

Parties to the main proceedings

Applicant: EVN Bulgaria Toplofikatsia EAD

Defendant: Nikolina Stefanova Dimitrova

Questions referred

1. Does Article 13(2) of Directive 2006/32/EC ⁽¹⁾ of the European Parliament and of the Council of 5 April 2006 preclude the possibility of the district heating supplier demanding consideration for the consumed thermal energy released by the system supplied with district heating of a building in co-ownership in proportion to the heatable volume of the apartments according to the floor plan, without taking account of the quantity of thermal energy actually released in the individual apartment?
2. Is a national provision that obliges consumers who are owners of apartments in buildings subject to the provisions on co-ownership to provide consideration for the thermal energy that is not used but is supplied by the building's system provided with district heating, if they have ceased the use of the thermal energy by removing the radiators in their apartments or as a result of employees of the district heating supplier having rendered the radiator technically incapable of releasing heat at their request, compatible with Article 27 of Directive 2011/83/EU? ⁽²⁾
3. Does such a national provision give rise to an unfair commercial practice within the meaning of Directive 2005/29/EC ⁽³⁾ 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?

⁽¹⁾ Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC (Text with EEA relevance), OJ 2006 L 114, p 64.

⁽²⁾ 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 (Text with EEA relevance), OJ 2011 L 304, p 64.

⁽³⁾ 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') (Text with EEA relevance), OJ 2005 L 149, p. 22.

Request for a preliminary ruling from the Sofiyski rayonen sad (Bulgaria) lodged on 27 December 2017 — Toplofikatsia Sofia EAD v Mitko Simoneov Dimitrov

(Case C-725/17)

(2018/C 094/14)

Language of the case: Bulgarian

Referring court

Sofiyski rayonen sad

Parties to the main proceedings

Applicant: Toplofikatsia Sofia EAD

Defendant: Mitko Simoneov Dimitrov

Questions referred

1. Does [Directive 2011/83/EU], ⁽¹⁾ which excludes from its scope the rules of conventional contract law on the conclusion of contracts, also exclude legislation governing this extremely atypical, legally prescribed structure for the existence of a contractual relationship?

2. If the directive does not exclude specific legislation in that situation, does that contract fall within the scope of Article 5 of the directive or of a different instrument? In the event that it is a contract or in the event that it is not, is the directive applicable in the present case?
3. Are such de facto contracts covered by the directive, irrespective of the time they arise, or does the directive apply only to newly acquired or, even more restrictively, to newly built apartments (that is to say, user-installations requesting connection to the district heating network)?
4. If the directive is applicable: does the national legislation infringe Article 5(1)(f), read in conjunction with paragraph 2, which provide for the right to terminate the legal relationship (or the fundamental possibility of doing so)?
5. Thus, in the event that a contract is concluded, is a particular form required, and what information must be provided to the consumer (understood to be the individual owner of an apartment and not a community of separate apartment owners)? Does failure to provide timely and accessible information affect the existence of a legal relationship?
6. In order to be a party to such a legal relationship, is a specific request necessary, thus a formally expressed intention of the consumer?
7. If a contract, be it formal or informal, is concluded, does heating of the common parts of the building (in particular the stairwells) form part of the subject matter of the contract and has the consumer ordered a service in that area of the building, if no request has been expressly made for that service by that consumer or even by the whole building in co-ownership (for example, when radiators have been removed — as appears to have happened in a great number of cases — the experts not mentioning that there are heating appliances in the common parts of the building)?
8. In the light of the above, is the fact that the heating supply is terminated in a private apartment relevant (or does it make a difference) as regards the owner's status as a consumer who has requested heating of the common parts of the building?

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

**Appeal brought on 5 January 2018 by Oleksandr Viktorovych Klymenko against the judgment of the
General Court (Sixth Chamber) delivered on 8 November 2017 in Case T-245/15: Klymenko v
Council**

(Case C-11/18 P)

(2018/C 094/15)

Language of the case: English

Parties

Appellant: Oleksandr Viktorovych Klymenko (represented by: M. Phelippeau, advocate)

Other party to the proceedings: Council of the European Union

Form of order sought

The appellant claims that the Court should set aside the Judgment of the General Court (Sixth Chamber) of 8 November 2017 in Case T-245/15.

The appellant requests the Court to grant the relief sought in the proceedings before the General Court below namely:

- to annul Council Decision (CFSP) 2015/364 of 5 March 2015 ⁽¹⁾; and Council Implementing Regulation (EU) 2015/357 of 5 March 2015 ⁽²⁾;
- to annul Council Decision (CFSP) 2016/318 of 4 March 2016 ⁽³⁾, and Council Implementing Regulation (EU) 2016/311 of 4 March 2016 ⁽⁴⁾;