Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

13 February 2025*

(Reference for a preliminary ruling – Directive 2002/22/EC (Universal Service Directive) – Electronic communications networks and services – Universal service and users' rights – Consumer protection – Contracts concluded between a consumer and an undertaking providing electronic communications services – Facilitating change of provider – Article 30(5) – Initial commitment period – Concept)

In Case C-612/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany), made by decision of 21 September 2023, received at the Court on 6 October 2023, in the proceedings

Verbraucherzentrale Berlin eV

v

Vodafone GmbH,

THE COURT (Fifth Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, D. Gratsias (Rapporteur), E. Regan, J. Passer and B. Smulders, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Verbraucherzentrale Berlin eV, by S. Fitzner, Rechtsanwältin,

– Vodafone GmbH, by C. Rohnke, Rechtsanwalt,

– the European Commission, by O. Gariazzo, L. Malferrari and G. Meessen, acting as Agents,

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

* Language of the case: German.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 30(5) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 11) ('the Universal Service Directive').

2 The request has been made in proceedings between Verbraucherzentrale Berlin eV, a consumer protection association ('the consumer protection association'), and Vodafone GmbH, a provider of telecommunications services, including in the field of mobile telephony, concerning a commercial practice put in place by that provider with regard to consumers.

Legal context

European Union law

The Universal Service Directive

3 Recitals 2, 30 and 49 of the Universal Service Directive stated:

'(2) Under Article 153 … [EC], the [European] Community is to contribute to the protection of consumers.

…

(30) Contracts are an important tool for users and consumers to ensure a minimum level of transparency of information and legal security. … In addition to the provisions of this Directive, the requirements of existing Community consumer protection legislation relating to contracts … apply to consumer transactions relating to electronic networks and services. Specifically, consumers should enjoy a minimum level of legal certainty in respect of their contractual relations with their direct telephone service provider, such that the contractual terms, conditions, quality of service, condition for termination of the contract and the service, compensation measures and dispute resolution are specified in their contracts. …

…

(49) This Directive should provide for elements of consumer protection, including clear contract terms and dispute resolution, and tariff transparency for consumers. …'

4 Article 20 of that directive, entitled 'Contracts', provided in paragraph 1 thereof:

'Member States shall ensure that, when subscribing to services providing connection to a public communications network and/or publicly available electronic communications services, consumers,

and other end-users so requesting, have a right to a contract with an undertaking or undertakings providing such connection and/or services. …'

5 Article 30 of that directive, entitled 'Facilitating change of provider', provides in paragraph 5 thereof:

'Member States shall ensure that contracts concluded between consumers and undertakings providing electronic communications services do not mandate an initial commitment period that exceeds 24 months. Member States shall also ensure that undertakings offer users the possibility to subscribe to a contract with a maximum duration of 12 months.'

Directive 2009/136

6 Under recital 47 of Directive 2009/136:

'In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interests. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges and so on. This does not preclude the imposition of reasonable minimum contractual periods in consumer contracts. Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications and should be implemented with the minimum delay, so that the number is functionally activated within one working day and the user does not experience a loss of service lasting longer than one working day. Competent national authorities may prescribe the global process of the porting of numbers, taking into account national provisions on contracts and technological developments. Experience in certain Member States has shown that there is a risk of consumers being switched to another provider without having given their consent. While that is a matter that should primarily be addressed by law enforcement authorities, Member States should be able to impose such minimum proportionate measures regarding the switching process, including appropriate sanctions, as are necessary to minimise such risks, and to ensure that consumers are protected throughout the switching process without making the process less attractive for them.'

Directive (EU) 2018/1972

7 The Universal Service Directive was repealed by Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ 2018 L 321, p. 36). According to the correlation table in Annex XIII thereto, Article 30(5) of the Universal Service Directive corresponds to Article 105(1) of Directive 2018/1972. Article 105, entitled 'Contract duration and termination', is worded as follows:

'1. Member States shall ensure that conditions and procedures for contract termination do not act as a disincentive to changing service provider and that contracts concluded between consumers and providers of publicly available electronic communications services other than number-independent interpersonal communications services and other than transmission services used for the provision of machine-to-machine services, do not mandate a commitment period longer than 24 months. Member States may adopt or maintain provisions which mandate shorter maximum contractual commitment periods.

…

3. Where a contract or national law provides for automatic prolongation of a fixed duration contract for electronic communications services other than number-independent interpersonal communications services and other than transmission services used for the provision of machine-to-machine services, Member States shall ensure that, after such prolongation, end-users are entitled to terminate the contract at any time with a maximum one-month notice period, as determined by Member States, and without incurring any costs except the charges for receiving the service during the notice period. Before the contract is automatically prolonged, providers shall inform end-users, in a prominent and timely manner and on a durable medium, of the end of the contractual commitment and of the means by which to terminate the contract. In addition, and at the same time, providers shall give end-users best tariff advice relating to their services. Providers shall provide end-users with best tariff information at least annually.

…'

8 In accordance with Articles 124 and 125 of that directive respectively, the period prescribed for its transposition into the legal systems of the Member States expired on 21 December 2020 and the Universal Service Directive was repealed with effect from that date.

German law

9 Under Paragraph 43b of the Telekommunikationsgesetz (Law on Telecommunications) of 22 June 2004 (BGBI. 2004 I, p. 1190), in the version applicable to the dispute in the main proceedings ('the TKG'):

'The initial minimum commitment period of a contract between a consumer and a provider of publicly available communications services must not exceed 24 months. …'

10 Paragraph 307 of the Bürgerliches Gesetzbuch (Civil Code; 'the BGB') provides:

'(1) Provisions in general terms and conditions of sale are of no effect if they unreasonably disadvantage the contracting partner of the party using them, contrary to the principles of good faith. Unreasonable disadvantage may also arise from the provision in question not being clear and intelligible.

(2) In case of doubt, unreasonable disadvantage must be assumed to exist if a provision

1. is incompatible with essential basic principles of the statutory rule from which it diverges, or

2. restricts essential rights or obligations arising from the nature of the contract in such a way that achieving the purpose of the contract is jeopardised.

(3) Subparagraphs 1 and 2 and Paragraphs 308 and 309 apply only to provisions contained in general terms and conditions of sale which are intended to derogate from or supplement statutory provisions. Other provisions may be of no effect pursuant to the second sentence of subparagraph 1 in conjunction with the first sentence of subparagraph 1.'

11 Under Paragraph 309 of the BGB:

‘Even in so far as it is permissible to derogate from the statutory provisions, the [following] provisions contained in general terms and conditions are to have no effect[:]

…

9. in the case of a contractual relationship, the object of which is the regular supply of goods or the regular provision of services or works by the user,
   (a) a contract duration binding the other party to the contract for more than two years,
   (b) a tacit renewal of the contractual relationship with the other party to the contract, unless the contractual relationship is renewed for an indefinite period and the other party to the contract is granted the right to terminate the renewed contract at any time by giving a maximum of one month’s notice,

…’

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

12 The consumer protection association brought an action for an injunction before the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany) against Vodafone, based on an alleged infringement by Vodafone of national consumer protection legislation to the detriment of existing customers, such as customers No 1 and No 2 referred to in the request for a preliminary ruling.

13 Customers No 1 and No 2 had each concluded an initial contract with Vodafone for a fixed commitment period. During 2018, before the expiry of their contracts, each of those two customers wished to change their subscription plan in order to purchase, at a reduced price, a new mobile telephone at a higher monthly rate.

14 To that end, customer No 1 signed an addendum to that customer’s initial contract in which it was stated that it was a ‘new contract’, concluded ‘before the end of the commitment period’ and that a new commitment period of 24 months would begin to run from the first day following the expiry of the commitment period of the initial contract. That customer immediately received the agreed mobile telephone and Vodafone immediately applied the new rate provided for in that addendum.

15 Customer No 2, for that customer’s part, signed a document entitled ‘Contract Extension’ in which a commitment period of 26 months was set. In that regard, Vodafone made it clear to that customer that the remaining term of the initial contract which the customer had signed and which had not yet expired should be added to the minimum contractual period of 24 months.

16 In support of its action for an injunction, the consumer protection association claimed that, as a result of the commercial practice described in paragraphs 14 and 15 of the present judgment, the customers were bound for a period of more than 24 months, in infringement of the first sentence of Paragraph 43b of the TKG and, in any event, of Paragraph 309(9)(a) of the BGB. Vodafone rebutted that that commercial practice concerned only mutually agreed contract extensions and did not fall within the scope of those provisions.

17 The Landgericht Düsseldorf (Regional Court, Düsseldorf) upheld that action in part, holding that, although the disputed commercial practice was not contrary to the abovementioned provisions, since those provisions related only to the duration of the initial contracts and not to that of subsequent contracts such as those resulting from the signing of the addendum and the document referred to in paragraphs 14 and 15 of the present judgment respectively, the agreements concluded with customers No 1 and No 2 did, however, contain general terms and conditions infringing Paragraph 307 of the BGB.

18 The parties to the main proceedings each brought an appeal against that judgment before the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany), which is the referring court. That court upheld the consumer protection association's appeal and dismissed Vodafone's appeal, on the ground that the commercial practice covered by the action for an injunction was in fact contrary to those national provisions, interpreted in the light of EU law.

19 That judgment was annulled by the Bundesgerichtshof (Federal Court of Justice, Germany), which referred the case back to the referring court, taking the view that there were factual elements of the dispute that had not been established with sufficient precision.

20 Hearing that dispute again, the referring court considers that the addendum and the document signed by customers No 1 and No 2 respectively should have entered into force and been executed from the date of their signature.

21 That court is uncertain as to the interpretation of the concept of 'initial commitment period' in the first sentence of Paragraph 43b of the TKG, the scope of which is disputed in Germany.

22 According to a first point of view, that concept concerns only the initial contracts concluded between a customer and a provider of communication services. Therefore, the temporal limitation provided for in Article 30(5) of the Universal Service Directive would not apply to extensions of such contracts, both tacit and resulting from a new agreement concluded between the same parties, irrespective of whether those extensions entail amendments to the contractual conditions.

23 According to a second view, put forward by the referring court, 'initial commitment period' should be taken to mean any commitment period, it being understood that the consumer must in any event be able to terminate the contract on expiry of the contractual period not exceeding 24 months referred to in the Universal Service Directive. In that regard, first, that interpretation would be consistent with the objective referred to in recital 47 of Directive 2009/136, which is to give the consumer the possibility to terminate a contract on expiry of a reasonable minimum contractual period 'in order to take full advantage of the competitive environment'. Second, an interpretation of the concept of 'initial commitment period' such as that set out in paragraph 22 of the present judgment implies that there would be no clear requirements as regards the duration of the subsequent contracts concluded between the parties to the initial contracts. Third, the second interpretation draws a distinction between the mere extension of a contract and the conclusion of a new contract involving the termination of the previous contract, which would make the application of the Universal Service Directive dependent on national concepts.

24 According to the referring court, the omission, from Article 105(1) of Directive 2018/1972, of the word 'initial' referred to in Article 30(5) of the Universal Service Directive is explained by the fact that the question of automatic extensions of fixed duration contracts is now governed by Article 105(3) of Directive 2018/1972.

25 In those circumstances, the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must "initial commitment period" [within the meaning of Article 30(5) of the Universal Service Directive] be understood to mean only the contractual term of an initial contract or also that of a renewal contract based on new declarations of intent concluded and put into effect a considerable time before the expiry of the initial contract if, compared to the initial contract, it provides for a different exchange of [obligations] between the operator and the customer?'

Consideration of the question referred

26 By its question, the referring court asks, in essence, whether Article 30(5) of the Universal Service Directive must be interpreted as meaning that the concept of 'initial commitment period' referred to in that provision covers both the duration of the initial contract concluded between a consumer and a provider of electronic communications services and that of a subsequent contract concluded between the same parties, such that that subsequent contract may not impose a commitment period exceeding 24 months, including when it was signed and put into effect before the expiry of the initial contract.

27 As a preliminary point, it should be noted that the referring court considers that the Universal Service Directive, now repealed and replaced by Directive 2018/1972, is applicable *ratione temporis* to the dispute in the main proceedings. It states, inter alia, in that regard, that in accordance with the national law applicable to that dispute, an action such as that brought by the applicant in the main proceedings can only be upheld if the contested commercial practice was unlawful at the time of the facts of that action. In the present case, those facts took place before the entry into force of Directive 2018/1972 and therefore the commercial practice at issue in the main proceedings must be assessed in the light of the Universal Service Directive.

28 In that regard, it is sufficient to recall that it is for the national courts alone to define the factual and legislative context of the questions they are asking (order of 25 March 2022, *IP and Others (Establishment of the accuracy of the facts in the main proceedings)*, C-609/21, EU:C:2022:232, paragraph 21 and the case-law cited). As far as the interpretation of provisions of national law is concerned, the Court is in principle required to rely on the description given in the order for reference. According to settled case-law, the Court does not have jurisdiction to interpret the internal law of a Member State (judgment of 5 December 2023, *Deutsche Wohnen*, C-807/21, EU:C:2023:950, paragraph 36 and the case-law cited).

29 In the light of those considerations, Article 30(5) of the Universal Service Directive must be interpreted.

30 In that regard, as regards, in the first place, the wording of that provision, clearly it may be inferred from the Spanish-, German-, Greek-, English- and French- language versions thereof that the adjective 'initial', in the feminine form, is intended to describe not 'contracts' or 'commitment', but the 'commitment period', which would mean that the EU legislature did not intend to draw a distinction between the initial contracts and the subsequent contracts concluded between the same parties. Nevertheless, other language versions of that provision, such as those in Italian and

Portuguese, may be interpreted as meaning that they seek to impose a requirement that the commitment period should not exceed 24 months only as regards the 'initial commitment', namely, in essence, the initial contract signed by the parties concerned.

31 It is settled case-law that provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all the languages of the European Union and, where there is any divergence between those various versions, the provision in question must be interpreted by reference to the general scheme and the purpose of the rules of which it forms part (judgment of 17 January 2023, *Spain* v *Commission*, C-632/20 P, EU:C:2023:28, paragraph 42 and the case-law cited).

32 In that regard, it must be noted, in the second place, that an interpretation of Article 30(5) of the Universal Service Directive according to which there can be no distinction between the initial contract and the subsequent contract concluded between the same parties is consistent with the objective of that directive.

33 As is apparent from the very title of Article 30 of the Universal Service Directive and from recital 47 of Directive 2019/136, the main objective of Article 30 is to facilitate an informed change of provider for consumers, when it is in their interests, in order to ensure those consumers take full advantage of the competitive environment. An interpretation of Article 30 as meaning that the expression 'initial commitment period' refers only to that of the initial contracts concluded between the parties concerned and not to that of subsequent contracts concluded between the same parties would lead to making it more difficult, potentially for long periods, for those consumers to change provider and thus, as the case may be, depriving them of the possibility to take full advantage of competition in the field concerned.

34 In particular, first, while it may indeed be considered that, by deciding to enter into a new contract with the same service provider, the consumer displays confidence in that service provider, that should not, however, in the light of that objective, lead to preventing that consumer from changing service provider if a more attractive offer were to present itself.

35 Second, it is apparent, in essence, from recitals 2 and 30 of the Universal Service Directive that consumer protection is one of the objectives pursued by that directive. Although, when deciding to commit again to the same service provider at the end of an initial contractual period, the consumer does indeed have some experience of the commercial practices of the other party to the contract, the fact remains that that experience may prove to be irrelevant if the new commitment entered into involves, on either side, services of a different nature from those covered by the initial contract. Accordingly, the level of protection that consumers should be entitled to cannot be lower when a consumer agrees to amendments to a contract binding that consumer to a service provider than when that consumer enters into such a contract for the first time with a new service provider.

36 That is a fortiori the case in a situation, such as that at issue in the main proceedings, where the subsequent contract concluded between the parties concerned contains amendments concerning essential terms in relation to the initial contract concluded between those parties, such as those relating to pricing, the content or the nature of the services concerned.

37 Admittedly, as is apparent from recital 47 of Directive 2009/136, the elimination of any legal, technical or practical obstacles which might make it difficult for consumers to change service providers does not go so far as to preclude the imposition of reasonable minimum contractual

periods in consumer contracts. However, an interpretation of Article 30(5) of Directive 2002/22 allowing a service provider to impose, in respect of a new commitment entered into with one of its subscribers, a longer duration than the maximum commitment period imposed by that provision cannot be regarded as consistent with the objectives pursued by the EU legislature which, by that provision, set a time limit which must not be exceeded.

38 In the light of all the foregoing considerations, the answer to the question raised is that Article 30(5) of the Universal Service Directive must be interpreted as meaning that the concept of 'initial commitment period' referred to in that provision covers both the duration of the initial contract concluded between a consumer and a provider of electronic communications services and that of a subsequent contract concluded between the same parties and such that that subsequent contract may not impose a commitment period exceeding 24 months, including when it was signed and put into effect before the expiry of the initial contract.

Costs

39 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fifth Chamber) hereby rules:

Article 30(5) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009

must be interpreted as meaning that the concept of 'initial commitment period' referred to in that provision covers both the duration of the initial contract concluded between a consumer and a provider of electronic communications services and that of a subsequent contract concluded between the same parties and such that that subsequent contract may not impose a commitment period exceeding 24 months, including when it was signed and put into effect before the expiry of the initial contract.

[Signatures]