the allocation of capacity for a term longer than one gas year ('long-term capacity'). It follows from the order for reference that Decision No 98/2010 also amended the rules relating to congestion management.
- 21 Before the amendment of the network code by Decision No 98/2010, the code provided that the network manager was to examine, in the order in which they were lodged, the requests for long-term capacity allocation and that that manager was to allocate that capacity, within the limits of spare capacity, by concluding a contract with the applicants.
- 22 In accordance with the rules amended by Decision No 98/2010, concerning gas year 2010/2011, the network manager is required to reserve 80% of spare capacity for the conclusion of long-term contracts and 20% of that capacity for the conclusion of annual contracts relating to that gas year. Concerning the following gas years, that decision provides that, from the gas year 2011/2012, long-term capacity

allocation, and the actual conclusion of contracts, will take place in accordance with new rules which must be drawn up by the network manager in cooperation with the natural gas vendors and submitted to the regulatory authority for approval.

- 23 The regulatory authority justified the adoption of those new rules by stating that the initial procedure for allocating capacity adversely affected the development of competition and hindered the entry of new participants onto the market.
- 24 On 27 March 2010, E.ON Földgáz brought an action before the Fővárosi Bíróság (Budapest Municipal Court) for annulment of the provisions of Decision No 98/2010 concerning capacity allocation mechanisms relating to the gas year 2010/2011. On 3 November 2011, its action was dismissed.
- 25 On 9 May 2012, the Fővárosi Ítéltábla (Regional Court of Appeal of Budapest) dismissed the appeal brought by E.ON Földgáz too, on the grounds that that company did not have *locus standi* in proceedings for judicial review of an administrative decision concerning the network code. E.ON Földgáz had failed to show that it had a relevant direct interest in relation to the contested provisions of Decision No 98/2010, in so far as it had not concluded a contract with the network manager and that decision referred only to that latter.
- 26 E.ON Földgáz therefore brought an appeal before the referring court. It claims that it has a direct interest which confers *locus standi* on it. That interest results from the fact that Decision No 98/2010 amended the rules of the network code on the basis of which it submitted, as the holder of a gas transmission authorisation, requests for capacity allocation and the new rules restricted its right to enter into a contract regarding the capacity covered by those requests. In that regard, it is not important to establish whether there was an existing contract between E.ON Földgáz and the network manager, since the network code governs, in particular, the procedure giving rise to the conclusion of such contracts. Moreover, Decision No 98/2010 was adopted as a result of the introduction of those requests. It states in addition that, under Law No XL of 2008 relating to the supply of natural gas, the network manager was obliged to consult it, in its capacity as natural gas vendor, during the procedure for drawing up the network code.
- 27 The referring court states that, under Hungarian law, a party to an administrative procedure has *locus standi* to bring an action against an administrative decision only when that action is directed against a provision of such a decision which directly affects its rights. It raises the question therefore whether the interest E.ON Földgáz relies on, which it describes as an economic interest, can constitute a direct interest capable of conferring *locus standi* on that applicant in the context of a legal action against a regulatory decision in the sphere of energy.
- 28 The referring court considers that interpretation of the concept of ‘party affected’, appearing in the second and third directives, is necessary. Although the Court has already interpreted that concept in the context of actions against decisions taken by the regulatory authorities in the field of electronic communications (judgments in *Tele2 Telecommunication*, C-426/05, EU:C:2008:103, and *Arcor*, C-55/06, EU:C:2008:244), there is no precedent in that regard concerning the regulation of the energy sector and, more particularly, decisions relating to the network code.
- 29 In those circumstances, the Kúria (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) In proceedings relating to an administrative decision adopted when [the second directive] was in force, do the provisions laid down in Article 25 of that directive, determining who is entitled to bring an action, apply, or are the provisions to be taken into consideration for the purposes of those proceedings those laid down in Article 41 of [the third directive] which entered into force during the proceedings, account being taken of the second subparagraph of Article 54(1) of that directive, under which those provisions are to be applicable from 3 March 2011?’

- (2) In the event that the [third directive] is applicable, can an approved vendor with a financial interest comparable to the interest at stake in the present proceedings, in relation to an action contesting the decision approving a network code or determining its content, be regarded as ‘a party affected’ for the purposes of Article 41(17) of that directive, or can only the network manager who is authorised to seek approval of the code be regarded as ‘a party affected’?
- (3) In the event that the [second directive] is applicable, does the approval or amendment of the network code, such as that which has taken place in the present case, fall within the situations contemplated in Articles 25(5) and (6), in as much as it refers to the assessment of requests for reserve capacity?
- (4) In the event that the case falls within one of the situations contemplated in Article 25(6) of the [second directive], can an approved vendor with a financial interest comparable to the interest at stake in the present proceedings, in relation to an action contesting the decision approving a network code or determining its content, be regarded as ‘a party affected’ for the purposes of Article 41(17) of that directive, or can only the network manager who is authorised to seek approval of the code be regarded as ‘a party affected’?
- (5) What interpretation is to be given to Article 25(11) of the [second directive], in accordance with which the claims referred to in Article 25(5) and (6) are to be without prejudice to the exercise of rights of appeal under [European Union] and national law, in the event that it is apparent from the answers to the preceding questions that national law makes the bringing of an action subject to more stringent requirements than those laid down in the directive or in [European Union] law?

Consideration of the questions referred for a preliminary ruling

The first question

- 30 By its first question, the referring court asks, in essence, whether the third directive, the period for transposition of which expired on 3 March 2011, and in particular the new provisions introduced in Article 41(17) thereof, must be interpreted as meaning that that directive is applicable to an action brought against a decision of a regulatory authority, such as that at issue in the main proceedings, adopted before the expiry of that period allowed for transposition and which was still pending on that date.
- 31 Article 41(17) of the third directive provides 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.
- 32 In accordance with its wording, that provision is applicable to situations in which the regulatory authority adopted a decision which infringes the rights of a party. It is therefore in the light of the date on which that decision was adopted that it is necessary to assess whether a situation is covered by Article 41(17) of the third directive.
- 33 Therefore, Article 41(17) of the third directive must be interpreted as not covering decisions of the regulatory authority adopted before the expiry of the period allowed for transposition referred to in Article 54(1) of that directive, namely, 3 March 2011.
- 34 As a result, in a situation such as that at issue in the main proceedings, in which Decision No 98/2010 was adopted on 22 February 2010, that is to say before the expiry of the period allowed for the transposition of the third directive, the latter is not applicable.

35 Therefore, the answer to the first question is that the third directive, the period allowed for transposition of which expired on 3 March 2011 and, in particular, the new provisions introduced in Article 41(17) thereof, must be interpreted as meaning that it does not apply to an action against a decision of a regulatory authority, such as that at issue in the main proceedings, adopted before the expiry of that period allowed for transposition and which was still pending on that date.

The second question

36 In view of the answer given to the first question, there is no need to answer the second question.

The third to fifth questions

37 By its third to fifth questions, which should be examined together, the referring court asks, in essence, whether Article 25 of the second directive must be interpreted as precluding national legislation concerning the exercise of rights of action before the court or tribunal having jurisdiction to review the lawfulness of acts of the regulatory authority, which, in circumstances such as those at issue in the main proceedings, does not make it possible to recognise that an operator, such as E.ON Földgáz, has *locus standi* for the purpose of bringing an action against a decision of that regulatory authority relating to the network code.

38 As was pointed out by the Advocate General in points 36 and 37 of his Opinion, the second directive contains no specific provisions conferring on operators a right to apply to the courts for legal review of decisions of the regulatory authority, such as Decision No 98/2010.

39 Nevertheless, it must be observed that Regulation No 1775/2005, which is the regulation applicable *ratione temporis* to the facts of the dispute in the main proceedings, provides for harmonised rules concerning access of market operators to the natural gas transmission network.

40 Thus, in accordance with recital 23 and Article 1(1) of that regulation, the objective of that regulation is to set non-discriminatory rules for access conditions to natural gas transmission systems, taking into account the specificities of national and regional markets with a view to ensuring the proper functioning of the internal market in gas.

41 In that context, it is apparent from the second subparagraph of Article 1(1) of that regulation, that the latter is intended, in particular, to provide for harmonised rules concerning capacity allocation mechanisms and congestion management procedures.

42 Article 5 of that regulation sets out the principles that the transmission operator is required to respect in implementing those mechanisms and procedures, in order to ensure that the access of market participants to the transmission network takes place in non-discriminatory and transparent conditions. Under Article 9(1) and (2) of Regulation No 1775/2005, the principles of Article 5 thereof are explained by the guidelines in the annex to that regulation.

43 Moreover, it follows from recital 17 and the first subparagraph of Article 10 of Regulation No 1775/2005, that the regulatory authorities are required to ensure observance of the principles referred to in Article 5 and the annex to that regulation, in the context of the exercise of their powers.

44 It follows that, where a regulatory authority adopts, as in the main proceedings, a decision which amends the network code rules relating to capacity allocation and congestion management by the network manager, that regulatory authority is required to ensure observance of the principles laid down in Regulation No 1775/2005 and, in particular, those in Article 5 thereof, read in conjunction with the Annex to that regulation.

- 45 Concerning the question whether Article 5 of Regulation No 1775/2005, read in conjunction with the Annex to that regulation, confers rights on an operator, such as E.ON Földgáz in the circumstances of the case in the main proceedings, which the regulatory authority is required to respect where it adopts a decision amending the regulatory requirements imposed on the network manager concerning the procedures governing access to that network, it should be emphasised that, in its capacity as holder of a gas transmission authorisation on the network, E.ON Földgáz must be regarded as a network user within the meaning of Article 2(1)(11) of Regulation No 1775/2005. In the light of the wording of that provision, it is irrelevant that such an operator has in fact concluded a contract with the network manager in order to benefit from the status of network user, in so far as that status covers all potential customers of the network manager.
- 46 Concerning, next, the objective pursued by Regulation No 1775/2005, as referred to in paragraph 41 of the present judgment, the principles set out in Article 5 of that regulation, read in conjunction with the Annex thereto, must be interpreted as constituting protective measures adopted in the interests of users wishing to gain access to the network and therefore capable of conferring rights on them (see, by analogy, judgment in *Tele2 Telecommunication*, C-426/05, EU:C:2008:103, paragraph 34).
- 47 In particular, concerning the capacity allocation mechanisms and congestion management procedures, it follows from paragraph 2.1.3. of the Annex to Regulation No 1775/2005 that those mechanisms and procedures neither prevent new entrants gaining access to the market nor constitute an undue obstacle to market access. Furthermore, those mechanisms do not prevent market participants, including new entrants and undertakings with a small market share, from competing effectively.
- 48 It is apparent from the foregoing considerations that an operator, such as E.ON Földgáz in the circumstances of the case in the main proceedings, is the holder of certain rights under Article 5 of Regulation No 1775/2005, read in conjunction with the Annex to that regulation, and must be regarded as potentially having its rights infringed by a decision of the regulatory authority which amends the rules of the network code relating to capacity allocation and congestion management.
- 49 In accordance with settled case-law, when there are no EU rules governing the matter, it is for the domestic legal system of every Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, but the Member States are, however, responsible for ensuring that those rights are effectively protected in every case (judgment in *Mono Car Styling*, C-12/08, EU:C:2009:466, paragraph 48 and case-law cited).
- 50 Thus, whilst it is, in principle, for national law to determine an individual's standing and legal interest in bringing proceedings, EU law nevertheless requires, in addition to observance of the principles of equivalence and effectiveness, that the national legislation should not undermine the right to effective judicial protection, as provided for in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') (see, to that effect, judgment in *Mono Car Styling*, C-12/08, EU:C:2009:466, paragraph 49 and case-law cited).
- 51 In the light of all the foregoing considerations, the answer to the third to fifth questions is that Article 5 of Regulation No 1775/2005, read in conjunction with the Annex to that regulation, and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation concerning the exercise of rights of action before the court or tribunal having jurisdiction to review the lawfulness of acts of a regulatory authority, which, in circumstances such as those at issue in the main proceedings, does not make it possible to confer on an operator, such as E.ON Földgáz, *locus standi* for the purpose of bringing an action against a decision of that regulatory authority relating to the network code.

Costs

⁵² 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 (Fourth Chamber) hereby rules:

1. **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, the period allowed for whose transposition expired on 3 March 2011 and, in particular, the new provisions introduced in Article 41(17) thereof, must be interpreted as not applying to an action against a decision of a regulatory authority, such as that at issue in the main proceedings, adopted before the expiry of that period allowed for transposition and which was still pending on that date.**
2. **Article 5 of Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks, read in conjunction with the Annex to that regulation, and Article 47 of the Charter, must be interpreted as precluding national legislation concerning the exercise of rights of action before the court or tribunal having jurisdiction to review the lawfulness of acts of a regulatory authority, which, in circumstances such as those at issue in the main proceedings, does not make it possible to confer on an operator, such as E.ON Földgáz Trade Zrt, *locus standi* for the purpose of bringing an action against a decision of that authority relating to the gas network code.**

[Signatures]