



## Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

24 February 2022\*

(Reference for a preliminary ruling – Directive 2011/83/EU – Consumer contracts – Concept of ‘trader’ – Obligation to provide information in respect of distance contracts – Requirement that the necessary information be provided in plain and intelligible language and on a durable medium)

In Case C-536/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), made by decision of 21 October 2020, received at the Court on 22 October 2020, in the proceedings

**‘Tiketa’ UAB**

v

**M. Š.,**

other party:

**‘Baltic Music’ VšĮ,**

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, S. Rodin, J.-C. Bonichot (Rapporteur), L.S. Rossi and O. Spineanu-Matei, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- ‘Tiketa’ UAB, by A. Korsakas, advokatas,
- the Lithuanian Government, by R. Dzikovič and K. Dieninis, acting as Agents,

\* Language of the case: Lithuanian.

– the Italian Government, by G. Palmieri, acting as Agent, and M.F. Severi, avvocato dello Stato,  
– the European Commission, by J. Jokubauskaitė, I. Rubene and N. Ruiz García, acting as Agents,  
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 2, point 2, Article 6(1) and (5) and Article 8(1) and (7) 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).
- 2 The request has been made in proceedings between ‘Tiketa’ UAB and M. Š. concerning the reimbursement of the sum paid by the latter to purchase a ticket for a cultural event which was subsequently cancelled and the associated costs incurred, namely travel and postage costs, as well as compensation for the non-pecuniary damage suffered by M. Š. as a result of that cancellation.

### **Legal context**

#### ***European Union law***

##### *Directive 2011/83*

- 3 Recitals 14 and 16 of Directive 2011/83 state:

‘(14) This Directive should not affect national law in the area of contract law for contract law aspects that are not regulated by this Directive. Therefore, this Directive should be without prejudice to national law regulating for instance the conclusion or the validity of a contract (for instance in the case of lack of consent). Similarly, this Directive should not affect national law in relation to the general contractual legal remedies, the rules on public economic order, for instance rules on excessive or extortionate prices, and the rules on unethical legal transactions.

...

(16) This Directive should not affect national laws on legal representation such as the rules relating to the person who is acting in the name of the trader or on his behalf (such as an agent or a trustee). Member States should remain competent in this area. This Directive should apply to all traders, whether public or private.’

4 According to Article 1 of that directive:

‘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 approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts concluded between consumers and traders.’

5 Article 2 of that directive is worded as follows:

‘For the purpose of this Directive, the following definitions shall apply:

(1) “consumer” means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;

(2) “trader” means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive;

...

(10) “durable medium” means any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

...’

6 Article 3(5) of that directive provides:

‘This Directive shall not affect national general contract law such as the rules on the validity, formation or effect of a contract, in so far as general contract law aspects are not regulated in this Directive.’

7 Article 6 of Directive 2011/83 provides:

‘1. 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:

...

(c) the geographical address at which the trader is established and the trader’s telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently and, where applicable, the geographical address and identity of the trader on whose behalf he is acting;

(d) if different from the address provided in accordance with point (c), the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where the consumer can address any complaints;

...

5. The information referred to in paragraph 1 shall form an integral part of the distance or off-premises contract and shall not be altered unless the contracting parties expressly agree otherwise.

...'

8 Article 8 of that directive is worded as follows:

'1. With respect to distance contracts, the trader shall give the information provided for in Article 6(1) or make that information available to the consumer in a way appropriate to the means of distance communication used in plain and intelligible language. In so far as that information is provided on a durable medium, it shall be legible.

...

7. The trader shall provide the consumer with the confirmation of the contract concluded, on a durable medium within a reasonable time after the conclusion of the distance contract, and at the latest at the time of the delivery of the goods or before the performance of the service begins. That confirmation shall include:

- (a) all the information referred to in Article 6(1) unless the trader has already provided that information to the consumer on a durable medium prior to the conclusion of the distance contract; and
- (b) where applicable, the confirmation of the consumer's prior express consent and acknowledgment in accordance with point (m) of Article 16.

...'

*Directive 2005/29/EC*

9 Under Article 2 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22):

'For the purpose of this Directive:

...

- (b) "trader" means any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader;

...'

10 Article 7(4) of Directive 2005/29 provides:

‘In the case of an invitation to purchase, the following information shall be regarded as material, if not already apparent from the context:

...

(b) the geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;

...’

### *Lithuanian law*

11 Article 2.133 of the Lietuvos Respublikos civilinis kodeksas (Civil Code of the Republic of Lithuania) provides:

‘1. When he makes it known that he is acting as an agent and is acting within the limits of the powers conferred on him, the transaction concluded by one person (the agent) on behalf of another (the principal) shall give rise to, alter or extinguish directly the civil rights and obligations of the principal.

2. The powers of the agent may also be inferred from the circumstances in which the agent acts (seller in retail trade, cashier, etc.). In the event that the conduct of a person gives reasonable grounds for third parties to think that he has appointed another person to be his agent, transactions concluded by that person in the principal’s name shall be binding on the principal.

3. In the event that an agent fails to declare that he is acting in the principal’s name and in his interests, the principal shall acquire the rights and assume the duties arising from the transaction only where the other party to the transaction was in a position to understand from the circumstances of its conclusion that that transaction was concluded with an agent, or where the identity of the person with whom the transaction was concluded was of no importance to that party.’

12 Under Article 6.228<sup>1</sup>(3) of that code:

“‘Trader” means any natural or legal person or any other organisation, or any subdivision of a legal person or other organisation, who is seeking to conclude or who concludes contracts for purposes relating to his trade, business, craft or profession, including persons acting in the name of a trader or on his behalf. A legal person may be deemed a trader irrespective of the legal form of its members.’

13 Article 2(24) of the Lietuvos Respublikos vartotojų teisių apsaugos įstatymas (Law of the Republic of Lithuania on the protection of consumer rights), in the version applicable to the dispute in the main proceedings, provides:

“‘Trader” means any natural or legal person or any other organisation, or any subdivision of a legal person or other organisation, who is seeking to conclude or who concludes contracts for purposes relating to his trade, business, craft or profession, including persons acting in the name of a trader or on his behalf. A legal person may be deemed a trader irrespective of the legal form of its members.’

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

- 14 Tiketa is engaged, via its website, in the distribution of tickets for events organised by third parties.
- 15 On 7 December 2017, M. Š. acquired from Tiketa a ticket for a cultural event which was due to take place on 20 January 2018. Before the purchase of that ticket was finalised, Tiketa's website indicated that that event was organised by 'Baltic Music' VŠĮ and referred to another website and a telephone number in order to obtain further information. Also included in red letters was the information that 'the event organiser bears full responsibility for the event and its quality and content, as well as for any information provided concerning the event. Tiketa is the ticket distributor and is acting as a disclosed agent'. More detailed information regarding the service provider in question and the reimbursement of tickets was set out in the general terms and conditions for the provision of services available on Tiketa's website.
- 16 The ticket delivered to M. Š. reproduced only part of those general terms and conditions. It contained, in particular, the statement that 'tickets are neither exchanged nor refunded. In the event of cancellation or postponement of the event, the [event] organiser shall be liable in full for the reimbursement of the ticket price'. The name, address and telephone number of the organiser of the event in question were also given and it was stated that the event organiser bore full responsibility for 'the event and its quality and content, as well as for any information provided concerning the event', with Tiketa acting as the ticket distributor and 'disclosed agent'.
- 17 On 20 January 2018, M. Š. travelled to the event in question and learned, on reading a notice posted at the entrance to the venue where the event was to occur, that it would not take place.
- 18 On 22 January 2018, Baltic Music informed Tiketa that the event in question had been cancelled and that persons who had purchased tickets could have them refunded. On the same day, Tiketa informed M. Š. of the possibility of obtaining a refund of the ticket price either at the ticket offices from which they had been purchased or online for tickets which had been purchased online.
- 19 On 23 January 2018, M. Š. asked Tiketa to reimburse his ticket and his travel costs and to compensate him for the non-pecuniary damage suffered as a result of the cancellation of the event in question. Tiketa informed him that he should approach Baltic Music since Tiketa was only the ticket distributor and was therefore not responsible for the quality or the cancellation of that event. It maintained that position in response to the repeated request addressed to it by M. Š. a few weeks later. M. Š. then approached Baltic Music, but his requests remained unanswered.
- 20 On 18 July 2018, M. Š. brought an action before the Vilniaus miesto apylinkės teismas (District Court of the City of Vilnius, Lithuania) requesting that Tiketa and Baltic Music be ordered jointly and severally to compensate him for the pecuniary damage, namely the ticket price and travel and postage costs, and for the non-pecuniary damage he had suffered as a result of the cancellation of the event in question.
- 21 By judgment of 8 October 2018, the Vilniaus miesto apylinkės teismas (District Court of the City of Vilnius) upheld that action in part and ordered Tiketa to pay M. Š. the sums claimed by way of compensation for his pecuniary damage and part of those claimed as compensation for non-pecuniary damage, together with interest at the annual rate of 5% from the date on which the proceedings were brought until full execution of its judgment.

- 22 Following the dismissal of Tiketa’s appeal against that judgment before the Vilniaus apygardos teismas (Regional Court, Vilnius, Lithuania), Tiketa brought an appeal on a point of law before the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania).
- 23 In those circumstances, the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is the concept of a “trader” defined in Article 2[, point 2,] of Directive 2011/83 to be construed as meaning that a person acting as an intermediary when a consumer purchases a ticket [for an event] may be regarded as a trader bound by the obligations set out in [that directive] and, accordingly, as a party to the sales contract or service contract against whom the consumer may file a claim or bring an action?
- (a) Is it relevant for the interpretation of the concept of a “trader” defined in Article 2[, point 2,] of Directive 2011/83 whether the person acting as an intermediary when a consumer purchases a ticket has, before the consumer is bound by a distance contract, provided that consumer, in a clear and comprehensible manner, with all information on the main trader as laid down in Article 6(1)(c) and (d) of [that directive]?
- (b) Is the fact of intermediation to be deemed to have been disclosed in the case where the person involved in the process of the ticket purchase, before the consumer is bound by a distance contract, provides the name and legal form of the main trader as well as the information that the main trader assumes full responsibility for the event, its quality and content and information provided thereon and indicates that it itself acts only as a ticket distributor and is a disclosed agent?
- (c) May the concept of a “trader” defined in Article 2[, point 2,] of Directive 2011/83 be construed as meaning that, given the legal relationship of twofold service (ticket distribution and event organisation) between the parties, both the ticket vendor and the event organiser can be deemed to be traders, that is to say, parties to the consumer contract?
- (2) Is the requirement to provide information and to make that information available to the consumer in plain and intelligible language, as laid down in Article 8(1) of Directive 2011/83, to be construed and applied in such a way that the obligation to inform the consumer is considered to be fulfilled properly where such information is provided in the intermediary’s rules on the provision of services made available to the consumer on the website tiketa.lt before the consumer makes the payment confirming that he or she has become acquainted with the intermediary’s rules on the provision of services and undertaking to respect them as part of the terms and conditions of the transaction to be concluded by means of a so-called “click-wrap” agreement, that is to say, by actively ticking a specific box in the online system and clicking on a specific link?
- (a) Is it relevant for the interpretation and application of this requirement that such information is not provided on a durable medium and that there is no subsequent confirmation of the contract that contains all the information necessary under Article 6(1) of Directive 2011/83 on a durable medium as required under Article 8(7) of [that directive]?
- (b) Under Article 6(5) of Directive 2011/83, does that information provided in the intermediary’s rules on the provision of services form an integral part of the distance contract irrespective of whether that information is not provided on a durable medium and/or there is no subsequent confirmation of the contract on a durable medium?’

## Consideration of the questions referred

### *The first question*

- 24 By its first question, the referring court asks, in essence, whether point 2 of Article 2 of Directive 2011/83 must be interpreted as meaning that not only a natural or legal person who is acting for purposes relating to his own trade, business, craft or profession in relation to contracts covered by that directive, but also a natural or legal person who is acting as an intermediary, in the name of or on behalf of that person, is a ‘trader’ within the meaning of that provision, and whether that intermediary and the principal trader may both be classified as ‘traders’ for the purposes of that provision, provided that the existence of a twofold provision of services has been established.
- 25 It should be noted at the outset that there are disparities between the different language versions of point 2 of Article 2 of Directive 2011/83. As the referring court points out, according to the Lithuanian language version of that provision, any person acting in the name of or on behalf of a trader, defined as any natural or legal person, whether publicly or privately owned, who, in contracts covered by that directive, is acting for purposes relating to his trade, business, craft or profession, is himself a trader within the meaning of that directive. By contrast, other language versions of that provision, in particular the English and French versions, provide that any person who meets that definition is such a trader, including where he acts through a third party acting in his name or on his behalf, thus implying that the fact that a person makes use of an intermediary does not relieve him of his status as a trader.
- 26 Thus, whatever the language version of point 2 of Article 2 of Directive 2011/83, an intermediary such as Tiketa must be classified as a ‘trader’, within the meaning of that provision, where it is acting for purposes relating to its own trade, business, craft or profession in relation to contracts covered by that directive. It is necessary, however, to determine whether such an intermediary is not, in any case, a ‘trader’, within the meaning of that provision, simply by acting in the name of or on behalf of such a trader.
- 27 According to the Court’s settled case-law, where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, inter alia, judgment of 21 December 2021, *Trapeza Peiraios*, C-243/20, EU:C:2021:1045, paragraph 32 and the case-law cited).
- 28 As regards the general scheme of Directive 2011/83, it should be noted that, according to Article 6(1)(c) and (d) of that directive, all traders are required, before the consumer is bound by a distance or off-premises contract or any corresponding offer, to inform the consumer, where necessary, of the identity and geographical address of the trader on whose behalf he is acting and, where applicable, the address of that trader’s place of business. In this way, that provision includes in the category of traders, within the meaning of point 2 of Article 2 of that directive, natural or legal persons acting on behalf of other traders.
- 29 Furthermore, in paragraphs 28 and 29 of the judgment of 4 October 2018, *Kamenova* (C-105/17, EU:C:2018:808), the Court ruled that the concept of ‘trader’, as defined by Directives 2011/83 and 2005/29, must be interpreted uniformly, since those directives are based on Article 114 TFEU and, as such, pursue the same objectives, namely to contribute to the proper functioning of the internal market and to ensure a high level of consumer protection in the legislative, regulatory and administrative framework which they cover. In paragraphs 32, 33 and 36 of that judgment,



the Court ruled, in essence, that, in contrast to the concept of ‘consumer’ within the meaning of point 1 of Article 2 of Directive 2011/83, which refers to any natural person not engaged in commercial or trade activities, the concept of ‘trader’ implies that the natural or legal person concerned is acting for purposes relating to his trade, business, craft or profession or in the name of or on behalf of a trader.

- 30 Lastly, the objective referred to in the preceding paragraph, which is mentioned in Article 1 of Directive 2011/83, calls for a broad interpretation of the scope of that directive and, accordingly, of the concept of ‘trader’ within the meaning of point 2 of Article 2 thereof.
- 31 It follows from the foregoing that not only a natural or legal person who is acting for purposes relating to his own trade, business, craft or profession in relation contracts covered by that directive, but also a natural or legal person who is acting as an intermediary, in the name of or on behalf of that person, is a ‘trader’ within the meaning of point 2 of Article 2 of Directive 2011/83.
- 32 That is the case irrespective of whether such an intermediary has fulfilled its obligations under Directive 2011/83.
- 33 In that regard, while it is true that, in paragraph 45 of the judgment of 9 November 2016, *Wathelet* (C-149/15, EU:C:2016:840), the Court ruled that a person acting as an intermediary for a private individual in the context of the sale of goods could be regarded as being himself the ‘seller’, within the meaning of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ 1999 L 171, p. 12), where he had not duly informed the purchaser of the identity of the owner of the goods, the solution adopted in that judgment cannot be transposed to the interpretation of the concept of ‘trader’, within the meaning of Directive 2011/83, which follows a different logic. While Directive 1999/44 imposes specific liability on the seller in respect of the sale of goods which are not in conformity with the contract of sale, it is apparent from recitals 14 and 16 and Article 3(5) of Directive 2011/83 that the latter governs consumers’ rights and not general aspects of contract law, such as the rules applicable to the formation of contracts or legal representation. In particular, Directive 2011/83 does not determine the identity of the parties to the contract concluded with the consumer where the principal trader uses an intermediary, nor does it govern the attribution of liability between the principal trader and the intermediary in the event of failure to fulfil the obligations which it lays down.
- 34 In the light of the foregoing, the question whether the natural or legal person who is acting as an intermediary in the name of or on behalf of another trader has informed the consumer that he was acting in that capacity also has no bearing on the classification of that intermediary as a ‘trader’ within the meaning of point 2 of Article 2 of Directive 2011/83.
- 35 Lastly, it follows from the wording and the context of that provision and from the objective pursued by Directive 2011/83, recalled in paragraphs 28 to 30 above, that the fact that that intermediary is a trader does not prevent that also being the case of the principal trader, in the name of or on behalf of which that intermediary is acting, without there being any need to establish the existence of a twofold provision of services, since both of those traders are required to ensure compliance with the requirements laid down by that directive.
- 36 In the light of the foregoing considerations, the answer to the first question is that point 2 of Article 2 of Directive 2011/83 must be interpreted as meaning that not only a natural or legal person who is acting for purposes relating to his own trade, business, craft or profession in

relation to contracts covered by that directive, but also a natural or legal person who is acting as an intermediary, in the name of or on behalf of that person, is a ‘trader’ within the meaning of that provision, since that intermediary and the principal trader may both be classified as ‘traders’ for the purposes of that provision, without there being any need to establish the existence of a twofold provision of services.

### *The second question*

- 37 By its second question, the referring court asks, in essence, whether Article 6(1) and (5) and Article 8(1) and (7) of Directive 2011/83 must be interpreted as precluding the information referred to in Article 6(1) from being provided to the consumer, prior to the conclusion of the contract, only in the general terms and conditions for the provision of services on the intermediary’s website, which that consumer actively accepts by ticking the box provided for that purpose, and whether that information provided by such a means forms an integral part of the distance or off-premises contract, including where it has not been provided to the consumer on a durable medium within the meaning of Article 8(7) of that Directive and/or where the consumer has not subsequently been provided with the confirmation of the contract concluded on such a medium.
- 38 As a preliminary point, according to Tiketa, the second question bears no relation to the subject matter of the dispute in the main proceedings on the ground that, in the present case, the consumer concerned received all the necessary information on a durable medium in the form of the ticket he was given for admission to the event in question. That line of argument amounts to challenging the admissibility of the second question.
- 39 According to settled case-law, requests to the Court for a preliminary ruling enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the Court does not have before it the legal or factual material necessary to give a useful answer to the questions submitted to it or where the problem is hypothetical (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 26 and the case-law cited).
- 40 It is apparent from the request for a preliminary ruling that the referring court is uncertain whether the provision of the information required by Directive 2011/83 in the general terms and conditions for the provision of services on the intermediary’s website, which the consumer accepts by ticking the box provided for that purpose, prior to payment for the ticket, is sufficient to ensure that the obligation to provide information laid down in Article 6(1) and Article 8(1) and (7) of that directive is fulfilled. Thus, even if the consumer did receive all the necessary information on the ticket for admission to the event which was subsequently provided to him, that fact could not affect the relevance of the second question. In any event, the referring court, which alone can assess the facts of the dispute in the main proceedings, states that the consumer was not, in the present case, provided with the confirmation of the contract concluded on a durable medium, including all the information referred to in Article 6(1) of Directive 2011/83, as required under Article 8(7) of that directive. Accordingly, the objection of inadmissibility in respect of the second question must be rejected.
- 41 As regards the question whether the obligation to provide information to the consumer is fulfilled where the information required by Directive 2011/83 is brought to the consumer’s attention in the intermediary’s general terms and conditions for the provision of services, which the consumer

accepts by ticking the box provided for that purpose, it should be noted that, as regards distance and off-premises contracts, that directive distinguishes between the substantive obligations on the trader in terms of providing information to the consumer, which form the subject of Article 6 thereof, and the obligations relating to the form which that information must take, which form the subject of Article 8 thereof.

- 42 Under Article 6(1) of Directive 2011/83, the trader must provide the consumer, prior to the conclusion of the contract and in a clear and comprehensible manner, with a certain amount of information, including his identity and contact details and, where applicable, the identity and contact details of the trader on whose behalf he is acting, but also the price of the goods or services in question and the existence of and the arrangements for the consumer's right of withdrawal. That provision 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).
- 43 Article 8(1) of Directive 2011/83 reiterates the requirement that the information referred to in Article 6(1) of that directive be provided to the consumer or made available in plain and intelligible language and provides that, in so far as that information is made available to the consumer on a durable medium, it is to be legible.
- 44 Article 8(7) of that directive provides that the trader is to provide the consumer with the confirmation of the contract on a durable medium within a reasonable time after the conclusion of the contract, and that such confirmation is, inter alia, to include the information referred to in Article 6(1) of that directive, unless that information has already been provided to the consumer on a durable medium.
- 45 It follows from the provisions referred to in paragraphs 41 to 44 above that, before the conclusion of the contract, it is solely for the trader to provide the consumer with the information required by Article 6(1) of Directive 2011/83 in a clear and comprehensible manner. It is only after the conclusion of that contract that the trader is also required, under Article 8(7) of that directive, to provide the consumer, within a reasonable time, with the confirmation of the contract concluded on a durable medium, unless the information provided for in Article 6(1) of that directive has already been communicated to the consumer on such a medium.
- 46 Far from prohibiting the use of certain means of communication, Directive 2011/83 thus merely manages the content of the pre-contractual information to be provided to the consumer (see, by analogy, judgment of 23 January 2019, *Walbusch Walter Busch*, C-430/17, EU:C:2019:47, paragraph 43). It follows that there is nothing to prevent the information provided for in Article 6(1) of that directive from being brought to the consumer's attention, prior to the conclusion of the contract, in the general terms and conditions for the provision of services on the intermediary's website, which that consumer accepts by ticking the box provided for that purpose.
- 47 It is, however, for the referring court to assess whether, in the case in the main proceedings, all that information was indeed brought to the attention of the consumer in question in the main proceedings, in a clear and comprehensible manner.

- 48 Such a means of providing information cannot, however, act as a substitute for the confirmation which must be provided to the consumer on a durable medium after the conclusion of the contract, in accordance with Article 8(7) of Directive 2011/83.
- 49 Under point 10 of Article 2 of that directive, the concept of ‘durable medium’ refers to ‘any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored’.
- 50 As the Court has already ruled with regard to the concept of ‘durable medium’ within the meaning 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 (OJ 1997 L 144, p. 19), which Directive 2011/83 repealed and replaced, such a medium must therefore, in practice, fulfil the same functions as paper form, in order to enable the consumer to exercise his rights where necessary (see, to that effect, judgment of 5 July 2012, *Content Services*, C-49/11, EU:C:2012:419, paragraphs 41 and 42).
- 51 The provision of the information provided for in Article 6(1) of Directive 2011/83 merely in the general terms and conditions for the provision of services on the intermediary’s website, which the consumer accepts by ticking the box provided for that purpose before making the payment, does not meet those requirements, since it does not mean that that information is addressed to that consumer personally, it does not ensure that its content is not altered and that the information is accessible for an adequate period, and does not allow the consumer to store that information or to reproduce it unchanged (see, by analogy, judgment of 5 July 2012, *Content Services*, C-49/11, EU:C:2012:419, paragraph 43). In those circumstances, such a means of providing information does not correspond to the definition of the concept of a ‘durable medium’ within the meaning of point 10 of Article 2 of that directive.
- 52 The fact that the consumer is not provided with the confirmation of the contract on a durable medium does not, however, affect the application of Article 6(5) of Directive 2011/83, which provides that the information referred to in Article 6(1) of that directive is to form an integral part of the distance or off-premises contract and may not be altered unless the contracting parties expressly agree otherwise. It is apparent from the very wording of Article 6(5) that the EU legislature did not make the inclusion of that information in the contract concluded with the consumer subject to fulfilment, by the trader, of its obligation to provide the consumer with the confirmation of the contract on a durable medium. An interpretation to the contrary would run counter to the objective of consumer protection pursued by Directive 2011/83.
- 53 In the light of the foregoing considerations, the answer to the second question is that Article 6(1) and (5) and Article 8(1) and (7) of Directive 2011/83 must be interpreted as not precluding the information referred to in Article 6(1) from being provided to the consumer, prior to the conclusion of the contract, only in the general terms and conditions for the provision of services on the intermediary’s website, which that consumer actively accepts by ticking the box provided for that purpose, provided that that information is brought to the consumer’s attention in a clear and comprehensible manner. However, such a means of providing information cannot act as a substitute for providing the consumer with the confirmation of the contract on a durable medium, within the meaning of Article 8(7) of that directive, since this does not prevent that information from forming an integral part of the distance or off-premises contract.

## Costs

- 54 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 (Fourth Chamber) hereby rules:

- 1. Point 2 of Article 2 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 must be interpreted as meaning that not only a natural or legal person who is acting for purposes relating to his own trade, business, craft or profession in relation to contracts covered by that directive, but also a natural or legal person who is acting as an intermediary, in the name of or on behalf of that person, is a ‘trader’ within the meaning of that provision, since that intermediary and the principal trader may both be classified as ‘traders’ for the purposes of that provision, without there being any need to establish the existence of a twofold provision of services.**
- 2. Article 6(1) and (5) and Article 8(1) and (7) of Directive 2011/83 must be interpreted as not precluding the information referred to in Article 6(1) from being provided to the consumer, prior to the conclusion of the contract, only in the general terms and conditions for the provision of services on the intermediary’s website, which that consumer actively accepts by ticking the box provided for that purpose, provided that that information is brought to the consumer’s attention in a clear and comprehensible manner. However, such a means of providing information cannot act as a substitute for providing the consumer with the confirmation of the contract on a durable medium, within the meaning of Article 8(7) of that directive, since this does not prevent that information from forming an integral part of the distance or off-premises contract.**

[Signatures]