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Professional by Assumption, Consumer by Behaviour: The Microentrepreneur in the Retail Electricity Market in the Light of Behavioural Economics[1]

Abstract

Civil law presumes that an entrepreneur acts as a professional, while the rules protecting electricity customers rely largely on disclosure. Drawing on behavioural economics, the article argues that both assumptions fail with respect to microentrepreneurs. It evaluates statutory classification (Germany), a default rule with standardised bills (Italy), and disclosure with ex post qualification (Poland). A CATI survey of 602 customers of one supplier (402 households, 200 businesses) shows that information on switching and on the comparison tool belongs to the least-read layer of the bill, that age and financial situation are associated with self-assessed knowledge but not the perceived comprehensibility of the bill, and that microentrepreneurs do not report understanding the bill better than households. The article formulates *de lege lata* conclusions concerning Annex I to Directive 2019/944, Article 31g of the Polish Energy Law, and Article 385^5 of the Polish Civil Code, and *de lege ferenda* proposals favouring protection that does not depend on the addressee's own initiative.

KEYWORDS: behavioural economics, microentrepreneur, electricity market, disclosure, choice architecture, energy bill, Directive 2019/944

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1 Introduction

Directive 2019/944[2] grants final customers of electricity, *inter alia*, the right to a summary of the key contractual conditions, to switch supplier, to bills that are "easy to understand", and to an offer comparison tool (Articles 10–14 and 18). Most of these rights are enjoyed by all final customers, and thus also by microentrepreneurs. The Directive reserves universal service for households, with the option of extending it to small enterprises (Article 27(1)), while the prohibition of switching fees (Article 12(2)) and access to a comparison tool (Article 14(1)) are guaranteed "at least" to household customers and, respectively, to small enterprises or to microenterprises with an expected annual consumption below 100,000 kWh. The protection of microentrepreneurs in the energy market has so far been analysed, *inter alia*, from the perspective of the Member State's competence to extend to them the standard of protection enjoyed by household customers and consumers.[3] The starting point of this study is the observation that the actual level of protection is determined not only by the catalogue of rights but also – and often above all – by the mechanism through which those rights are activated.

Civil law relies on a presumption that an entrepreneur acts as a professional: a microentrepreneur buying energy for business purposes is not a consumer within the meaning of Article 22^1 CC;[4] if a natural person, they may benefit

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2 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 (recast) (OJ L 158, 14.6.2019, p. 125, as amended), hereinafter "Directive 2019/944"; amended *inter alia* by Directive (EU) 2024/1711 of 13 June 2024 (OJ L, 2024/1711, 26.6.2024). Unless otherwise indicated, translations of quotations from Polish sources are the authors' own.

3 See, e.g., Marcin Marszałek, "Podwyższenie standardu ochrony mikroprzedsiębiorcy jako odbiorcy paliw i energii na podstawie kompetencji państwa członkowskiego w prawodawstwie Unii Europejskiej" *Zeszyty Prawnicze Biura Analiz Sejmowych*, No. 2 (2018): 17–24.

4 Act of 23 April 1964 – Civil Code (consolidated text: Journal of Laws of 2026, item 795), hereinafter "CC."

from consumer protection only to the extent provided for by statute, *inter alia* under Article 385^5 CC. In a microenterprise, however, the decision to buy energy is taken by the same person who runs the core business, usually in passing and without specialised support. [5] The aim of the paper is to show that microentrepreneurs take decisions on energy like consumers, while the law treats them as professionals – in the theoretical part on the basis of behavioural economics, and in the empirical part on the basis of declarations concerning the reading and understanding of the bill – and to assess the consequences of this discrepancy for the regulatory techniques used in Germany, Italy, and Poland. The study applies the doctrinal (legal-dogmatic) and comparative legal methods, supplemented by behavioural-economic analysis and an empirical survey of 602 electricity customers, including 200 businesses. The law is stated as at 24 September 2026.

The empirical part tests five hypotheses derived from the mechanisms described in section 2. Limited attention and satisficing (sections 2.1–2.2) lead one to expect that information on customers' market rights – such as the possibility of switching supplier and the comparison tool – is among the least-read elements of the bill (H1) and that customers read the bill selectively, focusing on the data needed for payment (H2). Research on price complexity (section 2.4) suggests, in turn, that the elements most often indicated as incomprehensible concern the multi-component price structure (H3). The claim that self-assessment is poorly calibrated (section 2.5) gives rise to the hypothesis that the factors that differentiate self-assessed knowledge (gender, age, and financial situation) differentiate neither the perceived comprehensibility of the bill nor the understanding of the information on it (H4). The last hypothesis, grounded in the observations on microenterprises (sections 2.2 and 2.6), addresses the presumption of professionalism directly: microentrepreneurs do not report understanding the bill better than households (H5).

5 Cf. the argument that an entrepreneur should be perceived as a professional "in the field of the profession actually pursued, and not in economic trade in general" (formulated in the context of Article 388 CC): Paweł Lewandowski, "Przedsiębiorca jako strona wyzyskana w rozumieniu art. 388 k.c." *Prawo i Więź*, No. 3 (62) (2026): 123; to the contrary, in the context of Article 22^1 CC, judgment of the Supreme Court of 3 October 2014, V CSK 630/13, which considered "too far-reaching" the view that an entrepreneur concluding a contract outside their line of business always has the status of a consumer.

The following parts present the behavioural framework, the regulatory techniques in the three national legal orders, the results of the survey, and the conclusions de lege lata and de lege ferenda.

2 | The Energy Customer in the Light of Behavioural Economics

2.1. The Model of the Decision-Maker in the Law Protecting Energy Customers

Consumer protection in EU law rests to a large extent on the assumption that the asymmetry between the parties is informational in nature and that correcting it requires equalising access to information.[6] Behavioural economics does not question the importance of information; what it questions is the tacit assumption that providing information is enough to change decisions. Decision-makers do not optimise but seek a satisfactory solution, because their access to information and their computational capacity are limited,[7] and research on heuristics and prospect theory has documented recurrent departures from the standard model.[8] The retail electricity market is particularly conducive to them: the price has many components, the benefits of activity are deferred, and the decision is infrequent.

2.2. Limited Attention

As Herbert A. Simon observed, "a wealth of information creates a poverty of attention": attention becomes a scarce resource that must be allocated among competing sources of information, and this deficit also affects public

6 Hans-W. Micklitz, Lucia A. Reisch, Kornelia Hagen, "An Introduction to the Special Issue on 'Behavioural Economics, Consumer Policy, and Consumer Law'" *Journal of Consumer Policy*, No. 3 (2011): 271–276; for the energy market, see Marzena Czarnecka, "Stosowanie ustawy o prawach konsumenta na rynku energii elektrycznej" *internetowy Kwartalnik Antymonopolowy i Regulacyjny*, No. 3 (2016): 41, 45–46.

7 Herbert A. Simon, "A Behavioral Model of Rational Choice" *The Quarterly Journal of Economics*, No. 1 (1955): 99, 101, 104, 110–111.

8 Amos Tversky, Daniel Kahneman, "Judgment under Uncertainty: Heuristics and Biases" *Science*, No. 4157 (1974): 1124–1131; Daniel Kahneman, Amos Tversky, "Prospect Theory: An Analysis of Decision under Risk" *Econometrica*, No. 2 (1979): 263–291.

institutions.[9] The theory of rational inattention assumes that agents with limited capacity to process information allocate attention as if optimising: they pay little attention to signals that are less relevant to their decisions and therefore react to them with delay and imprecision.[10] For the regulator this means that information placed outside the area on which the addressee's attention is focused has little influence on the addressee's decisions. Scarcity of resources, including time, narrows decision-makers' attention to urgent matters and taxes their cognitive capacity, which lowers the quality of decisions on matters outside this "tunnel"; the mechanism also applies to the management of organisations.[11] In a microenterprise, where management functions are usually concentrated in the hands of one or a few persons, energy matters can therefore be expected to fall outside the area of current concerns. Research on barriers to energy efficiency indicates, moreover, that larger organisations implement efficiency measures more often than smaller ones and that among SMEs the implementation of recommendations is also influenced – although the evidence is weaker – by the quality of the energy audit.[12]

2.3. Inertia and the Power of Defaults

The *status quo* effect and the power of defaults are classic behavioural phenomena that have been confirmed empirically many times.[13] In the

9 Herbert A. Simon, "Designing Organizations for an Information-Rich World," [in:] *Computers, Communications, and the Public Interest*, ed. Martin Greenberger (Baltimore: Johns Hopkins Press, 1971), 40–41, 47–48.

10 Christopher A. Sims, "Implications of Rational Inattention" *Journal of Monetary Economics*, No. 3 (2003): 675–676; Bartosz Maćkowiak, Filip Matějka, Mirko Wiederholt, "Rational Inattention: A Review" *Journal of Economic Literature*, No. 1 (2023): 226–273.

11 Sendhil Mullainathan, Eldar Shafir, *Scarcity: Why Having Too Little Means So Much* (New York: Times Books, 2013), chaps. 1, 2, and 9.

12 Joachim Schleich, "Barriers to Energy Efficiency: A Comparison across the German Commercial and Services Sector" *Ecological Economics*, No. 7 (2009): 2150–2159; Tobias Fleiter, Joachim Schleich, Ployplearn Ravivanpong, "Adoption of Energy-Efficiency Measures in SMEs—An Empirical Analysis Based on Energy Audit Data from Germany" *Energy Policy*, 51 (2012): 863–875.

13 William Samuelson, Richard Zeckhauser, "Status Quo Bias in Decision Making" *Journal of Risk and Uncertainty*, No. 1 (1988): 7–59; Eric J. Johnson, Daniel Goldstein, "Do Defaults Save Lives?" *Science*, No. 5649 (2003): 1338–1339; on the size and variability of the default effect, see Jon M. Jachimowicz et al., "When and Why Defaults Influence Decisions: A Meta-Analysis of Default Effects" *Behavioural Public Policy*, No. 2 (2019): 159–186.

Texas retail market customers stayed with their incumbent supplier despite the availability of significantly cheaper offers.[14] The British competition authority found that in 2013, 45% of microbusinesses were on default electricity tariffs, onto which they had been placed without an active decision, and that microbusinesses switched supplier less often than larger SMEs, which the authority regarded as an indication of limited engagement on the part of many of them.[15] For a substantial proportion of customers, the terms on which they buy electricity are therefore determined by the default rather than by an active decision.

2.4. Price Complexity and the Invisibility of Cost

An increase in the number of options – especially when the choice set is complex and the decision task difficult – may lower satisfaction with the choice and increase the likelihood that it will be deferred or abandoned,[16] and splitting the price into several mandatory components makes it harder to reconstruct the total cost.[17] Complexity may persist in a competitive market and be in the interest of suppliers, as it sustains an informational rent.[18] In a study of households on a non-linear (block) tariff, customers responded to the average rather than the marginal price.[19] Signals of low salience

14 Ali Hortaçsu, Seyed Ali Madanizadeh, Steven L. Puller, "Power to Choose? An Analysis of Consumer Inertia in the Residential Electricity Market" *American Economic Journal: Economic Policy*, No. 4 (2017): 192–226.

15 Competition and Markets Authority, *Energy Market Investigation: Final Report* (London: Competition and Markets Authority, 2016), paras. 276 and 16.35–16.38. https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf. [accessed: 24.09.2026].

16 Sheena S. Iyengar, Mark R. Lepper, "When Choice Is Demotivating: Can One Desire Too Much of a Good Thing?" *Journal of Personality and Social Psychology*, No. 6 (2000): 995–1006; on the conditions under which this effect occurs, see Alexander Chernev, Ulf Böckenholt, Joseph Goodman, "Choice Overload: A Conceptual Review and Meta-Analysis" *Journal of Consumer Psychology*, No. 2 (2015): 333–358.

17 Vicki G. Morwitz, Eric A. Greenleaf, Eric J. Johnson, "Divide and Prosper: Consumers' Reactions to Partitioned Prices" *Journal of Marketing Research*, No. 4 (1998): 453–463.

18 Xavier Gabaix, David Laibson, "Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets" *The Quarterly Journal of Economics*, No. 2 (2006): 505–540; Bruce I. Carlin, "Strategic Price Complexity in Retail Financial Markets" *Journal of Financial Economic*, No. 3 (2009): 278–287.

19 Koichiro Ito, "Do Consumers Respond to Marginal or Average Price? Evidence from Nonlinear Electricity Pricing" *American Economic Review*, No. 2 (2014): 537–563

affect behaviour more weakly than prominently displayed signals of the same value.[20] For a microentrepreneur the cost of energy is dispersed over time and hidden in the price of the product, while the benefits of switching are deferred, which, combined with loss aversion, favours the preservation of the *status quo*.

2.5. Overconfidence and Knowledge Calibration

The correspondence between consumers' subjective confidence and the accuracy of their knowledge is usually moderate and systematically biased,[21] and people revise an inflated assessment of their own understanding only when they have to go into detail.[22] In financial decisions overconfidence is stronger among men,[23] while in financial literacy surveys women more often answer "do not know".[24] This may lead to a paradox relevant to the law: an entrepreneur who – in line with the presumption of professionalism – regards themselves as a professional does not seek protection. If self-assessment is poorly calibrated, any mechanism that makes protection dependent on the addressee's self-classification rests on its least reliable link.[25]

(households in Southern California); commercial customers, by contrast, respond to both marginal and average prices, with lower-usage customers more sensitive to the marginal price – see Kaifang Luo, Yueming (Lucy) Qiu, Bo Xing, "Commercial Consumers Pay Attention to Marginal Prices or Average Prices? Implications for Energy Conservation Policies" *Journal of Cleaner Production*, 377 (2022): 134416.

20 Raj Chetty, Adam Looney, Kory Kroft, "Salience and Taxation: Theory and Evidence" *American Economic Review*, No. 4 (2009): 1145–1177; Pedro Bordalo, Nicola Gennaioli, Andrei Shleifer, "Salience and Consumer Choice" *Journal of Political Economy*, No. 5 (2013): 803–843.

21 Joseph W. Alba, J. Wesley Hutchinson, "Knowledge Calibration: What Consumers Know and What They Think They Know" *Journal of Consumer Research*, No. 2 (2000): 123–156.

22 Leonid Rozenblit, Frank Keil, "The Misunderstood Limits of Folk Science: An Illusion of Explanatory Depth" *Cognitive Science*, No. 5 (2002): 521–562.

23 Brad M. Barber, Terrance Odean, "Boys Will Be Boys: Gender, Overconfidence, and Common Stock Investment" *The Quarterly Journal of Economics*, No. 1 (2001): 261–292.

24 Annamaria Lusardi, Olivia S. Mitchell, "The Economic Importance of Financial Literacy: Theory and Evidence" *Journal of Economic Literature*, No. 1 (2014): 17–19.

25 Cf. – in a different context and from a different perspective (the risk of instrumental use of protection rather than inaccurate self-assessment) – the criticism of basing qualification on a declaration by the interested party itself: Natalia Pliszka, "Cel nabycia nieruchomości jako kryterium różnicowania ochrony nabywcy w ustawie deweloperskiej" *Prawo i Więź*, No. 4 (2026): 478, 492–493.

2.6. Vulnerability as a State, not a Status

A customer's susceptibility to decision errors is therefore a state, not a status: it cannot be read from a register entry or from the level of consumption. A bakery consuming 30,000 kWh a year is not a more competent buyer of energy than a doctor's surgery consuming 8,000 kWh. The CJEU, too, justifies consumer protection by the consumer's weaker bargaining position and level of knowledge, although it construes the notion of consumer objectively, irrespective of the knowledge of the person concerned.[26] Vulnerability understood in this way must be distinguished from the "vulnerable customer" within the meaning of Article 28 of Directive 2019/944, although the open-ended list of criteria in that definition ("or other criteria") allows vulnerability to be framed in situational terms. The question of extending wider protection to microentrepreneurs is therefore not whether they deserve it because of their size, but whether, in a given market environment, they are able to exercise effectively the rights they already have.

3 Regulatory Techniques as Choice Architecture

3.1. Typology and Assessment Criteria

From the perspective of choice architecture,[27] instruments protecting the customer can be ordered according to how protection is linked to the customer's conduct. Statutory classification assigns a status to the customer by operation of law on the basis of a criterion verifiable without any involvement on the customer's part. A default rule sets the terms of supply for a customer who has made no choice and designs them so that passivity does not lead to adverse consequences. Disclosure turns protection into a resource that the addressee may, but need not, use. *Ex post* assessment makes protection conditional on a requirement examined only afterwards, usually in a dispute. These techniques differ above all in the cost of activating protection, i.e., the outlays (of money, effort, and time) the customer must incur to trigger it. This criterion finds a positive-law anchor in the requirement that the right to switch supplier be granted to customers "in a non-discriminatory

26 Judgment of 3 July 1997, Benincasa, C-269/95, EU:C:1997:337, paras. 16–17; judgment of 3 September 2015, Costea, C-110/14, EU:C:2015:538, paras. 18 and 21.

27 Richard H. Thaler, Cass R. Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (New Haven: Yale University Press, 2008).

manner as regards cost, effort and time" (Article 12(4) of Directive 2019/944). The part of the activation cost those results from excessive or unjustified impediments corresponds to the notion of procedural friction (*sludge*).[28] Disclosure obligations often fail to change decisions and sometimes shift onto the addressee the burden of processing data that they are unable to bear.[29] An alternative to "nudging" is strengthening the addressee's decision-making competence (*boosting*) by changing the format of information.[30]

3.2. Germany: Statutory Classification

Under German law, the notion of household customer (*Haushaltskunde*) – unlike that in Article 3(13b) of the Polish Energy Law – also covers customers buying energy for their own professional, agricultural, or commercial purposes, provided that their annual consumption does not exceed 10,000 kWh.[31] This category is broader than the notion in Article 2(4) of the Directive. Entrepreneurs below the threshold benefit from basic supply (*Grundversorgung*, § 36 EnWG), the contract for which may be concluded tacitly by the mere withdrawal of energy,[32] and from protection against disconnection (§§ 41f–41g EnWG). The cost of activation is zero and the protection is resistant to inertia, which does not preclude high market activity: in 2024 around 7.1 million household customers (*Haushaltskunden*) switched supplier (approx. 14%), while basic supply contracts accounted for around 22% of the electricity withdrawn by this customer group.[33] The weakness of the model is the threshold effect: exceeding 10,000 kWh deprives customers of

28 Cass R. Sunstein, "Sludge Audits" *Behavioural Public Policy*, No. 4 (2022): 654–673.

29 Omri Ben-Shahar, Carl E. Schneider, *More Than You Wanted to Know: The Failure of Mandated Disclosure* (Princeton, NJ: Princeton University Press, 2014).

30 Ralph Hertwig, Till Grüne-Yanoff, "Nudging and Boosting: Steering or Empowering Good Decisions" *Perspectives on Psychological Science*, No. 6 (2017): 973–986.

31 Gesetz über die Elektrizitäts- und Gasversorgung (Energiewirtschaftsgesetz) of 7 July 2005 (BGBl. I S. 1970, 3621), last amended by Article 8(6) of the Act of 23 July 2026 (BGBl. 2026 I Nr. 226), hereinafter "EnWG", § 3 no. 57; §§ 41f–41g EnWG have applied since 23 December 2025 under the Act of 18 December 2025 (BGBl. 2025 I Nr. 347).

32 § 2(2) of the Stromgrundversorgungsverordnung (StromGVV) of 26 October 2006 (BGBl. I S. 2391, as amended).

33 Bundesnetzagentur, "Monitoringbericht 2025: Wettbewerb bleibt Stabilitätsanker der Energiemärkte," press release, 26 November 2025, https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/DE/2025/20251126_Monitoringbericht.html. [accessed: 25.09.2026]; in more detail Bundesnetzagentur and Bundeskartellamt, *Monitoringbericht 2025*

the status; they retain only – where they draw energy from the low-voltage grid – temporary substitute supply (*Ersatzversorgung*) lasting at most three months (§ 38 EnWG) and, if they are microenterprises with an expected annual consumption below 100,000 kWh, access to the comparison tool (§ 41c(1) EnWG).

3.3. Italy: A Default Rule and a Standardised Bill

The Italian model is based on the gradual protection service (*servizio a tutele graduali*), which – alongside non-vulnerable households – automatically covers low-voltage non-household customers who are not on a market offer; in the microenterprise segment these are enterprises all of whose withdrawal points have a contracted capacity of up to 15 kW. The service is provided by a supplier selected by auction for each area, which applies, as regards *inter alia* fixed charges, guarantees, and invoicing, the contractual terms of PLACET offers laid down by the regulator.[34] Assignment is based on a technical criterion, whereas the size of the enterprise is verified subsequently on the basis of a declaration requested by the supplier. Failure to reply does not entail loss of protection; only a negative result of a check leads to the customer being transferred to the appropriate regime and charged the price difference.[35] This design neutralises the unreliability of the addressee's self-assessment by means of a presumption in their favour and falls within the category of asymmetric paternalism.[36] The second pillar is the reform of the bill, applied

(Bonn: Bundesnetzagentur and Bundeskartellamt, 2025), 25–26, 154–155, 157, https://www.bundesnetzagentur.de/DE/Fachthemen/ElektrizitaetundGas/Monitoringberichte/start.html. [accessed: 24.09.2026].

34 Testo integrato delle disposizioni dell'Autorità per l'erogazione dei servizi di vendita dell'energia elettrica di ultima istanza (TIV), Annex A to Autorità di Regolazione per Energia Reti e Ambiente (hereinafter "ARERA") Resolution 362/2023/R/eel of 3 August 2023, as amended (version applicable from 1 July 2026), Articles 1, 4.4, 33.2, 40.2, 41.1, and 41.5, https://www.arera.it/fileadmin/allegati/docs/26/362-23-tiv-aggiornato.pdf. [accessed: 24.09.2026]; ARERA Resolution 208/2022/R/eel of 10 May 2022 (service for microenterprises); cf. ARERA Resolution 491/2020/R/eel of 24 November 2020 (service for small enterprises). With effect from 1 April 2027, the TIV will be replaced by a new text (see note 37).

35 Articles 5.1–5.3 and 6.1–6.2 TIV and Annex 1 to the TIV (model self-certification – dichiarazione sostitutiva).

36 Colin Camerer et al., "Regulation for Conservatives: Behavioral Economics and the Case for 'Asymmetric Paternalism'" *University of Pennsylvania Law Review*, No. 3 (2003): 1212, 1224–1230.

since 1 July 2025 also to low-voltage non-household customers: a single front page, a concise summary of energy costs, and a separate box setting out the terms of the offer.[37] The weakness of the model lies in its transitional character – the current service periods end on 31 March 2027. From 1 April 2027, customers who have not concluded another contract will, as a rule, be supplied by their current supplier on the terms of its market offer with the lowest estimated annual cost (with price terms valid for at least 12 months and no early-termination fees), and the three existing services will be replaced by a single gradual protection service for non-vulnerable households and small enterprises, in which microenterprises no longer form a separate segment.[38]

3.4. Poland: Disclosure and Ex Post Qualification

The Polish legislature has not used the option of extending universal service to small enterprises (Article 27(1) of the Directive): the definition of a household customer covers only the purchase of energy for consumption in a household, and the comprehensive service (usługa kompleksowa, combining sale and distribution) of the default supplier (sprzedawca z urzędu) is provided only for such customers.[39] Special safeguards in the event of disconnection are likewise available only to household electricity customers, while out-of-court dispute settlement by the Coordinator for Negotiations attached to the President of the Energy Regulatory Office (hereinafter "President of URE") is

37 ARERA Resolution 315/2024/R/com of 23 July 2024, Revisione della regolazione della Bolletta 2.0: approvazione de "La Bolletta dei clienti finali di energia" (consolidated text), points 1 and 2(a), https://www.arera.it/fileadmin/allegati/docs/24/315-2024_ti.pdf. [accessed: 24.09.2026], and Annex A (version applicable from 1 July 2025), Articles 2.1(a), 4.1, 5.1, 6.1, and 7.1–7.3, https://www.arera.it/fileadmin/allegati/docs/24/Allegato_A_315-24_new.pdf. [accessed: 24.09.2026].

38 ARERA (Autorità di Regolazione per Energia Reti e Ambiente), "Il servizio a tutele graduali", https://www.arera.it/consumatori/il-servizio-a-tutele-graduali. [accessed: 24.09.2026]; ARERA Resolution 262/2026/R/eel of 23 July 2026, Articles 1.1, 2.2–2.3, 2.6(a)–(b), and 2.7, https://www.arera.it/fileadmin/allegati/docs/26/262-2026-R-eel.pdf. [accessed: 25.09.2026], and Annex A thereto (TIV version applicable from 1 April 2027), Articles 1 and 33.2, https://www.arera.it/fileadmin/allegati/docs/26/262-2026-R-eel-ALLEGATO_A.pdf. [accessed: 25.09.2026].

39 Article 3(13b) and (29) and Article 5a(1) of the Act of 10 April 1997 – Energy Law (consolidated text: Journal of Laws of 2026, item 43, as amended), hereinafter "EL"; cf. Article 2(4), (6), and (7) and Article 27(1) of Directive 2019/944. "Default supplier" renders sprzedawca z urzędu, which is sometimes translated as "supplier of last resort"; since Directive 2024/1711, the latter term denotes the distinct regime of Article 27a of Directive 2019/944.

available – apart from them – only to prosumers and active customers who are consumers.[40] The Polish model is not, however, devoid of classification and default elements. Micro and small entrepreneurs benefit by operation of law from a cap on the costs of terminating a fixed-term contract (Article 4j(3a) EL), and a reserve supplier (sprzedawca rezerwowy) becomes by operation of law a party to the contract with a customer for whose withdrawal point no information on a sale contract has been submitted to the Central Energy Market Information System (CSIRE), subject to exceptions, *inter alia*, where the customer has been disconnected for arrears (Article 5ac(1), (3), and (6) EL). This default rule is, however, an emergency one: the price may reach three times the average price of the previous quarter.

Disclosure and *ex post* qualification remain the main instruments of protection. Microentrepreneurs with an expected annual consumption below 100,000 kWh have access to a comparison tool operated by the President of URE, which "contains information on all offers […] and compares them" (Article 31g(1) and (3)(1) EL).[41] It was made available in the form of spreadsheets that users must download, filter, and sort themselves, covering only sale prices; the President of URE described this solution as "not very interactive".[42] The amendment in force since 30 April 2026 also obliges suppliers to inform every final customer of the costs, benefits, and risks of the given type of contract (an obligation that suppliers must begin to perform by 30 January 2027 at the latest), and the customer confirms that this information has

40 Article 6b(3)–(3e), Article 6c(1)–(3), Article 6d(1)–(2), and Article 31a(1) and (2) EL; cf. Article 6c(1a) and (4) EL (prosumers who are consumers).

41 Article 31g EL, added by Article 1(56) of the Act of 28 July 2023 amending the Energy Law and certain other acts (Journal of Laws, item 1681, as amended), in force since 24 August 2024; microentrepreneur within the meaning of Article 7(1)(1) of the Act of 6 March 2018 – Entrepreneurs' Law (consolidated text: Journal of Laws of 2025, item 1480, as amended).

42 Urząd Regulacji Energetyki [Energy Regulatory Office], "Rynek energii: Regulator udostępnił porównywarki ofert na sprzedaż energii elektrycznej dla odbiorców indywidulanych [*sic*] i mikroprzedsiębiorców", 23 August 2024. https://www.ure.gov.pl/pl/urzad/informacje-ogolne/aktualnosci/12131,Rynek-energii-Regulator-udostepnil-porownywarki-ofert-na-sprzedaz-energii-elektr.html. [accessed: 24.09.2026]; Renata Mroczek, "To krytyczny punkt transformacji energetycznej w Polsce. Prezes URE wskazuje najsłabsze ogniwo", interview by Kacper Świsłowski, wnp.pl, 13 February 2026. https://www.wnp.pl/energia/to-krytyczny-punkt-transformacji-energetycznej-w-polsce-prezes-ure-wskazuje-najslabsze-ogniwo,1031408.html. [accessed: 24.09.2026].

been presented – which proves delivery, not understanding.[43] Protection against unfair terms is available to a natural person where the content of the contract shows that it is not of a professional character for that person (Article 385^5 § 1 CC).[44] In contracts concluded from 27 November 2025, where the content of the contract does not show its character, that person may make a declaration to that effect at the latest when concluding the contract, and the other party may not make the conclusion of the contract conditional on such a declaration (Article 385^5 § 1^1 CC).[45] Protection thus remains dependent on the addressee's self-assessment or on assessment in a dispute, does not cover microentrepreneurs who are not natural persons, and the competences of the consumer protection authorities refer to the Civil Code notion of consumer.[46] Another domestic example of sludge was the condition for applying the maximum price to micro, small, and medium-sized entrepreneurs between 1 December 2022 and 31 December 2024, namely the submission of a declaration; failure to submit it on time entitled the supplier not to apply the maximum price, and a late declaration took effect only from

43 Article 5(6da) and (6db) EL, added by Article 1(4)(f) of the Act of 13 March 2026 amending the Energy Law and certain other acts (Journal of Laws, item 516), which entered into force on 30 April 2026 (Article 38); electricity trading undertakings must first perform the obligations under paragraph 6da within nine months of that date, i.e., by 30 January 2027 (Article 28(2)).

44 See further Aleksandra Nadolska, "'Rozszerzenie' ochrony przedsiębiorców na gruncie umów bankowych zawierających klauzule abuzywne" *Prawo i Więź*, No. 1 (2022): 288; critically on the criterion of the business activity disclosed in the Central Register and Information on Economic Activity (CEIDG): Bogusława Gnela, "Uwagi na temat wybiórczego rozszerzania ochrony konsumenckiej na niektórych przedsiębiorców będących osobami fizycznymi" *Prawo*, 334 (2022): 610.

45 Article 385^5 § 1^1 CC, added by Article 2(1) of the Act of 5 August 2025 amending the Code of Civil Procedure, the Civil Code, and certain other acts (Journal of Laws, item 1172), in force since 27 November 2025 (Article 16(4)); contracts concluded before that date remain governed by the provisions in their previous wording (Article 13); similar solutions are provided for in Articles 556^4 § 2 and 556^5 § 2 CC and in Article 7aa(2) of the Act of 30 May 2014 on consumer rights (consolidated text: Journal of Laws of 2026, item 1244).

46 Article 4(12), Article 23a, and Article 42(1) of the Act of 16 February 2007 on competition and consumer protection (consolidated text: Journal of Laws of 2025, item 1714).

the month following the month of its submission.[47] The three techniques are compared in Table 1.

Table 1. Techniques for Protecting Microentrepreneurs in the Retail Electricity Market

Criterion	Germany	Italy	Poland
Dominant technique	statutory classification	default rule + standardised bill	disclosure + ex post qualification
Basis of qualification	consumption ≤ 10,000 kWh per year	low voltage, contracted capacity ≤ 15 kW; size verified ex post	no general one; status under Article 7 of the Entrepreneurs' Law in a narrow scope (Article 4j(3a) and Article 31g(1) EL)
Cost of activating protection	zero	zero; absence of a declaration does not exclude protection	zero under Article 4j(3a) and reserve supply; otherwise from high (comparing offers) to very high (litigation)
Resistance to inertia	full (up to the threshold)	full, but the service is transitional	limited to emergency reserve supply
Risk of classification error	threshold effect	limited; payment of the price difference after a negative check	apart from narrow exceptions, no classification
Who bears the cost of qualification	the system	the system; verification by the supplier and authorities	predominantly the customer

Source: compiled from the EnWG, StromGVV, TIV, ARERA resolutions, and the Polish Energy Law

4 | Empirical Study: How Customers Read Their Electricity Bill

4.1. Survey Method

Under point 1.2 of Annex I to Directive 2019/944, the bill of every final customer must display "prominently", *inter alia*, information on the benefits of switching

47 Article 2(2)(b), Article 3(1)(2) and (3), Article 3(5), and Article 5(1), (2), (5), and (6) of the Act of 27 October 2022 on emergency measures to limit electricity prices and support certain customers in 2023–2025 (consolidated text: Journal of Laws of 2024, item 1622, as amended), in the wording in force before 12 December 2024; since that date, Article 3(5) and Article 5(1) cover only customers referred to in Article 2(2)(d)–(f) (Article 1(3)(b) and (4)(a) of the Act of 27 November 2024, Journal of Laws, item 1831), the previous wording continuing to apply to settlements for 2024 (Article 10 of that act).

and a reference to the comparison tool. If the bill – in Poland issued as a VAT invoice (faktura) – is not read or not understood, the disclosure instrument fails at the very first stage. The hypotheses set out in the Introduction (H1–H5) were tested using the survey described below.

The survey was conducted by CATI among 602 customers receiving bills from a company of the TAURON group:[48] 402 households (61.2% men; mean age 56.2) and 200 businesses. Of the 198 businesses that reported their size, 84.3% employed up to 9 persons including the owner and 13.6% between 10 and 49 persons; this criterion only approximates the category of microentrepreneur under Article 7(1)(1) of the Entrepreneurs' Law.[49] Comparisons with households (H5) included only businesses employing up to 9 persons (n = 163–166). Respondents were asked about their self-assessed knowledge of electricity billing (Q1), the comprehensibility of the bill (Q2), their understanding of the information on it (Q3), the elements they find incomprehensible (Q4), and whether they read, and consider necessary, each of 60 elements of the bill. Percentages were calculated relative to valid answers to each question; the data were not weighted.

The results of the cluster analysis of the bill elements (Ward's method, performed separately for reading and for perceived necessity), Cronbach's α coefficients, and the correlations between layers and between responses to questions Q1–Q3 are taken from the survey report. Group differences in responses to questions Q1–Q4 were examined on the basis of the response distributions within groups of respondents (cross-tabulations), using non-parametric tests[50] and an ordinal logit model.[51] The strength of

48 The survey, covering 500 consumers and 100 enterprises, was conducted using CAWI (Computer-Assisted Web Interviewing) and CATI (Computer-Assisted Telephone Interviewing) methods as part of the project "Supporting the Just Transition Process in the Region by Strengthening the Capacity of the University of Economics in Katowice", implemented under the European Funds for Silesia 2021–2027 Programme (Just Transition Fund). The project was implemented between 1 October 2024 and 30 June 2026, with a total value of PLN 1,927,833.60, including PLN 1,735,050.24 in European Funds. The project leader and implementing institution have been anonymised for the purposes of peer review.

49 Article 7(1)(1) and (3) of the Entrepreneurs' Law; cf. Article 2(6) of Directive 2019/944.

50 R Core Team, *R: A Language and Environment for Statistical Computing*, version 4.6.1 (Vienna: R Foundation for Statistical Computing, 2026).

51 Peter McCullagh, "Regression Models for Ordinal Data" *Journal of the Royal Statistical Society. Series B (Methodological)*, No. 2 (1980): 109–127.

evidence was assessed with the Bayes factor BF_{01} (the ratio of the likelihood of the data under the hypothesis of no difference to that under the hypothesis of a difference), computed for the ordinal logit models using the BIC (Bayesian information criterion) approximation; values of 3–10, 10–30, 30–100, and above 100 indicate, respectively, moderate, strong, very strong, and extreme evidence of no difference, the reciprocal values indicate evidence of a difference of the same strength, and values between 1/3 and 3 are inconclusive.[52] Whether microentrepreneurs have an advantage over households was tested with a one-sided non-superiority test, following the logic of equivalence testing.[53]

4.2. Which Information Reaches the Customer (H1 and H2)

Roughly one respondent in three rates their knowledge of billing as low (33.4%), one in three considers the bill incomprehensible (33.1%), and one in three does not understand most of the information on it (32.8%); 19.0% understand all of it. The cluster analysis identified three layers of the bill that differ markedly in reading rates (Table 2).

52 Eric-Jan Wagenmakers, "A Practical Solution to the Pervasive Problems of *p* Values" *Psychonomic Bulletin & Review*, No. 5 (2007): 790, 796 (definition of BF_{01} at 790; BIC approximation at 796); thresholds of evidential strength according to the modified Jeffreys scale: Sandra Andraszewicz et al., "An Introduction to Bayesian Hypothesis Testing for Management Research" *Journal of Management*, No. 2 (2015): 526.

53 Daniël Lakens, "Equivalence Tests: A Practical Primer for *t* Tests, Correlations, and Meta-Analyses" *Social Psychological and Personality Science*, No. 4 (2017): 355–362.

Table 2. Layers of the Bill by Declared Reading of Information

Layer	Main elements	Cronbach's α	Reading rate (95% confidence interval)
Transactional and identification data (17 elements)	details of the parties, invoice number and date, billing period, amount due, payment deadline, consumption in kWh, withdrawal point	0.80	0.78 (0.77–0.80)
Billing parameters (20 elements)	tariff group, contracted capacity, meter readings, fixed and variable rates, charges: capacity, renewable energy sources (RES), cogeneration, transitional; average gross price per kWh	0.93	0.59 (0.57–0.61)
Regulatory and information layer (23 elements)	excise duty, legal bases of the tariff and of relief measures, information on the possibility of switching supplier, on the comparison tool and on dynamic prices, fuel mix, consumption in the same period of the previous year	0.89	0.42 (0.40–0.44)

Reading rate – the average share of elements of a layer that a respondent declares reading; cluster analysis using Ward's method, 60 elements of the bill. Source: compiled from the survey report

The differences between layers range from moderate to very large (d_z from 0.65 to 1.77, approximated from the means, standard deviations, and rank correlations of the layers' reading rates; $p < 0.001$). Information on the possibility of buying energy from another supplier, on where to find the comparison tool, and on the possibility of concluding a dynamic electricity price contract belongs to the least-read layer, as do information on relief measures and the comparison of consumption with the previous year. Hypothesis H1 is confirmed: information on customers' market rights – such as the possibility of switching supplier and the comparison tool – is among the elements of the bill that customers read least often. A considerable part of this layer consists, moreover, of items required by the legislature; for instance, the fuel mix and consumption in the previous year are provided "together with the invoice" under the Power System Regulation.[54] Information on switching and on the comparison tool is required by Article 5(6ca) EL, but only for household customers of a supplier applying a tariff and without specifying

54 § 44(1), (2), and (4) of the Regulation of the Minister of Climate and Environment of 22 March 2023 on the detailed conditions for the operation of the power system (consolidated text: Journal of Laws of 2025, item 919, as amended), hereinafter "Power System Regulation"; see also Article 5(6a) and (6c) EL.

the bill as the medium; as regards microentrepreneurs – apart from reserve supply (Article 5ad(2) EL) – no corresponding national provision was found.

Hypothesis H2 is also confirmed: the most frequently read data are those needed to complete the task of "paying the bill", which corresponds to the concepts of satisficing and rational inattention. The reading rates of the layers are positively correlated (ρ from 0.53 to 0.62), so information on rights reaches mainly those who are already engaged. Information on switching and on the comparison tool also fell within the cluster (11 elements, mostly regulatory notices) with the lowest perceived necessity (median 0.55 compared with 0.85–0.90).

4.3. What Is Incomprehensible (H3)

The question about incomprehensible elements was put to 471 respondents. They most often indicated "other additional charges" (42.7%) and the split into fixed and variable charges (41.4%), followed by the explanation of consumption by time-of-use period (32.9%) and time-of-use prices (31.0%); only 7.4% indicated no element at all. Hypothesis H3 is confirmed: the elements most often indicated as incomprehensible are those related to the price structure. A large part of the "additional charges" – the capacity, RES, cogeneration, and transitional charges – has a statutory or tariff basis, and the minimum scope of information on the bill is laid down in the Tariff Regulation issued under Article 46(3) EL.[55] Complexity is thus to a large extent produced by the

55 Capacity charge – Article 69(1) of the Act of 8 December 2017 on the capacity market (consolidated text: Journal of Laws of 2025, item 610, as amended); RES charge – Article 95(1) of the Act of 20 February 2015 on renewable energy sources (consolidated text: Journal of Laws of 2026, item 68, as amended); cogeneration charge – Article 60(1) of the Act of 14 December 2018 on the promotion of electricity from high-efficiency cogeneration (consolidated text: Journal of Laws of 2025, item 602, as amended); transitional charge – Articles 8 and 9(1) of the Act of 29 June 2007 on the rules for covering costs incurred by generators as a result of the early termination of long-term power and electricity sale contracts (consolidated text: Journal of Laws of 2022, item 311, as amended). Scope of information on the bill: Article 46(3) and (4)(12) EL; § 42 and § 50(3) of the Regulation of the Minister of Energy of 3 September 2026 on the method of shaping and calculating tariffs and the method of settlements in electricity trading (Journal of Laws, item 1182), in force since 5 September 2026, hereinafter "Tariff Regulation"; previously § 37 and § 45(3) of the Regulation of the Minister of Climate and Environment of 29 November 2022 with the same title (consolidated text: Journal of Laws of 2024, item 904, as amended), which ceased to have effect on 5 September 2026.

legislature itself, which then entrusts overcoming it to disclosure obligations. The average gross price per kWh – the parameter to which customers actually respond – belongs to the layer of which respondents read, on average, 59% of the elements. The fact that time-of-use periods are not understood matters, in turn, for time-of-use tariffs and indirectly also for dynamic electricity price contracts: according to a review of research on households, under opt-in enrolment the share of customers switching to time-of-use tariffs is estimated at 1–43% (the lower bound corresponding to actual uptake of offers, the upper to declared willingness), whereas under opt-out enrolment it most likely exceeds 57% and may approach 100%;[56] under Article 11(3) of Directive 2019/944, suppliers must obtain each final customer's consent before that customer is switched to a dynamic electricity price contract.

4.4. Self-Assessed Knowledge and the Perceived Comprehensibility of the Bill (H4)

Self-assessed knowledge correlates only moderately with the perceived comprehensibility of the bill ($\rho = 0.51$) and with the understanding of its information ($\rho = 0.49$). Most importantly, however, is the pattern shown in Table 3. Financial situation (very strong evidence, $BF_{01} = 0.03$) and age (moderate evidence, $BF_{01} = 0.14$) differentiate self-assessed knowledge, but the data provide moderate or strong evidence that they do not differentiate the perceived comprehensibility of the bill. Men report high knowledge more often than women (37.2% compared with 25.5%; $p = 0.026$), but the Bayes factor is inconclusive in this respect ($BF_{01} = 1.7$), while for the assessment of the bill the evidence of no difference is strong ($BF_{01} = 14.6$). Women, on the other hand, more often indicate time-of-use prices as incomprehensible (43.0% compared with 23.6%; $p = 0.002$ after Holm correction). Hypothesis H4 is partly confirmed: gender, age, and financial situation do not differentiate the perceived comprehensibility of the bill (Q2), whereas financial situation is associated with the understanding of its information (Q3; $p = 0.006$, although the Bayes factor is inconclusive in this respect, $BF_{01} = 0.48$) and gender with the indication of time-of-use prices as incomprehensible. This result is consistent with the claim that self-assessment is poorly calibrated but – given the declarative nature of all measures – does not verify it.

56 Moira L. Nicolson, Michael J. Fell, Gesche M. Huebner, "Consumer Demand for Time of Use Electricity Tariffs: A Systematized Review of the Empirical Evidence" *Renewable and Sustainable Energy Reviews*, 97 (2018): 276, 282–283, 285–286.

Table 3. Factors Differentiating Self-Assessed Knowledge (Q1), Perceived Comprehensibility of the Bill (Q2), and Understanding of Its Information (Q3) – Ordinal Logit Model

Factor	Q1. Self-assessed knowledge	Q2. Comprehensibility of the bill	Q3. Understanding of information
Men vs women	OR = 1.51 [1.05; 2.18]; BF_{01} = 1.7	OR = 0.86 [0.60; 1.25]; BF_{01} = 14.6	OR = 1.36 [0.92; 2.00]; BF_{01} = 5.9
Age (trend, per category)	OR = 0.62 [0.45; 0.83]; BF_{01} = 0.14	OR = 0.93 [0.68; 1.27]; BF_{01} = 17.4	OR = 0.75 [0.54; 1.04]; BF_{01} = 4.2
Financial situation (trend, per category)	OR = 1.48 [1.19; 1.83]; BF_{01} = 0.03	OR = 1.18 [0.95; 1.46]; BF_{01} = 6.1	OR = 1.37 [1.09; 1.72]; BF_{01} = 0.48
Microenterprises vs households	OR = 0.74 [0.53; 1.03]; BF_{01} = 4.8	OR = 0.79 [0.57; 1.09]; BF_{01} = 8.3	OR = 0.83 [0.59; 1.17]; BF_{01} = 13.4

OR – odds ratio of a higher response category (95% confidence interval); $BF_{01} > 3$ – evidence of no difference, $BF_{01} < 1/3$ – evidence of a difference. Gender, age, and financial situation – households. Source: own calculations

4.5. The Microentrepreneur and the Household (H5)

Microentrepreneurs do not differ significantly from households on any of the three measures, and the Bayes factors indicate moderate or strong evidence of no difference (Table 3). The direction of the differences is, moreover, consistent and unfavourable to microentrepreneurs (e.g., 49.1% of them consider the bill comprehensible, compared with 54.6% of households), and both groups indicate the same incomprehensible elements – the percentages in each category differ by less than 5 percentage points. From a legal perspective, the key question is whether microentrepreneurs – as the presumption of professionalism assumes – cope better than consumers. A one-sided non-superiority test (bootstrap 90% confidence intervals) rules out an advantage of microentrepreneurs greater than $d \approx 0.05$ on all three measures, while the study was able to detect a difference of about $d = 0.27$; a small advantage of households, by contrast, was not ruled out. Nor were significant differences found between industries ($p = 0.590$ for Q1 and 0.741 for Q2). Hypothesis H5 is confirmed: microentrepreneurs do not report understanding the bill better than households, and in this respect they are therefore in no better position than consumers.

4.6. Limitations

The survey covered the bills of a single supplier, and the templates for households and businesses may differ. All measures are declarative, so

knowledge calibration can be discussed only in relative terms. The ordinal logit models were estimated separately for each factor, so their results are not adjusted for respondents' other characteristics. Some subgroups are small, and the indices of perceived necessity are affected by the miscoding of some responses and should therefore be treated as indicative only. The results do not cover actual behaviour; further research should combine an objective test of bill comprehension with a measure of self-assessment and compare bill formats experimentally.

5 | Conclusions *de lege lata* and Proposals *de lege ferenda*

Neither of the two assumptions of the Polish model of protecting microentrepreneurs in the energy market – the effectiveness of disclosure and the professionalism of the addressee – is supported by behavioural economics or by the data collected. The microentrepreneur is a professional by assumption but a consumer by behaviour. The German, Italian, and Polish legal orders differ both in the content of the rights granted (comprehensive service, protection against disconnection, out-of-court dispute settlement) and – above all – in who bears the cost of activating them.

5.1. Conclusions *de lege lata*

First, the requirement to display "prominently" on the bill of every final customer information on switching and a reference to the comparison tool (Article 18(6) in conjunction with point 1.2(e) and (i) of Annex I to Directive 2019/944) should be understood functionally: it is not met by information placed on the bill in such a way that customers read it least often of all its elements. If – as follows from section 4.2 – this obligation has not been transposed with respect to microentrepreneurs, the gap cannot, as a rule, be closed by invoking the Directive in a dispute with the supplier, nor by consistent interpretation, which cannot lead to a result contra legem.[57]

57 Judgment of 14 July 1994, Faccini Dori, C-91/92, EU:C:1994:292, paras. 20–25; judgment of 5 October 2004, Pfeiffer and Others, C-397/01 to C-403/01, EU:C:2004:584, paras. 108–109 and 113–119; on the limits of consistent interpretation: judgment of 4 July 2006, Adeneler and Others, C-212/04, EU:C:2006:443, para. 110; judgment of 24 January 2012, Dominguez, C-282/10, EU:C:2012:33, para. 25. The position may differ in a dispute with a State-controlled supplier: a directive may also be relied on against

Second, the comparison tool is to "compare" offers according to "clear and objective criteria" (Article 31g(3)(1) EL in conjunction with Article 14(1)(c) of the Directive). A tool that shifts this task onto the customer does not fulfil the obligation. The President of URE, who is required to lay down, in a standard form, the scope and manner of the information to be provided by suppliers (Article 31g(5), second sentence, and (7) EL), can already design that form so as to allow the annual cost of an offer to be calculated for the customer's profile.

Third, whether a contract for the sale of energy is of a professional character (Article 385^5 § 1 CC) should be determined by objectively relating the contract to the scope of business (przedmiot działalności) disclosed in the Central Register and Information on Economic Activity (CEIDG). Since energy is an input used in every business, and microentrepreneurs do not report understanding the bill better than consumers, the purchase of energy by an entrepreneur whose business does not include the generation, trading, or distribution of energy is, as a rule, not of a professional character for that entrepreneur. This approach was taken by the District Court in Bydgoszcz: in a case concerning an electricity sale contract concluded by a sole trader running a hotel business, the court, relying on her CEIDG entry, held that the purchase of energy was merely an element necessary for operating the business and not the essence of her professional activity.[58] A declaration within the meaning of Article 385^5 § 1^1 CC can only be one made by the customer personally; a pre-formulated statement on the (non-)professional character of the contract inserted into the supplier's standard terms is not such a declaration, and making the conclusion of the contract conditional on its acceptance amounts to circumventing the prohibition in the second sentence of Article 385^5 § 1^1 CC.

5.2. Proposals *de lege ferenda*

First, instead of extending the definition in Article 3(13b) EL, which corresponds to the notion in Article 2(4) of the Directive, a separate category

a body subject to the authority or control of the State, even if it does not possess special powers; see judgment of 10 October 2017, Farrell, C-413/15, EU:C:2017:745, paras. 28 and 33–35.

58 Judgment of the District Court in Bydgoszcz of 9 September 2024, VIII GC 565/24, https://www.saos.org.pl/judgments/522861. [accessed: 24.09.2026]. On the purpose of Article 385^5 CC, cf. judgment of the Court of Appeal in Białystok of 13 April 2022, I AGa 76/21, https://www.saos.org.pl/judgments/492248. [accessed: 24.09.2026]; the provision was not applied in that case because of the date on which the loan agreement had been concluded.

of small low-voltage customer other than a household customer should be introduced into Article 3 EL, determined by a technical criterion (connection to the low-voltage grid and contracted capacity not exceeding a statutory threshold) on the basis of data held by the distribution system operator, with the size of the enterprise verified *ex post*. The technical criterion is not a measure of vulnerability (section 2.6) but an administrable proxy that allows protection to be assigned without the customer's involvement; following the Italian example, customers' silence should not deprive them of protection. This category should be selectively referred to in the provisions on the comprehensive service of the default supplier (Article 3(29) and Article 5a(1) EL) – which falls within the option in Article 27(1) of the Directive – and in Article 5(6ca), Article 6b(3)–(3e), and Article 31a EL. The Energy Law already protects micro and small entrepreneurs by operation of law (Article 4j(3a)).

Second, the Tariff Regulation issued under Article 46(3) EL, which, under Article 46(4)(12) EL, lays down the minimum scope of information on bills, should define the front page of the bill for low-voltage customers: the amount due, the payment deadline, the billing period, consumption, the average gross price per kWh, and a single sentence on the possibility of switching supplier with the address of the comparison tool, placed next to the amount due. Information that the Directive allows to be provided by reference (points 1.3 and 5 of Annex I) should be moved to the detailed part. The plain-language bill summary, which Article 5(6i) EL provides for from 30 June 2027 for households only,[59] should be extended to microentrepreneurs, for example by applying the 100,000 kWh threshold of Article 31g(1) EL. It would be advisable to precede the change with a field experiment and consultation with consumer organisations (Article 18(5) of the Directive).

Third, Article 31g(3) EL should expressly require the comparison tool to calculate, for each offer, the estimated total annual cost for the profile indicated by the customer and to rank offers by this parameter, while also presenting the contract term, termination costs, and the type of price.

Fourth, protection against unfair terms in electricity sale contracts should be based on a presumption that a contract concluded by a natural person conducting business activity is not of a professional character, unless that person's business includes the generation, trading, or distribution of energy.

59 Article 5(6i) EL, added by Article 1(4) of the Act of 11 June 2026 amending certain acts for the purpose of deregulation in the field of energy (Journal of Laws, item 900), entering into force on 30 June 2027.

The competences of the Coordinator for Negotiations (Article 31a(1) EL) and of consumer ombudsmen should be extended to customers in the proposed category, which corresponds to the obligation to ensure access to out-of-court dispute settlement for all final customers (Article 26(1) of the Directive).

Fifth, future price interventions for small and medium-sized enterprises (Article 66a of the Directive) should not make protection conditional on a declaration by the customer but should assign it on the basis of withdrawal-point data, with *ex post* verification. Since, moreover, switching to a dynamic electricity price contract requires the customer's consent, its dissemination should rely on a standardised illustration of risk for the customer's profile rather than on a mere confirmation that information has been received.

The costs of these changes – adapting billing systems, the risk of classification error at the threshold, and strengthening the position of default suppliers – are real. They do not, however, justify a model in which the cost of activating protection is borne predominantly by its weakest addressee. As long as the protection of microentrepreneurs depends on whether they read the least-read part of the bill and correctly assess their own legal position, that protection remains largely on paper.

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