Reports of Cases

OPINION OF ADVOCATE GENERAL
WAHL
delivered on 8 May 2014 [1]

Joined Cases C-359/11 and C-400/11

Alexandra Schulz
v
Technische Werke Schussental GmbH und Co. KG
Josef Egbringhoff
v
Stadtwerke Ahaus GmbH

(Requests for a preliminary ruling from the Bundesgerichtshof (Germany))

(Directive 2003/54/EC — Internal market in electricity — Directive 2003/55/EC — Internal market in natural gas — Contracts between suppliers and customers based on national legislation — Universal service obligation — General conditions — Unilateral adjustment by the supplier of the price of the service — Appropriate level of consumer protection — Final customers — Transparency requirement in relation to contractual terms and conditions — Interrelationship with Directive 93/13/EEC — Unfair terms in consumer contracts — Limitation of the temporal effects of a judgment)

1. Many public service sectors [2] which were once monopolies have undergone significant changes as a result of market liberalisation. This is also the case with the energy market. Within that context, the Electricity and Gas Directives [3] (or, collectively, 'the Energy Directives') set out the rules for the gradual liberalisation of the energy market in the European Union. [4] While mainly concerned with opening up the energy sector to competition, those directives also contain provisions designed to ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions for final customers. Those provisions — which are intended to guarantee a universal service [5] — require Member States to take appropriate action to protect customers, especially vulnerable customers, from disconnection, one of the mechanisms for doing so being the appointment of a supplier of last resort.

2. Under German law, gas and electricity suppliers have a duty to conclude contracts with household customers when they operate on the basis of a USO. To these contracts a standard rate for energy supply is applied. The issue that arises in the main proceedings is whether — as a corollary to that duty — service providers also enjoy a statutory right to vary prices unilaterally. To resolve that issue,

1 — Original language: English.

2 — These sectors include telecommunications, postal services, electricity and natural gas, as well as railway services.

3 — Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ 2003 L 176, p. 37) and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57).

4 — Completing the internal Market in Energy, COM(2001) 125 final, p. 2 ('the 2001 Commission Communication').

5 — While these provisions (namely, Article 3 of the Electricity Directive and Article 3 of the Gas Directive, quoted in points 6 and 10 below respectively) are framed in terms of a public service obligation, I will in the following refer to the obligation imposed under those provisions as a universal service obligation (or 'USO').

the Bundesgerichtshof (German Federal Court of Justice) now seeks guidance from this Court on the appropriate level of protection to be afforded to final customers, pursuant to EU law, in relation to these supply contracts. The issue is unquestionably of paramount importance. That is so because the legality of the price adjustments hinges on the interpretation to be given to the requirement, laid down in Article 3(5) of the Electricity Directive and in Article 3(3) of the Gas Directive, that contractual terms and conditions must be transparent.

3. In that context, the Court must also take a position on the possible interrelationship between that transparency requirement and the obligations under Articles 3 and 5 of Directive 93/13.[6] This need has arisen because the Court recently gave guidance on the latter set of obligations in the *RWE Vertrieb*[7] case, again in relation to contracts for the supply of energy. The crucial challenge in the present case, therefore, is to establish whether all those various requirements ought to be interpreted uniformly, despite the fact that the legal instruments from which they derive pursue different objectives. As I will aim to illustrate below, I believe that question ought to be answered in the negative.

I – **Legal framework**

A – *EU law*

1. The Electricity Directive

4. Recital 24 in the preamble to the Electricity Directive states that household customers — and, where Member States deem it appropriate, small enterprises — are to be ensured the right to be supplied with electricity of a specified quality at clearly comparable, transparent and reasonable prices. In that context, Member States should take the necessary measures to protect vulnerable customers.

5. According to recital 26, respect for the public service requirements is a fundamental requirement of the Electricity Directive. To this end, the directive lays down common minimum standards that take into account the objectives of universal protection and security of supply.

6. Article 3 of the Electricity Directive, which lays down the rules concerning public service obligations and consumer protection, provides:

‘3. Member States shall ensure that all household customers, and, where Member States deem it appropriate, small enterprises … enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable and transparent prices. To ensure the provision of universal service, Member States may appoint a supplier of last resort …

…

5. Member States shall take appropriate measures to protect final customers, and shall in particular ensure that there are adequate safeguards to protect vulnerable customers, including measures to help them avoid disconnection. In this context, Member States may take measures to protect final customers in remote areas. They shall ensure high levels of consumer protection, particularly with

6 — Directive of 5 April 1993 on unfair contract terms in consumer contracts (OJ 1993 L 95, p. 29).

7 — Case C-92/11 [2013] ECR.

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 to switch to a new supplier. As regards at least household customers, these measures shall include those set out in Annex A.'

7. Annex A to the Electricity Directive specifies the measures that Member States are to undertake in order to protect consumers. It states:

'Without prejudice to [EU] rules on consumer protection, in particular Directives 97/7/EC [8] 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 means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

— the duration of the contract, the conditions for renewal and termination of services and of the contract, the existence of any right of withdrawal;

— any compensation and the refund arrangements which apply if contracted service quality levels are not met; …

— ...

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. …

(b) are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect. Member States shall ensure that customers are free to withdraw from contracts if they do not accept the new conditions notified to them by their electricity service provider;

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

(d) are offered a wide choice of payment methods. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language. …'

8 — Directive of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts — Statement by the Council and the Parliament re Article 6(1) — Statement by the Commission re Article 3(1), first indent (OJ 1997 L 144, p. 19).

2. The Gas Directive

8. According to recital 26 in the preamble to the Gas Directive, Member States should ensure that, when customers are connected to the gas system, they are informed about their right to be supplied with natural gas of a specified quality and at a reasonable price. In that regard, measures taken by Member States to protect final customers may differ in relation to households, on the one hand, and small and medium sized enterprises, on the other.

9. Recital 27 further specifies that the respect for the public service requirements is a fundamental requirement of the Gas Directive. In this respect, common minimum standards — which take into account, inter alia, the objectives of consumer protection and security of supply — are specified in this directive.

10. Similarly to Article 3 of the Electricity Directive, Article 3 of the Gas Directive defines the contours of the public service obligation incumbent upon gas supply companies, and consumer protection. It provides:

'3. Member States shall take appropriate measures to protect final customers and to ensure high levels of consumer protection, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers, including appropriate measures to help them avoid disconnection. In this context, they may take appropriate measures to protect customers in remote areas who are connected to the gas system. Member States may appoint a supplier of last resort for customers connected to the gas network. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding general contractual terms and conditions, general information and dispute settlement mechanisms. Member States shall ensure that the eligible customer is effectively able to switch to a new supplier. As regards at least household customers these measures shall include those set out in Annex A.'

11. Similarly to the Electricity Directive, Annex A contains a list of measures that Member States are to undertake in order to protect consumers. It states:

'Without prejudice to [EU] rules on consumer protection, in particular [Directive 97/7] 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 gas service provider that specifies:

— …

— the means by which up to date information on all applicable tariffs and maintenance charges may be obtained;

— the duration of the contract, the conditions for renewal and termination of services and of the contract, the existence of any right of withdrawal;

— …

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. Where contracts are concluded through intermediaries, the above information shall also be provided prior to the conclusion of the contract:

(b) are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal

billing period after the increase comes into effect. Member States shall ensure that customers are free to withdraw from contracts if they do not accept the new conditions, notified to them by their gas service provider;

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

(d) are offered a wide choice of payment methods. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language. ...

…

(g) connected to the gas system are informed about their rights to be supplied, under the national legislation applicable, with natural gas of a specified quality at reasonable prices.'

B – *German law*

12. At the material time, the general terms and conditions pursuant to which electricity suppliers were to connect anyone to their supply system and to supply electricity at general standard-rate prices (standard-rate customers) were regulated by the provisions of the Verordnung über Allgemeine Bedingungen für die Elektrizitätsversorgung von Tarifkunden ('the AVBEltV')[9] and later by those contained in the Verordnung über Allgemeine Bedingungen für die Grundversorgung von Haushaltskunden und die Ersatzversorgung mit Elektrizität aus dem Niederspannungsnetz ('the StromGVV').[10] Those provisions also constitute an integral part of supply contracts with standard-rate customers.

13. Paragraph 4 of the AVBEltV states:

'(1) The electricity supplier shall supply [electricity] in accordance with the applicable standard rates and general terms and conditions.

(2) Changes in the standard rates and general terms and conditions shall become effective only after they have been published.'

14. The right of termination is set out in Paragraph 32 of the AVBEltV, which states:

'(1) The contractual relationship shall continue without interruption until one of the two parties gives one month's notice of termination, such notice expiring at the end of a calendar month …

(2) If the general standard rates vary or if the electricity supplier alters its general conditions on the basis of this Regulation, the customer may give two weeks' notice to terminate the contractual relationship, such notice expiring at the end of the calendar month following publication.'

9 — Regulation on the general terms and conditions for the supply of electricity to standard-rate customers of 21 June 1979 (BGBl. I, p. 684).

10 — Regulation on the general terms and conditions for the basic supply of household customers and the alternative supply of electricity from the low-voltage grid of 26 October 2006 (BGBl. I, p. 2391).

15. Paragraph 5(2) of the StromGVV states:

'Variations of the General Prices and the further terms and conditions shall become effective at the beginning of the relevant month, but only after publication thereof, which must be effected at least six weeks before the planned variation. At the same time as effecting publication the basic supplier is required to send written notification of the planned variations to the customer and to publish the variations on its website. Changes in the standard rates and general terms and conditions shall become effective only after they have been published.'

16. Under Paragraph 20 of the StromGVV, notice to terminate the basic supply contract expires at the end of the relevant calendar month.

17. At the material time, the general terms and conditions pursuant to which gas suppliers had to connect anyone to their supply system and to supply gas at general standard-rate prices (standard-rate customers) were regulated by the provisions of the Verordnung über Allgemeine Bedingungen für die Gasversorgung von Tarifkunden ('the ABVGasV').[11] Those provisions also constituted an integral part of supply contracts with standard-rate customers.

18. Paragraph 4 of the AVBGasV states:

'(1) The gas supplier shall supply gas in accordance with the applicable standard rates and general terms and conditions …

(2) Changes in the standard rates and general terms and conditions shall become effective only after they have been published.'

19. The right of termination is laid down in Paragraph 32 of the AVBGasV in the following manner:

'(1) The contractual relationship shall continue without interruption until one of the two parties gives one month's notice of termination, such notice expiring at the end of a calendar month …

(2) If the general standard rates vary or if the gas supplier alters its general conditions on the basis of this Regulation, the customer may give two weeks' notice to terminate the contractual relationship, such notice expiring at the end of the calendar month following publication.'

20. Moreover, the right of both electricity and gas suppliers unilaterally to adjust prices is limited by the case-law of the referring court, which affords suppliers the right to vary prices only to the extent that those variations remain reasonable. Accordingly, prices can be adjusted in accordance with a reasonably exercised discretion and any adjustment is binding on the other party only if it is reasonable. For that purpose, any price adjustment is subject to judicial review. The requirement of reasonableness also implies that suppliers are under an obligation to take into account possible reductions in cost.

II – **Facts, procedures and the questions referred**

21. In Case C-359/11, Technische Werke Schussental GmbH und Co. KG ('TWS'), a natural gas supplier, provides Ms Schulz, as a standard-rate customer paying the domestic rate, with pipeline gas for her property in Baienfurt. In the period from 1 January 2005 to 1 January 2007, TWS increased the price for the gas supplied four times; on 1 April 2007 the price was lowered again. Ms Schulz challenged the price adjustments on her annual statements for 2005, 2006 and 2007, on the grounds that she considered the price increases unreasonable.

11 — Regulation on the general terms and conditions for the supply of gas to standard-rate customers of 21 June 1979 (BGBl. I, p. 676).

22. In the proceedings before the referring court, TWS is claiming the outstanding payment for the years 2005 to 2007. The Amtsgericht (Local Court) upheld TWS's action for payment of the sum of EUR 2 733.12, plus interest for late payment and legal expenses. The appeal court dismissed the appeal brought by Ms Schulz, but granted her leave to appeal to the referring court on a point of law ('Revision').

23. In that context, entertaining doubts as to the compatibility with EU law of the legislation at issue, the Bundesgerichtshof decided to stay the proceedings and to refer the following question for a preliminary ruling:

'Is Article 3(3) of [Directive 2003/55], read in conjunction with point (b) and/or (c) of Annex A thereto, to be interpreted as meaning that a provision of national law on price adjustments in natural gas delivery contracts with household customers who are supplied gas within the framework of a universal service obligation (standard-rate customers) satisfies the transparency requirements if, in that provision, the grounds, preconditions and scope of the price adjustments are not specified but customers are assured that gas suppliers will give them sufficient advance notice of any price increases and they have the right to terminate the contract if they are unwilling to accept the amended contractual terms and conditions as communicated?'

24. In Case C-400/11, Stadtwerke Ahaus GmbH ('SWA') is a municipal distributor that provides Mr Egbringhoff with gas and electricity. In SWA's statement for 2004, SWA fixed the charge for its gas supplies at 3.521 cent/kWh and electricity supplies at 9.758 cent/kWh.

25. On several occasions between 2005 and 2008, SWA increased the price for the electricity and gas supplied. Each of these increases was published. On 18 January 2008, Mr Egbringhoff objected to SWA's statement of 6 January 2006 relating to gas and electricity supplies for 2005 on the grounds that it was unreasonable. However, he did make a conditional payment for the extra charges set out in the bills in respect of accounting years 2005, 2006 and 2007. SWA ignored Mr Egbringhoff's repeated requests that it demonstrate that the prices charged were reasonable and pay back the charges for electricity and gas supplies totalling EUR 746.54 which Mr Egbringhoff considered not to be due.

26. By an action brought on 30 December 2008, Mr Egbringhoff claims that SWA should repay him EUR 746.54, plus interest. He further asks for a declaration that SWA must take the charges effective in 2004 as a basis for calculating its prices for gas and electricity supplies for the accounting year 2008. While that action was unsuccessful in the lower courts, he was granted leave to appeal before the referring court on a point of law.

27. As in the appeal brought by Ms Schulz, the Bundesgerichtshof entertains doubts in Mr Egbringhoff's case as to the compatibility with EU law of the German legislation at issue. It therefore decided to stay the proceedings and to refer the following question for a preliminary ruling:

'Is Article 3(5) of [Directive 2003/54], read in conjunction with point (b) and/or (c) of Annex A thereto, to be interpreted as meaning that a provision of national law on price adjustments in electricity delivery contracts with household customers who are supplied electricity within the framework of a universal service obligation (standard-rate customers) satisfies the transparency requirements if, in that provision, the grounds, preconditions and scope of the price adjustments are not specified but customers are assured that electricity suppliers will give them sufficient advance notice of any price increases and they have the right to terminate the contract if they are unwilling to accept the amended contractual terms and conditions as communicated?'

28. In Case C-359/11, written observations have been submitted by TWS, the German Government and the Commission. In Case C-400/11, written observations have been submitted by Mr Egbringhoff, SWA, the German Government and the Commission.

29. By order of the President of the Court of 7 January 2014, the cases were joined for the purposes of the oral procedure and the judgment. Ms Schulz, TWS, Mr Egbringhoff and SWA presented oral argument at the hearing on 27 February 2014, as did the German Government and the Commission.

III – **Analysis**

A – *The context*

30. By its questions, the referring court essentially asks to what extent the transparency requirement laid down in Article 3(5) of the Electricity Directive and Article 3(3) of the Gas Directive is fulfilled where the national legislative provisions governing electricity and gas supply under a USO do no more, in relation to a situation where the service provider decides to adjust prices unilaterally after adequate prior notice, than provide for a right to terminate the contract.[12] In addressing this question, consideration must be given to the fact that those provisions do not require the supplier operating under a USO to disclose information to the customer concerning the grounds, preconditions and scope of the price adjustment.

31. The need to provide guidance on the transparency requirement contained in the Energy Directives arises in the context of efforts at EU level to open and liberalise the European market in energy. This process of liberalisation has proceeded on the basis of the same principles in the case of both electricity and natural gas and it therefore seems appropriate to provide a single answer to the questions referred, even though certain material differences can be identified between the two legal instruments.[13]

32. Given that the objectives underlying the Energy Directives are identical, the transparency requirement should be interpreted in the same way for both instruments. The objectives are twofold. On the one hand, as already alluded to above, the overarching aim of the Energy Directives is to assure the liberalisation of the energy market through the gradual introduction of competition in a sector traditionally characterised by national monopolies. Put differently, those directives are designed to ensure the achievement of an internal market in energy.[14] On the other hand, they also place particular emphasis on the need to ensure security of supply.[15]

33. The latter objective is intimately linked to the USO laid down in Article 3 of the Energy Directives. A USO — such as that laid down in the relevant provisions of the Energy Directives — is put in place to ensure that a service (in this case, the supply of energy) is provided to customers for a reasonable price and under reasonable conditions, irrespective of a customer's economic, social or

12 — As the hearing clarified, the questions referred are about the compatibility of national legislation with EU law and not about the possible direct effect of the provisions at issue within the context of national proceedings. In this sense, the issue of whether — and if so, to what extent — those national provisions may be interpreted in conformity with EU law is not of relevance here.

13 — Even a quick perusal of Articles 3 of the Energy Directives confirms this point. In fact, one commentator has described the Gas Directive as 'less far-reaching' than the Electricity Directive as regards the USO and the need to ensure reasonable prices. See, in that regard, Pront-van Brommel, S., 'The Development of the European Electricity Market in a Juridical No Man's Land', in Dorsman, A., et al. (eds), *Financial Aspects in Energy*, Springer-Verlag, Berlin: 2011, pp. 167 to 193, at p. 187.

14 — See the 2001 Commission Communication, cited in footnote 4 above.

15 — Ibid., p. 41.

geographical situation.[16] In other words, this regime complements services offered in a competitive market and thus operates as a 'safety net' for the most vulnerable customers.[17] Viewed from the position of energy suppliers, however, the USO substantially interferes with their freedom to conduct a business, especially given that prices offered under a USO have to be reasonable.[18]

34. The cases pending before the referring court clearly reflect the difficulties inherent in reconciling the interests of final customers supplied with energy under a USO and those of the service providers operating thereunder. The cases involve contracts for the universal supply[19] of electricity and/or gas. It emerges from the order for reference that, under this supply regime, energy suppliers in Germany are under a statutory duty to connect anyone to their supply system and to supply electricity and gas at general standard-rate prices. In other words, these contracts, which are governed by national legislation, do not fall within the sphere of freedom of contract. That can be seen with particular clarity from the fact that service providers are constrained by the relevant national provisions to enter into contracts even with undesirable customers. Likewise, those rules substantially narrow the possibilities for service providers to terminate contracts with such customers (a form of interference which is clearly encouraged by Articles 3 of the Energy Directives, which require Member States to undertake measures to ensure that disconnection must be avoided).

35. As was briefly mentioned above, the recent judgment of the Court in *RWE Vertrieb* expressly provides guidance as to the appropriate yardstick to be employed with regard to the transparency requirements under Directive 93/13. Although that case mainly turns on the interpretation of Directive 93/13, it also touched on the Gas Directive, given that the subject-matter of the contracts in question was the supply of natural gas on the basis of 'special contracts'.[20]

36. It is important to note, however, that Directive 93/13 expressly excludes from its scope — in accordance with Article 1(2) thereof — contractual terms which 'reflect mandatory statutory or regulatory provisions'. That is why that directive does not fall to be applied to the contracts at issue here, a point accepted by all the parties that have submitted observations.[21] This also explains why the referring court seeks guidance on the transparency requirement laid down in the Energy Directives, but not in relation to Directive 93/13.

37. Nonetheless, given that Ms Schulz, Mr Egbringhoff and the Commission all argue that the Court's *dicta* in *RWE Vertrieb* on the transparency requirement under Directive 93/13 can be directly transposed to the present context, I will begin by explaining why I do not consider this to be appropriate.

16 — On the concept of universal service in general, see Rott, P., 'A New Social Contract Law for Public Services? — Consequences from Regulation of Services of General Economic Interest in the EC', *European Review of Contract Law* (1) 2000, pp. 323 to 345, especially at p. 330 et seq. See also Nihoul, P., 'The status of consumers in European liberalisation directives', *Yearbook of Consumer Law* 2009, pp. 67 to 106.

17 — Rott, op. cit., p. 330.

18 — While Article 3(5) of the Electricity Directive contains a reference to reasonable prices, Article 3(3) of the Gas Directive remains silent on this issue. However, that discrepancy cannot in my view be interpreted as meaning that no requirement pertaining to the need to secure reasonable prices would exist in relation to gas supply under the USO provided for in that provision. This is so because the right to be supplied with natural gas at reasonable prices is expressly mentioned in recital 26 in the preamble to the Gas Directive as well as in point (g) of Annex A to that directive.

19 — Under German law, energy suppliers also have the possibility of concluding contracts with consumers for the supply of electricity or gas, on the basis of freedom of contract. This type of contract is, for historical reasons, referred to as a 'special contract'. In addition to the possibility of concluding such contracts, suppliers are obliged under national legislation to conclude contracts with customers in which a standard price is applied (contracts covered by a universal supply obligation).

20 — See footnote 19 above.

21 — I will therefore not deal with the more general — and clearly vexed — issue of what may or may not constitute contractual terms which 'reflect mandatory statutory or regulatory provisions'.

B – *The judgment of the Court in* RWE Vertrieb *and its implications for the cases under consideration*

38. In *RWE Vertrieb*, the Court provided express guidance as to the appropriate yardstick to be employed in reviewing the (un)fairness of contractual terms governing gas supply contracts which — while making express reference to national legislative provisions of the kind at issue here, namely, Paragraph 4 of the ABVGasV — are concluded on the basis of freedom of contract. The standard contractual term at issue in *RWE Vertrieb*, by which the gas supplier in question reserved the right to adjust prices, constituted a simple reference to such provisions. The legislation, in turn, quite simply referred back to the applicable standard rates and general terms and conditions. Asked to clarify the meaning of the transparency requirement under Directive 93/13, the Court emphasised the need to ensure that a contract sets out in transparent fashion *the reason for and method of varying* the applicable charges. This enables the consumer to foresee, on the basis of clear and intelligible criteria, the changes that may arise in relation to those charges. Additionally, the right to terminate the contract was considered to carry particular weight for the purposes of assessing the fairness of such standard contractual terms. [22]

39. While leaving to the referring court the actual assessment of the fairness of the standard contractual terms, the Court clearly indicated that the obligation to make the consumer aware of the reason for, and the method of varying, those charges and his right to terminate the contract was not satisfied by the mere reference, in the general terms and conditions, to legislation determining the rights and obligations of the parties. In *RWE Vertrieb*, it was considered to be of particular significance that the consumer was informed by the seller or supplier of the content of the provisions at issue — or rather, the rights stemming from those provisions — *before* the contract was entered into. [23] To my mind, such a conclusion was justified, given that the national rules in question simply referred back to the applicable standard rates and general terms and conditions.

40. If this interpretation were directly transposed to the present context, the inevitable conclusion would be that national provisions such as those at issue before the referring court do not satisfy the transparency requirement laid down in the Energy Directives. While the national provisions at issue here ensure that a contract can be terminated where the customer does not agree with price adjustments introduced unilaterally by the service provider, they fail to require the electricity or gas supplier in question to *inform* the customer of the reason for and method of varying the charges.

41. I would caution against such an extensive reading of *RWE Vertrieb*.

42. As mentioned above, the contracts under consideration in *RWE Vertrieb* were concluded on the basis of freedom of contract. However, the provisions on the adjustment of gas prices in the general terms and conditions inserted into those contracts referred to national legislation (in particular, Paragraph 4 of the ABVGasV) regulating contracts for universal supply, similar to the present case. The wording of the general terms and conditions at issue in *RWE Vertrieb* referred to national legislation which was wholly silent as to the circumstances in which price adjustments were to be allowed. Moreover, the national legislation did not envisage contracts of the type at issue in *RWE Vertrieb*, but only contracts for universal supply. [24] In those circumstances, a simple reference to such provisions, without further explanation concerning their content, was not considered by the Court to be compatible with 'Articles 3 and 5 of Directive 93/13 *in conjunction with* Article 3(3) of Directive 2003/55' (emphasis added). [25]

22 — *RWE Vertrieb*, paragraph 55 and the operative part of the judgment.

23 — Idem.

24 — See *RWE Vertrieb*, paragraphs 17 and 18.

25 — Idem., paragraph 55 and the operative part of the judgment.

43. As the German Government observes, *RWE Vertrieb* reviewed the implications of the transparency requirements laid down in Directive 93/13 and in the Gas Directive, read together. In my view, the use of the words 'in conjunction with' excludes at the outset the possibility of transposing the interpretation adopted by the Court in *RWE Vertrieb* to other contexts, such as the cases under consideration here, where Directive 93/13 does not fall to be applied.[26] Indeed, given the legal framework in *RWE Vertrieb* and the references to the case-law on Directive 93/13,[27] it seems to me clear that the main focus of the interpretative exercise undertaken by the Court was the relevant provisions of Directive 93/13.

44. As the Court itself accepted, the rationale for excluding from the scope of Directive 93/13 contractual terms that reflect provisions of national legislation governing a certain type of contract lies in the fact that a balancing exercise designed to reconcile the interests involved has already been undertaken. Indeed, it can legitimately be supposed that the national legislature has struck an appropriate balance between all the rights and obligations of the parties to such contracts.[28]

45. That is precisely the position here.

46. A point that should not be overlooked is that, by contrast with the contracts at issue in *RWE Vertrieb* — which were deliberately excluded from the scope of the national legislation on contracts for universal supply — the contracts under consideration here are in fact governed by that national legislation, namely, by the ABVGasV (as well as the AVBEltV and the StromGVV). As the Court has observed, an intention expressed by the parties to extend the application of legislative provisions to a different type of contract cannot be equated to the establishment by the national legislature of a balance between all the rights and obligations of the parties to the contract in question.[29]

47. This is why I fully agree with the German Government that, in circumstances where Directive 93/13 does not fall to be applied, the only relevant point of reference for assessing whether or not the national legislation at issue satisfies the transparency requirement as laid down in the Energy Directives is to be found within those directives. I will now try to shed some light on that requirement.

C – *The transparency requirement under the Energy Directives*

48. The requirement of transparency in relation to contractual terms and conditions is laid down in Article 3(5) of the Electricity Directive and Article 3(3) of the Gas Directive. Both those provisions are intended to ensure — alongside the overarching objective of liberalising the energy sector — 'high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms'.

49. Arguably, the wording of those provisions is of limited assistance for determining what 'transparency regarding contractual terms and conditions' may or may not encompass. Indeed, it could be argued, as the Commission does, that notwithstanding the differences between the circumstances underlying the present cases and those of the case that gave rise to the judgment in *RWE Vertrieb*, it would be justifiable to interpret the transparency requirement under the Energy Directives in the same manner as the transparency requirement laid down in Directive 93/13. This would be necessary, in particular, in the interest of consumer protection.

26 — See also my Opinion in Case C-95/12 *Commission* v *Germany* [2013] ECR, point 32.

27 — Case C-472/10 *Invitel* [2012] ECR, paragraphs 24, 26 and 28.

28 — *RWE Vertrieb*, paragraph 28. See also point 47 of the Opinion of Advocate General Trstenjak in the same case.

29 — Idem., paragraph 29.

50. To illustrate why I disagree with this approach, I will first address the different rationales underlying Directive 93/13 and the Energy Directives and how those rationales impact on the requirements imposed on traders and service providers respectively. I will then elaborate on how, in my view, the divergent interests of service providers and customers can be reconciled in the specific context of liberalisation of the energy market.

1. Contracts freely entered into, as opposed to contracts concluded within the context of a USO

51. As explained above, the Court held in *RWE Vertrieb* that information concerning the grounds, preconditions and scope of future price adjustments ought to be provided *prior* to the conclusion of the contract. In circumstances such as those of the cases before the referring court, I see no need to go that far. The reason for this lies in the different context in which contracts covered by Directive 93/13 operate as compared with those covered by the Energy Directives.

52. A point of particular significance is that, within the sphere of freedom of contract, where Directive 93/13 comes into play, traders remain free *not* to enter into a contract with a specific consumer.[30] They also have the option, unlike service providers operating under a USO, of varying prices without the need to respect the criterion of reasonableness which is laid down in the Electricity and Gas Directives (Article 3(5) and point (g) of Annex A respectively). In this contractual relationship between a consumer and a trader, the consumer is undoubtedly in the weaker position. This is so, in particular, because a consumer has only limited bargaining power in relation to professional traders (and, in particular, as regards standard contractual terms and conditions).

53. In those circumstances, the importance of possessing all the necessary information prior to the conclusion of the contract can hardly be underestimated.[31] In the final analysis, this information will enable the consumer to make an informed choice between traders and, in essence, to compare the general terms and conditions governing the contracts that those traders propose.[32] It helps the consumer to choose from among various traders — as the Court seems to have accepted in *RWE Vertrieb* — if he is informed, prior to the conclusion of the contract, of the reason for future price adjustments and the method of calculating them.

54. By contrast, contracts governed by the USO laid down in Article 3(5) of the Electricity Directive and Article 3(3) of the Gas Directive operate within a different context. That context is market liberalisation. However, as mentioned above, it can also be seen both from the preamble[33] to those directives as well as from the *travaux préparatoires*[34] that guaranteeing security of supply and adopting measures to avoid disconnection — within the framework of that USO — is considered to be of paramount importance.[35]

30 — Nihoul, op.cit., on how it cannot be automatically assumed that all consumers are of equal importance and value to companies seeking customers.

31 — Indeed, the rationale underlying Directive 93/13 is precisely to remedy this imbalance and re-establish equality between the consumer and the trader. See, in this respect, Case C-415/11 *Aziz* [2013] ECR, paragraph 45 and case-law cited.

32 — According to one commentator, this is the 'competitive function' of the transparency requirement laid down in Directive 93/13. See Micklitz, H.-W., 'Chapter 3. Unfair terms in consumer contracts', in Micklitz, H.-W., Reich, N., and Rott, P., *Understanding EU Consumer Law*, Intersentia, Antwerp: 2009, pp. 119 to 150, at p. 138.

33 — The need to ensure security of supply while at the same time ensuring universal service is illustrated by a combined reading of recitals 24 and 26 to the Electricity Directive as well as recitals 26 and 27 to the Gas Directive.

34 — COM(2001) 125 final, p. 41.

35 — The goals associated with liberalising the energy sector are twofold. On the one hand, it aims at creating a competitive market and, on the other, it seeks to ensure that the provision of energy — which is considered to be of general economic interest — is guaranteed as widely as possible. See, in relation to the Gas Directive, Case C-265/08 *Federutility and Others* [2010] ECR I-3377, paragraph 20 et seq. See Bartl, M., 'The affordability of energy: how much protection for the vulnerable consumers?', *Journal of Consumer Policy* (33) 2010, pp. 225 to 245, at p. 226.

55. To be sure, the attainment of those objectives presupposes that the service providers remain economically viable. One of the reasons for this is that they are required to provide a minimum service to all eligible customers under standardised conditions in a situation where their freedom to determine prices and terminate contracts with undesirable customers is substantially limited by national legislation. Accordingly, to accept that service providers operating under the constraints of a USO must be able to pass on increased costs to customers seems to be the appropriate means of reconciling the inherent conflict between the two main objectives of the Energy Directives.

56. In that respect, as the referring court observes, point (b) of Annex A to each of the Energy Directives, which allows modification of the contractual conditions and adjustment of the price, explicitly acknowledges that service providers operating under the constraints of a USO have a legitimate interest in passing on an increase in costs during the contractual period to customers without having to terminate contracts. This right to adjust prices seems particularly warranted where those service providers are under a statutory duty, under a USO, to enter into contracts with a specific category of customer.

57. The need to pass on increased costs in order to ensure economic viability certainly sheds light on the reasons underlying the acceptance of unilateral price adjustments within the context of a USO. However, the need to ensure economic viability goes only some way to explaining what transparency of contractual terms and conditions may or may not encompass in this particular context. Does it entail a duty to inform the customer of the grounds, preconditions and scope of possible future price adjustments? And if so, precisely when is that information to be disclosed?

2. Striking an adequate balance between the rights of customers and those of service providers within the context of a USO

58. Contrary to the basic principles of a competitive market, a service provider operating under a USO is obliged to enter into contracts even with undesirable customers and to supply those customers with electricity or gas at reasonable prices.[36] It is clear to me that this obligation significantly compromises the possibility for those service providers to vary the cost structure at their own discretion. In order to remedy that anomaly, the national legislature has intervened, in accordance with Articles 3 of the Energy Directives, to strike a balance 'between all the rights and obligations of the parties to [these] contracts'.[37] The question remains, however, whether — in light of the transparency requirement laid down in those provisions — that balance has been struck correctly by the German legislature, especially given the need to protect vulnerable customers.

59. Taking into consideration the fundamental contextual difference, described above, between contracts concluded on the basis of freedom of contract and those based on legislation providing for a USO, I see no cogent reason to interpret the transparency requirement laid down in Article 3(5) of the Electricity Directive and Article 3(3) of the Gas Directive as requiring Member States to ensure that the grounds, preconditions and scope of price adjustments are made known to customers *prior* to the

36 — An obligation to contract is embodied in point (a) of Annex A to the Energy Directives. See also Bartl, op.cit., on the affordability of energy and an analysis of different solutions adopted in Member States to tackle the problem of ensuring affordable energy for vulnerable customers. Moreover, a point that should not be overlooked here is that the requirement of ensuring universal service in the energy sector for a reasonable price has now also acquired the status of primary law at EU level. In fact, in addition to Article 14 TFEU which concerns services of general interest, Protocol 26 to the Lisbon Treaty requires, inter alia, that affordability in the context of universal service is ensured.

37 — *RWE Vertrieb*, paragraph 28.

conclusion of the contract.[38] Indeed, given that the main objective of the Energy Directives is not consumer protection,[39] but market liberalisation, the need to protect customers must be reconciled with the interests of electricity and gas suppliers. If an adequate balance is to be struck in that regard, I believe that Member States must ensure that that information is made available to customers at the time when they are informed of the price adjustment. And this for the following reasons.

60. As regards the rights of customers, it seems to me that there are two elements of particular importance here: the right to terminate the contract and the right to challenge, where appropriate, the reasonableness of the price increase at issue.[40] These rights are interconnected to the extent that both — in order to be effective — require the customer to possess sufficient information concerning the reason for the price increase and the method of its calculation. Such information is not necessary merely to enable the customer to assess whether terminating the contract (where possible) and choosing another supplier is worthwhile. It is also unquestionably of key importance to a customer who has to decide whether or not to challenge a price increase.

61. Indeed, despite the leeway that point (b) of Annex A to each of the Energy Directives allows in relation to price adjustment, that provision also requires Member States to ensure that customers are informed in good time of plans to change contractual terms and conditions. In addition, Member States are to ensure that customers are informed of their right to withdraw from an existing contract in that regard. The rights of customers do not end there, however.

62. As the referring court observed, point (c) of Annex A seems to be of particular interest here, given that it is intended to ensure that customers receive transparent information on applicable prices and tariffs and on standard terms and conditions with regard to access to and use of electricity services. Put differently, whereas point (b) clearly requires customers to be guaranteed a right to terminate the contract if prices are increased, point (c) adds another layer to that requirement by dictating that applicable prices are to be transparent. Contrary to the arguments put forward by the German Government, in order to ensure such transparency once prices are actually adjusted, it is imperative that the grounds, preconditions and scope of the adjustment be disclosed to the customer.

63. That said, and bearing in mind that Member States enjoy substantial discretion in implementing the provisions of the Energy Directives into national law, I believe it ought to be left to the national legislature to decide on the technicalities for communicating those reasons, and the method of adjustment, to customers. That discretion cannot, however, extend to a decision to do nothing to counterbalance the right of service providers to adjust prices unilaterally, as appears to be the case in Germany. Indeed, if such discretion were to be accepted, it would substantially undermine the effectiveness of the transparency requirement laid down in the Energy Directives and ultimately divest it of any significance.

38 — On this point, I fundamentally disagree with the analysis of Advocate General Trstenjak in point 69 (referring to footnote 50) of her Opinion in *RWE Vertrieb*. According to her, both Directive 93/13 and the Gas Directive are instruments of EU consumer protection law and ought to be regarded as complementing one another (and consequently, interpreted uniformly). For her, these instruments constitute a uniform body of law. In my view, this statement is based on a fallacy. Whereas Directive 93/13 relates to consumer (contract) law, the Gas (and Electricity) Directives deal with a completely different sphere of law, namely that of market liberalisation and the establishment of a USO in the context of energy supply to final customers. Taking account of this difference, I do not think it is appropriate to streamline the interpretation of the concepts of transparency in these different frameworks by means of judicial construction.

39 — This is, inter alia, illustrated by the terminology employed in the Energy Directives. Indeed, whereas Directive 93/13 concerns contracts concluded between consumers and traders, the Energy Directives refer to customers and service providers. It is also noteworthy that measures that Member States are to undertake to protect final customers under the Energy Directives may also encompass both household customers and small and medium-sized enterprises.

40 — While this right is not expressly provided for in the Energy Directives, I see this as a necessary corollary of the USO to provide energy to final customers at a reasonable price. Indeed, without a possibility to challenge price adjustments, the requirement of reasonableness would remain a dead letter.

64. Admittedly, this leads to differentiated levels of protection for final customers depending, in the final analysis, on whether or not Directive 93/13 falls to be applied. In fact, it could even be argued that it places particularly vulnerable customers in a weaker position than customers who may freely choose their service provider. However, this seems to be accepted by the EU legislature. Annex A to each of the Energy Directives makes, in that regard, explicit reference to Directive 93/13 by stating that the measures referred to in Article 3 of each of those directives are 'without prejudice to [EU] rules on consumer protection [in particular, Directive 93/13]'. To my mind, the only conceivable explanation for this is that the EU legislature did not intend to align — by means of a simple reference to Directive 93/13 — the level of customer protection stemming from the Energy Directives with that under Directive 93/13. This is obvious from the fact that a proposal to that effect put forward by the European Parliament during the legislative process was not reflected in the final version of the Energy Directives.[41] In other words, that legislative choice implies that the protection under Directive 93/13 may be higher and, at the very least, ought not to be transposed automatically to the context of contracts for universal supply in the energy sector.

65. However, what is clear is that, in framing the provisions laid down in Annexes A to the Energy Directives — and, in particular, in point (b) thereof — the EU legislature placed particular emphasis on the need to ensure that final customers are able to terminate their contracts if they do not accept price increases. Indeed, this seems justified from a contractual standpoint, bearing in mind that the right of suppliers to adjust prices unilaterally exposes the customer to the risk of unjustified price increases. To my mind, for all customers — whether or not they can be considered vulnerable — the right to terminate the contract is of the utmost importance. To be able to exercise that right effectively, the customer must be informed of the grounds, preconditions and scope of the price adjustment at the time of being informed that the adjustment is to be made, and no later.[42]

66. Indeed, while it seems likely that, in reality, only a very small percentage of customers will challenge price adjustments on the basis of such information, it is arguable that the need to disclose such information alone will to some extent deter unjustified price increases. In that sense, the transparency requirement laid down in the Energy Directives also contributes to maintaining prices at a 'reasonable' level, the obligation to do so being one of the cornerstones of the USO laid down in those directives.

67. This leads me to conclude that, on a proper construction of Article 3(5) of the Electricity Directive and Article 3(3) of the Gas Directive, the transparency requirement laid down in those provisions is not satisfied, in relation to the supply of electricity or gas to household customers on the basis of a contract for universal supply, by provisions of national law which, in regulating price adjustment under such contracts, do not require suppliers to disclose to the customer the grounds, preconditions and scope of the price adjustment at the latest *by the time that the customer is informed of the adjustment*.

41 — In fact, the Parliament proposal to add to those annexes a further point that would have extended the applicability of Directive 93/13 to contracts governing universal service in the energy sector was not accepted and is not included in the final version of the Energy Directives. See, in this respect, Part I of the Report of the European Parliament of 1 March 2002 on the proposal for a directive of the European Parliament and of the Council amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas (A5-0077/2002), Legislative proposals, amendments 89 and 160, pp. 65, 66 and 107. See also my comment on Advocate General Trstenjak's analysis on this issue at footnote 38 above.

42 — At the hearing, it was mentioned that service providers are required, as a matter of national law, to disclose all relevant information concerning price adjustments to the customer once an action is brought before a court. However, I do not believe that such an obligation can substitute, in any meaningful way, the obligation to disclose the grounds, preconditions and scope of a price adjustment to the customer at the time when that adjustment is communicated to the customer, as illustrated by Case C-400/11 in which Mr Egbringhoff tried to obtain this information in vain before instigating proceedings before a court. Indeed, from the viewpoint of assessing whether or not contesting the reasonableness of a price adjustment may be successful, that information must be available to the customer already prior to the commencement of court proceedings.

68. Lastly, TWS, SWA and the German Government have requested the Court to limit the temporal effects of its judgment in the event that it should find that the relevant German provisions on adjusting prices are incompatible with EU law. As I will explain below, I am satisfied that there is justification for granting that request in the present circumstances.

D – *The effects of a finding of incompatibility should be limited in time*

69. As is well known, the Court agrees to limit the temporal effects of its judgments only in exceptional circumstances where two cumulative criteria are met. This is explained by the fact that the Court's interpretation of a legal rule is intended to clarify and define the meaning and scope of that rule as it ought to have been understood and applied from its entry into force. Against this background, the first criterion to be satisfied is that the finding of incompatibility must entail a 'risk of serious economic repercussions'. In assessing whether or not that is the case, the number of legal relationships entered into in good faith on the strength of rules considered at the time to be validly in force is of particular significance. The second criterion to be satisfied is that the unlawful practices must have been adopted as a result of objective, significant uncertainty concerning the interpretation and scope of the EU law provision in question. [43]

70. In my view, both these criteria are met here.

71. Before moving on to the circumstances of the cases under consideration, it must nonetheless be pointed out that a similar request made in *RWE Vertrieb* was firmly rejected by the Court. That refusal was prompted, in essence, by the fact that the financial consequences for the gas suppliers did not entirely depend on the interpretation of the relevant EU law provisions given by the Court. Rather, those consequences were considered to be contingent, in the final analysis, on the assessment made by the referring court of the fairness of the contested contractual terms and conditions in the circumstances of each individual case. [44]

72. By contrast, [45] we are dealing here with a situation where the Court is asked not only to clarify the meaning of *other* provisions of EU law, but also and, most fundamentally, to rule on the compatibility with EU law of the relevant German legislative provisions.

73. This is why I am in no doubt that a finding of incompatibility would entail a risk of serious financial consequences for the electricity and gas suppliers in question. Following the logic of the referring court, the right of the electricity and gas suppliers to adjust prices hinges on the way in which the Court construes the meaning and scope of the transparency requirement laid down in Article 3(5) of the Electricity Directive and Article 3(3) of the Gas Directive. If the Court were to follow my approach to the interpretative issues raised by these cases, price adjustments such as those at issue in the cases before the referring court would be null and void.

43 — For example, see Joined Cases C-338/11 to C-347/11 *FIM Santander Top 25 Euro* [2012] ECR, paragraph 60 and case-law cited.

44 — *RWE Vertrieb*, paragraph 60.

45 — However, should the Court extend the reasoning it adopted in *RWE Vertrieb* to circumstances such as those in the present case, it would be illogical to accept a request to limit the temporal effects of a judgment confirming an interpretation already settled in a previous case. This is so because no 'objective, significant uncertainty concerning the interpretation and scope of the EU law provisions in question' would any longer exist.

74. Needless to say, the impact of such an outcome on the entire energy sector in Germany would be far from negligible.[46] That conclusion is not affected, in my view, by the fact that the number of customers supplied with energy on the basis of contracts for universal service appears to have been steadily declining in Germany.[47] While the gravity of the financial consequences stemming from a finding of incompatibility will necessarily depend on the limitation period applied by the national court (an issue which appears yet to be settled at national level[48]), it is my view that a 'risk of serious financial consequences' cannot be excluded. Even though also the number of customers affected by the judgment of this Court will necessarily depend on the limitation period to be applied, it must be assumed — even given the declining trend in contracts for universal supply — that that number is (significantly) higher than the estimate for the year 2013 provided by TWS at the hearing.[49]

75. That said, the risk of significant financial consequences is not, as a rule, enough to ensure the success of a request for limitation of the temporal effects of a judgment. As I have explained elsewhere,[50] any other approach would mean that — contrary to the underlying principle of allowing such requests only in exceptional circumstances — the most serious and most longstanding infringements would be those treated most favourably. That is why the second criterion, which combines the requirement that those involved be acting in good faith with the requirement that there be genuine uncertainty as to the meaning and scope of the relevant EU law provisions, must also be fulfilled.

76. Even that criterion seems to be satisfied in the cases before the referring court.[51] First, it is clear that prices have been adjusted by electricity and gas suppliers in good faith on the basis of national legislation considered to be validly in force. Second, as I have illustrated above, there is no objective reason to justify extending the application of the Court's *dicta* in *RWE Vertrieb* to situations which are not governed by Directive 93/13. Indeed, to the extent that those *dicta* are of no direct relevance here, the transparency requirement as expressed in the Energy Directives has not, to date, been the subject of any preliminary ruling on interpretation. As this Opinion illustrates, considerable uncertainty remains as to the meaning of that requirement. Only this Court can resolve that uncertainty, by giving a preliminary ruling in the present cases.

77. Having regard to those considerations, I propose that the Court should grant the request made in the course of these proceedings for limitation of the temporal effects of its ruling in the event that it should find, as I do, that the national provisions at issue do not satisfy the transparency requirement laid down in Article 3(5) of the Electricity Directive and Article 3(3) of the Gas Directive.

46 — According to the numbers provided by TWS at the hearing, 18 and 4 million household customers are currently supplied with electricity and gas respectively under contracts governing universal supply.

47 — Indeed, this development is explained — as was stated at the hearing — by the fact that customers are increasingly switching suppliers and opting for special contracts offered in a competitive market.

48 — A question concerning the applicable statute of limitations was raised at the hearing. Whereas it appears to be settled law that the limitation period for claims arising from *special contracts* is 3 years, the applicable limitation period in relation to contracts for universal supply has yet to be settled. In this respect, there is no indication that the application of a longer, 10 year, limitation period could be excluded at the outset.

49 — See footnote 46 above.

50 — See my Opinion in Case C-82/12 *Transportes Jordi Besora* [2013] ECR, point 54.

51 — This is of course so only to the extent that the Court does not consider that following the principles set out in *RWE Vertrieb*, any uncertainty as to the compatibility of the national rules with the transparency requirement contained in the Energy Directives had already been removed.

IV – **Conclusion**

78. In light of the above arguments, I propose that the Court answer the questions referred by the Bundesgerichtshof as follows:

On a proper construction of Article 3(5) of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC and Article 3(3) of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, the transparency requirement laid down in those provisions is not satisfied, in relation to the supply of electricity or gas to household customers on the basis of a contract for universal supply, by provisions of national law which, in regulating price adjustment under such contracts, do not require suppliers to disclose to the customer the grounds, preconditions and scope of the price adjustment at the latest by the time that the customer is informed of the adjustment.

The interpretation of the provisions referred to above does not take effect until the date on which the Court delivers its judgment in the present cases.