

OPINION OF ADVOCATE GENERAL
STIX-HACKL
delivered on 11 November 2004¹

I — Introduction

1. This case concerns the interpretation of Article 3(2) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.² The Court of Justice is being asked to clarify how far car hire contracts can be regarded as ‘contracts for the provision of ... transport services’ within the meaning of that provision.

2. Article 3(2) of the directive makes a derogation from the scope of the distance contracts directive in relation to Articles 4, 5, 6 and 7(1) of the directive, and thereby also creates a derogation from the right to cancel which consumers are to enjoy under Article 6.

3. The case arises from a complaint by the Office of Fair Trading (‘OFT’) and easyCar

(UK) Limited (‘easyCar’), in which, on the one hand, the OFT claims that easyCar should cease refusing customers the right of withdrawal and refund, while easyCar is seeking a declaration from the national court that it is free from that obligation.

II — Legal background

A — Community law

4. According to Article 1 thereof, the object of the distance contracts directive is ‘to approximate the laws, regulations and administrative provisions of the Member States concerning distance contracts between consumers and suppliers’.

5. ‘Distance contract’ is defined by Article 2 (1) as ‘any contract concerning goods or services concluded between a supplier and a

¹ — Original language: German.

² — OJ 1997 L 144, p. 19 (hereinafter: ‘the distance contracts directive’).

consumer under an organised distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded’.

the Consumer Protection (Distance Selling) Regulations 2000 (‘the Regulations’). The derogating provision in Article 3(2) is implemented by Regulation 6(2), which provides:

‘Regulations 7 to 19(1) shall not apply to:

6. One of the key provisions of the distance contracts directive is Article 6(1), which provides that ‘[f]or any distance contract the consumer shall have a period of at least seven working days in which to withdraw from the contract without penalty and without giving any reason’. Article 6(2) defines the legal consequences of exercising the right to withdraw, while Article 6(3) enumerates cases in which, unless the parties have agreed otherwise, the right to withdraw may not be exercised.

...

(b) contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period.’

7. However, Article 3(2) of the distance contracts directive provides, inter alia, that Article 6 is not to apply to ‘contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period’.

9. The basic ‘right to cancel’ is set out in Regulation 10(1):

B — *National Law*

8. The distance contracts directive was implemented into United Kingdom law by

‘Subject to Regulation 13, if within the cancellation period set out in regulations 11 and 12, the consumer gives a notice of cancellation to the supplier ... the notice of cancellation shall operate to cancel the contract.’

10. Regulation 12 transposes the time-limits set out in Article 6(1) of the Directive, regarding contracts for the supply of services, and Regulation 13(1)(a) (on which easyCar relies in the alternative) transposes Article 6(3).

11. Regulation 14 transposes the provisions of Article 6(2), and provides inter alia that on the cancellation of a contract under Regulation 10, the supplier shall reimburse any sum paid by or on behalf of the consumer in relation to the contract, free of charge less certain permitted charges made for the cost of returning goods.

III — Facts and procedure

12. EasyCar is a car hire company, which makes contracts with customers only over the internet. The rental cost of the cars is determined by supply and demand, so that, in principle, prices rise as fewer cars remain available. In that way, prices are lower the earlier one books and rise as the start of the rental period draws closer, according to the remaining availability. Customers are thereby enabled to get a vehicle, even shortly before the rental date, but at increased prices.

13. According to easyCar's terms of business, the customer has a right to cancel after a hire contract has been concluded, but without any right to refund save in the event of unforeseeable or otherwise exceptional circumstances, such as serious illness or natural disaster.

14. After several consumer complaints were raised against easyCar over the question whether the hire contracts complied with British law, and with the Regulations in particular, easyCar applied to the referring court on 21 November 2002 for a declaration that its rental agreements 'are exempted from the cancellation requirements of Regulations 10 and 12 pursuant to Regulation 6(2)(b) and/or Regulation 13(1)(a)'.

15. EasyCar argued that its car hire contracts fell within the exception in Regulation 6(2) for 'contracts for the provision of ... transport services', which in turn corresponds to Article 3(2) of the distance contracts directive.

16. On 7 February 2003 the OFT, in turn, issued a claim seeking an injunction, arguing that easyCar was not complying with its obligations under Regulations 10 and 14, which represent the implementation of Article 6(1) and (2) of the distance contracts directive.

17. Though the parties differ as to what is denoted by ‘transport’ within the meaning of the Regulations, they agree that the car hire contracts at issue constitute ‘distance contracts’ and the ‘provision of services’ within the meaning of the Regulations and thus of the distance contracts directive.

18. Since the Regulations, breach of which the OFT alleges before the national court, are to be interpreted as the transposition of the distance contracts directive, the High Court of Justice (England and Wales), Chancery Division, referred the following question to the Court of Justice by order of 21 July 2003:

‘Does the term “contracts for the provision of ... transport ... services”, in Article 3(2) of Directive 97/7/EC on the protection of consumers in respect of distance contracts, include contracts for the provision of car hire services?’

port ... services’, submitting that ‘transport’ includes not only the actual carrying out of transport by one’s own staff but also simply the placing of means of transport at the customer’s disposal. The legislature deliberately drew no distinction. The provision in Article 3(2) therefore refers to all contracts concluded in the area of ‘transport’, an interpretation supported by the German wording ‘in den Bereichen ... Beförderung’ and the Italian wording ‘relativi ... ai trasporti’, which both exclude a narrow interpretation.

20. Further, it maintains, it is clear from the other services referred to in Article 3(2) that the cases to be removed from the scope of the distance contracts directive are precisely those in which cancellation is out of the question because the service provider would be exposed to severe consequences. That is particularly so where reservation is necessary on account of limited capacities. A car hire firm is also exposed to that risk. There is no distinction in that respect from contracts in the areas of accommodation, catering or leisure services.

IV — The question referred

A — Arguments of the parties

19. *EasyCar* argues that car hire contracts are ‘contracts for the provision of ... trans-

21. The *travaux préparatoires* to the directive, it argues, also support that interpretation, in that, for example, Article 3 of the Commission’s proposal for a directive of 21 May 1992³ expressly includes services which require reservation.

³ — OJ 1992 C 156, pp. 14, 16.

22. EasyCar also relies on the interpretation of the word 'transport'. It argues that, as the Court of Justice has stated in relation to the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes,⁴ that expression covers everything that is used to go from one place to another, so that means of transport are also included. Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another⁵ also supports the view that the provision of vehicles constitutes a supply of transport services.

23. Not to include car hire would, moreover, not be in accordance with the Community law principle of equal treatment, as car hire would be disadvantaged vis-à-vis traditional transport services such as bus services, with which it is in competition, if the exception were not to apply to it.

24. The *United Kingdom Government*, by contrast, argues that car hire contracts are not covered by the exception in Article 3(2), firstly because the exception should be

narrowly construed and secondly because 'transport' means the provision of transport services and is not limited to the provision of means of transport.

25. A difference in treatment from that accorded to passenger transport undertakings is, the Government submits, justified. Unlike such undertakings, which require a special licence to transport persons, car hire is subject to no such requirement. In addition, passenger transport services depend on fixed route networks. Moreover, the position of a passenger as regards the possession of a driving licence and the conclusion of an insurance contract is not comparable with that of the driver of a hired car.

26. The United Kingdom Government further doubts whether car hire services are in a competitive relationship with passenger transport services at all.

27. In any event, the Government argues that the customer in a distance contract for the provision of car hire services is just as deserving of protection as in other cases covered by the directive.

4 — OJ 1977 L 145, p. 1 (hereinafter 'the Sixth VAT Directive').

5 — OJ 1983 L 105, p. 59.

28. The *Spanish Government* argues that the content of a car hire contract is not transport *per se*. Although the expressions 'suministro/fourniture/provision' in the Spanish, French and English language versions⁶ of Article 3(2) of the directive might give the misleading impression that they cover the supply of moveable goods, the directive makes a derogation only for the carrying out of transport itself, not the supply of means. That, it argues, is apparent primarily from a comparison of the two indents in Article 3(2) and the use which is there made of the term 'supply'.

29. The *Commission* agrees that Article 3(2) does not cover car hire contracts. That, it argues, is obvious from the natural interpretation of the word 'transport'. 'Transport', it submits, means the movement of persons or things from one place to another. It thus includes an active element, which is absent in the case of the mere provision of hire cars.

30. The *Commission* further argues that, whilst all derogations concern services for which reservations are made, the aim of the legislature was also to remove from its scope

services in respect of which cancellation close to the time of performance would lead to severe consequences for the undertaking providing the service. That risk, it submits, is not present in the case of car hire, since there the vehicle returns to the 'pool' of available vehicles, and thus remains at the disposal of the undertaking.

B — *Legal assessment*

31. The question referred concerns the interpretation of the second indent of Article 3(2) of the distance contracts directive, and in particular the clarification of the expression 'for the provision of ... transport ... services'.

32. The second indent of Article 3(2) excludes contracts for the provision of accommodation, transport, catering or leisure services from the scope of certain provisions of the directive, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period.

33. It thus represents a derogation from the scope of the application of a provision of secondary law, which, according to the consistent case-law of the Court of Justice,

⁶ — In those language versions, these expressions are unclear, in that they can mean either the provision of a service or the supply of goods. Since the German version refers to 'Erbringung' (provision), its wording does not support such a view.

is to be interpreted narrowly.⁷ That applies in particular in the area of consumer protection,⁸ since here in particular it is especially necessary to take account of the protective purpose of the measure in question when interpreting it.

within the directive in accordance with its ordinary meaning.⁹

34. With regard to car hire, the uncertainty surrounding the derogation in question arises from the fact that the contracts concerned might be capable of being regarded as contracts for the provision of transport services in that their purpose is the provision of a means of transport. From the wording of that derogation, the question which essentially arises is whether the provision of a means of transport is to be regarded as the provision of transport services. In this context, the purpose of the derogation merits particular attention.

36. In the common understanding, the characteristic factor in transport is that persons or goods are carried to a place other than the place of departure. It is not sufficient, however, that the carriage is effected by the recipient of the service himself, as in the case of car hire; rather, it is precisely the carriage to another place that naturally belongs to the characteristic duties of the provider of the service. The French Government rightly pointed to that circumstance in its oral submissions.

1. The concept of 'transport' in Article 3(2) of the distance contracts directive

35. The directive itself does not explain the term 'transport', so that, in principle, the term must be interpreted in its context

37. In the context of the distance contracts directive, however, a divergent interpretation might arise simply from the fact that some language versions of the derogating provision refer not to 'transport' as such, but generally to a provision of services 'in the area' of transport. Thus the German and Italian versions concern all services 'in den Bereichen ... Beförderung' or 'relativi ai trasporti', whereas the French, Spanish or English versions refer to a provision 'of transport'.¹⁰ It is, however, not excluded, as

7 — See, inter alia, Case C-83/99 *Commission v Spain* [2001] ECR I-445, paragraph 19; Case C-216/97 *Gregg* [1999] ECR I-4947, paragraph 12.

8 — See, inter alia, Case C-481/99 *Heminger* [2001] ECR I-9945, paragraph 31; Case C-203/99 *Veedfald* [2001] ECR I-3569, paragraph 15.

9 — See Case C-83/99 (cited in footnote 7), paragraphs 16 and 20.
10 — See above, footnote 6.

the Spanish Government points out, that the wording of various language versions also allows a broader interpretation.

38. As the Community judicature has consistently held, the different language versions of a Community text must be given a uniform interpretation and hence in the case of divergence between the versions the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part.¹¹

39. The directive is designed on the one hand to ensure comprehensive protection for consumers, to be accorded in principle in all areas where, on account of the use of distance selling methods, there is an increased need for information. Certain areas, on the other hand, which the legislature assumed would be particularly severely affected by the strict requirements of the distance contracts directive, remain exceptions.

40. If, for the purposes of interpretation, one considers, for example, the *travaux préparatoires* to the distance contracts directive and its wording to the effect that the services are to be provided at a certain time or within

a certain period, it becomes clear that the essential feature of all the areas excluded by the second indent of Article 3(2) is that they concern provisions of services for which reservations are made. The justification lies in the need to protect the provider of services, in particular, from cancellation at short notice of a service that has already been booked.¹²

41. That is because the dependence of an undertaking on reservations causes it to enter into various commitments, which would expose it to heavy burdens if the counterpart were lacking. In particular, the provider of services undertakes at the time the contract is made to keep a certain capacity free for a certain period. If the recipient does not use that service, the provider must rely at short notice on finding a new recipient, who wishes to receive the same service for exactly the same period. That can prove problematic from the point of view of complying with particular customer wishes in the absence of corresponding flexibility — unlike in the case of the renewed offering for sale of goods or services in respect of which reservation plays no part.

11 — Case C-341/01 *Plato Plastik* [2004] ECR I-4883, paragraph 64; Case C-127/00 *Hässle* [2003] ECR I-14781, paragraph 70; Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraph 28; and Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 14.

12 — See the Proposal for a Council Directive on the protection of consumers in respect of contracts negotiated at a distance (distance selling), COM/92/11 final (OJ 1992 C 156, p. 14). See also the Common Position (EC) No 19/95 adopted by the Council on 29 June 1995 with a view to adopting Directive 95/ /EC of the European Parliament and of the Council of ... on the protection of consumers in respect of distance contracts (OJ 1995 C 288, p. 1).

42. With that objective in mind — namely taking account of the needs of the service provider — the issue is not so much whether the carrying out of the activity in question constitutes transport as such as whether that activity falls within the area of transport and is therefore subject to the same risks as envisaged in the second indent of Article 3(2).

43. Since the decisive factor for the exception is not, therefore, the actual carrying out of transport, one cannot exclude the possibility that the placing of means of transport at the customer's disposal is to be regarded as a service within the area of 'transport' and can therefore fall within the exception in the distance contracts directive.

2. The placing of means of transport at the customer's disposal as a service within the area of transport

44. EasyCar essentially argues that the renting out of vehicles constitutes the placing of means of transport at the customer's disposal, which as a provision of services falls within Article 3(2) of the distance contracts directive in just the same way as the provision of actual transport. EasyCar refers in that respect to various judgments of the

Court of Justice clarifying the concept of means of transport.

45. Whether and to what extent those judgments are relevant here, however, is questionable.

The relevance of the existing case-law

46. In *Hamann*¹³ the Court of Justice included sailing yachts within the term 'form of transport' under Article 9(2)(d) of the Sixth VAT Directive.¹⁴

47. Concerning the place where a taxable provision of services is made, Article 9(2) of the Sixth VAT Directive contains, for practical reasons, special determining criteria. The criterion for the hiring out of movable tangible property — the place of use — did not appear practicable in relation to the hiring out of forms of transport, since forms of transport may easily cross frontiers mak-

¹³ — Case 51/88 *Hamann* [1989] ECR 767, paragraph 15 et seq.

¹⁴ — Concerning the concept of a motor vehicle in the Sixth VAT Directive, see also, for example, Case C-305/97 *Royscot Leasing and Others* [1999] ECR I-6671, paragraph 20.

ing it difficult, if not impossible, to determine the place where they are used.¹⁵ Accordingly, that determining criterion does not apply to forms of transport. Against that background, the Court of Justice justified the designation of sailing yachts as ‘forms of transport’ by reference to the difficulty in determining the place where the yacht was used and need to avoid a situation in which VAT was not payable at all. In making its decision, it relied on factors that can have no relevance for the interpretation of Article 3 (2) of the distance contracts directive.

48. I come to the same conclusion in relation to the judgments in *ARO Lease*¹⁶ and *Lease Plan Luxembourg*,¹⁷ in which the Court of Justice — again against the background of the Sixth VAT Directive and for the purpose of determining the place of supply of a service — equated the hiring out of motor vehicles to a hiring out of forms of transport. The same applies to the judgment in *Commission v Spain*,¹⁸ in which the Court of Justice held, concerning the application of a reduced rate of value added tax, that ‘[t]he making available of road infrastructure to users on payment of a toll does not consist in the provision of a means of transport but in

permitting users who have a vehicle to make a journey in better conditions’.

49. In conclusion, therefore, solutions worked out by the Court of Justice in interpreting the Sixth VAT Directive can be used in other contexts only to a very limited extent. Moreover, the question here is not whether car hire can be classified as the placing of a form of transport at the customer’s disposal, but rather whether it constitutes a service in the area of transport within the meaning of the distance contracts directive.

50. Nor can Directive 83/182 and the case-law based thereon give any information, since, here also, legislative material with an assessment in tax law is concerned with an area other than consumer protection.

51. Nor can the expression ‘service in the area of transport’ be derived from general legal rules of First Council Directive 80/1263/EEC of 4 December 1980 on the introduction of a Community driving licence¹⁹ or the subsequent Council Directive 91/439/EEC of 29 July 1991 on driving

15 — Judgment cited in footnote 13, paragraph 17.

16 — Case C-190/95 *ARO Lease* [1997] ECR I-4383, paragraphs 11 to 14.

17 — Case C-390/96 *Lease Plan Luxembourg* [1998] ECR I-2553, paragraphs 22 and 23.

18 — Cited in footnote 7, paragraph 21.

19 — OJ 1980 L 375, p. 1.

licences,²⁰ since neither of those directives concern transport; their primary aim is rather the categorisation of individual classes of driving licence.

52. It can, it is true, also be deduced from the case-law of the Court of Justice that not all services in the transport sector constitute transport services. When one considers, however, that the issue in *Aéroports de Paris v Commission*²¹ was the classification of services in connection with the running of an airport, that become immediately obvious.

Conclusions in relation to the interpretation of the distance contracts directive

53. If, therefore, no conclusions can be drawn from the existing case-law regarding the interpretation of the distance contracts directive, the concept of transport in Article 3(2) of the distance contracts directive requires an independent interpretation, apart from the abovementioned directives and areas of law. That interpretation must accord with the context of the directive and the protective purpose of its provisions.

54. With regard to the derogation, as already emphasised,²² the most important point to note is that, in accordance with consistent case-law, such a provision is to be interpreted narrowly. Due attention must therefore also be paid to the affinity of a form of transport with transport within the meaning of the second indent of Article 3(2).

55. A rented vehicle is, in principle, suitable for carrying objects and further persons in addition to the driver. A further factor supporting the argument that car rental constitutes a provision of services in the area of transport — at least in the broadest sense — is the purpose in using the rented vehicle as a form of transport. It is true that, in the case of car hire, the hirer has no way of knowing how the vehicles will be used. As easyCar argues with some justification, however, the result of renting a vehicle as an alternative to the use of public transport is that use as a form of transport stands in the foreground.

56. Therefore, even if the subject-matter of a car hire contract is the placing of means of

20 — OJ 1991 L 237, p. 1.

21 — Case C-82/01 P [2002] ECR I-9297, paragraph 27.

22 — See above, No 33.

transport at the customer's disposal, there is to that extent nevertheless a service in the area of transport. Whether, however — as required here — it constitutes a transport service within the meaning of Article 3(2) of the distance contracts directive, essentially depends on the purpose of the relevant derogation from that directive.

3. The purpose of the derogation under Article 3(2) of the distance contracts directive

subject-matter, the sense of the derogation might nevertheless require that not *every* such placing is to fall within the exception. That in turn depends upon whether, in the event of the distance contracts directive being applied, the undertaking in question would be exposed to the same particular financial or factual consequences as the other providers of services referred to in the second indent of Article 3(2). Only if the undertaking were, through application of the provisions of the distance contracts directive, to be exposed to such consequences can a reduction in consumer protection, corresponding to the compromise apparent in the derogation between consumer protection and the legitimate concerns of undertakings,²³ be justified.

57. It needs to be determined here whether, in accordance with its sense and purpose and taking due account of the consumer protection goals of the directive, the second indent of Article 3(2) allows the placing of a form of transport at the customer's disposal to be regarded as a transport service.

The sense and purpose of the derogation

58. Even if car hire has the placing of a form of transport at the customer's disposal as its

59. As established above,²⁴ the derogation seeks to protect particular services which have reservation as a precondition and would be affected by the requirements of the distance contracts directive to an unreasonable extent. That occurs where a reserva-

23 — This in turn means that a proper interpretation of the derogation in question is not necessarily the 'most consumer-friendly' since the very existence of such an exceptional provision indicates in itself that an appropriate compromise between consumer protection and the legitimate concerns of undertakings is necessary in interpreting this derogation. In striking that compromise, it should be noted that, in the final analysis, innovative services or distribution channels are to be interpreted in favour of consumers.

24 — See above, Nos 40 et seq.

tion leads to a setting aside of capacities that can no longer be used in another place and can therefore lead to high opportunity costs on the part of the provider.

61. The essential feature of a disproportionate burden, however, would be an increased organisational effort on the basis of an existing reservation. That will as a rule not be the case with the mere placing of hire cars at customers' disposal, at least not if, for example, the preparation of the vehicle (cleaning, tanking, etc.) is in any case carried out on the basis of an additional agreement, as appears to be the case with easyCar.

Whether car hire undertakings can be disproportionately burdened

60. A car hire undertaking that concludes all its contracts over the internet is in principle dependent on a reservation of its services, because only in that way is it capable of making economic use of the vehicles. Even in the case of 'traditional' car hire undertakings, reservation allows a more economic use of the vehicle fleet. That economic consideration does not, however, appear on its own to be decisive, when one considers that, even in the case of hire vehicles which become available at short notice, a profitable bargain can still be made, through so-called last-minute offers, for example. In that case, the provider has a plan at his disposal to combat insufficient utilisation at the last minute. Application of the right to cancel under the distance contracts directive is therefore not in itself sufficient to constitute a disproportionate burdening of the undertakings concerned from the economic standpoint.

62. Nor, in principle, is a car hire contract affected by a cancellation in the same way as transport undertakings in general which undeniably fall within the derogation. Although, in the case of car hire also, contracts cancelled at short notice can lead to capacities remaining unused during the reserved period, a transport undertaking, unlike a car hire firm, also has in principle to solve the problem of a suitable redeployment of any staff who are not needed. Independently thereof, a transport undertaking also has to carry increased liability risks vis-à-vis transported goods or persons,

which cause increased costs. Moreover, the loss of opportunity to use a vehicle from a fleet, as in the case of a car hire contract, is likely to involve less in the way of costs than the carrying out of a transport service with a high proportion of empty capacity.

existence of a right to cancel in favour of the consumer.

63. Nor does any different result arise from the possibility of there being a relationship of competition between a car hire undertaking and passenger transport undertakings which fall within the derogation of Article 3(2) of the distance contracts directive. Whether such a relationship of competition actually exists is immaterial, since, even if it did, account would have to be taken of the fact that non-application of the distance contracts directive to such transport undertakings is justified primarily by the particular demands on the business and its staff, such as special licences, dependence on networks and, in part, a practical obligation to contract, which do not apply to the same extent in the case of car hire.

65. A car hire firm could become deserving of protection in principle only if it is itself dependent on an overall plan going beyond the individual undertaking. The proceedings in which this question has arisen concern the car hire firm of easyCar, which forms part of a business plan with many branches (easyJet, easyBus etc.). A car hire firm that is bound into an overall business plan, which includes areas falling within the derogation under the distance contracts directive, to such an extent that serious consequences, on account, for example, of essential staff or business identity or on account of mixed offers (flight+hire car), actually feed through to the car hire business could fall within the derogation. Otherwise, the car hire firm would, on account of those consequences, be placed in a worse position than its competitors. In such circumstances, moreover, sufficient consumer protection might be afforded by means of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours.²⁵

64. It is apparent from all of the above that the service plan of a car hire firm is not unduly affected merely because of the

66. However, the facts underlying this reference do not suggest any such dependence.

²⁵ — OJ 1990 L 158, p. 59.

67. In principle, therefore, none of the above justifies removing or restricting consumer protection in relation to the conclusion of a pure car hire contract through the non-application of provisions of the distance contracts directive, since consumers should above all be supplied with sufficient information in order to be clear in their own minds as to the contents of the contract. Particularly, however, in the case of an undertaking — such as the car hire firm of easyCar concerned by this reference —, which makes cost savings on the basis of a high degree of splitting up of component services, an increased duty to provide information is necessary, for example as to which services are included and which are to be booked in addition.

68. I would therefore hold that a placing of forms of transport at customers' disposal by a car hire firm on the basis of hire contracts can be excluded from the scope of the directive only if, in the event of the rights contained in the provisions referred to in Article 3(2) of the distance contracts directive coming into operation, the hire undertaking would suffer just as severe particular consequences as an undertaking carrying out transport itself. In the case of a 'normal' car hire firm, however, that is in principle not the case.

V — Conclusion

69. In the light of the above, I propose that the Court should reply to the question referred as follows:

A pure car hire contract does not constitute a 'contract for the provision of ... transport ... services' within the meaning of Article 3(2) of Directive 97/7/EC on the protection of consumers in respect of distance contracts.