



The Constitutional Court turns to the Court of Justice of the European Union with respect to the connection of the users of natural gas to the natural gas transmission system and suspends legal proceedings in a case

On 11 June 2020, the Constitutional Court decided to request a preliminary ruling from the Court of Justice of the European Union (hereafter – CJEU) in case No. 2019-28-0103 “On Compliance of Decision No. 1/7 of 18 April 2019 by the Board of the Public Utilities Commission “Regulation on the Connection to the Natural Gas Transmission System for Biomethane Producers, Liquefied Natural Gas System Operators and Natural Gas Users” with Article 1, Article 64, Article 89 and the First Sentence of Article 105 of the *Satversme* of the Republic of Latvia as well as Section 45 (7) and Section 84¹ (1) of the Energy Law and the Compliance of Section 84¹ (1) of the Energy Law with Article 64 of the *Satversme* of the Republic of Latvia”.

The Constitutional Court found that there were doubts in the case, whether the norms 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 (hereafter – Directive 2009/73/EC) established obligations for the Member States regarding the adoption of such legal regulation, in accordance with which the user of natural gas could choose, whether it wanted to connect to the distribution system of natural gas or directly to the transmission system of natural gas.

Pursuant to the first part of Article 267 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union has jurisdiction to give preliminary rulings concerning the interpretation of the Treaties as well as the validity and interpretations of acts of the institutions, bodies, offices or agencies of the Union. In

accordance with the second and third part of this article, the Constitutional Court has the right and, in some cases, – an obligation to turn to CJEU.

In the present case, the Constitutional Court has identified the need to raise questions before CJEU to receive a preliminary ruling regarding interpretation of the norms of Directive 2009/73/EC. The Constitutional Court decided to raise the following questions before CJEU:

1. Are Article 23 and Para 1 of Article 32 of Directive 2009/73/EC to be interpreted to mean that the Member States should adopt such legal regulation that would envisage, firstly, that any direct customer may choose, to which type of system – transmission or distribution system – it will connect to, and, secondly, that the system operator has the obligation to allow it to connect to the respective system?
2. Is Article 23 of Directive 2009/73/EC to be interpreted to mean that an obligation has been established for the Member States to adopt such legal regulation, pursuant to which only the direct customer of the transmission system of natural gas, which is not a household customer (i.e., only industrial customer), may connect to this system?
3. Is Article 23 of Directive 2009/73/EC and, in particular, the concept of “new industrial customer”, to be interpreted to mean that, in this Article, an obligation has been established for the Member States to adopt such legal regulation, pursuant to which only such direct customer, who is not a household customer (i.e., only industrial customer) and who previously has not been connected to the distribution system, may connect to the transmission system of natural gas?
4. Are Para 2 of Article 2 and Article 23 of Directive 2009/73/EC to be interpreted to mean that such regulation of a Member State, pursuant to which the transmission of natural gas

includes transporting natural gas directly to the direct customer's supply system of natural gas, is contrary to them?

The Constitutional Court decided to suspend legal proceedings in the case until the ruling by CJEU enters into force.

The text of the decision is available on the homepage of the Constitutional Court:

http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2019/11/11.06.2020._V%C4%93r%C5%A1an%C4%81s-EST_liet%C4%81_2019-28-0103.pdf#search=

The press release was prepared with the aim to facilitate understanding of cases heard by the Constitutional Court. It shall not be regarded as part of the judgement and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court www.satv.tiesa.gov.lv.

Ketija Strazda

Head, Public Relations and Protocol Department
of the Constitutional Court

Ketija.Strazda@satv.tiesa.gov.lv,

67830749, 26200580