Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

11 September 2019*

(Reference for a preliminary ruling — Consumer protection — Directive 2002/65/EC — Distance consumer loan agreement — Right of withdrawal — Exercising the right of withdrawal after the contract has been performed in full at the consumer's express request — Communication to the consumer of information regarding the right of withdrawal)

In Case C-143/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Bonn (Regional Court, Bonn, Germany), made by decision of 9 February 2018, received at the Court on 23 February 2018, in the proceedings

Antonio Romano,

Lidia Romano

v

DSL Bank — a branch of DB Privat- und Firmenkundenbank AG, formerly DSL Bank — a division of Deutsche Postbank AG,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader, A. Rosas, L. Bay Larsen and M. Safjan (Rapporteur), Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– DSL Bank — a branch of DB Privat- und Firmenkundenbank AG, by A. Menkel, Rechtsanwalt,

– the German Government, represented initially by T. Henze, M. Hellmann, E. Lankenau and A. Berg, and subsequently by M. Hellmann, E. Lankenau and A. Berg, acting as Agents,

– the European Commission, by F. Erlbacher and C. Valero, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 March 2019,

* Language of the case: German.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(2), Article 5(1), the second indent of the second subparagraph of Article 6(1), Article 6(2)(c), Article 6(6) and Article 7(4) of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ 2002 L 271, p. 16).

2 The request has been made in connection with a dispute between Mr Antonio Romano and Mrs Lidia Romano and DSL Bank — a branch of DB Privat- und Firmenkundenbank AG, formerly DSL Bank — a division of Deutsche Postbank AG ('DSL Bank'), concerning the exercise by Mr and Mrs Romano of a right to withdraw from a loan agreement concluded by the parties to the main proceedings.

Legal context

European Union law

3 Recitals 1, 3, 12, 13, 14, 23 and 24 of Directive 2002/65 read as follows:

'(1) It is important, in the context of achieving the aims of the single market, to adopt measures designed to consolidate progressively this market and those measures must contribute to attaining a high level of consumer protection, in accordance with Articles 95 and 153 [EC].

…

(3) … In order to safeguard freedom of choice, which is an essential consumer right, a high degree of consumer protection is required in order to enhance consumer confidence in distance selling.

…

(12) The adoption by the Member States of conflicting or different consumer protection rules governing the distance marketing of consumer financial services could impede the functioning of the internal market and competition between firms in the market. It is therefore necessary to enact common rules at Community level in this area, consistent with no reduction in overall consumer protection in the Member States.

(13) A high level of consumer protection should be guaranteed by this Directive, with a view to ensuring the free movement of financial services. Member States should not be able to adopt provisions other than those laid down in this directive in the fields it harmonises, unless otherwise specifically indicated in it.

(14) This directive covers all financial services liable to be provided at a distance. However, certain financial services are governed by specific provisions of Community legislation which continue to apply to those financial services. However, principles governing the distance marketing of such services should be laid down.

…

(23) With a view to optimum protection of the consumer, it is important that the consumer is adequately informed of the provisions of this directive and of any codes of conduct existing in this area and that he has a right of withdrawal.

(24) When the right of withdrawal does not apply because the consumer has expressly requested the performance of a contract, the supplier should inform the consumer of this fact.'

4 Article 1 of the directive, headed 'Object and scope', provides, in paragraph 1 thereof:

'The object of this directive is to approximate the laws, regulations and administrative provisions of the Member States concerning the distance marketing of consumer financial services.'

5 Article 2 of the directive, headed 'Definitions', provides:

'For the purposes of this Directive:

(a) "distance contract" means any contract concerning financial services concluded between a supplier and a consumer under an organised distance sales or service-provision scheme run by the supplier, who, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;

(b) "financial service" means any service of a banking, credit, insurance, personal pension, investment or payment nature;

(c) "supplier" means any natural or legal person, public or private, who, acting in his commercial or professional capacity, is the contractual provider of services subject to distance contracts;

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

…'

6 Article 3 of the directive, headed 'Information to the consumer prior to the conclusion of the distance contract', is worded as follows:

'1. In good time before the consumer is bound by any distance contract or offer, he shall be provided with the following information concerning:

…

(3) the distance contract
   (a) the existence or absence of a right of withdrawal in accordance with Article 6 and, where the right of withdrawal exists, its duration and the conditions for exercising it, including information on the amount which the consumer may be required to pay on the basis of Article 7(1), as well as the consequences of non-exercise of that right;

…

2. The information referred to in paragraph 1, the commercial purpose of which must be made clear, shall be provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the principles governing the protection of those who are unable, pursuant to the legislation of the Member States, to give their consent, such as minors.

…’

7 Article 4 of Directive 2002/65, which is headed ‘Additional information requirements’, provides:

‘1. Where there are provisions in the Community legislation governing financial services which contain prior information requirements additional to those listed in Article 3(1), these requirements shall continue to apply.

2. Pending further harmonisation, Member States may maintain or introduce more stringent provisions on prior information requirements when the provisions are in conformity with Community law.

3. Member States shall communicate to the Commission national provisions on prior information requirements under paragraphs 1 and 2 of this Article when these requirements are additional to those listed in Article 3(1). The Commission shall take account of the communicated national provisions when drawing up the report referred to in Article 20(2).

4. The Commission shall, with a view to creating a high level of transparency by all appropriate means, ensure that information, on the national provisions communicated to it, is made available to consumers and suppliers.’

8 Article 5 of the directive, which is headed ‘Communication of the contractual terms and conditions and of the prior information’, provides:

‘1. The supplier shall communicate to the consumer all the contractual terms and conditions and the information referred to in Article 3(1) and Article 4 on paper or on another durable medium available and accessible to the consumer in good time before the consumer is bound by any distance contract or offer.

2. The supplier shall fulfil his obligation under paragraph 1 immediately after the conclusion of the contract, if the contract has been concluded at the consumer’s request using a means of distance communication which does not enable providing the contractual terms and conditions and the information in conformity with paragraph 1.

…’

9 Article 6 of Directive 2002/65, which is headed ‘Right of withdrawal’, provides:

‘1. The Member States shall ensure that the consumer shall have a period of 14 calendar days to withdraw from the contract without penalty and without giving any reason. …

The period for withdrawal shall begin:

– either from the day of the conclusion of the distance contract … or

– from the day on which the consumer receives the contractual terms and conditions and the information in accordance with Article 5(1) or (2), if that is later than the date referred to in the first indent.

…

2. The right of withdrawal shall not apply to:

…

(c) contracts whose performance has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal.

3. Member States may provide that the right of withdrawal shall not apply to:

(a) any credit intended primarily for the purpose of acquiring or retaining property rights in land or in an existing or projected building, or for the purpose of renovating or improving a building, or

(b) any credit secured either by mortgage on immovable property or by a right related to immovable property …

…

6. If the consumer exercises his right of withdrawal he shall, before the expiry of the relevant deadline, notify this following the practical instructions given to him in accordance with Article 3(1)(3)(d) by means which can be proved in accordance with national law. The deadline shall be deemed to have been observed if the notification, if it is on paper or on another durable medium available and accessible to the recipient, is dispatched before the deadline expires.

…'

10 Article 7 of the directive, which is headed 'Payment of the service provided before withdrawal', provides:

'1. When the consumer exercises his right of withdrawal under Article 6(1) he may only be required to pay, without any undue delay, for the service actually provided by the supplier in accordance with the contract. The performance of the contract may only begin after the consumer has given his approval. …

…

3. The supplier may not require the consumer to pay any amount on the basis of paragraph 1 unless he can prove that the consumer was duly informed about the amount payable, in conformity with Article 3(1)(3)(a). However, in no case may he require such payment if he has commenced the performance of the contract before the expiry of the withdrawal period provided for in Article 6(1) without the consumer's prior request.

4. The supplier shall, without any undue delay and no later than within 30 calendar days, return to the consumer any sums he has received from him in accordance with the distance contract, except for the amount referred to in paragraph 1. This period shall begin from the day on which the supplier receives the notification of withdrawal.

5. The consumer shall return to the supplier any sums and/or property he has received from the supplier without any undue delay and no later than within 30 calendar days. …'

11 Article 11 of Directive 2002/65, headed 'Sanctions', provides:

'Member States shall provide for appropriate sanctions in the event of the supplier's failure to comply with national provisions adopted pursuant to this directive.

They may provide for this purpose in particular that the consumer may cancel the contract at any time, free of charge and without penalty.

These sanctions must be effective, proportional and dissuasive.'

German law

12 Paragraph 312b of the Bürgerliches Gesetzbuch (German Civil Code), in the version applicable to the dispute in the main proceedings ('the BGB'), provides, in subparagraph 1 thereof:

'"Distance contracts" are contracts for the supply of goods or services, including financial services, concluded between a seller or supplier and a consumer exclusively by the use of means of distance communication, except where the contract is concluded under an organised distance sales or service-provision scheme. "Financial services" within the meaning of the first sentence are any services of a banking, credit, insurance, personal pension, investment or payment nature.'

13 Paragraph 312d of the BGB provides:

'1. In the case of a distance contract the consumer has a right of withdrawal under Paragraph 355. …

2. Notwithstanding the first sentence of Paragraph 355(2), the withdrawal period does not begin before the information requirements under Paragraph 312c(2) have been fulfilled by the seller or supplier … and, in the case of services, not before the day on which the contract is concluded.

3. In the case of services, the right of withdrawal is also extinguished in the following cases:

(1) In the case of financial services, where performance of the contract has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal …

…

5. In addition, there is no right of withdrawal in the case of distance contracts in respect of which the consumer already has, on the basis of Paragraph 495 and Paragraphs 499 to 507, a right of withdrawal or right of repayment under Paragraph 355 or Paragraph 356. In the case of such contracts, the second subparagraph applies *mutatis mutandis*.

6. In the case of distance contracts in relation to financial services, notwithstanding Paragraph 357(1), the consumer must pay compensation for the value of the service provided in accordance with the governing termination on grounds of non-performance only if he has been informed of this legal effect before he accepts the contract and if he has expressly agreed to the supplier beginning performance of the service before the end of the withdrawal period.'

14 Paragraph 346 of the BGB provides:

'1. If one contractual party has contractually reserved the right to terminate the contract or if he has a statutory right of termination, then, if termination occurs, any services received shall be returned, and the benefits derived from such services surrendered.

2. In lieu of restitution or surrender, the debtor must provide compensation for value to the extent that

(1) restitution or surrender is excluded by virtue of the nature of what has been obtained …

If consideration is specified in the contract, this is to be taken as a basis when calculating the compensation for value; if compensation for value for the benefit of use of a loan is to be paid, evidence may be adduced that the value of the benefit of use was in fact less.'

15 Paragraph 355 of the BGB provides, in subparagraph 3 thereof:

'The right of withdrawal shall be extinguished at the latest 6 months after the contract is concluded. In the case of the supply of goods the period shall not commence before the date on which they are received by the recipient. Notwithstanding the first sentence, the right of withdrawal shall not be extinguished if the consumer has not been duly informed of his right of withdrawal; in the case of distance contracts in relation to financial services, in addition, the right of withdrawal shall not be extinguished if the supplier has not properly fulfilled his notification obligations under Paragraph 312c(2)(1).'

16 Paragraph 495 of the BGB provides, in subparagraph 1 thereof:

'In the case of consumer loan contracts, the borrower has a right of withdrawal under Paragraph 355.'

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

17 In October 2007, Mr and Mrs Romano concluded a contract with the credit institution DSL Bank for a loan to finance the property which they occupied as their private residence.

18 The contract, a fixed annuity loan, stipulated a fixed rate of interest until 31 December 2017. It stipulated that the borrower should make an initial repayment of 2% of the capital and, following that, monthly instalments of EUR 548.53 in interest and capital repayments. Repayment was to begin on 30 November 2007, with the payment of the first instalment. The granting of the loan was contingent on the creation of a mortgage as security over the property.

19 The contract was concluded in the following manner.

20 DSL Bank sent Mr and Mrs Romano a pre-formulated 'loan application', together with a notice on the right of withdrawal, a summary of the terms for repayment of the capital, the general terms and conditions of the loan, and a document entitled 'information and instructions for the consumer relating to the housing loan'.

21 The notice on the right of withdrawal stated that 'the right of withdrawal [would be] extinguished early if the contract [was] performed in full and the borrower [had] expressly agreed to this'.

22 Mr and Mrs Romano signed the loan application, the notice on the right of withdrawal, and the confirmation of receipt of the information and instructions for the consumer relating to the housing loan, and sent DSL Bank the signed copies of those documents. DSL Bank then approved Mr and Mrs Romano's loan application in writing.

23 Mr and Mrs Romano then provided the agreed security. At their request, DSL Bank disbursed the loan and Mr and Mrs Romano then began making the agreed repayments.

24 By letter of 8 June 2016, Mr and Mrs Romano gave notice that they were exercising their right of withdrawal from the contract concluded in 2007, arguing that the notice on the right of withdrawal was not consistent with German legislation.

25 DSL Bank disputed Mr and Mrs Romano's entitlement to exercise a right of withdrawal, whereupon they brought an action before the Landgericht Bonn (Regional Court, Bonn, Germany) seeking a declaration that, as a result of their withdrawal, DSL Bank could no longer invoke its rights under the loan agreement. They also claimed that DSL Bank should return the sums they had paid under the contract up to the time of withdrawal, together with compensation for the benefit of the use thereof.

26 It is apparent from the order for reference that the loan agreement at issue in the main proceedings is a distance contract relating to a financial service, within the meaning of Paragraph 312b of the BGB.

27 The referring court considers that the proviso stated in the notice on the right of withdrawal concerning the extinction of that right, mentioned in paragraph 21 above, is based on Paragraph 312d(3)(1) of the BGB, which transposes Article 6(2)(c) of Directive 2002/65 into German law. However, according to the case-law of the Bundesgerichtshof (Federal Court of Justice, Germany), that provision of the BGB does not apply to consumer credit agreements, including distance contracts. In the case of such contracts, the consumer has a right of withdrawal governed not by Paragraph 312d(3)(1) of the BGB, but by Paragraph 355(3) of the BGB, read in conjunction with Paragraph 495(1) thereof. Paragraph 355(3) provides that the right of withdrawal is not extinguished if the consumer has not been duly informed of his right of withdrawal. Furthermore, it does not provide that the right of withdrawal is extinguished where performance of the contract has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal.

28 Given those circumstances, the referring court questions whether the proviso concerning the extinction of the right of withdrawal, mentioned in paragraph 21 above, is correct and, consequently, whether the consumer has been duly informed of his right.

29 Finally, the referring court notes that the wording of the notice on the right of withdrawal may be regarded as sufficiently clear and precise for the average consumer as defined in the case-law of the Court of Justice, that is to say, a reasonably well-informed and reasonably observant and circumspect consumer, having regard to all the relevant facts and all the circumstances surrounding the conclusion of the contract. However, it considers that the notice was not sufficiently clear and precise for the average consumer as defined in German case-law, which refers to a consumer who is less circumspect in legal matters.

30 Taking the view that the resolution of the dispute in the main proceedings is dependent on the interpretation of certain provisions of Directive 2002/65, the Landgericht Bonn (Regional Court, Bonn) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 6(2)(c) of Directive 2002/65/EC to be interpreted as precluding national legislation or practice, such as that at issue in the main proceedings, which does not provide that the right of withdrawal is no longer applicable in the case of distance loan agreements where performance of the contract has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal?

(2) Are Article 4(2), Article 5(1), the second indent of the second subparagraph of Article 6(1) and Article 6(6) of Directive 2002/65/EC to be interpreted as meaning that, for the purpose of determining whether the information required by national law pursuant to Article 5(1) and Article 3(1)(3)(a) of Directive 2002/65/EC has been duly disclosed to the consumer and for determining the exercise of the right of withdrawal by the consumer pursuant to national law, the reference consumer is the average, reasonably well-informed and reasonably observant and circumspect consumer, having regard to all the relevant facts and all the circumstances surrounding the conclusion of the contract?

(3) In the event that Questions 1 and 2 are answered in the negative:

Is Article 7(4) of Directive 2002/65/EC to be interpreted as precluding national legislation which provides that, after notice of withdrawal from a distance consumer loan agreement has been given, the supplier must also pay to the consumer, in addition to the sum he has received from the consumer in accordance with the agreement, compensation for the benefit of the use of that sum?'

Consideration of the questions referred

The first question

31 By its first question, the referring court essentially asks whether Article 6(2)(c) of Directive 2002/65/EC is to be interpreted as precluding national legislation, as interpreted by national case-law, which, in the case of a distance contract relating to financial services concluded between a supplier and a consumer, does not provide that the consumer no longer has a right of withdrawal in the event that performance of the contract has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal.

32 It must be remembered in this connection that, pursuant to Article 6(2)(c) of the directive, the right of withdrawal enjoyed by a consumer who concludes with a supplier a distance contract relating to financial services does not apply to contracts where performance of the contract has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal.

33 In the case in the main proceedings, it is clear from the order for reference that Paragraph 312d(3)(1) of the BGB, which transposes Article 6(2)(c) of the Directive 2002/65 into German law, provides that the right of withdrawal is extinguished if performance of a contract relating to financial services has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal. It is also clear from the order for reference, however, that, in accordance with the case-law of the Bundesgerichtshof (Federal Court of Justice), that provision of the BGB does not apply to consumer credit agreements, including distance contracts, and that, in the case of such contracts, the right of withdrawal is not extinguished in the circumstances mentioned in Paragraph 312d(3)(1) of the BGB.

34 It is clear from Article 1(1) of Directive 2002/65, read in the light of recital 13 thereof, that, in principle, the directive is fully harmonising with regard to the matters it governs. Indeed, as recital 13 states, the Member States should not be able to adopt provisions other than those laid down in the directive in the fields it harmonises, unless otherwise specifically indicated in it.

35 In so far as concerns the case in which the right of withdrawal does not apply, in accordance with Article 6(2)(c) of Directive 2002/65, that article does not contain any provision authorising the Member States to provide in their national legislation that consumers should retain a right of withdrawal in the event that the contract has been performed in full by both parties at the consumer's express request before the consumer exercises his right of withdrawal.

36 That being so, it must be concluded that Article 6(2)(c) of Directive 2002/65, read in conjunction with Article 1(1) thereof and in the light of recital 13 of the directive, does preclude a Member State from providing that consumers have a right of withdrawal in the circumstances mentioned in the preceding paragraph.

37 It is important to remember in this connection that the principle of interpretation in conformity with EU law requires the national authorities to do everything within their power, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that EU law is fully effective and to achieving an outcome consistent with the objective pursued by it (judgment of 8 May 2019, *Praxair MRC*, C-486/18, EU:C:2019:379, paragraph 37 and the case-law cited).

38 Although the obligation to interpret national law in a manner consistent with EU law cannot serve as the basis for an interpretation of national law *contra legem*, national courts must alter their established case-law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of a directive (judgment of 8 May 2019, *Związek Gmin Zagłębia Miedziowego*, C-566/17, EU:C:2019:390, paragraph 49 and the case-law cited).

39 In the light of the foregoing considerations, the answer to the first question is that Article 6(2)(c) of Directive 2002/65, read in conjunction with Article 1(1) thereof and in the light of recital 13 of the directive, is to be interpreted as precluding national legislation, as interpreted by national case-law, which, in the case of a distance contract relating to financial services concluded between a supplier and a consumer, does not provide that the consumer no longer has a right of withdrawal in the event that performance of the contract has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal. It is for the national court to take the whole body of domestic law into consideration and to apply the interpretative methods recognised by domestic law, with a view to achieving an outcome consistent with that provision, and to alter established national case-law, where necessary, if it is based on an interpretation of national law that is incompatible with that provision.

The second question

Preliminary observations

40 It should be observed as a preliminary point that, in the context of the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. The Court has a duty to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court of Justice by those courts (judgment of 8 May 2019, *PI*, C-230/18, EU:C:2019:383, paragraph 42 and the case-law cited).

41 The second question concerns the interpretation of Article 4(2), Article 5(1), the second indent of the second subparagraph of Article 6(1) and Article 6(6) of Directive 2002/65/EC.

42 It is apparent from the order for reference that, in this case, DSL Bank communicated to Mr and Mrs Romano, prior to the conclusion of the contract at issue in the main proceedings, the information that 'the right of withdrawal will be extinguished early if the contract is performed in full and the borrower has expressly agreed to this'.

43 The referring court considers that, although that information corresponds to the case in which the right of withdrawal does not apply, in accordance with Article 6(2)(c) of Directive 2002/65, it is nevertheless incorrect, being inconsistent with national legislation, as interpreted by the Bundesgerichtshof (Federal Court of Justice), under which the right of withdrawal is not extinguished even if the contract has been performed in full and the borrower has expressly agreed to this.

44 It must be borne in mind in this connection that, in accordance with Article 3(1)(3)(a) of Directive 2002/65, the consumer is to be provided with information concerning, inter alia, the existence or absence of a right of withdrawal, in accordance with Article 6 of the directive, in good time before he is bound by any distance contract or offer. Paragraph 2 of Article 3 of the directive provides that the information referred to in paragraph 1, the commercial purpose of which must be made clear, is to be provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the principles governing the protection of those who are unable, pursuant to the legislation of the Member States, to give their consent, such as minors.

45 Pursuant to Article 5(1) of Directive 2004/65, the supplier must communicate to the consumer all the contractual terms and conditions and the information referred to in Article 3(1) and Article 4 of the directive on paper or on another durable medium available and accessible to the consumer in good time before the consumer is bound by any distance contract or offer.

46 In light of the foregoing considerations, the second question must be reformulated so that it addresses the issue of whether Article 5(1) of Directive 2002/65, read in conjunction with Article 3(1)(3)(a) and Article 6(2)(c) thereof, is to be interpreted as meaning that the obligation upon a supplier who concludes with a consumer a distance contract relating to financial services to communicate to that consumer in a clear and comprehensible manner, before he is bound by any distance contract or offer, information concerning the existence of a right of withdrawal is fulfilled where the supplier informs the consumer that the right of withdrawal does not apply to a contract which has been performed in full by both parties at the consumer's express request before the consumer exercises his right of withdrawal, even though that information is not consistent with national legislation, as interpreted by national case-law, under which, in such circumstances, the right of withdrawal does in fact apply.

The question

47 Pursuant to Article 5(1) of Directive 2002/65, read in conjunction with Article 3(1)(3)(a) thereof, the supplier is required to communicate to the consumer, before the consumer is bound by any distance contract or offer, information concerning, inter alia, the existence or absence of the right of withdrawal provided for in Article 6 of the directive.

48 Since, in accordance with Article 6(2)(c) of Directive 2002/65, the right of withdrawal does not apply to contracts whose performance has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal, the consumer must be informed, at the pre-contractual stage, that there is no right of withdrawal in the circumstances mentioned in that provision.

49 Admittedly, as is clear from Article 4(2) of Directive 2002/65, pending further harmonisation, Member States may maintain or introduce more stringent provisions on prior information requirements when the provisions are in conformity with EU law.

50 However, as stated in the answer to the first question, Article 6(2)(c) of Directive 2002/65, read in conjunction with Article 1(1) thereof and in the light of recital 13 of the directive, is to be interpreted as precluding national legislation which, in the case of a distance contract relating to financial services concluded between a supplier and a consumer, does not provide that the consumer's right of withdrawal is no longer applicable in the event that performance of the contract has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal.

51 That being so, a Member State is not at liberty to lay down in national legislation an obligation upon a seller or supplier who concludes with a consumer a distance contract relating to financial services to communicate to that consumer, before he is bound by any distance contract or offer, information that is at odds with the mandatory provisions of Directive 2002/65, namely information about the existence of a right of withdrawal where the contract has been performed in full by both parties at the consumer's express request before the consumer exercises his right of withdrawal.

52 Given that Directive 2002/65 provides that the consumer's right of withdrawal is not applicable in the circumstances mentioned in the previous paragraph, it cannot be held that a seller or supplier has failed in his obligation under Article 5(1) of the directive, read in conjunction with Article 3(1)(3)(a) and Article 6(2)(c) thereof, to provide the consumer with the requisite information where he has abstained from informing the consumer of the existence, under national legislation, of a right of withdrawal in such circumstances and has instead informed him that the right of withdrawal does not apply in such circumstances.

53 It is appropriate to add that, pursuant to Article 3(2) of Directive 2002/65, read in conjunction with Article 3(1)(3)(a) thereof, the information concerning the existence or absence of a right of withdrawal must be provided to the consumer in a clear and comprehensible manner.

54 The perception of the average consumer, that is to say a reasonably well-informed and reasonably observant and circumspect consumer, is all that is relevant in that regard (see, by analogy, the judgment of 7 August 2018, *Verbraucherzentrale Berlin*, C-485/17, EU:C:2018:642, paragraph 44 and the case-law cited).

55 Indeed, Directive 2002/65 is intended to bring about the full harmonisation of national legislation, and this entails the adoption of an interpretation of the model of the reference consumer that is common to all Member States.

56 In light of the foregoing considerations, the answer to the second question is that Article 5(1) of Directive 2002/65, read in conjunction with Article 3(1)(3)(a) and Article 6(2)(c) thereof, is to be interpreted as meaning that the obligation upon a supplier who concludes with a consumer a distance contract relating to financial services to communicate to that consumer in a manner which would be clear and comprehensible to an average, reasonably well-informed and reasonably observant and circumspect consumer, in accordance with the requirements of EU law, before the consumer is bound by any distance contract or offer, information concerning the existence of a right of withdrawal is fulfilled where the supplier informs the consumer that the right of withdrawal does not apply to a contract which has been performed in full by both parties at the consumer's express request before the consumer exercises his right of withdrawal, even though that information is not consistent with national legislation, as interpreted by national case-law, under which, in such circumstances, the right of withdrawal does in fact apply.

The third question

57 The third question is relevant only in the event that the first and second questions are answered in the negative. Given the answers to the first and second questions, there is no need to answer the third question.

Costs

58 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:

1. **Article 6(2)(c) of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC, read in conjunction with Article 3(1)(3)(a) and Article 6(2)(c) thereof, is to be interpreted as meaning that the obligation upon a supplier who concludes with a consumer a distance contract relating to financial services to communicate to that consumer in a clear and comprehensible manner, before he is bound by any distance contract or offer, information concerning the existence of a right of withdrawal is fulfilled where the supplier informs the consumer that the right of withdrawal does not apply to a contract which has been performed in full by both parties at the consumer's express request before the consumer exercises his right of withdrawal, even though that information is not consistent with national legislation, as interpreted by national case-law, under which, in such circumstances, the right of withdrawal does in fact apply.**

2. **In light of the foregoing considerations, the answer to the second question is that Article 5(1) of Directive 2002/65, read in conjunction with Article 3(1)(3)(a) and Article 6(2)(c) thereof, is to be interpreted as meaning that the obligation upon a supplier who concludes with a consumer a distance contract relating to financial services to communicate to that consumer in a manner which would be clear and comprehensible to an average, reasonably well-informed and reasonably observant and circumspect consumer, in accordance with the requirements of EU law, before the consumer is bound by any distance contract or offer, information concerning the existence of a right of withdrawal is fulfilled where the supplier informs the consumer that the right of withdrawal does not apply to a contract which has been performed in full by both parties at the consumer's express request before the consumer exercises his right of withdrawal, even though that information is not consistent with national legislation, as interpreted by national case-law, under which, in such circumstances, the right of withdrawal does in fact apply.**

[Signatures]