Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

8 May 2025 *

(Reference for a preliminary ruling – Consumer protection – Directive 93/13/EEC – Unfair terms in consumer contracts – Article 2(b) – Concept of 'consumer' – Dual-purpose contract – Farmer concluding a contract for the purchase of a product intended for both agricultural and domestic use – Internal market for electricity – Directive 2009/72/EC – Article 3(7) – Annex I, paragraph 1(a) – Household customer – Contract for the supply of electricity for a fixed period at a fixed price – Contractual penalty for early termination – National legislation limiting the amount of that penalty to the 'costs and damages resulting from the contract')

In Case C-410/23 [Pielatak], [i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland), made by decision of 26 May 2023, received at the Court on 3 July 2023, in the proceedings

I. SA

v

S. J.,

THE COURT (Fourth Chamber),

composed of I. Jarukaitis (Rapporteur), President of the Chamber, N. Jääskinen, A. Arabadjiev, M. Condinanzi 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:

– the Polish Government, by B. Majczyna, acting as Agent,

* Language of the case: Polish.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

– the European Commission, by O. Beynet, M. Owsiany-Hornung and T. Scharf, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(b) and (c) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) and of Article 3(5) and (7), as well as paragraph 1(a) and (e) of Annex I to Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

2 The request has been made in proceedings between I. S.A., an electricity supplier ('the supplier') and S. J., a farmer, concerning the payment of a contractual penalty for the early termination by the latter of a fixed-term, fixed-price electricity supply contract concluded by those parties.

Legal context

European Union law

Directive 93/13

3 According to Article 2 of Directive 93/13:

'For the purposes of this Directive:

…

(b) "consumer" means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession;

(c) "seller or supplier" means any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned.'

Directive 2009/72

4 Recitals 3, 7, 8, 51, 52, 54 and 57 of Directive 2009/72 stated:

'(3) The freedoms which the Treaty guarantees the citizens of the Union … are achievable only in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.

…

(7) The Communication of the Commission [to the European Council and the European Parliament] of 10 January 2007 entitled "An Energy Policy for Europe" [COM(2007) 1 final] highlighted the importance of completing the internal market in electricity and of creating a level playing field for all electricity undertakings established in the [European] Community. …

(8) In order to secure competition and the supply of electricity at the most competitive price, Member States and national regulatory authorities should facilitate cross-border access for new suppliers of electricity from different energy sources as well as for new providers of power generation.

…

(51) Consumer interests should be at the heart of this Directive and quality of service should be a central responsibility of electricity 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.

(52) Clear and comprehensible information should be made available to consumers concerning their rights in relation to the energy sector. …

…

(54) Greater consumer protection is guaranteed by the availability of effective means of dispute settlement for all consumers. …

…

(57) Promoting fair competition and easy access for different suppliers and fostering capacity for new electricity generation should be of the utmost importance for Member States in order to allow consumers to take full advantage of the opportunities of a liberalised internal market in electricity.'

5 Article 1 of the directive, entitled 'Subject matter and scope', provided:

'This directive establishes common rules for the generation, transmission, distribution and supply of electricity, together with consumer protection provisions, with a view to improving and integrating competitive electricity markets in the Community. …'

6 Article 2 of the directive contains the following definitions:

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

…

7. "customer" means a wholesale or final customer of electricity;

…

9. “final customer” means a customer purchasing electricity for his own use;

10. “household customer” means a customer purchasing electricity for his own household consumption, excluding commercial or professional activities;

11. “non-household customer” means a natural or legal persons purchasing electricity which is not for their own household use and includes producers and wholesale customers;

12. “eligible customer” means a customer who is free to purchase electricity from the supplier of his choice within the meaning of Article 33;

…’

7 Article 3 of the directive, entitled ‘Public service obligations and customer protection’, provided, in paragraphs 5 and 7 thereof:

‘5. Member States shall ensure that:

(a) where a customer, while respecting contractual conditions, wishes to change supplier, the change is effected by the operator(s) concerned within three weeks; and

(b) customers are entitled to receive all relevant consumption data.

Member States shall ensure that the rights referred to in points (a) and (b) are granted to customers in a non-discriminatory manner as regards cost, effort or time.

…

7. 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. Member States shall ensure that the eligible customer is in fact able easily to switch to a new supplier. As regards at least household customers, those measures shall include those set out in Annex I.’

8 Article 33 of Directive 2009/72, entitled ‘Market opening and reciprocity’, stated in paragraph 1 thereof:

‘Member States shall ensure that the eligible customers comprise:

…

(c) from 1 July 2007, all customers.’

9 Article 37 of the directive, entitled ‘Duties and powers of the regulatory authority’, provided, in paragraph 1 thereof:

‘The regulatory authority shall have the following duties:

…

(l) respecting contractual freedom with regard to interruptible supply contracts and with regard to long-term contracts provided that they are compatible with Community law and consistent with Community policies;

…’

10 Annex I to that directive, entitled ‘Measures on consumer protection’, provided, in paragraph 1 thereof:

‘Without prejudice to Community rules on consumer protection, in particular Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts [(OJ 1997, L 144, p. 19)] and … Directive [93/13], the measures referred to in Article 3 are to ensure that customers:

(a) have a right to a contract with their electricity service provider that specifies:

…

– the duration of the contract, the conditions for renewal and termination of services and of the contract and whether withdrawal from the contract without charge is permitted,

…

Conditions shall be fair and well-known in advance. In any case, this information should be provided prior to the conclusion or confirmation of the contract. …

…

(e) are not charged for changing supplier;

…’

11 Directive 2009/72 was repealed and replaced, with effect from 1 January 2021, by 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), in accordance with the first paragraph of Article 72 of Directive 2019/944.

Directive 2011/83/EU

12 Recital 17 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), states:

'The definition of consumer should cover natural persons who are acting outside their trade, business, craft or profession. However, in the case of dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer.'

Directive 2019/944

13 Recital 1 of Directive 2019/944 states:

'A number of amendments are to be made to [Directive 2009/72]. In the interests of clarity, that Directive should be recast.'

14 Article 12 of Directive 2019/944, entitled 'Right to switch and rules on switching-related fees', provides, in paragraphs 2 and 3:

'2. Member States shall ensure that at least household customers and small enterprises are not charged any switching-related fees.

3. By way of derogation from paragraph 2, Member States may permit suppliers or market participants engaged in aggregation to charge customers contract termination fees where those customers voluntarily terminate fixed-term, fixed-price electricity supply contracts before their maturity, provided that such fees are part of a contract that the customer has voluntarily entered into and that such fees are clearly communicated to the customer before the contract is entered into. Such fees shall be proportionate and shall not exceed the direct economic loss to the supplier or the market participant engaged in aggregation resulting from the customer's termination of the contract, including the costs of any bundled investments or services that have already been provided to the customer as part of the contract. The burden of proving the direct economic loss shall be on the supplier or market participant engaged in aggregation, and the permissibility of contract termination fees shall be monitored by the regulatory authority, or by an other competent national authority.'

Polish law

15 The ustawa – Prawo energetyczne (Law on Energy), of 10 April 1997 (Dz. U. No 54, item 348), in the version applicable to the dispute in the main proceedings ('the Law on Energy'), provides, in Article 4j(3a) thereof:

'An end customer may terminate a fixed-term contract pursuant to which the energy-sector undertaking supplies gaseous fuel or energy to that customer, without bearing costs and damages

other than those resulting from the contract, by submitting a written statement to the energy-sector undertaking.'

16 The ustawa – Kodeks cywilny (Law establishing the Civil Code), of 23 April 1964 (Dz. U. No 16, item 93), in the version applicable to the dispute in the main proceedings ('the Civil Code'), provides, in Article 483(1) thereof:

'The contract may stipulate that compensation for damage arising from non-performance or improper performance of a non-pecuniary obligation is to be effected by payment of a fixed sum (contractual penalty).'

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

17 On 18 March 2017, S. J. and the supplier concluded a contract for the supply of electricity ('the contract at issue in the main proceedings') to which Annex 1 and the general conditions of sale were attached and were an integral part thereof.

18 Article 7(2) of that contract stipulated that the contract was concluded for a fixed time, running until 31 December 2021 and that the supply of electricity would commence on 1 January 2018. Paragraph 6 of that article stated that, inter alia in the event of a withdrawal from that contract by the customer before date indicated in paragraph 2 thereof, the customer would be required to pay a contractual penalty in accordance with the principles set out in point VI, paragraphs 1 to 3, of the general conditions of sale. Pursuant to that paragraph 1, the amount of that penalty corresponded to the unused electricity declared by the customer in the same contract as 'quantity of energy provided' for a given place of supply, at a unit price of 60 zlotys (PLN) (about EUR 14) per Megawatt Hour (MWh). The unused quantity of energy was calculated as being the sum of the average consumption of energy estimated for each of the months following the termination of the contract at issue in the main proceedings and remaining until the end of the period indicated in that Article 7(2). The consumption of electricity provided to the point of consumption was 20 MWh per year and the point of consumption of electricity, set out in Annex 1 of that contract, was S. J.'s agricultural holding.

19 By a letter of 5 May 2017, notified to the supplier on 8 May 2017, S. J. indicated to the latter that he withdrew from the contract at issue in the main proceedings by exercising his legal right of withdrawal provided for in respect of consumer contracts. In addition, he submitted a declaration of rescission of the legal effects of a contract concluded in error and alleged that the contract was invalid.

20 By a letter of 22 May 2020, the supplier stated that he regarded the declarations submitted as being ineffective. It issued a debit note giving S. J. until 7 July 2020 to pay the sum of PLN 4 700.22 (about EUR 1 128), by way of the contractual penalty, and issued an invoice dated 5 March 2018, in the sum of PLN 254.33 (about EUR 61) and a corrected invoice dated 8 January 2020 in the sum of PLN 314.90 (about EUR 75) for the electricity provided between 1 January 2018 and 10 January 2018.

21 As S. J. refused to pay those sums, the supplier brought an action before the Sąd Rejonowy dla m. st. Warszawy w Warszawie (District Court, Warsaw, Poland) seeking an order that S. J. be ordered to pay them. That court dismissed that action. First, it held that S. J. did not have the status of consumer, and that he had not therefore legally withdrawn from the contract at issue in the main proceedings on the basis of the consumer protection legislation. In that regard, it found that the

contract at issue in the main proceedings designated as the point of consumption the agricultural holding of S. J. and that, whilst the latter had admittedly stated that the energy purchased was also intended for his domestic use, that was insufficient to qualify him as a consumer, as that contract provided that it was intended for persons who did not have the status of consumer. According to that court, the use of an offer intended for customers who did not have the status of consumer proved in itself that S. J. had concluded the contract at issue in the main proceedings as a seller or supplier and that the contract related directly to his professional activity, namely his agricultural holding.

22 Second, that court applied Article 4j(3a) of the Law on Energy, but nevertheless found that it could not uphold the claim for payment of the contractual penalty, since, pursuant to Article 483(1) of the Civil Code, such a penalty could only be provided for in the event of non-performance or incorrect performance of a non-financial obligation, whereas, in the present case, the object of the purchaser's consideration in the case of sale of energy, is financial consideration, namely payment of the price.

23 In addition, the demands for payment for energy consumed were rejected as unfounded as the supplier had not supplied any quantity of energy.

24 The supplier brought an appeal against that judgment before the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland), which is the referring court. It alleges, inter alia, an infringement of Article 4j(3a) of the Law on Energy and of Article 483(1) of the Civil Code.

25 The referring court states that, according to the statements by S. J., the representatives of an electricity undertaking presented themselves at his agricultural holding on 18 March 2017 and made him an offer of the supply of electricity. On their advice, he signed clean forms which had been sent to him and which he received at the end of April 2017, a copy of the contract at issue in the main proceedings in which, first, the information and the annexes were different from those of the offer which had been made to him and, second, the information relating to the consumption of energy provided had been introduced in an arbitrary way. It was for those reasons that, by letter of 5 May 2017, he had stated his wish to withdraw from that contract.

26 In that context, the referring court wonders whether, in the first place, S. J. has the status of seller or supplier, or of consumer, and whether, consequently, his withdrawal is valid. It observes, inter alia, that the Sąd Rejonowy dla m. st. Warszawy w Warszawie (District Court, Warsaw) found that the contract at issue in the main proceedings referred to the addressee as the 'agricultural holding' of S. J. and that it was in reliance on Article 2(4) alone of that contract, which provided that that contract was intended for persons that did not have the status of consumer, that that court held that S. J. did not have that status. It also observes that, pursuant to Polish law, a farmer must be regarded as being a seller or supplier, unless he manages his agricultural holding for his own needs.

27 Although, admittedly, according to the Court's case-law, the status of consumer or of seller or supplier, within the meaning of Directive 93/13, must be determined having regard to a functional criterion, consisting in an assessment of whether the contractual relation at issue has arisen in the course of activities outside a trade, business or profession, such a functional difference cannot, however, be made in the present case, given that it is indisputable that the subject matter of the contract at issue in the main proceedings was the purchase of energy both for the purposes of the agricultural holding concerned and for S. J.'s domestic use. It notes, furthermore, that dual-purpose contracts are not mentioned in Directive 93/13 and that, while recital 17 of Directive

2011/83 refers to that type of contract, the Court, notably in the judgment of 20 January 2005, *Gruber* (C-464/01, EU:C:2005:32), set out, in order to determine whether the signatory of such a contract may be regarded as being a consumer, different criteria from those set out in recital 17.

28 Having regard to those considerations, the referring court wonders how the concept of 'consumer', within the meaning of Article 2(b) of Directive 93/13, is to be interpreted where the purpose of the contract at issue is in part private and in part professional.

29 In the second place, finding that, taking into account the date on which the contract at issue in the main proceedings was concluded, it is Directive 2009/72 which is relevant for the resolution of the dispute before it, the referring court observes that the possibility of freely switching energy supplier and the specific protection of consumers are amongst the principles established in that directive and that the possibility of withdrawing from a contract is closely connected with switching supplier. The possibility of imposing costs on the customer in the event of the termination by him or her of a contract for the supply of energy concluded for a fixed term raises, according to it, difficulties with regard to guaranteeing the power freely to switch energy supplier.

30 According to that court, it follows from Article 3(7) of, and Annex I to, Directive 2009/72 that a customer who has consumer status has nothing to pay in the event of switching supplier or withdrawal from a contract. Moreover, that Article 3(7) means that the possibility must be ensured, for a customer, to easily switch supplier, without that customer suffering discrimination as regards costs and without financial disadvantages imposed being a means of arbitrary discrimination with regard to other suppliers, with the result that the client cannot in fact switch supplier.

31 However, Article 4j(3a) of the Law on Energy, laying down the possibility of imposing costs on customers in the event of the early termination of a fixed-term contract does not include an exception for consumers. The question therefore arises as to whether that law is contrary to Directive 2009/72, more specifically to the high level of consumer protection provided for in paragraph 1(a) and (e) of Annex I thereto and referred to in recital 51 of that directive. In that regard, the referring court emphasises that Polish law permits the imposition of contractual penalties, but does not lay down criteria for their calculation, in particular in terms of proportionality to costs, risks, or damage suffered, which may be contrary to the requirements imposed inter alia by Article 3(7) of that directive. In practice, such penalties could equal the costs potentially invoiced for the agreed energy supply, which would in fact preclude the possibility of withdrawing from such contracts.

32 In those circumstances, the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do Article 2(b) and (c) of Directive [93/13] and the definition of ["]consumer["] contained therein, and recital 17 of Directive [2011/83] also cover a farmer who concludes a contract for the purchase of electricity both for an agricultural holding and for private purposes for a household?

(2) Must Article 3(5) and (7) of and recital 51 and Annex I(1)(a) and (e) to Directive [2009/72], which requires that no charge be levied on consumers in the event of withdrawal from a contract for the provision of electricity services, be interpreted as precluding the possibility of imposing a contractual penalty on an energy consumer customer for the termination of a fixed-term contract for the provision of electricity [(Article 4j(3a) of the Law on Energy)]?'

Consideration of the questions referred

The first question

33 It must be observed at the outset that, whilst, in the wording of its first question, the referring court refers not only to Article 2(b) of Directive 93/13, which defines the concept of 'consumer' within the meaning of that directive, but also to point (c) of that article, which defines the concept of 'seller or supplier' within the meaning of that directive, it is also clear from that wording and the reasoning of the order for reference that that court seeks to obtain an interpretation solely of the concept of 'consumer'.

34 Accordingly, it must be understood that, by its first question, the referring court asks, in essence, whether Article 2(b) of Directive 93/13, read in the light of recital 17 of Directive 2011/83, must be interpreted as meaning that the concept of 'consumer', within the meaning of that provision, covers a farmer who concludes a contract for the purchase of electricity which is intended simultaneously for both his agricultural holding and his domestic use.

35 According to Article 2(b) of Directive 93/13, a 'consumer' is any natural person who, in contracts covered by that directive, is acting for purposes which are outside his or her trade, business or profession.

36 In that regard, the Court has repeatedly held that the concept of 'consumer', within the meaning of Article 2(b), is objective in nature and is distinct from the concrete knowledge the person in question may have, or from the information that person actually has. The status of 'consumer' of that person concerned must be assessed by reference to a functional criterion, consisting in an assessment of whether the contractual relation at issue has arisen in the course of activities outside a trade, business or profession (see, to that effect, order of 19 November 2015, *Tarcău*, C-74/15, EU:C:2015:772, paragraph 27, and judgment of 8 June 2023, *YYY. (Concept of 'consumer')*, C-570/21, EU:C:2023:456, paragraph 30 and the case-law cited).

37 As to the question whether and, in the affirmative, in which circumstances, a person who concludes a dual-purpose contract, namely a contract for goods or services intended for a purpose relating in part to his or her trade, business or profession, and therefore falling only partly outside that activity, may nevertheless fall within the concept of 'consumer', within the meaning of Article 2(b), the Court has already held that, while the wording alone of that provision does not make it possible to determine, the context of that provision does not rule out that, in certain circumstances, a natural person who concludes such a contract could be classified as a 'consumer', within the meaning of that provision (see, to that effect, judgment of 8 June 2023, *YYY. (Concept of 'consumer')*, C-570/21, EU:C:2023:456, paragraphs 31 to 39).

38 In that regard, the Court held that, in order to ensure compliance with the objectives pursued by the EU legislature in the sphere of consumer contracts, and the consistency of EU law, account must be taken, in particular, of the concept of 'consumer' in recital 17 of Directive 2011/83,

which makes explicit the intention of the EU legislature as regards the definition of the concept of 'consumer' in the case of dual-purpose contracts and from which it is apparent that, where the contract is concluded for purposes which relate only partly to the trade of the person concerned and where the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be regarded as a consumer (see, to that effect, judgment of 8 June 2023, *YYY. (Concept of 'consumer')*, C-570/21, EU:C:2023:456, paragraphs 40 to 45).

39 The Court also recalled that the mandatory nature of the provisions contained in Directive 93/13 and the specific consumer-protection requirements require a broad interpretation of the concept of 'consumer', within the meaning of Article 2(b) of that directive, in order to ensure its effectiveness (see, to that effect, judgment of 8 June 2023, *YYY. (Concept of 'consumer')*, C-570/21, EU:C:2023:456, paragraph 46).

40 In that context, the Court also stressed that, to the extent that Article 2(b) of Directive 93/13 seeks to protect consumers in the event of unfair contract terms, the strict interpretation of the concept of 'consumer' adopted in the judgment of 20 January 2005, *Gruber* (C-464/01, EU:C:2005:32), for the purposes of determining the scope of the derogating jurisdictional rules laid down in Articles 13 to 15 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32), as amended by the successive conventions on the accession of new Member States to that convention, in the case of a dual-purpose contract, cannot be extended, by analogy, to the concept of 'consumer' within the meaning of Article 2(b) of Directive 93/13 (judgment of 8 June 2023, *YYY. (Concept of 'consumer')*, C-570/21, EU:C:2023:456, paragraph 51).

41 In the light of those considerations, the Court held that Article 2(b) of Directive 93/13 must be interpreted as meaning that the concept of 'consumer', within the meaning of that provision, covers a person who has concluded a loan contract intended for a purpose in part within and in part outside his or her trade, business or profession, together with a joint-borrower who did not act within his or her trade, business or profession, where the trade, business or professional purpose is so limited as not to be predominant in the overall context of that contract (see, to that effect, judgment of 8 June 2023, *YYY. (Concept of 'consumer')*, C-570/21, EU:C:2023:456, paragraph 53).

42 It follows from the foregoing that, in order to determine whether a natural person who concludes a dual-purpose contract, covered by Directive 93/13, acts for purposes that are outside his or her trade, business or profession and, consequently, falls with the concept of 'consumer', within the meaning of Article 2(b) of Directive 93/13, it is necessary to examine whether the trade, business or professional purpose of that contract is so limited as not to be predominant in its overall context.

43 In accordance with settled case-law, it is for a national court before which an action relating to a contract which may be covered by Directive 93/13 has been brought to determine, taking into account all the evidence and in particular the terms of that contract, whether the person concerned may be categorised as a 'consumer' within the meaning of that directive. In order to do that, the national court must take into account all the circumstances of the case, particularly the nature of the goods or service covered by the contract in question, that are capable of showing the purpose for which those goods or that service is being acquired (judgment of 8 June 2023, *YYY. (Concept of 'consumer')*, C-570/21, EU:C:2023:456, paragraph 55 and the case-law cited).

44 That also applies, where a dual-purpose contract is at issue, for the purposes of assessing, first, the extent of each of the two parts to that contract in its overall context and, second, the predominant purpose of that contract. Thus, where a dual-purpose contract is at issue, it is for the national court to examine all the circumstances surrounding the contract at issue in the main proceedings and to assess, on the basis of the objective evidence available to it, to what extent the trade, business or professional purpose of that contract or its non-professional purpose is predominant in its overall context (see, by analogy, judgment of 8 June 2023, *YYY. (Concept of 'consumer')*, C-570/21, EU:C:2023:456, paragraphs 56 to 58).

45 Therefore, while the terms of the contract concerned must be taken into account, they do not, in themselves, suffice to determine whether or not, in concluding that dual-purpose contract, the natural person concerned acted for purposes outside his or her trade, business or profession. However, having regard to the purpose of the contract at issue in the main proceedings, which concerns the purchase of electricity, it must be stated that an estimate by the parties of a high level of annual electricity consumption may indicate that the trade, business or professional purpose is predominant, whereas a low estimate of the level of consumption is likely to indicate that the predominant purpose consists in domestic use.

46 Having regard to the foregoing considerations, the answer to the first question is that Article 2(b) of Directive 93/13, read in the light of recital 17 of Directive 2011/83, must be interpreted as meaning that the concept of 'consumer', within the meaning of that provision, covers a farmer who concludes a contract for the purchase of electricity which is intended both for his or her agricultural holding and his or her domestic use, where the trade, business or professional purpose of that contract is so limited as not to be predominant in the overall context of that contract.

The second question

47 At the outset, it must be observed that, first of all, the request for a preliminary ruling does not make clear how the interpretation of Article 3(5) of Directive 2009/72, referred to in the wording of the second question, is relevant for the outcome of the dispute in the main proceedings. Pursuant to Article 3(5)(a) and (b), Member States are to ensure that, first, where a customer, while respecting contractual conditions, wishes to change supplier, the change is to be effected by the operator(s) concerned within three weeks and, second, that customers are entitled to receive all relevant consumption data, and those rights are to be granted to customers in a non-discriminatory manner as regards cost, effort or time.

48 It is clear from that request that the contract at issue in the main proceedings was terminated before the date on which it came into effect and before any electricity was supplied pursuant to it. In those circumstances, and in the absence of an explanation from the referring court in that respect, there is nothing to indicate how the dispute in the main proceedings concerns the situation of a change of supplier. Similarly, there is nothing to indicate that the dispute concerns the communication by the supplier of consumption data. Furthermore, the right easily to change supplier, which, pursuant to Article 2(12) of Directive 2009/72, read in conjunction with Article 33 thereof, has, since 1 July 2007, been granted to all customers, within the meaning of Article 2(7) of that directive, and with regard to which the referring court expresses doubts justifying its second question, is specifically provided for in Article 3(7) of that directive, which is also the subject matter of that question.

49 Likewise, the interpretation sought of paragraph 1(e) of Annex I to Directive 2009/72, also referred to in the wording of the second question, does not appear to be necessary for the purposes of resolving the dispute in the main proceedings. That provision covers the situation of a change of electricity supplier whereas, as stated in the preceding paragraph of the present judgment, the request for a preliminary ruling does not make clear how the dispute concerns such a situation.

50 Next, it should be recalled that the concept of 'consumer', used by the referring court in the wording of the second question, is not defined by Directive 2009/72, but that the Court has already held that, in the absence of any indication to the contrary in a given provision of that directive, that term has, in that directive, a broad meaning and includes, as a rule, any 'final customer' within the meaning of Article 2(9) of that directive, namely both 'household customers', within the meaning of Article 2(10), and 'non-household customers', within the meaning of Article 2(11) of that directive (see, to that effect, judgment of 11 January 2024, *G (Early termination fees)*, C-371/22, EU:C:2024:21, paragraph 35).

51 However, it is apparent from the request for a preliminary ruling that it is the scope of the measure set out in the fifth indent of paragraph 1(a) of Annex I to Directive 2009/72 that is at the heart of the referring court's questions. Annex I concerns more specifically, as is apparent from the last sentence of Article 3(7) of that directive, 'household customers' within the meaning of Article 2(10) of that directive.

52 Lastly, the documents before the Court show that the contract at issue in the main proceedings was concluded not only for a fixed period, but also for a fixed price for the entire duration of that contract.

53 In the light of those factors, it must be held that, by its second question, the referring court asks, in essence, whether Article 3(7) of, and paragraph 1(a) of Annex I to, Directive 2009/72, read in the light of recital 51 of that directive, must be interpreted as precluding national legislation which allows a contractual penalty to be imposed on a household customer when that customer terminates an electricity supply contract concluded for a fixed term and at a fixed price early.

54 When interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgments of 7 June 2005, *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 41, and of 11 January 2024, *G (Early termination fees*), C-371/22, EU:C:2024:21, paragraph 32).

55 As regards, in the first place, the wording of the provisions the interpretation of which is sought, it should be recalled that Article 3(7) of Directive 2009/72 requires Member States to take appropriate measures to protect final customers, to ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms, and to ensure that the eligible customer is able to switch easily to another supplier. That provision adds that, as regards at least household customers, those measures are to include those set out in Annex I to that directive.

56 As is apparent from the fifth indent of paragraph 1(a) of Annex I, those measures include measures to ensure that customers have a right to a contract with their electricity supplier that specifies, inter alia, 'whether withdrawal from the contract without charge is permitted'.

57 However, it is apparent from a comparison of the various language versions of Directive 2009/72 that it is only in the French-language version that that provision appears to indicate that, as regards at least household customers, Member States must take measures to ensure that the contract concluded by customers with their electricity supplier provides for their right to be terminated free of charge. In all the other language versions of that directive, that provision merely states, in essence, that, as regards at least household customers, Member States must take measures to ensure that customers are entitled to a contract concluded with their electricity supplier specifying whether it is possible to withdraw from that contract without charge.

58 In accordance with settled case-law, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be given priority over the other language versions in that regard. The need for uniform application and, therefore, for uniform interpretation of an EU measure precludes one version of the text being considered in isolation, but requires that the measure be interpreted by reference to the general scheme and purpose of the rules of which it forms part (judgment of 30 June 2022, *Allianz Elementar Versicherung*, C-652/20, EU:C:2022:514, paragraph 36 and the case-law cited).

59 Furthermore, it should be borne in mind that the last subparagraph of paragraph 1(a) of Annex I to Directive 2009/72 states that contract conditions are to be fair and well known in advance and that, in any case, that information should be provided prior to the conclusion or confirmation of the contract.

60 It follows from the foregoing that the wording of Article 3(7) of, and paragraph 1(a) of Annex I to, Directive 2009/72 indicates that, as regards at least household customers, Member States must take the necessary measures to ensure that those customers can, if they so wish, in fact easily switch suppliers. In addition, they must take the necessary steps to ensure that the contractual terms are fair, are drafted in clear terms and communicated in advance, so that the customer can understand their scope before the contract is signed and consent to it freely and in an informed manner, thus satisfying the condition of transparency imposed by that wording, and in order for there to be a mechanism for settling disputes which might arise between those customers and their electricity supplier.

61 By contrast, the wording of those provisions does not make it possible to determine whether they preclude Member States from providing, in their national legislation, that a contractual penalty may be imposed on a household customer when that customer terminates a fixed-term, fixed-price electricity supply contract early.

62 In that regard, it should be noted, in particular, that the fact that national legislation allows such a contract to stipulate that a contractual penalty will be payable in the event of early termination of that contract by the customer does not necessarily prevent that customer from being able easily to switch supplier, as provided for in the wording of Article 3(7) of Directive 2009/72, provided that that legislation contains instruments to ensure compliance with the conditions set out in paragraph 60 of the present judgment, and in particular to control the amount of such a penalty (see, by analogy, judgment of 11 January 2024, *G (Early termination fees)*, C-371/22, EU:C:2024:21, paragraph 37). It is, moreover, that amount rather than the very existence of such a penalty in principle which is such as to prevent such a change.

63 As regards, in the second place, the context of Article 3(7) of, and paragraph 1(a) of Annex I to, Directive 2009/72, it should be noted, first of all, that Article 3(5) of that directive states that changes of supplier are to take place while respecting contractual conditions. In the same vein,

Article 37(1)(l) of that directive provides that regulatory authorities are under a duty to respect contractual freedom with regard to interruptible supply contracts and with regard to long-term contracts provided that they are compatible with EU law and consistent with EU policies.

64 Next, it is true that, under paragraph 1(e) of Annex I to Directive 2009/72, read in conjunction with Article 3(7) thereof, Member States must, as regards at least household customers, take measures to ensure that those customers 'are not charged for changing supplier'. It cannot, however, be inferred therefrom that Directive 2009/72 precludes, as a matter of principle, the imposition of a contractual penalty in the event of early termination, by a household customer, of an electricity supply contract concluded for a fixed term and at a fixed price.

65 To hold that paragraph 1(e) of Annex I to Directive 2009/72 means that, even where a household customer terminates a fixed-term, fixed-price electricity supply contract early, a contractual penalty can never be imposed on him or her would run counter to the wording of the fifth indent of paragraph 1(a) of Annex I in most of its language versions and, according to the language version adopted, would deprive the latter provision of any practical effect or render Directive 2009/72 contradictory.

66 Where a provision of EU law is open to several interpretations, preference must be given to that interpretation which ensures that the provision retains its effectiveness (judgments of 24 February 2000, *Commission* v *France*, C-434/97, EU:C:2000:98, paragraph 21, and of 23 November 2023, *EVN Business Service and Others*, C-480/22, EU:C:2023:918, paragraph 37 and the case-law cited). Moreover, according to a general principle of interpretation, a provision must be interpreted, as far as possible, in such a way as not to detract from its validity (judgments of 4 October 2001, *Italy* v *Commission*, C-403/99, EU:C:2001:507, paragraph 37, and of 21 September 2023, *Stappert Deutschland*, C-210/22, EU:C:2023:693, paragraph 47 and the case-law cited).

67 It must therefore be held that any costs for changing supplier, referred to in paragraph 1(e) of Annex I to Directive 2009/72, are separate from costs linked to the termination of a contract, referred to in point (a) of that provision, and that paragraph 1(e) of Annex I does not preclude, as a matter of principle, Member States from retaining the option of providing, in their national legislation, that a contractual penalty may be imposed on a household customer where he or she terminates a fixed-term, fixed-price electricity supply contract early.

68 Moreover, the EU legislature expressly pronounced to that effect when it adopted Directive 2019/944, as is unequivocally stated in Article 12(2) and (3) of that directive, which constitutes, in accordance with recital 1 thereof, a recast of Directive 2009/72, and which has replaced that directive since 1 January 2021.

69 Lastly, recital 51 of Directive 2009/72 merely states, first, that the interests of consumers should be at the heart of that directive and that quality of service should be a central responsibility for electricity undertakings; second, that existing rights of consumers need to be strengthened and guaranteed, and should include greater transparency; third, that consumer protection should ensure that all consumers in the wider remit of the Community benefit from a competitive market, and fourth, that consumer rights should be enforced by Member States or, where a Member State has so provided, the regulatory authorities. That recital thus contains no indication to the effect that, as a matter of principle, Member States are precluded from

providing, in their national legislation, that a contractual penalty may be imposed on a household customer when that customer terminates a fixed-term, fixed-price electricity supply contract early.

70 By contrast, recital 52 of that directive states that clear and comprehensible information should be made available to consumers concerning their rights in relation to the energy sector, and recital 54 thereof states that the means of dispute resolution provided for in Article 3(7) of that directive must be available to all consumers.

71 It must therefore be held that it is not apparent from the context of Article 3(7) of, and paragraph 1(a) of Annex I to, Directive 2009/72 that those provisions preclude, as a matter of principle, national legislation which allows a contractual penalty to be imposed on a household customer when that customer terminates a fixed-term, fixed-price electricity supply contract early. By contrast, it follows, in essence, from that context that such national legislation must, as already indicated by the wording of the provisions to be interpreted, ensure that customers, including household customers, have the right to choose their supplier and to be informed in a clear and comprehensible manner of their rights and are able to enforce them in the context of a dispute settlement mechanism (see, by analogy, judgment of 11 January 2024, *G (Early termination fees)*, C-371/22, EU:C:2024:21, paragraph 44).

72 As regards, in the third place, the objectives pursued by Directive 2009/72, the Court has already held that, under Article 1 thereof, the purpose of that directive is to establish common rules for the generation, transmission, distribution and supply of electricity, together with consumer protection provisions, with a view to improving and integrating competitive electricity markets in the European Union. In that context, and as is apparent from recitals 3, 7 and 8 thereof, that directive seeks, in particular, to establish a fully open and competitive internal market in electricity, which enables all consumers freely to choose their suppliers and suppliers freely to deliver to their customers, to foster competitiveness within the internal market in order to secure the supply of electricity at the most competitive price, and to create a level playing field in that market in order to bring about completion of the internal market in electricity (judgment of 11 January 2024, *G (Early termination fees)*, C-371/22, EU:C:2024:21, paragraph 45 and the case-law cited).

73 In that regard, it should be recalled that the Court has also held that fixed-term, fixed-price electricity supply contracts can protect customers by guaranteeing them a low and stable electricity price, offering consumers the certainty that the costs which they will have to bear will not vary throughout the duration of the contract. However, in order to fulfil its obligations under such contracts, the electricity supplier concerned may have incurred specific costs, which could, for it, have given rise to additional costs as compared with a contract of indefinite duration with no fixed price, particularly for the purpose of hedging against the volatility of costs on the wholesale market. Accordingly, the possibility of permitting the imposition of a contractual penalty on a customer where that customer terminates that type of fixed-term, fixed-price contract early may allow the supplier to offset the particular costs which it incurs as a result of that type of contract, whilst avoiding having to pass on to all customers the financial risk associated with that type of contract, which could lead to higher electricity prices for them and would, in the final analysis, be contrary to the objective of ensuring the most competitive prices for consumers (judgment of 11 January 2024, *G (Early termination fees)*, C-371/22, EU:C:2024:21, paragraph 47).

74 The Court added that, however, it is necessary to take into account also the general objective pursued by Directive 2009/72 of bringing about the completion of the internal market in electricity, as well as the more specific objectives, set out in recitals 51 and 57 of that directive, of ensuring that consumers benefit from a competitive and liberalised market. Thus, it held that the attainment of those objectives would be undermined if national legislation permitted the imposition of contractual penalties which were incommensurate with the costs arising from the contract but not fully amortised on account of its early termination. Such penalties are likely artificially to dissuade the customers concerned from terminating their fixed-term, fixed-price electricity supply contract early, inter alia with a view to switching supplier, thereby preventing them from fully benefiting from a competitive and liberalised internal market in electricity (see, to that effect, judgment of 11 January 2024, *G (Early termination fees)*, C-371/22, EU:C:2024:21, paragraph 48).

75 Those findings, made by the Court in the context of a case concerning the early termination of a fixed-term, fixed-price electricity supply contract by a non-household customer, can be applied in respect of a contract of the same nature concluded with a household customer, since Directive 2009/72 makes no distinction, as regards the objectives referred to in paragraphs 72 to 74 of the present judgment, according to the status of the consumer concerned.

76 Thus, the objectives of Directive 2009/72 indicate that Member States must, in principle, have the option of providing, in their national legislation, that a contractual penalty may be imposed on a household customer when that customer terminates a fixed-term, fixed-price electricity supply contract early, provided that the general conditions arising from that directive, relating, in particular, to the need to inform that customer and the existence of a dispute resolution mechanism, are satisfied.

77 However, since the second question relates, according to the information provided by the referring court, to national legislation which allows contractual penalties to be imposed, but without laying down any criterion for their calculation, in particular in terms of proportionality with the costs, the risks incurred or the damage suffered, it must also be stated that, although Directive 2009/72 does not contain any indication in that regard, the Member States must, in accordance with the case-law of the Court, exercise their powers in compliance with EU law and they cannot therefore, in so doing, undermine the effectiveness of Directive 2009/72 (judgment of 11 January 2024, *G (Early termination fees*), C-371/22, EU:C:2024:21, paragraph 50 and the case-law cited).

78 The effectiveness of Directive 2009/72 would be undermined if, within the framework of the dispute settlement mechanism which the Member States are required to provide under that directive for the benefit of electricity consumers, the administrative or judicial authority before which a matter is brought were unable to assess the amount of a contractual penalty such as that at issue in the main proceedings and, where appropriate, to require it to be reduced or even annulled, if, in the light of all the circumstances of the case, that penalty were found to be disproportionate to the costs arising from a contract such as that at issue in the main proceedings, but not fully amortised on account of the early termination of that contract, with the result that that penalty would, in practice, have the effect of frustrating the right of the final customer to be in fact able freely to choose his or her supplier and undermine the objectives of that directive recalled in paragraphs 72 and 74 of the present judgment (see, by analogy, judgment of 11 January 2024, *G (Early termination fees)*, C-371/22, EU:C:2024:21, paragraph 51).

79 While that assessment of the proportionality of the amount of such a contractual penalty is a matter solely for the national authority before which any dispute is brought, it is nevertheless appropriate, in order to provide a useful response to the referring court, to state that, for the purposes of that assessment, account may be taken, inter alia, of the initial duration of the contract in question, the remaining duration at the time of its termination, the quantity of electricity which was purchased with a view to the performance of that contract but which will not ultimately be consumed by the customer, and the means which a reasonably diligent supplier would have had at its disposal to limit any economic losses that it might incur as a result of that early termination (see, by analogy, judgment of 11 January 2024, *G (Early termination fees)*, C-371/22, EU:C:2024:21, paragraph 52).

80 It follows from the foregoing that Article 3(7) of, and paragraph 1(a) of Annex I to, Directive 2009/72, read in the light of recital 51 of that directive, do not preclude national legislation such as that at issue in the main proceedings, provided that such legislation ensures that the contractual penalty which may be provided for under that legislation is fair, clear, communicated in advance and freely consented to, and that there is a possibility of an administrative or judicial redress, in the context of which the authority before which the matter is brought may assess the proportionality of that penalty in the light of all the circumstances of the case and, where appropriate, require its reduction or annulment (see, by analogy, judgment of 11 January 2024, *G (Early termination fees*), C-371/22, EU:C:2024:21, paragraph 55).

81 In order to provide a useful answer to the referring court, it should also be stated that, first, in the light of that interpretation, it is irrelevant whether, in the context of the dispute in the main proceedings, S. J. is classified as a 'household customer', within the meaning of Article 2(10) of Directive 2009/72, or as a 'non-household' customer, within the meaning of Article 2(11) of that directive, an analogous interpretation is valid where the early termination, by a non-household customer, of fixed-term, fixed-price electricity supply contract is at issue (see, to that effect, judgment of 11 January 2024, *G (Early termination fees)*, C-371/22, EU:C:2024:21, paragraph 55).

82 Nevertheless, and secondly, in accordance with paragraph 1 of Annex I to Directive 2009/72, that interpretation is without prejudice to the rights that a customer such as S. J. could, as the case may be, derive from EU consumer protection legislation, in particular from Directive 93/13, if that customer is, in addition, covered by the concept of 'consumer' within the meaning of Article 2(b) of the latter directive.

83 In the light of all the foregoing considerations, the answer to the second question is that Article 3(7) of, and paragraph 1(a) of Annex I to, Directive 2009/72, read in the light of recital 51 of that directive, must be interpreted as not precluding national legislation under which, in the event of early termination, by a household customer, of an electricity supply contract concluded for a fixed term and at a fixed price, the latter is required to pay the contractual penalty stipulated in the contract, provided that that legislation, first, ensures that such a contractual penalty is fair, clear, communicated in advance and freely consented to, and, second, provides for the possibility of administrative or judicial redress, in the context of which the authority before which the matter is brought may assess the proportionality of that penalty in the light of all the circumstances of the case and, where appropriate, impose its reduction or annulment. That interpretation is without prejudice to the rights that such a customer could, as the case may be, derive from EU consumer protection legislation, in particular from Directive 93/13, if that customer is, in addition, covered by the concept of 'consumer' within the meaning of Article 2(b) of the latter directive.

Costs

84 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 (Fourth Chamber) hereby rules:

1. **Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read in the light of recital 17 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 meaning that the concept of 'consumer', within the meaning of that provision, covers a farmer who concludes a contract for the purchase of electricity which is intended both for his or her agricultural holding and his or her domestic use, where the trade, business or professional purpose of that contract is so limited as not to be predominant in the overall context of that contract.

2. **Article 3(7) of, and Annex I, paragraph 1(a), to, Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, read in the light of recital 51 of Directive 2009/72,**

   must be interpreted as not precluding national legislation under which, in the event of early termination, by a household customer, of an electricity supply contract concluded for a fixed term and at a fixed price, the latter is required to pay the contractual penalty stipulated in the contract, provided that that legislation, first, ensures that such a contractual penalty is fair, clear, communicated in advance and freely consented to, and, second, provides for the possibility of administrative or judicial redress, in the context of which the authority before which the matter is brought may assess the proportionality of that penalty in the light of all the circumstances of the case and, where appropriate, impose its reduction or annulment. That interpretation is without prejudice to the rights that such a customer could, as the case may be, derive from EU consumer protection legislation, in particular from Directive 93/13, if that customer is, in addition, covered by the concept of 'consumer' within the meaning of Article 2(b) of the latter directive.

[Signatures]