Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

30 January 2025 *

(Reference for a preliminary ruling – Energy – Internal market in natural gas – Directive 2009/73/EC – Article 3(1) – Obligations of Member States towards natural gas undertakings – Consumer protection – Articles 40 and 41 – Powers of the regulatory authority – Breach by a natural gas undertaking of its duty of transparency towards consumers – Duplication of penalties for the same unlawful conduct – Article 50 of the Charter of Fundamental Rights of the European Union – Right not to be tried or punished twice in criminal proceedings for the same criminal offence – *Ne bis in idem* – Article 52(1) – Limitations on the exercise of that fundamental right – Principle of proportionality)

In Case C-205/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul București (Regional Court, Bucharest, Romania), made by decision of 24 February 2023, received at the Court on 28 March 2023, in the proceedings

Engie România SA

v

Autoritatea Națională de Reglementare în Domeniul Energiei,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Second Chamber, acting as President of the Third Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Jääskinen, M. Gavalec and N. Piçarra (Rapporteur), Judges,

Advocate General: A. Rantos,

Registrar: R. Șereș, Administrator,

having regard to the written procedure and further to the hearing on 24 April 2024,

after considering the observations submitted on behalf of:

– Engie România SA, by L. Chiurtu, N.-V. Dinu, R. Iancu, I. Katona and A. Radu, avocați,

* Language of the case: Romanian.

– the Autoritatea Națională de Reglementare în Domeniul Energiei, by G.-S. Niculescu, A.-M. Riling, C. Vernea and A. Zorzoană, acting as Agents,

– the Romanian Government, by R. Antonie, E. Gane, R.I. Hațieganu and A. Rotăreanu, acting as Agents,

– the Greek Government, by K. Boskovits and C. Kokkosi, acting as Agents,

– the European Commission, by O. Beynet, L. Nicolae and T. Scharf, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(1) 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), in the light of Articles 50 and 52 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Engie România SA ('Engie'), a natural gas supplier, and the Autoritatea Națională de Reglementare în Domeniul Energiei (National Energy Sector Regulatory Authority, Romania) ('the ANRE') concerning a report, compiled by the latter, finding and imposing a fine for an administrative offence attributed to Engie.

Legal context

European Union law

The Charter

3 Article 50 of the Charter, entitled 'Right not to be tried or punished twice in criminal proceedings for the same criminal offence', states:

'No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the [European] Union in accordance with the law.'

4 Article 52 of the Charter, entitled 'Scope and interpretation of rights and principles', provides in paragraph 1:

'Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.'

Directive 2009/73

5 Recital 48 of Directive 2009/73 states:

‘Consumer interests should be at the heart of this Directive and quality of service should be a central responsibility of natural gas undertakings. 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 Community benefit from a competitive market. Consumer rights should be enforced by Member States or, where a Member State has so provided, the regulatory authorities.’

6 Under the terms of Article 2 of that directive:

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

…

25. “household customer” means a customer purchasing natural gas for his own household consumption;

…

27. “final customer” means a customer purchasing natural gas for his own use;

…’

7 Article 3 of that directive, entitled ‘Public service obligations and customer protection’, is worded as follows:

‘1. Member States shall ensure, on the basis of their institutional organisation and with due regard to the principle of subsidiarity, that, without prejudice to paragraph 2, natural gas undertakings are operated in accordance with the principles of this Directive with a view to achieving a competitive, secure and environmentally sustainable market in natural gas, and shall not discriminate between those undertakings as regards their rights or obligations.

2. Having full regard to the relevant provisions of the Treaty, in particular Article [106 TFEU], Member States may impose on undertakings operating in the gas sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and environmental protection, including energy efficiency, energy from renewable sources and climate protection. …

3. 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 transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. … As regards at least household customers those measures shall include those set out in Annex I.

…’

8 Article 40 of that directive, entitled ‘General objectives of the regulatory authority’, provides:

‘In carrying out the regulatory tasks specified in this Directive, the regulatory authority shall take all reasonable measures in pursuit of the following objectives within the framework of their duties and powers as laid down in Article 41, in close consultation with other relevant national authorities, including competition authorities, as appropriate, and without prejudice to their competencies:

…

(g) ensuring that customers benefit through the efficient functioning of their national market, promoting effective competition and helping to ensure consumer protection;

…’

9 Article 41 of Directive 2009/73, entitled ‘Duties and powers of the regulatory authority’, provides, in paragraphs 1 and 4:

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

…

(i) monitoring the level of transparency, including of wholesale prices, and ensuring compliance of natural gas undertakings with transparency obligations;

…

(o) 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 natural gas undertakings;

(b) to carry out investigations into the functioning of the gas markets, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market. …;

…

(d) to impose effective, proportionate and dissuasive penalties on natural gas 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 to a competent court to impose such penalties. …;

…’

10 Annex I to that directive, entitled 'Measures on consumer protection', states, in point 1:

'Without prejudice to Community rules on consumer protection …, the measures referred to in Article 3 are to ensure that customers:

…

(c) receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of gas services;

…'

Romanian law

Law No 363/2007

11 Legea nr. 363/2007 privind combaterea practicilor incorecte ale comercianților în relația cu consumatorii și armonizarea reglementărilor cu legislația europeană privind protecția consumatorilor (Law No 363/2007 on combating improper commercial practices on the part of traders in dealings with consumers and harmonising regulations with European consumer protection legislation), of 21 December 2007 (*Monitorul Oficial al României*, Part I, No 899 of 28 December 2007), transposes into Romanian law 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 ('the Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).

Law No 123/2012

12 Under Article 143(1)(k) of Legea nr. 123/2012 energiei electrice și a gazelor naturale (Law No 123/2012 on electricity and natural gas) of 10 July 2012 (*Monitorul Oficial al României*, Part I, No 485 of 16 July 2012), in the version applicable to the dispute in the main proceedings:

'Natural gas suppliers are, inter alia, under the following obligations:

…

(k) to provide final customers with clear information on the prices and tariffs applied, as the case may be, as well as on the general conditions of access to and use of the services which they offer.'

13 Article 194(24[1]) of that law provides:

'The following acts constitute administrative offences governing activities in the natural gas sector: …failure by participants in the natural gas market to comply with their obligations under Article 143(1), Article 144[1] and Article 145(4)(g).'

14 Under Article 195(1)(2)(c) of that law, those administrative offences are punishable by a fine of between 20 000 and 400 000 Romanian lei (RON) (approximately EUR 4 000 to 80 000).

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

15 On 14 September 2021, by a report finding and imposing a fine for an administrative offence, the Autoritatea Națională pentru Protecția Consumatorilor (National Consumer Protection Authority, Romania) ('the ANPC') imputed to Engie misleading and aggressive commercial practices in the exercise of its economic activity, on the basis of Law No 363/2007. It found that Engie had misled consumers by unilaterally notifying them of a change in the price set in the initial offer after a period of 3 months, even though that price was valid for a period of 12 months.

16 By a decision of the same date, that authority ordered Engie to cease those practices, to suspend its activity until it had ceased those practices, and not to change the price of natural gas supplied to household customers.

17 On 11 October 2021, the ANRE drew up a report finding and imposing a fine for an administrative offence ('the ANRE's report'). In that report, it found that Engie had, as an authorised supplier of natural gas, breached, inter alia, its duty of transparency, laid down in Article 143(1)(k) of Law No 123/2012, which transposes Directive 2009/73 into Romanian law, and imposed on it a series of administrative fines totalling RON 800 000 (approximately EUR 160 000). That authority took the view that Engie had, first, committed irregularities concerning the content of certain natural gas offers and, second, had not sufficiently demonstrated the right which it reserved to adjust subsequently the price for the supply of natural gas set out in the contracts concluded with its customers.

18 The ANRE thus ordered Engie to notify the 12 final customers identified in the ANRE's report that the fixed price for natural gas to which it had committed itself in the preliminary contract offer would be maintained, and to annul the amendments sent to those customers. In addition, it ordered Engie to identify all final customers who had accepted standard offers at a fixed price valid for the period stated in those offers and to whom notifications and amendments had subsequently been sent increasing the price for natural gas supplied before the end of that period, to notify those customers that the fixed price for gas would be maintained in accordance with those offers and to annul the amendments that had been sent out.

19 Engie brought an action before the Judecătoria Sectorului 4 București (Court of First Instance, District 4, Bucharest, Romania) against the ANRE's report. That action was dismissed as unfounded by judgment of 14 March 2022.

20 Engie then lodged an appeal against that judgment before the Tribunalul București (Regional Court, Bucharest, Romania), the referring court.

21 That court asks, in the first place, whether the ANRE can require a natural gas undertaking, which it claims has breached its duty of transparency vis-à-vis consumers, to apply a price different from the market price determined on the basis of the principle of freedom to fix prices which, according to that court, is apparent from Article 3(1) of Directive 2009/73.

22 In the second place, the national court observes, first, that both the ANRE and the ANPC found the same fact, the first authority having classified it as a 'breach of the duty of transparency' laid down in Article 143(1)(k) of Law No 123/2012, and the second as a 'misleading and aggressive commercial practice with regard to consumers', within the meaning of Law No 363/2007. Second, it states that both the ANRE and the ANPC imposed on Engie, by separate acts, the same obligation to make reparation, namely to revert to the price set by the 'standard offers in April 2021', which was significantly lower than the purchase price of natural gas on the open market.

23 That court thus asks the Court of Justice to interpret Article 50 and Article 52(1) and (3) of the Charter in the context of the application of Law No 363/2007 and Law No 123/2012, in order to clarify the applicability of Article 50 of the Charter 'in the case where two penalties are imposed, on different legal bases … in respect of the same facts'.

24 In those circumstances, the Tribunalul București (Regional Court, Bucharest) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Can an alleged breach of the duty of transparency incumbent on natural gas suppliers in their dealings with household consumers, which has been implemented in national legislation and is treated under that legislation as an administrative offence (contravenția), also result in the competent national authority's requiring a natural gas supplier to apply, in dealings with consumers, a price imposed by administrative means that takes no account of the principle of freedom to fix prices in the natural gas market, that principle being established by Article 3(1) of [Directive 2009/73]?

(2) Can the fact that a natural gas supplier has been fined both by the consumer protection authority and by the energy sector regulatory authority, by means of two separate reports of offences imposing the same measures on the supplier (duplication of administrative acts imposing measures), be regarded as a justified restriction of [the right not to be tried or punished twice in criminal proceedings for the same criminal offence], under the provisions of Article [50] of the [Charter], or is it a breach of that principle?

Does such a combination of acts imposing the same measures on the basis of the same facts, drawn up by different authorities, comply with the principle of proportionality?'

The application to reopen the oral part of the procedure

25 Following the delivery of the Advocate General's Opinion of 11 July 2024, Engie requested, by document lodged at the Registry of the Court of Justice on 28 August 2024, the reopening of the oral part of the procedure, pursuant to Article 83 of the Rules of Procedure of the Court of Justice, in order to submit additional legal arguments which, in its view, could have a decisive influence on the interpretation of Article 50 of the Charter, thus making it necessary to qualify the assessment criteria enshrined in the case-law relating to that provision.

26 Under Article 83 of its Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the opening or reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information, where a party has submitted a new fact which is of such a nature as to be a decisive factor for the judgment of the Court, or where the case must be

decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

27 In the present case, the Court finds, after hearing the Advocate General, that Engie does not refer to any new fact which is of such a nature as to be a decisive factor for the decision which the Court is called upon to give in the present case. Furthermore, the Court considers that it has all the information necessary to give a ruling and that the case does not have to be decided on the basis of an argument which has not been debated before it.

28 In those circumstances, there is no need to order the reopening of the oral part of the procedure.

Consideration of the questions referred

The first question

Admissibility

29 The ANRE and the Romanian Government contend that the first question is inadmissible, on the ground that it is based on factual assessments which do not correspond to the situation at issue in the main proceedings. The ANRE's report does not impose a specific price for the supply of natural gas to Engie's customers, nor does it penalise Engie on account of the price charged. It merely orders the applicant to reinstate the gas supply price that was charged before the alleged breach of the duty of transparency towards its customers.

30 In the context of the preliminary ruling procedure under Article 267 TFEU, based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the dispute in the main proceedings. The Court is empowered to rule on the interpretation or validity of EU law applicable to the factual and legal context described by the referring court, in order to provide that court with such guidance as will assist it in resolving the dispute before it. Therefore, it is not for the Court to call into question the findings of fact on which the request for a preliminary ruling is based (see, to that effect, judgment of 20 December 2017, *Schweppes*, C-291/16, EU:C:2017:990, paragraphs 21 and 22).

31 Furthermore, questions referred for a preliminary ruling concerning EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 2 April 2020, *Coty Germany*, C-567/18, EU:C:2020:267, paragraph 24 and the case-law cited).

32 However, that is not the situation in the present case. It is apparent from the request for a preliminary ruling that the provisions of Directive 2009/73 of which the interpretation is sought, are directly related to the dispute in the main proceedings, which concerns measures imposed by a national regulatory authority on a natural gas undertaking, pursuant to the national legislation

transposing that directive into Romanian law. Moreover, that request contains sufficient information for the Court to determine the scope of the first question and to provide a useful answer thereto.

33 It follows that the first question is admissible.

Substance

34 By its first question, the referring court asks, in essence, whether Article 3(1) and (3) of Directive 2009/73 must be interpreted as precluding a national energy regulatory authority, where it finds that a natural gas supplier has failed to fulfil its duty of transparency with regard to its customers when the price for the supply of that product is adjusted, from requiring that supplier to maintain the price set in the contracts initially concluded with those customers.

35 Under Article 3(1) of Directive 2009/73, Member States are to ensure, on the basis of their institutional organisation and with due regard to the principle of subsidiarity, that natural gas undertakings are operated in accordance with the principles of that directive with a view to achieving a competitive, secure and environmentally sustainable market in natural gas, and are not to discriminate between those undertakings as regards either rights or obligations.

36 Although it does not expressly follow from any provision of Directive 2009/73 that the price of supply of natural gas must be fixed by the play of supply and demand, that requirement follows from the very purpose and general scheme of the directive, the aim of which is to pursue the achievement of an internal market in natural gas that is entirely and effectually open and competitive and in which all consumers can freely choose their suppliers and all suppliers can freely supply their products to their customers (see, to that effect, judgment of 7 September 2016, *ANODE*, C-121/15, EU:C:2016:637, paragraph 26 and the case-law cited).

37 Article 3(2) of that directive nevertheless allows Member States to impose on undertakings operating in the gas sector ‘public service obligations’ which may relate, inter alia, to ‘the price of supplies’. Such measures must be adopted in the general economic interest and be clearly defined, transparent, non-discriminatory and verifiable, in order to ensure equality of access for EU gas undertakings to national consumers, having ‘full regard’ of the relevant provisions of the TFEU and, in particular, of Article 106 of that treaty (see by analogy, judgment of 20 April 2010, *Federutility and Others* (C-265/08, EU:C:2010:205, paragraphs 21 and 22).

38 In addition, Article 3(3) of Directive 2009/73 requires Member States to take appropriate measures to protect final customers, within the meaning of Article 2(27) of that directive, and to ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions and general information. As regards, at least, household customers, within the meaning of Article 2(25) of that directive, those measures must include those laid down in Annex I to that directive.

39 Under point 1(c) of that annex, the measures referred to in Article 3 of Directive 2009/73 must ensure that customers receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of gas services, in order to enable them, in accordance with the objective of consumer protection, in particular, to exercise the right to withdraw from the contract or to challenge the change in the price of supply (see, by analogy, judgment of 2 April 2020, *Stadtwerke Neuwied*, C-765/18, EU:C:2020:270, paragraph 29).

40 To that end, in accordance with Article 41(1)(i) and (o) of Directive 2009/73, the national regulatory authority is entrusted with the task of ensuring compliance of natural gas undertakings with transparency obligations and of helping to ensure, together with other relevant authorities, that the consumer protection measures, including those set out in Annex I, are effective and enforced.

41 Furthermore, it is apparent from Article 40(g) of Directive 2009/73 that the national regulatory authority is required to take, within the framework of its duties and powers as defined in Article 41 of that directive, all reasonable measures to ensure that customers benefit from the efficient functioning of their national market and to help to ensure the protection of customers, whose interests are at the heart of that directive, as stated in recital 48 thereof.

42 Lastly, it follows from Article 41(4) of Directive 2009/73 that the regulatory authorities must be able to issue, in particular, binding decisions on natural gas undertakings (point (a)), to carry out investigations into the functioning of the gas markets, to decide on and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market (point (b)), and to impose effective, proportionate and dissuasive penalties on natural gas undertakings not complying with their obligations under that directive (point (d)).

43 In the present case, it is apparent from the request for a preliminary ruling that the ANRE found that Engie had breached its duty of transparency, referred to in Article 143(1)(k) of Law No 123/2012, on the ground that that company had not sufficiently informed its customers of the power it reserved for itself to adjust the price for the supply of natural gas set out in the contracts concluded with those customers, on the basis of a ‘standard offer’, during the initial 12-month period. Consequently, the ANRE, first, imposed a fine on Engie and, second, required Engie, as a remedial measure, to revert to the price set in April 2021 under the initial contract.

44 It must be held that such measures, the choice of which falls, as is apparent from paragraphs 35 and 42 above, within the discretion of the Member States, come within the exercise of the powers conferred on the national regulatory authorities, in accordance with Articles 40 and 41 of Directive 2009/73, which seek to ensure the transparency of the terms and conditions of consumer contracts. Accordingly, those measures are intended to ensure the effectiveness of consumer protection.

45 Furthermore, the measure relating to the restoration of the price fixed in the initial supply contract is not such as to contravene the requirement, referred to in paragraph 36 above, that the price for the supply of natural gas be fixed by the play of supply and demand. By that measure, the national regulatory authority did not exercise its powers to fix a price in gas supply contracts, but obliged the supplier to restore, in those contracts, a price which had been mutually agreed between the supplier and the customer concerned.

46 In the light of the foregoing considerations, the answer to the first question is that Article 3(1) and (3) of Directive 2009/73 must be interpreted as not precluding a national energy regulatory authority, where it finds that a natural gas supplier has failed to fulfil its duty of transparency with regard to its customers, when the price for the supply of that product is adjusted, from requiring that supplier to maintain the price set in the contracts initially concluded with those customers.

The second question

47 By its second question, the national court asks, in essence, whether Article 50 of the Charter, read in conjunction with Article 52(1) thereof, must be interpreted as precluding a natural gas supplier from being subject, on the basis of different national laws transposing, respectively, Directive 2009/73 and Directive 2005/29, to two penalties for identical facts.

48 Pursuant to Article 50 of the Charter 'no one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the European Union in accordance with the law'. That fundamental right, an expression of the principle *ne bis in idem*, prohibits a duplication both of proceedings and of penalties of a criminal nature for the same acts and against the same person (see, to that effect, judgments of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 25, and of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 22 and the case-law cited).

49 In the first place, Article 50 of the Charter is not limited to proceedings and penalties which are classified as 'criminal' by national law, but extends – regardless of such a classification in national law – to proceedings and penalties which must be considered as being criminal in nature on account of the intrinsic nature of the offence or the degree of severity of the penalty which the person concerned is liable to incur (see, to that effect, judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraphs 25 and 26 and the case-law cited). That degree of severity must be assessed by reference to the maximum penalty for which the relevant provisions provide (see, to that effect, judgment of 14 September 2023, *Volkswagen Group Italia and Volkswagen Aktiengesellschaft*, C-27/22, EU:C:2023:663, paragraph 53 and the case-law cited).

50 The criterion regarding the intrinsic nature of the offence, involves ascertaining whether the penalty at issue has, inter alia, a punitive purpose, without regard to the fact that it also pursues a deterrent purpose. It is of the very nature of criminal penalties that they seek both to punish and to deter unlawful conduct. By contrast, measures which merely repair the damage caused by the offence at issue are not criminal in nature (see, to that effect, judgment of 14 September 2023, *Volkswagen Group Italia and Volkswagen Aktiengesellschaft*, C-27/22, EU:C:2023:663, paragraph 49 and the case-law cited).

51 In the present case, among the measures referred to in paragraphs 16 and 43 above, it appears, first, that the corrective measure requiring the supplier to revert to the price fixed in April 2021 under the initial contract constitutes a measure which, a priori, is limited to making good the damage caused by the offence at issue, within the meaning of the case-law referred to in the preceding paragraph, which it is, however, for the referring court to ascertain.

52 Second, as regards the financial penalties imposed on Engie by the ANPC and by the ANRE, it is apparent from the request for a preliminary ruling that, under Article 194(24[1]) and Article 195(1)(2)(c) of Law No 123/2012, a breach of the duty of transparency laid down in Article 143(1)(k) of that law is punishable by a fine of between RON 20 000 and RON 400 000. On that basis and in view of the various administrative offences of which Engie is accused, the ANRE ordered Engie to pay a fine totalling RON 800 000 (approximately EUR 160 000). In addition, the Romanian Government and Engie stated, in their respective written observations, that the ANPC ordered Engie to pay a fine of RON 150 000 (approximately EUR 30 000).

53 It is for the national court to ascertain, taking account of all the information available to it and the maximum amounts laid down by the relevant national provisions applied to Engie by the ANPC and the ANRE, whether those penalties are sufficiently severe to be classified as 'criminal penalties'.

54 In the second place, the application of Article 50 of the Charter is subject to a twofold condition, namely, first, that there must be a prior final decision (the '*bis*' condition) and, second, that that decision relates to the same facts which are the subject of the subsequent proceedings or decisions (the '*idem*' condition) (see, to that effect, judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 28).

55 As regards the '*bis*' condition, in order for a judicial decision to be regarded as having given a final ruling on the facts subject to a second set of proceedings, that decision must not only have become final, in accordance with national law, but must also have been taken after a determination has been made as to the merits of the case (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 29 and the case-law cited). Where such a decision exists, Article 50 of the Charter precludes criminal proceedings in respect of the same facts from being initiated or maintained (see, to that effect, judgment of 14 September 2023, *Volkswagen Group Italia and Volkswagen Aktiengesellschaft*, C-27/22, EU:C:2023:663, paragraph 59).

56 In the present case, the file before the Court contains information indicating that the penalty imposed on Engie by the ANPC had been challenged before the Romanian courts and definitively annulled on account of the lack of jurisdiction of that authority. If the national court were to uphold that information, the '*bis*' condition, examined in the preceding paragraph, would not be satisfied.

57 By contrast, if the national court were to find that the '*bis*' condition is satisfied in the present case, it should be noted, as regards the '*idem*' condition, that it follows from the very wording of Article 50 of the Charter that that provision prohibits the same person from being tried or punished in criminal proceedings more than once for the same offence. The relevant criterion for that purpose is identity of the material facts, understood as the existence of a set of concrete circumstances which are inextricably linked together and which have resulted in the final acquittal or conviction of the person concerned. The legal classification under national law of the facts and the legal interest protected are not relevant for the purposes of establishing the existence of the same offence, in so far as the scope of the protection conferred by Article 50 of the Charter cannot vary from one Member State to another (see, to that effect, judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraphs 31, 33 and 34).

58 Since the '*idem*' condition requires the material facts to be identical, Article 50 of the Charter is not intended to be applied where the facts in question are merely similar. Identity of the material facts must be understood to mean a set of concrete circumstances stemming from events which are, in essence, the same, in that they involve the same perpetrator and are inextricably linked together in time and space (see, to that effect, judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraphs 36 and 37).

59 In the present case, as is apparent from paragraph 22 above, the referring court considers, first, that, following the respective administrative procedures, both the ANRE and the ANPC established the same facts, the first authority having classified them as a 'breach of the duty of

transparency' laid down in Article 143(1)(k) of Law No 123/2012, and the second as a 'misleading and aggressive commercial practice with regard to consumers', within the meaning of Law No 363/2007.

60 In the third place, a limitation on the exercise of the fundamental right not to be tried or punished twice in criminal proceedings for the same criminal offence, guaranteed in Article 50 of the Charter and, therefore, a duplication of criminal proceedings or penalties may be justified on the basis of Article 52(1) thereof. In accordance with the first sentence of that paragraph, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. According to the second sentence of Article 52(1), subject to the principle of proportionality, limitations of those rights and freedoms may be made only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

61 As regards, first, respect for the essence of the fundamental right guaranteed in Article 50 of the Charter, that content is, in principle, respected where national law merely provides only for the possibility of a duplication of proceedings and penalties under different legislation (see, to that effect, judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 43). That is the case here, since the penalties imposed on Engie had been adopted on the basis of different national legislation transposing Directive 2009/73 and Directive 2005/29 respectively.

62 As regards, second, compliance with the principle of proportionality, it should be noted that it requires that the duplication of proceedings and penalties provided for by national legislation does not exceed what is appropriate and necessary in order to attain the objectives legitimately pursued by that legislation. When there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused by that measure must not be disproportionate to the aims pursued (judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 46 and the case-law cited).

63 A duplication of penalties may, however, be justified where the proceedings brought by two different authorities pursue complementary aims relating to different aspects of the same unlawful conduct. Indeed, public authorities can legitimately choose complementary legal responses to certain conduct that is harmful to society through different procedures forming a coherent whole so as to address different aspects of the social problem involved, provided that the accumulated legal responses do not represent an excessive burden for the individual concerned (see, to that effect, judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraphs 49 and 50).

64 As recalled in paragraphs 38 to 41 above, the measures relating to the transparency of the terms and conditions of consumer contracts which the national regulatory authorities may adopt, in accordance with Directive 2009/73, are intended to ensure the effectiveness of consumer protection. Therefore, as noted in paragraph 36 above, those measures ensure the achievement of an internal market in natural gas which is entirely and effectively open and competitive, in which all consumers can, inter alia, freely choose their suppliers as a result of that transparency.

65 However, it is apparent from point 1 of Annex I to that directive that those measures are without prejudice to EU rules on consumer protection. It is thus open to a Member State to penalise infringements, on the one hand, of sectoral rules intended to liberalise the natural gas market

and, on the other, of the rules on unfair commercial practices, referred to in Directive 2005/29, in order to ensure a high level of consumer protection in that sector (see, by analogy, judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 47).

66 In order to determine the strict necessity of such duplication of proceedings and penalties, it is necessary to assess whether there are clear and precise rules making it possible to predict which acts or omissions are liable to be subject to a duplication of proceedings and penalties, and also to predict that there will be coordination between the different authorities, whether the two sets of proceedings have been conducted in a manner that is sufficiently coordinated and within a proximate timeframe and whether any penalty that may have been imposed in the proceedings that were first in time was taken into account in the assessment of the second penalty, meaning that the resulting burden, for the individual concerned, of such duplication is limited to what is strictly necessary and the overall penalties imposed correspond to the seriousness of the offences committed (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 51 and the case-law cited).

67 As the Advocate General observed in point 49 of his Opinion, it is not unusual for a company active on the market for the generation or distribution of energy to have to comply with a number of sectoral rules pursuing different or complementary objectives and may, in some circumstances, be faced with various penalties for the same conduct, on the basis of those sector rules.

68 In the present case, the file before the Court contains evidence of a close connection in time between the two sets of administrative proceedings at issue in the main action and the decisions adopted at the end of those proceedings, one brought under energy sector rules and the other under consumer protection rules, and also of cooperation and exchanges of information between the authorities concerned, which it is, however, for the national court to determine.

69 In the light of all of the foregoing considerations, the answer to the second question is that Article 50 of the Charter, read in conjunction with Article 52(1) thereof, must be interpreted as not precluding a natural gas supplier from being subject, on the basis of different national laws transposing, respectively, Directive 2009/73 and Directive 2005/29, to two penalties which must be classified as 'criminal penalties for identical facts' provided that:

– there are clear and precise rules making it possible to predict which acts or omissions may be subject to a duplication of proceedings and penalties, and to ensure coordination between the two competent authorities;

– the two sets of proceedings concerned have been conducted in a sufficiently coordinated manner and within a proximate timeframe; and

– all the penalties imposed correspond to the seriousness of the offences.

Costs

70 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 (Third 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**

   must be interpreted as not precluding a national energy regulatory authority, where it finds that a natural gas supplier has failed to fulfil its duty of transparency with regard to its customers, when the price for the supply of that product is adjusted, from requiring that supplier to maintain the price set in the contracts initially concluded with those customers.

2. **Article 50 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 52(1) thereof,**

   must be interpreted as not precluding a natural gas supplier from being subject, on the basis of different national laws transposing, respectively, Directive 2009/73 and 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') to two penalties which must be classified as 'criminal penalties for identical facts', provided that:

   – **there are clear and precise rules making it possible to predict which acts or omissions may be subject to a duplication of proceedings and penalties, and to ensure coordination between the two competent authorities;**

   – **the two sets of proceedings concerned have been conducted in a sufficiently coordinated manner and within a proximate timeframe; and**

   – **all the penalties imposed correspond to the seriousness of the offences.**

[Signatures]