Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

5 June 2025 *

(Reference for a preliminary ruling – Internal market for electricity – Regulation (EU) 2019/943 – Directive (EU) 2019/944 – Scope – Electricity consumption inaccurately measured owing to meter malfunction – Billing on the basis of estimated electricity consumption – Consumer rights – Directive 2011/83/EU – Scope – Unsolicited supply)

In Case C-310/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski rayonen sad (Sofia District Court, Bulgaria), made by decision of 22 April 2024, received at the Court on 29 April 2024, in the proceedings

YL

v

'Elektrorazpredelitelni mrezhi Zapad' EAD,

THE COURT (Ninth Chamber),

composed of N. Jääskinen, President of the Chamber, M. Condinanzi (Rapporteur) and R. Frendo, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– 'Elektrorazpredelitelni mrezhi Zapad' EAD, by V. Bozhilov, A. Ganev and A. Krastev, advokati,

– the European Commission, by O. Beynet, D. Drambozova, I. Rubene and T. Scharf, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Bulgarian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 18(1), (7) and (8) of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ 2019 L 158, p. 54), of Article 10(4), Article 46(2)(d) and Article 59(1)(a) of 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 (OJ 2019 L 158, p. 125) and of Article 27 of 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).

2 The request has been made in proceedings between YL, in his capacity as a residential customer, and 'Elektrorazpredelitelni mrezhi Zapad' EAD ('ERM Zapad') concerning an invoice the amount of which was calculated on the basis of an estimated electricity consumption owing to the malfunctioning of the meter.

Legal context

European Union law

Directive 2011/83

3 Recitals 11 and 25 of Directive 2011/83 state:

'(11) This Directive should be without prejudice to Union provisions relating to specific sectors, such as … the internal market for electricity and natural gas.

…

(25) Contracts related to district heating should be covered by this Directive, similarly to the contracts for the supply of water, gas or electricity. …'

4 Article 3(1) of that directive provides:

'This Directive shall apply, under the conditions and to the extent set out in its provisions, to any contract concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis.'

5 Article 27 of the directive provides:

'The consumer shall be exempted from the obligation to provide any consideration in cases of unsolicited supply of goods, water, gas, electricity, district heating or digital content or unsolicited provision of services, prohibited by Article 5(5) and point 29 of Annex I to 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)]. In such cases, the absence of a response from the consumer following such an unsolicited supply or provision shall not constitute consent.'

Regulation 2019/943

6 Article 18 of Regulation 2019/943 provides:

'1. Charges applied by network operators for access to networks, including charges for connection to the networks, charges for use of networks, and, where applicable, charges for related network reinforcements, shall be cost-reflective, transparent, take into account the need for network security and flexibility and reflect actual costs incurred in so far as they correspond to those of an efficient and structurally comparable network operator and are applied in a non-discriminatory manner. Those charges shall not include unrelated costs supporting unrelated policy objectives.

Without prejudice to Article 15(1) and (6) of 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)] and the criteria in Annex XI to that Directive the method used to determine the network charges shall neutrally support overall system efficiency over the long run through price signals to customers and producers and in particular be applied in a way which does not discriminate positively or negatively between production connected at the distribution level and production connected at the transmission level. The network charges shall not discriminate either positively or negatively against energy storage or aggregation and shall not create disincentives for self-generation, self-consumption or for participation in demand response. Without prejudice to paragraph 3 of this Article, those charges shall not be distance-related.

…

7. Distribution tariffs shall be cost-reflective taking into account the use of the distribution network by system users including active customers. Distribution tariffs may contain network connection capacity elements and may be differentiated based on system users' consumption or generation profiles. Where Member States have implemented the deployment of smart metering systems, regulatory authorities shall consider time-differentiated network tariffs when fixing or approving transmission tariffs and distribution tariffs or their methodologies in accordance with Article 59 of [Directive 2019/944] and, where appropriate, time-differentiated network tariffs may be introduced to reflect the use of the network, in a transparent, cost efficient and foreseeable way for the final customer.

8. Distribution tariff methodologies shall provide incentives to distribution system operators for the most cost-efficient operation and development of their networks including through the procurement of services. For that purpose regulatory authorities shall recognise relevant costs as eligible, shall include those costs in distribution tariffs, and may introduce performance targets in order to provide incentives to distribution system operators to increase efficiencies in their networks, including through energy efficiency, flexibility and the development of smart grids and intelligent metering systems.'

Directive 2019/944

7 Recital 83 of Directive 2019/944 states:

‘Regulatory authorities should ensure that transmission system operators and distribution system operators take appropriate measures to make their network more resilient and flexible. To that end, they should monitor those operators’ performance based on indicators such as the capability of transmission system operators and distribution system operators to operate lines under dynamic line rating, the development of remote monitoring and real-time control of substations, the reduction of grid losses and the frequency and duration of power interruptions.’

8 Article 10(4) of that directive provides:

‘Final customers shall be given adequate notice of any intention to modify contractual conditions and shall be informed about their right to terminate the contract when the notice is given. Suppliers shall notify their final customers, in a transparent and comprehensible manner, directly of any adjustment in the supply price and of the reasons and preconditions for the adjustment and its scope, at an appropriate time no later than two weeks, or no later than one month in the case of household customers, before the adjustment comes into effect. Member States shall ensure that final customers are free to terminate contracts if they do not accept the new contractual conditions or adjustments in the supply price notified to them by their supplier.’

9 Article 46(2) of that directive provides:

‘The activity of electricity transmission shall include at least the following tasks in addition to those listed in Article 40:

…

(d) the collection of all the transmission system related charges including access charges, energy for losses and ancillary services charges;

…’

10 Article 59(1) of the directive is worded as follows:

‘The regulatory authority shall have the following duties:

(a) fixing or approving, in accordance with transparent criteria, transmission or distribution tariffs or their methodologies, or both;

…’

Bulgarian law

11 Article 50 of the Pravila za izmervane na kolichestvoto elektricheska energia (Rules for metering amounts of electricity; 'the metering rules'), adopted by the Komisia za energiyno i vodno regulirane (Energy and Water Regulatory Commission, Bulgaria), which is the Bulgarian regulatory authority within the meaning of Directive 2019/944, provides:

'(1) Where it is found, on inspection of the meter, that the commercial metering device fails to provide measurements, or provides measurements deviating from the maximum permissible error, the electricity distribution system operator concerned shall calculate the quantity of electricity on the date on which there was no measurement or there was an inaccurate or imprecise measurement, and revert to the time of the last inspection, without that period exceeding three months, it being understood that:

(a) in the event that the commercial metering device which provides measurements deviating from the maximum permissible error, the amount of electricity transmitted shall be calculated by correcting the amount measured with the known error, taking into account the precision level of the commercial metering device;

(b) in the event of a commercial metering device failing to provide measurements, the amount of electricity transmitted shall be calculated up to a ceiling of one third of the debit of the metering installation for electricity usage by the customer, on the basis of eight hours per day.

…'

12 Article 52 of the metering rules provides:

'(1) In the event of a technical malfunctioning in the commercial metering device which makes it impossible to record the amounts of used electricity passing through the metering system and no external influence has been identified from the inspection or reporting, the amount of electricity which has flowed through the system is calculated in the following order of priority:

…

2. the arithmetical average amount of electricity consumed by the customer during an earlier accounting period and the amount consumed by the customer during an analogous period in the preceding year;

…'

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

13 YL is the owner of a house connected to the electricity distribution system and equipped with a meter. Access to that meter, which is located in a metal box installed on the street, is only accessible by ERM Zapad's employees.

14 It is apparent from the order for reference that, on 10 April 2023, during an on-the-spot inspection carried out by ERM Zapad, it was found that the meter did not work, even though there were no visible faults, whether externally or as to its content. That meter was removed and

sent for testing to the Bulgarski institut po metrologia (Bulgarian Institute of Metrology, Bulgaria), which concluded that the meter did not meet the standard metrological and technical requirements and that, consequently, it had not been possible to record YL's electricity consumption accurately. It is also established that the last inspection of the meter, before that of 10 April 2023, was carried out on 14 March 2018.

15 In the order for reference, it is also stated, first, that, in the absence of an accurate recording of the actual consumption of electricity, ERM Zapad issued an invoice in the sum of 2 058.26 leva (BGN) (about EUR 1 000), representing an estimated electricity consumption of 3 168 kilowatt-hour (kWh) for the period from 11 January 2023 to 10 April 2023 ('the invoice at issue'), in accordance with the metering rules. Secondly, the sum due in respect of that consumption was calculated on the basis of the day tariff for electricity in force for the period concerned, which is higher than the night tariff.

16 YL brought an action before the Sofiyski rayonen sad (Sofia District Court, Bulgaria), which is the referring court, challenging the invoice at issue by submitting that it had been impossible for him to know that the meter was not working given that he did not have access to it. Furthermore, he disputes the period for which the estimated electricity consumption was calculated.

17 The referring court explains that the metering rules govern the procedure and methods of calculation of the amount of electricity that may be attributed to the consumer in the event that electricity consumption has not been measured accurately.

18 According to that court, first of all, where the meter does not work correctly and in the absence of external interference by the consumer, that calculation is carried out pursuant, inter alia, to Article 52 of the metering rules, which permits the supplier to rely on an estimated electricity consumption. Next, in the event of failure of the tariff switch, namely the clock which determines a day regime or night regime, that calculation is made on the basis of the relevant provisions of the metering rules. Relying on the concept of unjust enrichment, the metering rules translate a presumption that the consumer used a certain amount of energy during a given period, which depends on the time of the finding by the supplier or by the system operator of the technical malfunctioning of the meter, at a specific night or day tariff. Finally, those provisions therefore dealt with the electricity consumed, but not measured, which is regarded as being a loss for the transmission system operator the cost of which must be borne by the consumer.

19 The referring court finds, in the first place, that recital 83 of Directive 2019/944 introduces the principle of the reduction of losses on the electricity transmission system, which falls within the general principle of energy efficiency, remote monitoring and control of the system by the electricity transmission system operators.

20 In that context, it stresses that Article 46(2)(d) of that directive states that the activity of electricity transmission includes the collection of charges for losses and that, in accordance with Article 18(8) of Regulation 2019/943, the regulatory authority of the Member State is to recognise that the operation and development costs of the system are admissible and is to include them in the distribution tariffs in order to provide an incentive to system operators to increase the efficiency of their networks and restrict losses with the aim of energy efficiency.

21 In that regard, the referring court is uncertain as to the meaning of the expression 'charges … for losses' for the purposes of Article 46(2)(d) of Directive 2019/944 and of Article 18(8) of Regulation 2019/943. It wonders whether that expression includes the billing of electricity consumed, but not accurately recorded as the result of a malfunctioning of the meter, attributable or not to acts by the consumer, where the supplier or system operator failed to remedy that defect in good time.

22 That court stresses also that Regulation 2019/943 introduces the principle that, with a view to ensuring proportionality, costs must be included in tariffs, which could lead, in practice, to a weakening of the obligation of those operators to increase the efficiency of their systems by the reduction of their costs, as the facts of the case in the main proceedings demonstrate.

23 In the present case, that court observes that, between 2018 and 2023, the meter at issue was not subject to any verification, and that it was after the inspection which identified its failure on 12 April 2023 that ERM Zapad drew up an invoice seeking to recover its costs for energy provided but not recorded. That court wonders whether those losses may be charged to the consumer where the supplier, the transmission system operator or the distribution system operator had not remedied in good time the problem caused by the malfunctioning of the meter.

24 In the second place, the referring court recalls that Article 59(1)(a) of Directive 2019/944 gives the regulatory authority the power to fix or approve transmission and distribution tariffs, or their methods of calculation, or both.

25 It wonders whether that provision permits a national law to include the costs of the system operator in those tariffs where they correspond to an energy supplied and consumed, but not recorded, or recorded imprecisely, due to the malfunctioning of a meter, having regard to the principle that those tariffs or their calculation methods are fixed in accordance with transparent criteria.

26 In the third place, the referring court observes that Article 18 of Regulation 2019/943, in paragraphs (1) and (7) thereof respectively, imposes on the consumer the obligation of paying the transmission system operator charges which reflect the costs of that system and requires that the costs take into account use of the distribution system.

27 However, that court wonders how the costs referred to must take account of use of the distribution system and whether, in that regard, an estimated record of costs is permissible.

28 In the fourth place, the referring court, recalling that it is common ground that the parties to the main proceedings have a contractual relationship for the supply of electricity relating to the place concerned, and considering that, in accordance with Article 3 of Directive 2011/83, that directive applies to contracts for the supply of electricity, questions whether Article 27 of that directive dispenses with the consumer's obligation to pay the supplier any sum exceeding the amount of electricity actually consumed in the event of the malfunctioning of the metering device.

29 In the fifth place, the referring court stresses that Article 10(4) of Directive 2019/944 requires suppliers to notify their final customers of any adjustment in the supply price. It wonders whether that provision permits a national law to enable the supplier or the system operator to carry out, in a situation such as that at issue in the main proceedings, a new calculation of the price and amount of electricity.

30 In those circumstances, the Sofiyski rayonen sad (Sofia District Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must [the concept of] “charges … for losses” for the purposes of Article 46(2)(d) of [Directive 2019/944] and Article 18(8) of [Regulation 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] 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?’

Admissibility of the request for a preliminary ruling

31 At the outset, ERM Zapad submits, first, that the referring court adopted the order which includes the request for a preliminary ruling without complying beforehand with the adversarial principle, in breach of national law. Secondly, it calls into question some of the findings of fact made by that court, the inaccuracy of which, in essence, has the consequence that the request has no connection with the legal relationship between the parties to the main proceedings. In particular, contrary to what is apparent from the order for reference, ERM Zapad only has the status of a distribution system operator. There is no contractual relationship between it and YL for the supply of electricity and, furthermore, the existence of such a relationship has not been invoked.

32 Next, ERM Zapad submits that there is no connection between the subject matter of the dispute in the main proceedings and EU law. As regards, first, the first to third and fifth questions, which seek an interpretation of Regulation 2019/943 and of Directive 2019/944, the facts of the case in the main proceedings do not fall within the scope of those acts. As regards, secondly, the fourth question, concerning the interpretation of Directive 2011/83, ERM Zapad considers that, in accordance with recitals 11 and 25 thereof, the activity of electricity distribution, unlike that of the supply of electricity, does not fall within the scope of that directive.

33 Moreover, the questions referred are not relevant for determining the outcome of the dispute in the main proceedings. Since the inspections made showed that the meter's security indicators had been damaged, those questions are inadmissible to the extent that they refer to a case of a malfunctioning of that equipment which is not attributable to external influence. Irrespective of whether or not there was such influence, the replies to those questions are irrelevant for the determination of the sole question raised by the dispute in the main proceedings, which concerns the justification for the debt at issue and its amount. The source of that debt is the established fact that YL consumed electricity in an amount that could not be measured without paying for it, which caused ERM Zapad to suffer loss. The question of whether that amount constituted a loss for the system or whether that loss could be included in the distribution tariffs could be relevant in the case of a procedure in which ERM Zapad claimed the amount at issue from all consumers in the context of the division of the financial cost resulting from a need for collective compensation to be made by all of those consumers and not by a sole customer who used electricity in unmeasured amounts.

34 Finally, the interpretation of the provisions of EU law referred to in the request for a preliminary ruling does not raise any doubt, taking into account, inter alia, the case-law of the Court relating to EU legislation earlier than Directive 2019/944 and Regulation 2019/943.

35 The European Commission observes that it is clear from the order for reference that there was no external influence affecting the meter and that, therefore, to the extent that the five questions submitted for a preliminary ruling refer to the hypothesis that there was a malfunctioning of that equipment attributable to an external influence, those questions are hypothetical and therefore inadmissible.

36 In order to ascertain whether the present request for a preliminary ruling is admissible, it should be recalled, in the first place, that, according to settled case-law, in the context of a preliminary ruling procedure, it is not for the Court of Justice, in view of the distribution of functions between itself and the national courts, to determine whether the order for reference was made in accordance with the rules of national law governing the organisation of the courts and their procedure. The Court is, moreover, bound by that order for reference in so far as it has not been

rescinded on the basis of a means of redress provided for by national law (judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 28 and the case-law cited).

37 Accordingly, it is not for the Court to take a position, in the present case on the possible breach, by the order for reference, of the national procedural rules.

38 Moreover, it should also be recalled that, according to settled case-law, the national court alone has jurisdiction to find and assess the facts in the case in the main proceedings. In that context, the Court is empowered to rule solely on the interpretation or validity of EU law in the light of the factual and legal situation as described by the referring court, in order to provide that court with such guidance as will assist it in resolving the dispute before it (see, to that effect, judgments of 16 March 1978, *Oehlschläger*, 104/77, EU:C:1978:69, paragraph 4, and of 24 October 2019, *État belge*, C-35/19, EU:C:2019:894, paragraph 28). Consequently, even where the facts set out in the order for reference are disputed by a party to the main proceedings, it is on the basis of the information provided by the referring court that the questions submitted must be answered (see, to that effect, judgment of 20 March 2025, *Sumitomo Chemical Agro Europe*, C-809/23, EU:C:2025:195, paragraphs 42 and 43).

39 Accordingly, it is not for the Court to take a position on the findings of fact contained in the order for reference, the accuracy of which is called into question by ERM Zapad.

40 In the second place, as regards the relevance of the questions submitted for the determination of the outcome of the dispute, it should be recalled, first, that, according to settled case-law, it is solely for the national court before which the dispute in the main proceedings has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. It follows that questions referred by national courts enjoy a presumption of relevance and that the Court may refuse to rule on those questions only where it is quite obvious that the interpretation sought bears no relation to the actual facts of the dispute in the main proceedings or its purpose, 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 those questions (judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 35 and the case-law cited).

41 In the present case, while the parties to the main proceedings do not agree as to the nature and purpose of the dispute in the main proceedings, neither of the parties calls into question the reality of it, which, moreover, is clear from the statements given by the referring court summarised in paragraphs 13 to 18 of the present judgment. In addition, those same statements make it clear that the questions submitted to the Court concerning the interpretation of EU law are not manifestly and entirely unrelated to the actual facts of the dispute in the main proceedings, as it appears from the order for reference.

42 It must however be noted that the referring court submits its five questions for a preliminary ruling in relation to two alternative factual situations, namely the hypothesis in which the malfunctioning of the meter at issue is attributable to an external influence and one in which it is not so attributable.

43 However, it is unequivocally stated in the order for reference that that malfunctioning was not attributable to external influence.

44 Consequently, to the extent that the questions relate to the hypothesis which does not correspond to the factual situation at issue in the main proceedings as described in the order for reference, namely that the malfunctioning of the meter was attributable to external influence, those questions are hypothetical and therefore inadmissible.

45 Secondly, ERM Zapad appears to conclude that the questions referred for a preliminary ruling are inadmissible on the ground that the situation at issue in the main proceedings does not fall within the scope of application of either Regulation 2019/943, Directive 2019/944 or Directive 2011/83.

46 However, it suffices to observe that, where, as in the present case, it is not obvious that the interpretation of an EU provision bears no relation to the facts of the main action or its purpose, the objection alleging the inapplicability of that provision to the case in the main action does not relate to the admissibility of the request for a preliminary ruling, but concerns the substance of the questions (judgments of 28 October 2021, *Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo*, C-319/19, EU:C:2021:883, paragraph 25, and, to that effect, of 24 July 2023, *Lin*, C-107/23 PPU, EU:C:2023:606, paragraph 66 and the case-law cited).

47 In the third place, as regards the alleged absence of doubt as to the interpretation of EU law sought due to, inter alia, the existing case-law of the Court on the subject, it suffices to recall that, even when there is case-law of the Court resolving the point of law at issue, national courts and tribunals retain the broadest power to bring a matter before the Court if they consider it appropriate to do so, and the fact that the provisions whose interpretation is sought have already been interpreted by the Court does not deprive the Court of jurisdiction to give a further ruling (judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 37 and the case-law cited).

48 In the light of the foregoing considerations, the questions referred are inadmissible in so far as they refer to the situation in which the malfunctioning of the meter at issue is attributable to an external influence.

Consideration of the questions referred

49 By its questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 18(1), (7) and (8) of Regulation 2019/943, Article 10(4), Article 46(2)(d) and Article 59(1)(a) of Directive 2019/944 and Article 27 of Directive 2011/83 must be interpreted as meaning that, where, owing to the malfunctioning of a meter, it has not been possible to measure accurately the amount of electricity consumed by a residential customer, an amount calculated on the basis of an estimated electricity consumption may be billed to that customer.

50 In order to reply to those questions, it must be ascertained, as a preliminary matter, whether the legal consequences of such a malfunctioning falls within the scope of the regulation and those directives.

51 In that regard, it should be noted in the first place that, as regards Article 18(1), (7) and (8) of Regulation 2019/943, which is the subject of the first and third questions, that article provides, in essence, that charges applied by network operators for access to networks, in the same way as distribution tariffs, are to be cost-reflective, transparent and take into account the need for

network security and flexibility. In addition, distribution tariffs are to include the costs borne by the distribution system operators for the most cost-efficient operation and development of their networks.

52 However, there is nothing in those provisions to support a finding that they cover the legal consequences of the malfunctioning of a meter.

53 In the second place, as regards Directive 2019/944, it must be emphasised, first, that Article 10(4) thereof, which is the subject of the fifth question, merely provides for the right of final customers to be informed by the supplier of any intention to modify contractual conditions and, at an appropriate time, of any adjustment in the supply price.

54 The dispute in the main proceedings clearly does not relate to contractual changes or, in particular, to a price adjustment, which is all the more the case since the rules applied by ERM Zapad are fixed by the metering rules.

55 Furthermore, the right to information laid down in Article 10(4) of Directive 2019/944 relates only to the contractual conditions that depend on the will of the parties, including in particular the price of the electricity, and not to the tariffs of transmission and distribution which seek to remunerate the transmission or distribution system operator for use of that system, which are fixed by the regulatory authority in accordance with Article 59(1)(a) of Directive 2019/944.

56 Secondly, Article 46(2)(d) of Directive 2019/944, which is the subject of the first question, on the assumption that that provision applies to an entity other than a transmission system operator such as ERM Zapad appears to be, merely includes in the activity of electricity transmission 'the collection of all the transmission system related charges including access charges, energy for losses and ancillary services charges'.

57 That provision not only does not refer to any concept of 'charges … for losses', as referred to in the first question, but it also clearly does not concern the legal consequences of the malfunctioning of a meter.

58 Thirdly, in accordance with Article 59(1)(a) of that directive, which is the subject of the second question, the regulatory authority fixes or approves, in accordance with transparent criteria, transmission or distribution tariffs or their calculation methodologies, or both.

59 It must be observed that, besides the fact that the case in the main proceedings does not concern the validity of the criteria or calculation methodologies laid down by the metering rules, or compliance with those rules by ERM Zapad when fixing the sum set out in the invoice at issue, that sum does not correspond to a transmission or distribution tariff providing remuneration for use of the transmission or distribution system, since, by means of that invoice, ERM Zapad demanded payment of a sum corresponding to the electricity consumed by YL but which had not been accurately measured.

60 In the third place, as regards Directive 2011/83, even if, contrary to the position taken by ERM Zapad, that directive applied to the activity of electricity distribution, Article 27 thereof, which is the subject of the fourth question, provides that the customer is to be exempted from the obligation to provide any consideration in cases of unsolicited supply, including of electricity.

61 As ERM Zapad and the Commission submit, in order for that provision to apply, the supply of electricity must not have been solicited. In the present case, it is clear from the request for a preliminary ruling that YL, on the basis of a contract the validity of which is not disputed, consumed electricity for a period during which the meter at issue did not function correctly, with the result that it cannot be concluded that the supply of that electricity had not been solicited by YL, and that is the case irrespective of the identity of the supplier.

62 Having regard to the foregoing considerations, the answer to the questions referred is that:

– Article 18(1), (7) and (8) of Regulation 2019/943 and Article 10(4), Article 46(2)(d) and Article 59(1)(a) of Directive 2019/944 must be interpreted as not governing the legal consequences of the malfunctioning of an electricity meter and are not therefore applicable to a situation in which, owing to such a malfunctioning, it has not been possible to measure accurately the amount of electricity consumed by a residential customer and a sum corresponding to an estimated electricity consumption has been billed to that customer;

– Article 27 of Directive 2011/83 must be interpreted as not applying to a situation in which payment is demanded from a consumer for electricity provided in accordance with a valid contract, consumed, but not accurately measured owing to the malfunctioning of a meter.

Costs

63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Ninth Chamber) hereby rules:

1. **Article 18(1), (7) and (8) of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity and Article 10(4), Article 46(2)(d) and Article 59(1)(a) of 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**

   must be interpreted as not governing the legal consequences of the malfunctioning of an electricity meter and are not therefore applicable to a situation in which, owing to such a malfunctioning, it has not been possible to measure accurately the amount of electricity consumed by a residential customer and a sum corresponding to an estimated electricity consumption has been billed to that customer.

2. **Article 27 of 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,**

   must be interpreted as not applying to a situation in which payment is demanded from a consumer for electricity provided in accordance with a valid contract, consumed, but not accurately measured owing to the malfunctioning of a meter.

[Signatures]