Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

14 June 2017*

(Reference for a preliminary ruling — Consumer protection — Alternative dispute resolution (ADR) procedures — Directive 2008/52/EC — Directive 2013/11/EU — Article 3(2) — Applications by consumers to set an order aside in the context of payment order proceedings instituted by a credit institution — Right of access to the judicial system — National legislation providing for mandatory recourse to a mediation procedure — Obligation to be assisted by a lawyer — Condition for the admissibility of proceedings before the courts)

In Case C-75/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale Ordinario di Verona (Verona District Court, Italy), made by decision of 28 January 2016, received at the Court on 10 February 2016, in the proceedings

Livio Menini,

Maria Antonia Rampanelli

v

Banco Popolare Società Cooperativa,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, E. Regan, J.-C. Bonichot, C.G. Fernlund and S. Rodin, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 24 November 2016,

after considering the observations submitted on behalf of:

— the Italian Government, by G. Palmieri, acting as Agent, and D. Del Gaizo, avvocato dello Stato,

— the German Government, by M. Hellmann and T. Henze, acting as Agents,

— the European Commission, by E. Montaguti, C. Valero and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 February 2017,

* Language of the case: Italian.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation 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), and of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ 2008 L 136, p. 3).

2 The request has been made in proceedings between (i) Livio Menini and Maria Antonia Rampanelli and (ii) Banco Popolare Società Cooperativa concerning payment of the debit balance on a current account held by Mr Menini and Ms Rampanelli at the Banco Popolare, following the grant of credit facilities by the latter.

Legal context

EU law

Directive 2008/52

3 Recitals 8 and 13 of Directive 2008/52 state as follows:

'(8) The provisions of this Directive should apply only to mediation in cross-border disputes, but nothing should prevent Member States from applying such provisions also to internal mediation processes.

…

(13) The mediation provided for in this Directive should be a voluntary process in the sense that the parties are themselves in charge of the process and may organise it as they wish and terminate it at any time. ...'

4 Article 1 of that directive provides as follows:

'1. The objective of this Directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.

2. This Directive shall apply, in cross-border disputes, to civil and commercial matters except as regards rights and obligations which are not at the parties' disposal under the relevant applicable law. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

…'

5 Article 2(1) of that directive provides as follows:

'For the purposes of this Directive a cross-border dispute shall be one in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party on the date on which:

(a) the parties agree to use mediation after the dispute has arisen;

(b) mediation is ordered by a court;

(c) an obligation to use mediation arises under national law; or

(d) for the purposes of Article 5 an invitation is made to the parties.'

6 Article 3(a) of that directive defines the term 'mediation' as a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.

7 Article 5(2) of Directive 2008/52 provides as follows:

'This Directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.'

Directive 2013/11

8 Recitals 16, 19 and 45 of Directive 2013/11 state:

'(16) ... This Directive should apply to complaints submitted by consumers against traders. It should not apply to complaints submitted by traders against consumers or to disputes between traders. However, it should not prevent Member States from adopting or maintaining in force provisions on procedures for the out-of-court resolution of such disputes.

…

(19) Some existing Union legal acts already contain provisions concerning [alternative dispute resolution (ADR)]. In order to ensure legal certainty, it should be provided that, in the event of conflict, this Directive is to prevail, except where it explicitly provides otherwise. In particular, this Directive should be without prejudice to Directive [2008/52], which already sets out a framework for systems of mediation at Union level for cross-border disputes, without preventing the application of that Directive to internal mediation systems. This Directive is intended to apply horizontally to all types of ADR procedures, including to ADR procedures covered by Directive [2008/52].

…

(45) The right to an effective remedy and the right to a fair trial are fundamental rights laid down in Article 47 of the Charter of Fundamental Rights of the European Union. Therefore, ADR procedures should not be designed to replace court procedures and should not deprive consumers or traders of their rights to seek redress before the courts. This Directive should not

prevent parties from exercising their right of access to the judicial system. In cases where a dispute could not be resolved through a given ADR procedure whose outcome is not binding, the parties should subsequently not be prevented from initiating judicial proceedings in relation to that dispute. Member States should be free to choose the appropriate means to achieve this objective. They should have the possibility to provide, inter alia, that limitation or prescription periods do not expire during an ADR procedure.'

9 Article 1 of that directive is worded as follows:

'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 [ADR] procedures. This Directive is without prejudice to national legislation making participation in such procedures mandatory, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.'

10 Article 3 of that directive provides as follows:

'1. Save as otherwise set out in this Directive, if any provision of this Directive conflicts with a provision laid down in another Union legal act and relating to out-of-court redress procedures initiated by a consumer against a trader, the provision of this Directive shall prevail.

2. This Directive shall be without prejudice to Directive [2008/52].

…'

11 Article 4 of Directive 2013/11 is worded as follows:

'1. For the purposes of this Directive:

(a) "consumer" means any natural person who is acting for purposes which are outside his trade, business, craft or profession;

(b) "trader" means any natural persons, or any legal person irrespective of whether privately or publicly owned, who is acting, including through any person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession;

(c) "sales contract" means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;

(d) "service contract" means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof;

(e) "domestic dispute" means a contractual dispute arising from a sales or service contract where, at the time the consumer orders the goods or services, the consumer is resident in the same Member State as that in which the trader is established;

(f) "cross-border dispute" means a contractual dispute arising from a sales or service contract where, at the time the consumer orders the goods or services, the consumer is resident in a Member State other than the Member State in which the trader is established;

(g) "ADR procedure" means a procedure, as referred to in Article 2, which complies with the requirements set out in this Directive and is carried out by an ADR entity;

(h) "ADR entity" means any entity, however named or referred to, which is established on a durable basis and offers the resolution of a dispute through an ADR procedure and that is listed in accordance with Article 20(2);

(i) "competent authority" means any public authority designated by a Member State for the purposes of this Directive and established at national, regional or local level.

2. A trader is established:

— if the trader is a natural person, where he has his place of business,

— if the trader is a company or other legal person or association of natural or legal persons, where it has its statutory seat, central administration or place of business, including a branch, agency or any other establishment.

3. An ADR entity is established:

— if it is operated by a natural person, at the place where it carries out ADR activities,

— if the entity is operated by a legal person or association of natural or legal persons, at the place where that legal person or association of natural or legal persons carries out ADR activities or has its statutory seat,

— if it is operated by an authority or other public body, at the place where that authority or other public body has its seat.'

12 Article 8 of Directive 2013/11 is worded as follows:

'Member States shall ensure that ADR procedures are effective and fulfil the following requirements:

(a) the ADR procedure is available and easily accessible online and offline to both parties irrespective of where they are;

(b) the parties have access to the procedure without being obliged to retain a lawyer or a legal advisor, but the procedure shall not deprive the parties of their right to independent advice or to be represented or assisted by a third party at any stage of the procedure;

(c) the ADR procedure is free of charge or available at a nominal fee for consumers;

…'

13 Article 9 of that directive provides as follows:

'1. Member States shall ensure that in ADR procedures:

…

(b) the parties are informed that they are not obliged to retain a lawyer or a legal advisor, but they may seek independent advice or be represented or assisted by a third party at any stage of the procedure;

…

2. In ADR procedures which aim at resolving the dispute by proposing a solution, Member States shall ensure that:

(a) The parties have the possibility of withdrawing from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure. They shall be informed of that right before the procedure commences. Where national rules provide for mandatory participation by the trader in ADR procedures, this point shall apply only to the consumer.

…

3. Where, in accordance with national law, ADR procedures provide that their outcome becomes binding on the trader once the consumer has accepted the proposed solution, Article 9(2) shall be read as applicable only to the consumer.'

14 Article 12 of that directive states:

'1. Member States shall ensure that parties who, in an attempt to settle a dispute, have recourse to ADR procedures the outcome of which is not binding, are not subsequently prevented from initiating judicial proceedings in relation to that dispute as a result of the expiry of limitation or prescription periods during the ADR procedure.

2. Paragraph 1 shall be without prejudice to provisions on limitation or prescription contained in international agreements to which Member States are party.'

Italian law

15 Article 4(3) of decreto legislativo n. 28 Attuazione dell'articolo 60 della legge 18 giugno 2009, n. 69, in materia di mediazione finalizzata alla conciliazione delle controversie civili e commerciali (Legislative Decree No 28 implementing Article 60 of Law No 69 of 18 June 2009 on mediation in civil and commercial matters) of 4 March 2010 (GURI No 53 of 5 March 2010, p. 1) ('Legislative Decree No 28/2010'), which transposes Directive 2008/52 into Italian law, provides in the version applicable at the material time as follows:

'On appointment, the lawyer must inform the client of the possibility of having recourse to the mediation procedure governed by the present decree and the tax concessions laid down in Articles 17 and 20. Furthermore, the lawyer shall inform the client of the cases in which initiating the mediation procedure is a condition for the admissibility of legal proceedings. That information must be provided clearly and in writing. In the event of breach of the obligations to provide information, the contract between the lawyer and the client may be declared invalid. ...'

16 Article 5 of Legislative Decree No 28/2010 provides as follows:

'…

1bis. Any person who intends to bring legal proceedings concerning a dispute over … insurance, banking or financial contracts, shall be required, as a preliminary step, assisted by a lawyer, to use the mediation procedure within the meaning of the present decree or the settlement procedure provided for in Legislative Decree No 179 of 8 October 2007, or the procedure established under Article 128bis of the Consolidated Law on banking and credit referred to in Legislative Decree No 385 of 1 September 1993, as subsequently amended, in respect of the fields regulated therein. Use of the mediation procedure shall be a condition for the admissibility of legal proceedings. …

…

2bis. Where the use of a mediation procedure constitutes a condition for the admissibility of legal proceedings, that condition shall be regarded as fulfilled if the first meeting with the mediator ends without agreement.

…

4. Paragraphs 1bis and 2 shall not apply:

(a) in enforcement procedures, including applications to set aside, until a decision has been handed down on the requests for the grant and stay of provisional enforcement;

…'

17 Article 8 of that legislative decree is worded as follows:

'1. On submission of a request for mediation, the person responsible within the relevant body shall designate a mediator and shall arrange a first meeting between the parties on a date no later than 30 days after the filing of the request. The request and the date of the first meeting shall be communicated to the other party by any appropriate means to ensure receipt thereof, including by the requesting party. At the initial and subsequent meetings, and until conclusion of the procedure, the parties shall take part assisted by a lawyer. …

…

4bis. Where a party fails without a valid reason to participate in mediation, a court may infer evidence from that in the subsequent judgment, within the meaning of the second paragraph of Article 116 of the Code of Civil Procedure. The court shall order any party who, in the cases mentioned in Article 5, has failed without a valid reason to participate in mediation to pay the State Treasury a sum equal to the single payment payable in respect of the proceedings.

…'

18 Decreto legislativo n. 130 Attuazione della direttiva 2013/11/UE sulla risoluzione alternativa delle controversie dei consumatori, che modifica il regolamento (CE) n. 2006/2004 e la direttiva 2009/22/CE (Legislative Decree No 130, transposing Directive 2013/11/EU on alternative resolution of consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC) of 4 August 2015 (GURI No 191 of 19 August 2015) ('Legislative Decree No 130/2015') inserted a new Title IIbis entitled 'Out-of-court resolution of disputes' in decreto legislativo n. 206, recante Codice del consumo (Legislative Decree No 206 on the Consumer Code) of 6 September 2005 (GURI No 235 of 8 October 2005) ('the Consumer Code'). Article 141 of that code, as amended by Legislative Decree No 130/2015, which appears in the new title, provides as follows:

'…

4. The provisions of the present title shall apply to voluntary out-of-court settlement procedures for the settlement, including via electronic means, of national and cross-border disputes between consumers and traders resident and established in the European Union, in the context of which the ADR entity offers a solution or brings the parties together in order to facilitate an amicable settlement, and, in particular, to the mediation entities for consumer matters referred to in the special section provided for in Article 16(2) and (4) of [Legislative Decree No 28/2010], and to the other ADR

entities set up or listed in the registers held and supervised by the authorities referred to in paragraph 1(i), following verification of the existence of the conditions and of the conformity of their organisation and their procedures with the present title. …

…

6. The present text shall be without prejudice to the following provisions under which out-of-court dispute resolution procedures are mandatory in nature:

(a) Article 5(1bis) of [Legislative Decree No 28/2010], which governs situations in which mediation for the purposes of settlement in civil and commercial litigation is a condition of admissibility;

…'

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

19 Banco Popolare granted Mr Menini and Ms Rampanelli current-account credit facilities on the basis of three successive contracts, for the purposes of enabling them to buy shares, including those issued by Banco Popolare itself and other companies belonging to it.

20 On 15 June 2015, Banco Popolare obtained an order for payment requiring Mr Menini and Ms Rampanelli to pay a sum of EUR 991848.21, corresponding to the balance which, it claimed, remained outstanding under a contract signed on 16 July 2009 for the opening of a current account guaranteed by a mortgage. Mr Menini and Ms Rampanelli applied to have that order for payment set aside and sought a stay of the relevant provisional enforcement measures.

21 The referring court, the Tribunale Ordinario di Verona (Verona District Court, Italy), notes that, under national law, such an application to have an order set aside is admissible only on condition that the parties have first initiated a mediation procedure, pursuant to Article 5(1bis) and (4) of Legislative Decree No 28/2010. The referring court also establishes that the dispute before it falls within the scope of the Consumer Code, as amended by Legislative Decree No 130/2015 transposing Directive 2013/11 into Italian law. Mr Menini and Ms Rampanelli should be regarded as 'consumers', within the meaning of Article 4(a) of that directive, having concluded contracts which may be classified as 'service contracts' within the meaning of Article 4(d) of that directive.

22 According to the referring court, it is not clear that the fact that Directive 2013/11 expressly refers to Directive 2008/52 means that the first of those directives was intended to entitle Member States to provide for mandatory use of a mediation procedure rather than the ADR procedure provided for by Directive 2013/11 as regards disputes involving consumers. When Article 5(2) of Directive 2008/52 permits Member States to provide for mediation as a condition for the admissibility of legal proceedings, it is not mandatory since it leaves that choice to the Member States.

23 That said, the referring court takes the view that the provisions of Italian law on mandatory mediation are contrary to Directive 2013/11. According to the referring court, that directive establishes a single, exclusive and harmonised system for disputes involving consumers, binding the Member States as to achievement of the objective pursued by that directive. That directive should therefore apply also to the procedures covered by Directive 2008/52.

24 The referring court also points out that Article 9 of Directive 2013/11 leaves the parties the choice not only of whether or not to take part in the ADR procedure, but also of withdrawing from it at any stage, with the result that mandatory use of mediation, provided for by national law, would put the consumer in a less favourable position than if such use were merely optional.

25 Finally, according to the referring court, the mandatory mediation procedure provided for in national law is contrary to Article 9(2) of Directive 2013/11, in so far as, in the national procedure, the parties may not withdraw from the mediation procedure at any time unconditionally if they are not satisfied with the performance or operation of that procedure. They may do so only by relying on a valid reason; otherwise they will be liable to a fine which the court is required to impose, even if the party who withdrew from the mediation procedure was successful at the end of the legal proceedings.

26 In those circumstances, the Tribunale Ordinario di Verona (District Court, Verona) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) In so far as it provides that Directive [2013/11] "shall be without prejudice to Directive [2008/52]", must Article 3(2) of Directive 2013/11 be construed as meaning that it is without prejudice to the possibility for individual Member States of providing for compulsory mediation solely in those cases which do not fall within the scope of Directive 2013/11, that is to say the cases referred to in Article 2(2) of Directive 2013/11, contractual disputes arising out of contracts other than sales or service contracts, as well as those which do not concern consumers?

(2) In so far as it guarantees consumers the possibility of submitting complaints against traders to appropriate entities offering alternative dispute resolution procedures, must Article 1 of Directive 2013/11 be interpreted as meaning that it precludes a national rule which requires the use of mediation in one of the disputes referred to in Article 2(1) of Directive 2013/11 as a precondition for the admissibility of legal proceedings by the consumer, and, in any event, as precluding a national rule that requires a consumer taking part in mediation relating to one of the abovementioned disputes to be assisted by a lawyer and to bear the related costs, and allows a party not to participate in mediation only on the basis of a valid reason?'

Consideration of the questions referred

Admissibility of the request for a preliminary ruling

27 The Italian and German Governments contest the admissibility of the request for a preliminary ruling on the ground that Directive 2013/11 is not applicable to the dispute in the main proceedings. The Italian Government claims that that dispute follows on from order for payment proceedings instituted by a trader against a consumer and, as such, falls outside the scope of Directive 2013/11. The German Government considers that the referring court has not specified whether the mediation procedure established by Legislative Decree No 28/2010 is an 'ADR procedure' before an 'ADR entity', as defined by Directive 2013/11, which is the only situation in which that directive would apply.

28 According to the Court's settled case-law, the Court may refuse to rule on a question submitted by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its subject matter, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 14 March 2013, *Allianz Hungária Biztosító and Others*, C-32/11, EU:C:2013:160, paragraph 26 and the case-law cited).

29 In the present case, it is apparent, however, that the question whether Directive 2013/11 is applicable to the dispute in the main proceedings is inextricably linked to the answers to be given to the present request for a preliminary ruling. In those circumstances, the Court has jurisdiction to answer that request (see, by analogy, judgment of 7 March 2017, *X and X*, C-638/16 PPU, EU:C:2017:173, paragraph 37 and the case-law cited).

The first question

30 By its first question, the referring court asks, in essence, whether Article 3(2) of Directive 2013/11, in so far as it provides that that directive applies 'without prejudice to' Directive 2008/52, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides for a mandatory mediation procedure in the disputes referred to in Article 2(1) of Directive 2013/11.

31 It should be noted that Article 1(1) of Directive 2008/52 provides that the latter's objective is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation. Article 1(2) provides that that directive is to apply to cross-border disputes in civil and commercial matters, that is to say, in accordance with Article 2 of that directive, any dispute in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party.

32 In the present case, it is common ground that the dispute in the main proceedings is not such a cross-border dispute.

33 It is true that, as stated in recital 8 of Directive 2008/52, nothing prevents Member States from applying that directive to internal mediation processes, an option which, as is apparent from the request for a preliminary ruling, was selected by the Italian legislature. To that effect, recital 19 of Directive 2013/11 recalls that Directive 2008/52 sets out a framework for systems of mediation at Union level for cross-border disputes, without preventing the application of that directive to internal mediation systems.

34 However, as the Advocate General observed in point 60 of his Opinion, the decision of the Italian legislature to extend the application of Legislative Decree No 28/2010 to include national disputes cannot have the effect of widening the scope of Directive 2008/52, as defined in Article 1(2) thereof.

35 It follows that since Directive 2008/52 is not applicable in a dispute such as that in the main proceedings, it is not necessary, in the present case, to rule on the question of the relationship between that directive and Directive 2013/11. The question whether Directive 2013/11 precludes national legislation such as that at issue in the main proceedings is precisely the subject of the second question raised by the referring court and must, accordingly, be examined in that context.

36 Having regard to the foregoing considerations, there is no need to reply to the first question referred.

The second question

37 By its second question, the referring court asks, in essence, whether Directive 2013/11 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides, first, for mandatory recourse to a mediation procedure, in disputes referred to in Article 2(1) of that directive, as a condition for the admissibility of legal proceedings relating to those disputes, secondly, that, in the context of such mediation, consumers must be assisted by a lawyer and, thirdly, that consumers may avoid prior recourse to mediation only if they demonstrate the existence of a valid reason in support of that decision.

38 In replying to that question, it is necessary to examine, first of all, whether Directive 2013/11 may apply to legislation such as that at issue in the main proceedings.

39 In that regard, it should be noted that, in accordance with Article 1 of Directive 2013/11, the objective of that directive is that consumers can, on a voluntary basis, submit complaints against traders by using ADR procedures.

40 Directive 2013/11 does not apply to all disputes involving consumers, but only to procedures which satisfy the following cumulative conditions, that is to say, (i) the procedure must have been initiated by a consumer against a trader concerning contractual obligations arising from sales or service contracts, (ii) in accordance with Article 4(1)(g) of Directive 2013/11, that procedure must comply with the requirements laid down in that directive and, in particular, in that respect, be independent, impartial, transparent, effective, fast and fair, and (iii) that procedure must be entrusted to an ADR entity, that is to say, in accordance with Article 4(1)(h) of that directive, an entity, however named or referred to, which is established on a durable basis and offers the resolution of a dispute through an ADR procedure and which is entered on the list drawn up in accordance with Article 20(2) of Directive 2013/11, a list which is notified to the European Commission.

41 In order to determine whether Directive 2013/11 is applicable to an ADR procedure such as that at issue in the main proceedings, it is necessary to examine whether those conditions are met.

42 As regards the first condition, the question whether an ADR procedure, such as that at issue in the main proceedings, must be regarded as having been initiated not by a trader but by a consumer is a matter for the national court to determine and falls within the scope of the national law of each Member State. Consequently, as regards the main proceedings, it is for the referring court to determine whether an application to have an order for payment set aside and an application for a stay of provisional enforcement associated with that measure constitute a complaint by a consumer, of an independent nature in relation to the order for payment proceedings instituted by a trader working in credit, such as the trader at issue in the main proceedings.

43 As regards the second and third conditions, the request for a preliminary ruling does not specify whether the mediation procedure provided for in Italian legislation takes place before an ADR entity, in accordance with Directive 2013/11. Likewise, it is for the referring court to assess whether the entity referred to in Article 141(4) of the Consumer Code, as amended by Legislative Decree No 130/2015, is an ADR entity which satisfies the conditions laid down in Directive 2013/11, since that is a condition for the application of that directive.

44 It follows that Directive 2013/11, subject to the checks to be carried out by the referring court, may apply to legislation such as that at issue in the main proceedings.

45 As regards the three elements contained in the question raised by the referring court and, in the first place, as regards the requirement for a mediation procedure as a condition for the admissibility of legal proceedings concerning the dispute forming the subject matter of that procedure, as provided for in Article 5(1bis) of Legislative Decree No 28/2010, it is true that the first sentence of Article 1 of Directive 2013/11 provides for an option for consumers to submit, 'on a voluntary basis', complaints against traders to ADR entities.

46 In that regard, the referring court asks whether, according to a literal interpretation of the first sentence of Article 1, Member States are entitled to maintain such prior and mandatory recourse to mediation only for types of disputes which do not fall within the scope of that directive.

47 However, it is settled case-law of the Court that, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 15 October 2014, *Hoštická and Others*, C-561/13, EU:C:2014:2287, paragraph 29 and the case-law cited).

48 In that regard, although the first sentence of Article 1 of Directive 2013/11 uses the expression 'on a voluntary basis', it must be noted that the second sentence of that article expressly provides for the possibility, for the Member States, of making participation in ADR procedures mandatory, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.

49 That interpretation is supported by Article 3(a) of Directive 2008/52 which defines mediation as a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute. This process may be initiated by the parties or suggested or ordered by a court, but also prescribed by the law of a Member State. Furthermore, in accordance with Article 5(2) thereof, Directive 2008/52 is without prejudice to national legislation making the use of mediation compulsory, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.

50 As stated in recital 13 of Directive 2008/52, the voluntary nature of the mediation lies, therefore, not in the freedom of the parties to choose whether or not to use that process but in the fact that 'the parties are themselves in charge of the process and may organise it as they wish and terminate it at any time'.

51 Accordingly, what is important is not whether the mediation system is mandatory or optional, but the fact that the parties' right of access to the judicial system is maintained. To that end, as the Advocate General observed in point 75 of his Opinion, Member States retain their full legislative autonomy, on condition that Directive 2013/11 remains effective.

52 Accordingly, the fact that national legislation, such as that at issue in the main proceedings, has not only put in place an out-of-court mediation procedure, but has also made it mandatory to have recourse to that procedure before bringing an action before a judicial body, is not such as to jeopardise the attainment of the objective of Directive 2013/11 (see, by analogy, judgment of 18 March 2010, *Alassini and Others*, C-317/08 to C-320/08, EU:C:2010:146, paragraph 45).

53 It is, admittedly, common ground that, by making the admissibility of legal proceedings brought in the areas referred to in Article 5(1bis) of Legislative Decree No 28/2010 conditional upon the implementation of a mandatory attempt at mediation, the national legislation at issue in the main proceedings introduces an additional step to be overcome before being entitled to access the courts. That condition might prejudice implementation of the principle of effective judicial protection (see, to that effect, judgment of 18 March 2010, *Alassini and Others*, C-317/08 to C-320/08, EU:C:2010:146, paragraph 62).

54 Nevertheless, it is settled case-law of the Court that fundamental rights do not constitute unfettered prerogatives and may be restricted, provided that the restrictions in fact correspond to objectives of general interest pursued by the measure in question and that they do not involve, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed (judgment of 18 March 2010, *Alassini and Others*, C-317/08 to C-320/08, EU:C:2010:146, paragraph 63 and the case-law cited).

55 As the Advocate General observed in point 81 of his Opinion, although the judgment of 18 March 2010, *Alassini and Others* (C-317/08 to C-320/08, EU:C:2010:146) concerns a settlement procedure, the reasoning adopted by the Court in that judgment can be transposed to national legislation making recourse to other out-of-court procedures mandatory, such as the mediation procedure at issue in the main proceedings.

56 That said, as recital 45 of Directive 2013/11 in essence states, Member States are free to choose the means they deem appropriate for the purposes of ensuring that access to the judicial system is not hindered. The fact, first, that the outcome of the ADR procedure is not binding on the parties and, secondly, the fact that the limitation periods do not expire during such a procedure are two means which, amongst others, would be appropriate for the purposes of achieving that objective.

57 As regards the binding nature of the outcome of the ADR procedure, Article 9(2)(a) of Directive 2013/11 requires Member States to ensure that, in the context of that procedure, the parties have the possibility of withdrawing from the procedure at any stage if they are dissatisfied with its performance

or operation. Furthermore, in accordance with Article 9(2)(b) of that directive, at the end of the ADR procedure, a solution is merely proposed to the parties and they have the choice as to whether or not to agree to or follow it.

58 Even though Article 9(3) of Directive 2013/11 establishes the possibility for national legislation to provide that the outcome of ADR procedures is binding on traders, such a possibility requires that the consumer has previously accepted the proposed solution.

59 As regards limitation periods. Article 12 of Directive 2013/11 provides that Member States are to ensure that parties who have recourse to an ADR procedure in an attempt to settle a dispute are not subsequently prevented from initiating judicial proceedings as a result of the expiry of the limitation period during that procedure.

60 Moreover, under Article 8(a) of Directive 2013/11, the ADR procedure must be accessible online and offline to both parties, irrespective of where they are.

61 Accordingly, the requirement for a mediation procedure as a condition for the admissibility of proceedings before the courts may prove compatible with the principle of effective judicial protection, provided that that procedure does not result in a decision which is binding on the parties, that it does not cause a substantial delay for the purposes of bringing legal proceedings, that it suspends the period for the time-barring of claims and that it does not give rise to costs — or gives rise to very low costs — for the parties, and only if electronic means are not the only means by which the settlement procedure may be accessed and interim measures are possible in exceptional cases where the urgency of the situation so requires (see, to that effect, judgment of 18 March 2010, *Alassini and Others*, C-317/08 to C-320/08, EU:C:2010:146, paragraph 67).

62 It is therefore for the referring court to establish whether the national legislation at issue in the main proceedings, in particular Article 5 of Legislative Decree No 28/2010 and Article 141 of the Consumer Code, as amended by Legislative Decree No 130/2015, does not prevent the parties from exercising their right of access to the judicial system, in accordance with the requirement of Article 1 of Directive 2013/11, in that that legislation meets the requirements set out in the previous paragraph.

63 To that extent, the requirement for a mediation procedure as a condition for the admissibility of proceedings before the courts would be compatible with Article 1 of Directive 2013/11.

64 In the second place, as regards the obligation, on the part of the consumer, to be assisted by a lawyer in order to initiate a mediation procedure, the answer to that question derives from the wording of Article 8(b) of Directive 2013/11. That article, relating to the effectiveness of the procedure, provides that the Member States are to ensure that the parties have access to the ADR procedure without being obliged to retain a lawyer or a legal advisor. Furthermore, Article 9(1)(b) of that directive provides that each party must be informed that they are not obliged to retain a lawyer or a legal advisor.

65 Accordingly, national legislation may not require a consumer taking part in an ADR procedure to be assisted by a lawyer.

66 Finally, in the third place, as regards the question whether Directive 2013/11 must be interpreted as precluding a provision of national law to the effect that consumers may withdraw from a mediation procedure only in the event that they demonstrate the existence of a valid reason in support of that decision, on pain of penalties in the context of subsequent legal proceedings, it is necessary to take the view that such a limitation restricts the parties' right of access to the judicial system, contrary to the objective of Directive 2013/11, recalled in Article 1 thereof. Any withdrawal from an ADR

procedure by a consumer must not have unfavourable consequences for that consumer in the context of proceedings before the courts relating to the dispute which formed, or which ought to have formed, the subject matter of that procedure.

67 The latter consideration is supported by the wording of Article 9(2)(a) of Directive 2013/11 which, as regards ADR procedures which seek to resolve the dispute by proposing a solution, requires Member States to ensure that the parties have the possibility of withdrawing from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure.

68 The same provision also specifies that, where national legislation provides for the mandatory participation of traders in ADR procedures, the consumer, and only the consumer, must always benefit from that right to withdraw.

69 Consequently, Directive 2013/11 must be interpreted as precluding national legislation which entitles consumers to withdraw from a mediation procedure only in the event that they demonstrate the existence of a valid reason in support of that decision.

70 However, it must be noted that, at the hearing, the Italian Government declared that the imposition of a fine by the court in subsequent proceedings is provided for only in the event of failure to participate in the mediation procedure without a valid reason and not in the event of withdrawal from it. If that is the case, which it is for the referring court to determine, Directive 2013/11 does not preclude national legislation which entitles a consumer to refuse to participate in a prior mediation procedure only on the basis of a valid reason, to the extent that he may bring it to an end without restriction immediately after the first meeting with the mediator.

71 In view of the foregoing considerations the answer to the second question is as follows:

— Directive 2013/11 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which prescribes recourse to a mediation procedure, in disputes referred to in Article 2(1) of that directive, as a condition for the admissibility of legal proceedings relating to those disputes, to the extent that such a requirement does not prevent the parties from exercising their right of access to the judicial system.

— On the other hand, that directive must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that, in the context of such mediation, consumers must be assisted by a lawyer and that they may withdraw from a mediation procedure only if they demonstrate the existence of a valid reason in support of that decision.

Costs

72 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 (First Chamber) hereby rules:

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) must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which prescribes recourse to a mediation procedure, in disputes referred to in Article 2(1) of that

directive, as a condition for the admissibility of legal proceedings relating to those disputes, to the extent that such a requirement does not prevent the parties from exercising their right of access to the judicial system.

On the other hand, that directive must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that, in the context of such mediation, consumers must be assisted by a lawyer and that they may withdraw from a mediation procedure only if they demonstrate the existence of a valid reason in support of that decision.

[Signatures]