



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 151/2019

Luxembourg, 5 December 2019

Judgment in Joined Cases C-708/17 'EVN Bulgaria Toplofikatsia' EAD v Nikolina Stefanova Dimitrova and C-725/17 'Toplofikatsia Sofia' EAD v Mitko Simeonov Dimitrov

European Union law does not preclude a national law that provides that each owner of a property in a building in co-ownership is required to contribute to the cost of heating supplied to the common parts of that building

In the judgment in EVN Bulgaria Toplofikatsia (C-708/17 and C-725/17), pronounced on 5 December 2019, the Court considered whether a national law governing the supply of thermal energy is compatible with EU law and held that Directive 2011/83 on consumer protection¹ and Directive 2005/29 on unfair commercial practices² do not preclude a national law that requires owners of an apartment in a building in co-ownership connected to a district heating network to contribute to the costs of the consumption of thermal energy by the common parts and the internal installation of that building, even though they did not individually request the supply of that heating and they do not use it in their apartment. In respect of that same law the Court also held that Directives 2006/32³ and 2012/27⁴ on energy efficiency did not preclude billing for consumption that, for each owner of an apartment in a building in co-ownership, was calculated proportionately to the heated volume of his or her apartment.

The disputes in the main proceedings arise in the context of two actions for the payment of bills addressed to owners of properties in buildings held in co-ownership for the consumption of thermal energy by the internal installation and common parts of those buildings, those owners having refused to pay those bills. Those property owners consider that, while their property is supplied by the district heating network pursuant to a contract for supply agreed between the association of co-owners and the thermal energy provider, they did not however individually consent to receiving district heating and do not use it in their own apartment.

The Court first of all considered the interpretation of the concept of 'consumer', within the meaning of Directive 2011/83⁵, and held that as customers of an energy provider the owners and the holders of a right in rem over the use of property in a building in co-ownership connected to a district heating network are covered by that concept, to the extent that they are natural persons not engaged in commercial or professional activities. The Court therefore concluded that the contracts for the supply of district heating at issue in the main proceedings fall within the category of

¹ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64), Article 27.

² Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22), Article 5(1) and (5)).

³ Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC (OJ 2006 L 114, p. 64), Article 13(2).

⁴ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ 2012 L 315, p.1), Article 10(1).

⁵ Article 2(1) of Directive 2011/83.

contracts concluded between traders and consumers, within the meaning of Article 3(1) of Directive 2011/83.

Next the Court clarified the concept of the 'unsolicited supply' of a product, within the meaning of Article 27 of Directive 2011/83, by observing that the provision of thermal energy to the internal installation and consequently the common parts of a building in co-ownership, carried out following a decision adopted by the association of property owners of that building to connect it to the district heating, in accordance with national law, was not an unsolicited supply of district heating.

Finally, the Court ruled on the method of billing for the consumption of thermal energy in buildings in co-ownership. It observed that, in accordance with Directive 2006/32⁶, Member States must ensure that the final users in the fields, inter alia, of electricity and district heating are provided with individual meters that measure precisely their actual consumption where that is technically possible. According to the Court, it is hard to conceive being able completely to distinguish the heating bills individually, in particular in respect of the internal installation and the common parts, given that the apartments in such a building are not thermally independent of one another since heat circulates between the units that are heated and those that are less or are not heated. In those circumstances, the Court concluded that, having regard to the wide discretion available to Member States as regards the method of calculation of the consumption of thermal energy in buildings in co-ownership, Directives 2006/32 and 2012/27 do not preclude a calculation of the heat emitted by the internal installation that is done proportionately to the heated volume of each apartment.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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⁶ Article 13(2) of Directive 2006/32.