

Case C-310/24**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

29 April 2024

Referring court:

Sofiyski rayonen sad (Bulgaria)

Date of the decision to refer:

22 April 2024

Applicant:

YL

Defendant:

‘Elektrozpredelitelni mrezhi Zapad’ EAD

Subject matter of the main proceedings

Action for a negative declaratory judgment, by which the applicant is seeking a declaration that he is not required to pay an electricity bill that is based on estimated consumption for the three months prior to the reading of a meter that was defective and did not accurately record actual consumption

Subject matter and legal basis of the request

Interpretation of Directive (EU) 2019/944, Regulation (EU) 2019/943 and Directive 2011/83/EU as regards the question of how electricity prices are set, the components that are to be included and how the principle of energy efficiency is to be applied; interpretation of Directive 2011/83 as regards the question of whether a consumer is required to pay the price for an estimated amount of electricity if the metering device has failed or has recorded consumption incorrectly and that has been caused by an external influence or there was no external influence; in addition, interpretation as to the proportionality of costs in the energy system and the obligation for consumers to bear such costs, in view of

the principle that the supplier/operator is to be provided with incentives to limit its losses.

Questions referred for a preliminary ruling

1. Must [the concept of] ‘charges ... for losses’ for the purposes of Article 46(2)(d) of Directive (EU) 2019/944 and Article 18(8) of Regulation (EU) 2019/943 be interpreted as including also electricity consumed but not recorded by the metering device, where the absence of metering or the inaccurate metering of the electricity provided to the consumer:

- (a) is due to external influence;
- (b) is not due to external influence;

and the cause was not remedied in good time by the operator or the electricity supplier, and the charge includes an ‘estimated’ amount of electricity over a period of time determined by law, the end of which is dependent on the supplier establishing a technical malfunction?

2. Is the obligation of the regulatory authority under Article 59(1)(a) of Directive 2019/944 to be interpreted as meaning that the principle of fixing transparent criteria for transmission or distribution tariffs or their methodologies is complied with where the tariff includes the operator’s costs in respect of a calculation of the estimated amount of losses over an estimated period of time, on account of an issue with the metering device (metering device that fails to record or is technically malfunctioning), where the reason for that device’s failure

- (a) is due to external influence;
- (b) is not due to external influence;

and that cause was not remedied in good time by the operator or the electricity supplier, which is the owner of the metering device?

3. Must Article 18(1) and (7) of Regulation 2019/943 be interpreted as allowing national legal rules under which costs in respect of electricity consumed by a consumer are determined on the basis of an estimate of that consumer’s electricity consumption over an estimated period of time, without verification of the amount of electricity he or she has actually consumed, where there is an issue with the device for the measurement of the amount of electricity and that issue:

- (a) is due to external influence;
- (b) is not due to external influence?

4. Must Article 27 of Directive 2011/83/EU be interpreted as meaning that the consumer is under an obligation to pay for an estimated amount of electricity over

an estimated period of time, where the metering device does not record the actual amount of electricity consumed, that device is located outside the consumer's property, and its failure to record:

- (a) is due to external influence;
- (b) is not due to external influence?

5. Must Article 10(4) of Directive 2019/944 be interpreted as allowing national legal rules permitting an electricity supplier/operator to recalculate the amount of electricity, replacing it with an estimated amount of electricity consumed over an estimated period of time, where the metering device is not measuring properly, is beyond the consumer's reach, and its failure to record:

- (a) is due to external influence;
- (b) is not due to external influence?

Provisions of European Union law relied on

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: Article 1, Article 2(1) and (2), Article 3(1) and (2), Article 4, Article 9(1), (2) and (3), Article 18(1) to (4), Article 27

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: recital 83, Article 1, Article 2(1) to (4), Article 10(1) and (2), Article 10(3)(a), (b), (d), (e), (f), (g) and (h), Article 10(4) to (12), Article 46(2)(d), Article 59(1)(a) and (r)

Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity: Article 18(1), (3), (7) and (8)

Provisions of national law relied on

GRAZHDANSKI PROTSESUALEN KODEKS (CODE OF CIVIL PROCEDURE)

Article 7(3) The court shall examine of its own motion whether unfair terms are used in a contract concluded with a consumer. It shall give the parties the opportunity to make observations on those matters.

ZAKON ZA ENERGETIKATA (LAW ON ENERGY)

Under Article 83(1), the construction and operation of the electricity network are governed by the provisions contained in the Pravila za izmervane na kolichestvoto elektricheska energia (Rules for metering amounts of electricity; ‘the PIKEE’), which lay down measurement principles, measurement methodologies and locations, including the procedure and methodologies for recalculating the amount of electricity in the event that the electricity is not measured, is measured incorrectly or is not measured accurately. Those rules are adopted by the [Komisia za energiyno i vodno regulirane (Energy and Water Regulatory Commission, Bulgaria; ‘the commission’)] on a proposal from the electricity undertakings and are published both by the commission and by the electricity undertakings on their respective websites.

Paragraph 1 of that law includes a definition of ‘household customer’: a customer who purchases electricity or district heating with hot water or steam as the heat carrier for heating, air conditioning and hot water supply, or natural gas, for the customer’s own household consumption.

PRAVILA ZA IZMERVANE NA KOLICHESTVOTO ELEKTRICHESKA ENERGIJA (RULES FOR METERING AMOUNTS OF ELECTRICITY)

Under Article 1, those rules define, in particular, the requirements for measurement accuracy and for inspecting the technical and metrological characteristics of metering devices/systems and their associated communication connections, the rights and obligations of the owner of a metering system and of the parties to electricity transactions, the conditions and procedures for identifying cases where electricity is not being measured, is being measured incorrectly or is not being measured accurately, the conditions, procedures and methodologies for operating the locations and devices for commercial metering.

The rules also provide for the inspection, by the operator of the network concerned, of the devices for commercial and control metering, checking compliance with the requirements laid down, including the requirements for accuracy.

In addition to those inspections, the network operator (the owner of the commercial metering device) must ensure on-the-spot technical testing of the metering system/the commercial metering devices, as well as the replacement or adaptation of the calibration programme for the commercial metering device. Reading the commercial metering device does not constitute technical testing within the meaning of those rules.

Section IX of the rules sets out the procedure and methodologies for recalculating the amount of electricity.

Article 49, set out in Section IX, provides that the operator of the network concerned is to draw up a findings report of the inspection carried out in accordance with those rules, which must be signed by one of its representatives and by the user or their representative. If the inspection reveals that the

commercial metering device does not fulfil the prescribed metrological and/or technical characteristics, that its integrity and/or functionality is impaired or that a foreign element is suspected of having been added to it, the device is removed, sealed with a seal bearing the mark of the operator of the network concerned and a unique number, and sent to the authority responsible for metrological testing within 14 days of the date of the inspection.

If the failure of the commercial metering device is attributable to *force majeure* within the meaning of the rules, the operator of the network concerned may refrain from sending the removed commercial metering device to the competent metrological regulatory authority.

In those cases, the operator of the network concerned is to install functional commercial metering devices.

Article 50 of the rules sets out detailed arrangements for calculating the amount of electricity in the event of the commercial metering device failing to provide a measurement or providing a measurement deviating from the maximum permissible error, Article 51 sets out rules in the event of an improper connection to the electricity grid, and Article 52 sets out rules in the event of a technical fault in the commercial metering device, which means that although the electricity consumed flows through the metering system, the metering system does not record the amounts, and no external influence has been identified in the check or reporting.

Under Article 56 of the rules, in the event of recalculation of the amounts of electricity under that section of the rules, the operator of the electricity distribution network is to provide the user with a bill and an extract in respect of the recalculated amounts of electricity, and to inform the user of the amount payable for network services (with the exception of the price for access to the distribution network, which is calculated on the basis of the power provided) and of the 'public service obligations'. The amounts of electricity recalculated in accordance with paragraph 1 are billed on the basis of the market price of electricity so as cover technical costs, estimated for the period of the recalculation, set by the commission in respect of the relevant network operator.

Succinct presentation of the facts and procedure in the main proceedings

- 1 The parties are not in dispute that the applicant is the owner of land on which there is a house, which has been connected to the electricity transmission network since 10 April 2022, and that the defendant was entitled to supply and charge for electricity during the period and at the location in question. The defendant is an authorised electricity transmission network operator and electricity supplier. A consumer account for electricity supply and electricity consumption was opened for the land in question in the defendant's database. It is undisputed that there is a consumer contract between the parties for the supply of electricity for the period and location in question and that the applicant's house has an electricity meter

(technical metering device; ‘the metering device’) that is located outside the boundaries of the property.

- 2 It is also undisputed that employees of the defendant checked the electricity meter on 10 April 2023. That meter is located in a metal box on the street that is only accessible by the defendant’s employees. Following the inspection of 10 April 2023, the meter was removed and sent for testing to the Balgarski institut po metrologia (Bulgarian Institute of Metrology; ‘the BIM’), which tested the meter. Those findings of fact were also made in the expert opinion obtained by the court.
- 3 The testing indisputably showed that the day tariff meter was not cumulating measurement values and that the metering device had no visible defects, either externally or on the circuit boards or individual parts of the electricity meter, including its software. The BIM concluded that the electricity flowing through the meter was not cumulated in the set tariff and that the meter neither met the metrological characteristics nor fulfilled the requirements for the accuracy of electricity measurement.
- 4 On the basis of those results, the defendant issued a bill in accordance with Article 50(1)(b) of the PIKEE. The defendant argues that, since the metering device had failed, it was entitled to calculate estimated electricity consumption for the period of three months prior to the inspection, namely from 11 January 2023 to 10 April 2023. The estimated consumption calculated by the defendant is 3 168 kWh. Based on the electricity prices applicable at that time, the amount billed was 2 058.26 leva (BGN) (approx. EUR 1 000). The defendant calculated that amount solely on the basis of the day tariff, which is more expensive than the night tariff.
- 5 The applicant claims that he does not owe that amount, as he had no knowledge that the electricity meter had failed and had no access to that meter, and that the estimate could also have been made for a shorter period, namely only for the period in which the electricity meter had failed. He therefore brought an action seeking a negative declaration to the effect that he does not owe any payment for estimated electricity consumption for the last three months prior to the inspection.
- 6 The defendant opposes the action in its entirety and argues that the amount was calculated in accordance with Article 50(1)(b) of the PIKEE – when the commercial metering device fails to provide a measurement or provides a measurement deviating from the maximum permissible error.
- 7 The court expert’s report found that, at the time of the inspection on 10 April 2023, the electricity to the applicant’s property was not being fully recorded by the electricity meter. Electricity was flowing through the meter, but the measurement deviation was greater than permitted. The electricity meter did not cumulate the measurement values on its display. It let electricity through but did not cumulate it in its metering mechanism/display and therefore did not process the pulses, i.e. it did not measure the electricity that passed through. In particular, in the period from 20 January 2023 to 20 February 2023, the electricity meter did

not measure fully. In the period from 21 February 2023 to 9 April 2023, it measured only partially. The testing took place on 21 April 2023. Therefore, the device was measuring incompletely or partially for the period from 20 January 2023 to 9 April 2023.

- 8 The court expert's report shows that the defendant last had the electricity meter in question inspected on 14 March 2018. The following inspection was carried out on the date at issue, namely 12 April 2023. The defendant did not have remote access to the electricity meter to read the values in real time and check the condition of the device and therefore no remote readings were taken, but only readings by the defendant's employees. There are no measuring instruments in the area for monitoring the electricity values. The expert was therefore unable to determine precisely the amount of electricity consumed by the applicant for the period during which the meter was measuring incompletely or partially (20 January 2023 to 9 April 2023).
- 9 It is undisputed and is also evident from the expert's report that the electricity meter in question did not fully record the electricity that was flowing through it. There was no external influence on the metering device, no faults in the connection system or in the switchgear to the transmission network. The software had not been manipulated. It was established that the cause of the meter's failure to record was an internal fault, a technical malfunction on its part. The electricity meter had failed.
- 10 It is undisputed that the applicant was informed of the testing carried out and that the defendant billed the applicant for the disputed amount and that bill was duly received. The testing was carried out in accordance with the law and the necessary reports were drawn up. The applicant was informed of the testing and its results.

The essential arguments of the parties in the main proceedings

- 11 The dispute concerns the legal situation and not the facts of the case. The applicant claims that he does not owe the amount billed; the defendant disputes that. The question is whether the defendant's actions are contrary to consumer protection. Can an electricity supply company of its own motion and unilaterally bill amounts if the electricity meter did not display any measurement values, was not located on the consumer's property and was owned by the supplier? It is disputed whether the consumer must pay the amount in question for the estimated electricity consumption for the previous three months, where he is not at fault (by way of deliberate meter interference) and it is not clear how much he has consumed under the day and night tariff respectively. The price varies depending on the tariff.
- 12 The question that arises is whether the defendant's action is appropriate in terms of consumer protection, i.e. whether the company may unilaterally recalculate the consumer's electricity consumption because the electricity meter, to which the consumer had no access, failed, the recalculation being based on an estimated

amount of electricity on the basis of the flow rate of the electricity meter over an estimated period of time and not on the actual period of time during which the electricity meter had failed. It is disputed whether the consumer should be liable for the estimated electricity costs over an estimated period of time if his electricity meter failed but the meter is owned by the defendant and under the control of the supplier of the service and the latter failed to remove it and replace it with a new meter in a timely manner, and given that the last inspection took place five years before the inspection at issue.

Succinct presentation of the reasoning in the request for the preliminary ruling

- 13 Recital 83 of Directive 2019/944 sets out the requirement to reduce losses in the electricity transmission network (as part of the general principle of energy efficiency) and for remote reading and monitoring of the network in real time by that network's operators.
- 14 With regard to losses in the electricity transmission network, the Bulgarian legislature has enacted Article 83(1)(6) and Article 83(2) of the Law on Energy, on the basis of which the commission – a regulatory authority for the purposes of Directive 2019/944 – has laid down the PIKEE.
- 15 The commission has included calculation provisions in the PIKEE, on the basis of which it is determined how much electricity the consumer would have consumed over an estimated period of time (estimated electricity consumption), in accordance with the principle of unjust enrichment. The rules cover several scenarios.
- 16 Where there is a technical malfunction of the metering device but there has been a proven change to the connection system or external influence on the technical metering device due to actions (fault) on the part of the consumer, the electricity supplier is to charge for an amount of electricity estimated in accordance with Article 50 of the PIKEE at a price determined by the commission. Article 50 of the PIKEE therefore only regulates the calculation method in the event of external influences on the metering of consumption or on the type of connection. If an end consumer has illegally connected to the electricity transmission network, the supply company is to bill for the electricity in accordance with the provisions of Article 51 of the PIKEE.
- 17 If the electricity meter fails or does not measure correctly, without any external influence on the part of the consumer, invoicing is carried out in accordance with Article 52 of the PIKEE. That provision allows the supplier to charge an amount based on the estimated electricity consumption in the event of meter failure without any external influence on the part of the consumer.
- 18 In the event of a malfunction or inaccurate functioning of a tariff switch, the supplier may calculate the amount in accordance with Article 53 of the PIKEE.

Under Bulgarian law, the tariff switch is a timer that controls day and night settings. That is because, until 1 April 2024, the electricity price varied depending on the day or night tariff.

- 19 The provisions of Articles 50 to 53 of the PIKEE take into account the principle of unjust enrichment (principle of compensation for electricity consumed but not recorded). The rules are based on the assumption that, in the absence of metering or in the event of a malfunction of a technical metering device, the consumer has consumed a certain amount of electricity at the night tariff or at the day tariff over a particular period of time. The commission has defined a fiction for the electricity consumption period, electricity amount and electricity tariff.
- 20 However, the provisions cited treat the amounts of electricity referred to in Articles 50 to 53 of PIKEE as network losses suffered by the electricity transmission network operator. The loss consists of electricity consumed by the consumer that was not recorded by the meter. The consumer is therefore not paying for the actual amount of electricity used. At the same time, the provisions of the PIKEE introduce a fiction for the estimated amount of electricity used, without taking account of the specific circumstances of the household concerned.
- 21 These provisions establish an ‘estimated’ amount of electricity for a particular period, depending on when the supplier/operator discovers the failure of the device. If the discovery is made at a later point in time, the supplier calculates the electricity at a higher price than if the discovery is made earlier. That is due to the fact that electricity prices are updated every few months, which leads to their increase.
- 22 According to the cited national provisions, electricity not recorded by the meter constitutes a cost which must be borne by the consumer to the extent and duration laid down by the rules. That is intended to take account of the principle of unjust enrichment. In legal terms, it relates to the principle of compensating the electricity supplier for lost value, the burden of which is on the consumer. That obligation to pay compensation is explained by the fact that the electricity meter was out of order, was not measuring correctly or was influenced by external factors, but it can nevertheless be assumed that the consumer consumed electricity.
- 23 At the same time, Article 46(2)(d) of Directive 2019/944 provides that the activity of electricity transmission is to include charges for losses. Pursuant to Article 18(8) of Regulation 2019/943, the regulatory authority of the Member State is to recognise the network costs as eligible and is to include them in the distribution tariffs in order to provide incentives to distribution system operators to increase efficiencies. That measure is intended to create incentives for suppliers/operators to optimise their networks in order to reduce losses with a view to energy efficiency.

- 24 In this respect, it is unclear which elements are covered by the term charges for losses, for the purposes of Article 46(2)(d) of Directive 2019/944 and Article 18(8) of Regulation 2019/943. Are those provisions to be interpreted as meaning that the charges for losses also include electricity consumed but not recorded by the metering device, where the absence of or defective recording of the electricity at the consumer's location (a) is due to action on the part of the consumer, (b) is not due to action on the part of consumer but to failure of the device and the consequence of the absence of metering was not remedied in good time by the network operator or the electricity supplier?
- 25 Regulation 2019/943 enshrines the principle of proportionality. According to that principle, the costs should therefore be included in the tariffs. For the referring court, the question arises as to whether that will reduce the obligation of operators/suppliers to increase the efficiency of their networks by reducing the costs of electricity supply. In the present case, it was established that, before 12 April 2023, the meter in question had been inspected in 2018. The electricity supplier therefore took no measures to check or maintain the device between 2018 and 2023. It was only when the electricity supplier discovered the failure of the device on 12 April 2023 that it calculated an amount intended, in accordance with the legal provisions, to cover its costs relating to the energy supplied but not measured. Can losses in respect of unmetered electricity, as in this case, be charged to the consumer if the supplier or the network operator has not rectified the fault in the metering device in good time? The referring court considers that the inclusion of costs in respect of losses, such as those at issue in the main proceedings, would weaken the incentives for the electricity supplier/network operator to reduce its losses because the costs would then not be borne directly [by the electricity supplier/network operator] but by the end consumer.
- 26 It is therefore unclear whether Article 18(8) of Regulation 2019/943 precludes legal rules such as those in question here, under which the consumer is required to pay the network operator or the electricity supplier for the estimated electricity consumption, where an electricity meter has not measured consumption or has measured it incorrectly through no fault of the consumer, and the supplier or the operator has not remedied the cause in good time.
- 27 Having said that, under Article 59(1)(a) of Directive 2019/944, the regulatory authority is empowered to fix or approve transmission or distribution tariffs or their methodologies. In this respect, it is unclear whether Article 59 of that directive permits legal rules such as those in question here, under which the operator's costs for energy supplied and consumed, which was not measured or was measured inaccurately due to a fault in the metering device, are included in the tariff. Is that obligation of the regulatory authority to be interpreted as meaning that the fixing of transmission or distribution tariffs or their corresponding methodologies, in accordance with transparent criteria, is complied with in cases where the cause of the failure of the metering device (a) is due to action on the part of the consumer, or (b) is not due to action on the part of the customer but to a defective meter? It should be noted that that tariff includes the operating costs of

the electricity supplier/network operator in the event of issues with the metering devices that are not immediately rectified by the supplier/network operator, namely in the amount of the estimated losses over an estimated period of time.

- 28 In addition, Article 18(1) of Regulation 2019/943 stipulates that the consumer must pay charges to the transmission network operator that reflect the costs to the network and, in Article 18(7) thereof, that those costs are based on the use of the distribution network by the system users. It is unclear how those costs are to be reflective of the use of the distribution network by its users – on the basis of an estimated bill or on the basis of actually calculated costs/losses? Is Article 18(1) and (7) of Regulation No 2019/943 to be interpreted as permitting a national provision which lays down methodologies for calculating costs in respect of electricity consumed by a consumer on the basis of an estimate of electricity consumption over an estimated period of time, without taking into account the amount of electricity actually consumed by the consumer, in the event of failure of the technical metering device (electricity meter)?
- 29 In accordance with Article 3 of Directive 2011/83, contracts for the supply of electricity fall within the scope of consumer protection. In the present case, it has been established and is not disputed by the parties that a contractual relationship exists between them for the supply of electricity to the abovementioned location. Article 27 of Directive 2011/83 exempts the consumer from paying an amount to the electricity supplier in excess of the electricity supply ordered. That provision thus establishes the principle that the consumer only has to pay for the supply of electricity that he or she has actually consumed. The provisions of the PIKEE, on the other hand, establish the principle in national law that an estimated amount of electricity over an estimated period of time must be paid for, where the metering device was technically incapable of metering electricity consumption, in the various scenarios specified in Articles 50 to 53 of the PIKEE. Payment for an estimated amount of electricity that has not been actually measured is made under Bulgarian law in the light of the principle of reducing electricity costs, set out in recital 83 of Directive 2019/944 (principle of energy efficiency). Those costs in respect of the energy network are passed on to the consumer. In addition, Article 4 of Directive 2011/83 lays down the principle that Member States may not introduce provisions which are more stringent than those laid down by that directive. It is therefore unclear whether Articles 4 and 27 of Directive 2011/83 are to be interpreted as allowing national legal rules that impose an obligation on the household customer to pay for an estimated amount of electricity over an estimated period of time, where the metering device did not actually record the amount of electricity, was located beyond the customer's reach and the absence of recording (a) is due to external influence on the meter or action on the part of the customer, or (b) is not due to external influence or action on the part of the customer but is due to a malfunction of the device; the consumer had no access to the meter and the supplier/operator did not remedy the malfunction of the device in good time. Is Article 27 of the Directive to be interpreted as meaning that, in the event of incorrect or inaccurate measurement by the meter, which is not due to

the consumer's action, the consumer must pay only for the amount that he or she has actually consumed?

- 30 Furthermore, Article 10(4) of Directive 2019/944 provides that suppliers must notify their final customers of any adjustment in the supply price. The final price for the consumer is therefore calculated on the basis of the amount of electricity consumed and a price per unit of quantity. In that respect, it is unclear whether Article 10(4) of Directive 2019/944 is to be interpreted as allowing national legal rules that permit an electricity supplier/network operator to replace the amount of electricity with an estimate of the amount of electricity consumed over an estimated period of time in the circumstances described above.
- 31 The interpretation of the abovementioned provisions of EU law is necessary to determine what is meant by charges for losses in the energy system and whether those costs are to be borne by the supplier or by the consumer. First, burdening the supplier with such costs will incentivise it to increase its energy efficiency (principle of energy efficiency) and, second, that ensures consumer protection in the European Union (the consumer only has to pay for the electricity he or she actually consumes). In the context of consumer protection, the question of whether the consumer has to pay for an estimated amount of electricity over an estimated period of time if he or she is not responsible for the absence of metering also requires interpretation. The interpretation requirement arises from the need to examine the proportionality of the introduced national provision on the payment for electricity in the event of meter failure with regard to the EU rules on consumer protection in relation to the provision of public utility services. Interpretation is also necessary to clarify whether the introduction by the regulatory authority of a fiction for consumed electricity in the event of a meter failure is permissible.
- 32 For the reasons set out above, the matter must be referred to the Court of Justice of the European Union for a preliminary ruling pursuant to point (b) of the first paragraph of Article 267 TFEU. The question is whether EU law is to be interpreted as allowing the consumer to pay for an amount of electricity supplied that is billed on the basis of an estimated amount of electricity over an estimated period of time, without it being checked whether the consumer actually consumed that amount of electricity during that period. Is the introduction of fictions such as those at issue in the present proceedings permitted when electricity bills are issued? The court considers that an interpretation of EU law is necessary for a proper resolution of the dispute, so as to assess the extent to which consumer rights are protected and the principle of energy efficiency is applicable if costs are passed on to the consumer without verification of actual consumption.