



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

25 June 2020*

(Reference for a preliminary ruling — Consumer protection — Directive 2013/11/EU — Alternative dispute resolution — Article 13(1) and (2) — Mandatory information — Accessibility of information)

In Case C-380/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany), made by decision of 9 May 2019, received at the Court on 15 May 2019, in the proceedings

Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV

v

Deutsche Apotheker- und Ärztebank eG,

THE COURT (Sixth Chamber),

composed of M. Safjan (Rapporteur), President of the Chamber, C. Toader and N. Jääskinen, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV, by T. Rader, Rechtsanwalt,
- Deutsche Apotheker- und Ärztebank eG, by M. Alter, Rechtsanwalt,
- the Italian Government, by G. Palmieri, acting as Agent, and S. Faraci, avvocato dello Stato,
- the Portuguese Government, by P. Barros da Costa, C. Farto, L. Inez Fernandes and T. Paixão, acting as Agents,
- the European Commission, by M. Wilderspin and C. Valero, acting as Agents,

* Language of the case: German.

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

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 13 of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ 2013 L 165, p. 63).
- 2 The request has been made in proceedings between Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV (Federal Union of Consumer Organisations and Associations, Germany) ('the Federal Union') and Deutsche Apotheker- und Ärztebank eG ('DAÄB') relating to DAÄB's practices regarding consumer communication of information on alternative dispute resolution.

Legal context

European Union law

Directive 2011/83/EU

- 3 Under Article 6(1) of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64), that article being entitled 'Information requirements for distance and off-premises contracts':

'Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner:

...

- (t) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.

...'

Directive 2013/11

- 4 Recitals 1, 2, 5, 7, 47 and 48 of Directive 2013/11 state:

'(1) Article 169(1) and point (a) of Article 169(2) [TFEU] provide that the Union is to contribute to the attainment of a high level of consumer protection by the measures it adopts pursuant to Article 114 TFEU. Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies are to ensure a high level of consumer protection.

(2) ... The internal market should provide consumers with added value in the form of better quality, greater variety, reasonable prices and high safety standards for goods and services, which should promote a high level of consumer protection.

...

(5) Alternative dispute resolution (ADR) offers a simple, fast and low-cost out-of-court solution to disputes between consumers and traders. However, ADR is not yet sufficiently and consistently developed across the Union. ... Consumers and traders are still not aware of the existing out-of-court redress mechanisms, with only a small percentage of citizens knowing how to file a complaint with an ADR entity. ...

...

(7) In order for consumers to exploit fully the potential of the internal market, ... consumers and traders should be aware of the existence of such procedures. ...

...

(47) When a dispute arises it is necessary that consumers are able to identify quickly which ADR entities are competent to deal with their complaint and to know whether or not the trader concerned will participate in proceedings submitted to an ADR entity. Traders who commit to use ADR entities to resolve disputes with consumers should inform consumers of the address and website of the ADR entity or entities by which they are covered. That information should be provided in a clear, comprehensible and easily accessible way on the trader's website, where one exists, and if applicable in the general terms and conditions of sales or service contracts between the trader and the consumer. Traders should have the possibility of including on their websites, and in the terms and conditions of the relevant contracts, any additional information on their internal complaint handling procedures or on any other ways of directly contacting them with a view to settling disputes with consumers without referring them to an ADR entity. Where a dispute cannot be settled directly, the trader should provide the consumer, on paper or another durable medium, with the information on relevant ADR entities and specify if he will make use of them.

(48) The obligation on traders to inform consumers about the ADR entities by which those traders are covered should be without prejudice to provisions on consumer information on out-of-court redress procedures contained in other Union legal acts, which should apply in addition to the relevant information obligation provided for in this Directive.'

5 Under Article 1 of that directive, entitled 'Subject matter':

'The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by ensuring that consumers can, on a voluntary basis, submit complaints against traders to entities offering independent, impartial, transparent, effective, fast and fair alternative dispute resolution procedures. ...'

6 Article 3(3) of the directive, that article being entitled 'Relationship with other Union legal acts', provides:

'Article 13 of this Directive shall be without prejudice to provisions on consumer information on out-of-court redress procedures contained in other Union legal acts which shall apply in addition to that Article.'

7 Under Article 13 of the directive, entitled ‘Consumer information by traders’:

‘1. Member States shall ensure that traders established on their territories inform consumers about the ADR entity or ADR entities by which those traders are covered, when those traders commit to or are obliged to use those entities to resolve disputes with consumers. That information shall include the website address of the relevant ADR entity or ADR entities.

2. The information referred to in paragraph 1 shall be provided in a clear, comprehensible and easily accessible way on the traders’ website, where one exists, and, if applicable, in the general terms and conditions of sales or service contracts between the trader and a consumer.

3. Member States shall ensure that, in cases where a dispute between a consumer and a trader established in their territory could not be settled further to a complaint submitted directly by the consumer to the trader, the trader provides the consumer with the information referred to in paragraph 1, specifying whether he will make use of the relevant ADR entities to settle the dispute. That information shall be provided on paper or on another durable medium.’

German law

8 Paragraph 36 of the Gesetz über die alternative Streitbeilegung in Verbrauchersachen (Verbraucherstreitbeilegungsgesetz — VSBG) (Law on alternative modes of resolution of consumer disputes) of 19 February 2016 (BGBl. 2016 I, p. 254; ‘the VSBG’), entitled ‘General information obligation’, provides:

‘1. A trader who maintains a website or uses general terms and conditions shall, in an easily accessible, clear and comprehensible manner:

- (1) inform the consumer of the extent to which he is willing or obliged to take part in dispute resolution procedures before a consumer conciliation body and
- (2) if the trader has committed himself to taking part in a dispute resolution procedure before a consumer conciliation body, or if he is obliged to take part on the basis of legal provisions, he shall refer the consumer to the competent consumer conciliation body; the reference must contain information on the address and website of the consumer conciliation body and a declaration by the trader that he will take part in a dispute resolution procedure before that consumer conciliation body.

2. The information under subparagraph 1 must:

- (1) appear on the trader’s website, if the trader maintains a website,
- (2) be provided together with his general terms and conditions, if the trader uses general terms and conditions.

...’

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

9 DAÄB is a cooperative bank which operates the website www.apobank.de, via which no contracts are concluded.

- 10 The website's legal notice contains information on DAÄB's willingness or obligation to take part in a dispute resolution procedure before a consumer conciliation body. In addition, it is possible to download from that website, as a PDF (*Portable Document Format*), the general terms and conditions of the contracts that DAÄB concludes with consumers ('the general terms and conditions at issue'). Those terms and conditions contain no information on DAÄB's willingness or obligation to take part in such a dispute resolution procedure.
- 11 If DAÄB concludes with a consumer a contract subject to the terms and conditions at issue, the consumer receives, in addition to the document containing the said general terms and conditions, a list of prices and services also drawn up by DAÄB, on the reverse of which it provides information on its willingness to take part in a dispute resolution procedure ('the list of prices and services at issue').
- 12 The Federal Union is of the opinion that the information that DAÄB commits to use consumer conciliation bodies should be included in the general terms and conditions at issue and that, consequently, DAÄB's business practice described in paragraphs 10 and 11 above is contrary to Paragraph 36(2) of the VSBG.
- 13 In those conditions, the Federal Union brought before the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany) an action seeking an order that DAÄB, on pain of specified judicial enforcement measures, must desist from not providing in the general terms and conditions at issue information as to its willingness or obligation to take part in a dispute resolution procedure before a consumer conciliation body.
- 14 The Landgericht Düsseldorf (Regional Court, Düsseldorf) dismissed the action, on the ground that Paragraph 36(2) of the VSBG requires traders to provide consumers with the information referred to Paragraph 36(1) of the VSBG together with the general terms and conditions only if the trader uses them. The mere publication of the general terms and conditions of a contract on a website does not constitute use, because use requires one contracting party to provide the other with the general terms and conditions upon conclusion of a contract.
- 15 Furthermore, it took the view that the provision to the consumer, together with the general terms and conditions, of a separate information sheet such as the list of prices and services at issue, upon conclusion of a contract, satisfies the requirements of point 2 of Paragraph 36(2) of the VSBG. That is because the general terms and conditions of a contract could consist of several documents and separate sets of clauses.
- 16 The Federal Union brought an appeal against that decision of the Landgericht Düsseldorf (Regional Court, Düsseldorf) before the referring court, the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany).
- 17 The referring court observes that, whereas under Paragraph 36(2) of the VSBG the information referred to in Paragraph 36(1) of the VSBG must be provided to the consumer 'together with' the general term and conditions used by the trader, Article 13(2) of Directive 2013/11 provides, by contrast, that that information must be provided, 'if applicable', 'in' the general terms and conditions.
- 18 In that regard, the referring court seeks guidance as to the interpretation of the expression 'if applicable' in Article 13(2) and, specifically, as to whether the trader's information obligation under that provision is subject to the trader's communication to the consumer of his general terms and conditions upon conclusion of a contract or whether that obligation falls with the trader by the mere fact that those general terms and conditions drawn up by the trader are available for download on his website.

- 19 In addition, the referring court asks whether the information referred to in that provision must be provided in the general terms and conditions drawn up by the trader or whether they may stem from a separate document such as the list of prices and services at issue.
- 20 In that regard, the referring court notes that whereas consumers generally make sure that they keep the general terms and conditions of a contract in order to be able to find the information referred to in Paragraph 36(1) of the VSBG, the list of prices and services, as a rule, is subject to amendments over the course of the contractual relationship and, accordingly, does not provide consumers with the same guaranteed access to that information.
- 21 Considering that the resolution of the dispute in the main proceedings turns on the interpretation of the provisions of Directive 2013/11, the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Does the information obligation under Article 13(2) of [Directive 2013/11], to provide the information pursuant to Article 13(1) in the general terms and conditions, already arise when the trader makes the general terms and conditions available for download on his website, on which no contracts are concluded?
- (2) If Question 1 is answered in the affirmative: Does the trader meet his obligation to provide the information in the general terms and conditions in such a case if he provides the information not in the file made available for download, but elsewhere on the company’s website?
- (3) Does the trader meet his obligation to provide the information in the general terms and conditions if he provides the consumer with — in addition to a document containing the general terms and conditions — a list of prices and services also drawn up by the trader in a separate document containing the information pursuant to Article 13(1) of [Directive 2013/11]?’

Consideration of the questions referred

- 22 By those questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 13(1) and (2) of Directive 2013/11 are to be interpreted as meaning that a trader who provides in an accessible manner on his website the general terms and conditions of sales or service contracts, but concludes no contracts with consumers via that website, must provide in his general terms and conditions information about the ADR entity or ADR entities by which that trader is covered, when that trader commits to or is obliged to use that entity or those entities to resolve disputes with consumers, or whether it is sufficient in that respect that the trader either provides that information in other documents accessible on his website, or under other tabs thereof, or provides that information to the consumer in a separate document from the general terms and conditions upon conclusion of the contract subject to those general terms and conditions.
- 23 Under Article 13(2) of Directive 2013/11, information about the ADR entity or ADR entities by which those traders are covered, referred to in Article 13(1) thereof, must be ‘provided in a clear, comprehensible and easily accessible way on the traders’ website, where one exists, and, if applicable, in the general terms and conditions of sales or service contracts between the trader and a consumer’.
- 24 The wording of that provision is unambiguous and provides that the information referred to in the previous paragraph must be provided ‘in’ the general terms and conditions, where they are published on the trader’s website, and not in other documents accessible on that website or under other tabs thereof. That lack of ambiguity is confirmed by the various language versions of that provision, inter alia the Spanish (*en las condiciones generales*), Czech (*ve všeobecných obchodních podmínkách*), German (*in den allgemeinen Geschäftsbedingungen*), English (*in the general terms and conditions*),

Italian (*nelle condizioni generali*), Dutch (*in de algemene voorwaarden*), Polish (*w ogólnych warunkach umów*), Portuguese (*nos termos e nas condições gerais*), Finnish (*yleisissä ehdoissa*) and Swedish (*i de allmänna villkoren*) language versions.

- 25 According to settled case-law, it is necessary, with regard to the interpretation of provisions of EU law, to consider not only their wording but also the context and the objectives of the legislation of which they form part (see, to that effect, judgment of 8 May 2019, *Inspecteur van de Belastingdienst*, C-631/17, EU:C:2019:381, paragraph 29 and the case-law cited).
- 26 With regard to the objective of Directive 2013/11, it is apparent from Article 1 thereof, read in the light of recitals 1 and 2 of the directive, that that directive seeks to ensure a high level of consumer protection by ensuring that consumers can, on a voluntary basis, submit complaints against traders to entities offering alternative dispute resolution procedures.
- 27 In order for consumers to be able to make use of that option, they should be informed about the existing out-of-court redress mechanisms, as stated in recitals 5 and 7 of Directive 2013/11. In that regard, recital 47 of that directive states that when a dispute arises it is necessary that consumers are able to identify quickly which ADR entities are competent to deal with their complaint and to know whether or not the trader concerned will participate in proceedings submitted to an ADR entity.
- 28 With regard to the question of whether the information about the identity of the ADR entity or ADR entities by which that trader is covered must be provided in the general terms and conditions available on the trader's website even where that website is not used to conclude contracts with consumers, it should be noted that Article 13(2) of Directive 2013/11 refers to the general terms and conditions of sales or service contracts between a trader and a consumer. However, this article does not limit the information obligation provided therein to cases where the trader concludes contracts with consumers via his website.
- 29 Under that provision, information about the ADR entity or ADR entities by which the trader is covered must be provided on the trader's website, 'if the trader maintains a website, and, if applicable, in the general terms and conditions', with the expression 'and, if applicable' showing that the information must not only be provided on the trader's website but also be included in those general terms and conditions when they are available on that website.
- 30 It follows that, in accordance with Article 13(2) of Directive 2013/11, the information obligation provided therein is not satisfied if a trader who publishes his general terms and conditions on his website omits that information but includes it elsewhere on his website.
- 31 Moreover, as is apparent from Article 3(3) of Directive 2013/11, read in the light of recital 48 thereof, the directive applies without prejudice to the provisions on consumer information on out-of-court redress procedures contained in other EU legal acts, which apply in parallel to the information obligation laid down in that directive.
- 32 However, it is apparent from Article 6(1)(t) of Directive 2011/83 that consumers must be informed of the possibility of having recourse to an out-of-court complaint and redress mechanism to which the trader is subject and of the methods for having access to it 'before' being bound by a distance or off-premises contract, or any corresponding offer.
- 33 In that regard, the Court has already held that Article 6(1) of Directive 2011/83 seeks to ensure the communication to consumers, before the conclusion of a contract, both of information concerning the contractual terms and the consequences of that conclusion, allowing consumers to decide whether they wish to be contractually bound to a trader, and of information necessary for proper performance of that contract and, in particular, for the exercise of their rights (judgment of 10 July 2019, *Amazon EU*, C-649/17, EU:C:2019:576, paragraph 43 and the case-law cited).

- 34 In order for the consumer to be able to benefit from that information to that end, the consumer must receive that information in good time before the contract is concluded and not simply at the stage of concluding the contract, given that the information provided before the contract is concluded is of fundamental importance for a consumer (see, by analogy, judgments of 18 December 2014, *CA Consumer Finance*, C-449/13, EU:C:2014:2464, paragraph 46, and of 23 January 2019, *Walbusch Walter Busch*, C-430/17, EU:C:2019:47, paragraph 36 and the case-law cited).
- 35 Therefore, under Article 13(2) of Directive 2013/11 and Article 6(1)(t) of Directive 2011/83, it is not sufficient that the consumer receives the information about ADR referred to therein simply at the time the contract is concluded with the trader, whether in the general terms and conditions of the contract or in a separate document from those general terms and conditions.
- 36 In the light of all of the above, the answer to the questions referred is that Article 13(1) and (2) of Directive 2013/11 are to be interpreted as meaning that a trader who provides in an accessible manner on his website the general terms and conditions of sales or service contracts, but concludes no contracts with consumers via that website, must provide in his general terms and conditions information about the ADR entity or ADR entities by which that trader is covered, when that trader commits to or is obliged to use that entity or those entities to resolve disputes with consumers. It is not sufficient in that respect that the trader either provides that information in other documents accessible on his website, or under other tabs thereof, or provides that information to the consumer in a separate document from the general terms and conditions, upon conclusion of the contract subject to those general terms and conditions.

Costs

- 37 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

Article 13(1) and (2) of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on consumer alternative dispute resolution and repealing Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on ADR) are to be interpreted as meaning that a trader who provides in an accessible manner on his website the general terms and conditions of sales or service contracts, but concludes no contracts with consumers via that website, must provide in his general terms and conditions information about the ADR entity or ADR entities by which that trader is covered, when that trader commits to or is obliged to use that entity or those entities to resolve disputes with consumers. It is not sufficient in that respect that the trader either provides that information in other documents accessible on his website, or under other tabs thereof, or provides that information to the consumer in a separate document from the general terms and conditions, upon conclusion of the contract subject to those general terms and conditions.

[Signatures]