Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

15 May 2025 *

(Reference for a preliminary ruling – Electronic commerce – Directive 2000/31/EC – Commercial communications – Article 6(c) – Concept of 'promotional offers' – Online advertising setting out a specific payment arrangement – Purchase on invoice involving a deferral of payment of the sales price – Information on the need for a prior assessment of the consumer's creditworthiness only during the online ordering process)

In Case C-100/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 21 December 2023, received at the Court on 7 February 2024, in the proceedings

Verbraucherzentrale Hamburg e.V.

v

bonprix Handelsgesellschaft mbH,

THE COURT (Second Chamber),

composed of K. Jürimäe, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Second Chamber, M. Gavalec (Rapporteur), Z. Csehi and F. Schalin, Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– bonprix Handelsgesellschaft mbH, by M. Ringer and M. Sahner, Rechtsanwälte,

– the European Commission, by G. von Rintelen and J. Szczodrowski, acting as Agents,

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

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6(c) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

2 The request has been made in proceedings between Verbraucherzentrale Hamburg e.V., a consumer protection association ('the consumer protection association'), and bonprix Handelsgesellschaft mbH, concerning an advertising message, appearing on the latter's website, concerning a specific payment arrangement.

Legal context

European Union law

Directive 2000/31

3 Recitals 7, 10, 29 and 60 of Directive 2000/31 read as follows:

'(7) In order to ensure legal certainty and consumer confidence, this Directive must lay down a clear and general framework to cover certain legal aspects of electronic commerce in the internal market.

…

(10) In accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market; where action at [EU] level is necessary, and in order to guarantee an area which is truly without internal frontiers as far as electronic commerce is concerned, the Directive must ensure a high level of protection of objectives of general interest, in particular the protection of minors and human dignity, consumer protection and the protection of public health; …

…

(29) Commercial communications are essential for the financing of information society services and for developing a wide variety of new, charge-free services; in the interests of consumer protection and fair trading, commercial communications, including discounts, promotional offers and promotional competitions or games, must meet a number of transparency requirements; …

…

(60) In order to allow the unhampered development of electronic commerce, the legal framework must be clear and simple, predictable and consistent with the rules applicable at international level so that it does not adversely affect the competitiveness of European industry or impede innovation in that sector.'

4 Article 1 of that directive, headed ‘Objective and scope’, provides:

‘1. This Directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States.

…’

5 Article 2 of that directive, entitled ‘Definitions’, provides:

‘For the purposes of this Directive, the following terms shall bear the following meanings:

…

(f) “commercial communication”: any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession. …

…’

6 Article 6 of Directive 2000/31, entitled ‘Information to be provided’, in Section 2 thereof on ‘Commercial communications’, provides:

‘In addition to other information requirements established by [EU] law, Member States shall ensure that commercial communications which are part of, or constitute, an information society service comply at least with the following conditions:

…

(c) promotional offers, such as discounts, premiums and gifts, where permitted in the Member State where the service provider is established, shall be clearly identifiable as such, and the conditions which are to be met to qualify for them shall be easily accessible and be presented clearly and unambiguously;

(d) promotional competitions or games, where permitted in the Member State where the service provider is established, shall be clearly identifiable as such, and the conditions for participation shall be easily accessible and be presented clearly and unambiguously.’

Directive 2005/29

7 Article 3 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’) (OJ 2005 L 149, p. 22), as amended by Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 (OJ 2019 L 328, p. 7) (‘Directive 2005/29’), entitled ‘Scope’, provides, in paragraph 4 thereof:

‘In the case of conflict between the provisions of this Directive and other [EU] rules regulating specific aspects of unfair commercial practices, the latter shall prevail and apply to those specific aspects.’

8 Article 7 of that directive, entitled ‘Misleading omissions’, provides:

‘1. A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

2. It shall also be regarded as a misleading omission when, taking account of the matters described in paragraph 1, a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in that paragraph or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

…

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

…

(d) the arrangements for payment, delivery and performance, if they depart from the requirements of professional diligence;

…’

Directive 2011/83/EU

9 Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64), states, in Article 6 thereof entitled ‘Information requirements for distance and off-premises contracts’:

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

…

(g) the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader’s complaint handling policy;

…

8. The information requirements laid down in this Directive are in addition to information requirements contained in … Directive [2000/31] and do not prevent Member States from imposing additional information requirements in accordance with those Directives.

…’

German law

10 Paragraph 6(1)(3) of the Telemediengesetz (Law on Electronic Media), of 26 February 2007 (BGBl. 2007 I, p. 179), is intended to transpose Article 6(c) of Directive 2000/31 and provides that, as regards the obligations of service providers in relation to commercial communications which are electronic media or parts of electronic media, promotional offers, such as discounts, premiums and gifts, must be clearly identifiable as such, and the conditions which are to be met to qualify for them must be easily accessible and presented clearly and unambiguously.

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

11 bonprix is a company engaged in online trading. In December 2021, the following advertising message appeared on its website: ‘Convenient purchase on invoice’.

12 The consumer protection association contested that advertising practice, taking the view that it is misleading in that it does not enable the consumer to understand that the payment arrangement thus proposed is subject to a prior assessment of his or her creditworthiness.

13 By judgment of 21 July 2022, the Landgericht Hamburg (Regional Court, Hamburg, Germany) dismissed that association’s action seeking an order requiring bonprix to cease that practice.

14 The appeal brought by the consumer protection association against that judgment before the Hanseatisches Oberlandesgericht (Higher Regional Court, Hamburg, Germany) was dismissed. That court held that the advertising practice at issue is not misleading and that bonprix had not infringed the obligation to provide information laid down in Article 6(1)(3) of the Law on Electronic Media. The advertising message at issue does not constitute a ‘promotional offer’, within the meaning of that provision, since the purchase of goods on invoice does not confer on the purchaser a monetary advantage specific to such a promotional offer. Since the only advantage for the purchaser is the possibility of paying on a deferred basis, he or she does not enjoy any advantage going beyond the actual purchase.

15 Hearing the appeal on a point of law brought by the consumer protection association, the Bundesgerichtshof (Federal Court of Justice, Germany), which is the referring court in the present case, is uncertain as to the scope of the obligation to provide information laid down in Article 6(c) of Directive 2000/31. Taking the view that the advertising message at issue constitutes a commercial communication and forms an integral part of an information society service, it wonders whether that message falls within the concept of ‘promotional offer’ within the meaning of that provision.

16 In that regard, the referring court submits that, although a literal interpretation of that concept may be answered in the affirmative, a contextual analysis taking into account the illustrative examples of that concept referred to in that provision, namely ‘discounts, premiums and gifts’, may nevertheless suggest that the EU legislature did not intend to refer to mere payment arrangements due to the exceptional nature of the measures thus listed.

17 That being so, that court considers that the deferral of payment of the sales price linked to a purchase on invoice represents, in any event, a monetary advantage, even if it is minimal. Similarly, the mere promise of preferential treatment could be regarded as sufficient to characterise a promotional offer.

18 Furthermore, the referring court states that the fact that an advertising message setting out a particular payment arrangement may fall within the concept of 'promotional offer', is consistent with the objective of Directive 2000/31 which is to protect consumers, since the possibility of purchasing on invoice offers the purchaser advantages both of a legal nature and in terms of safety.

19 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does advertising with a payment arrangement (in the present case: 'convenient purchase on invoice'), which while having only a low monetary value, contributes to the safety and legal interests of the consumer (in the present case, no disclosure of sensitive payment data; in the case of rescission of the contract, no reclamation of an advance payment) constitute a promotional offer within the meaning of Article 6(c) of Directive 2000/31 …?'

Consideration of the question referred

20 By its single question, the referring court asks, in essence, whether Article 6(c) of Directive 2000/31 must be interpreted as meaning that the concept of 'promotional offer', within the meaning of that provision, covers an advertising message appearing on the website of an undertaking active in online trading and involving a particular payment arrangement.

21 Article 6 of Directive 2000/31 provides that, in addition to other information requirements established by EU law, Member States are to ensure that commercial communications which are part of, or constitute, an information society service meet certain minimum conditions. Thus, under point (c) of that article, where promotional offers, such as discounts, premiums and gifts, are authorised in the Member State where the service provider is established, those offers must be clearly identifiable as such and the conditions which are to be met to qualify for them must be easily accessible and be presented clearly and unambiguously.

22 It follows from the wording of Article 6(c) of Directive 2000/31, which appears in Section 2 thereof, entitled 'Commercial communications', that the concept of 'promotional offer' itself falls within the generic concept of 'commercial communication', which is defined in Article 2(f) of that directive as referring, in principle, to any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession.

23 Since Directive 2000/31 does not, however, define precisely what is meant by 'promotional offer' within the meaning of Article 6(c) of that directive, the content and scope of that autonomous concept of EU law must be determined by considering its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it is part (see, to that effect, judgments of 14 July 2022, *Porsche Inter Auto and Volkswagen*, C-145/20, EU:C:2022:572, paragraph 88 and the case-law cited, and of 30 April 2024, *Trade Express-L and DEVNIA TSIMENT*, C-395/22 and C-428/22, EU:C:2024:374, paragraph 65).

24 As regards, in the first place, the usual meaning in everyday language of the term 'promotional offer', it follows from an analysis of the various language versions of Article 6(c) of Directive 2000/31 that that concept may, in general, be understood as covering any form of communication by which a provider seeks to promote goods or services to the recipient by giving him or her an advantage. A literal interpretation alone of that concept does not, however, make it possible to determine unequivocally the conditions which such an advantage must satisfy in order to characterise it.

25 As regards, in the second place, the context in which the concept of 'promotional offer' is used, it should be noted that it is accompanied, in Article 6(c) of Directive 2000/31 itself, by a non-exhaustive list of examples such as 'discounts, premiums and gifts'. For reasons of consistency, communications covered by that provision must therefore have the characteristics common to discounts, premiums and gifts.

26 In that regard, it should be noted, first, that the discounts, premiums and gifts referred to in that provision confer on their recipient an objective advantage, so that the reality of that advantage cannot be left to the subjective assessment of that recipient.

27 Second, those same reasons of consistency mean that the characteristics which are common to commercial communications relating to promotional competitions and games, under Article 6(d) of Directive 2000/31, must be distinguished from commercial communications covered by Article 6(c) of that directive. Thus, unlike promotional competitions and games, promotional offers provide a certain advantage which does not depend on chance or selection.

28 Third, the discounts, premiums and gifts referred to in Article 6(c) of Directive 2000/31 are characterised by their incentive nature, in that they are capable of influencing the recipient's behaviour in his or her choice of goods or services, and by the objective and certain nature of the advantage which they confer on him or her. It follows that, in order to constitute a 'promotional offer' within the meaning of that provision, any communication intended to promote goods or services must lead, for the benefit of the recipient, to the grant of an objective and certain advantage which is capable of influencing that recipient's consumption behaviour.

29 Contrary to what bonprix has argued in its written observations, it cannot be inferred from the words 'discounts, premiums and gifts' that a 'promotional offer', within the meaning of that provision, is necessarily defined by the existence of a substantial monetary advantage for its recipient.

30 On the one hand, both discounts, premiums and gifts may have little, or even negligible, monetary value. On the other hand, while it may indeed be accepted that a discount entails a reduction in the financial consideration payable by the recipient and, therefore, a quantifiable monetary advantage for that recipient, that is not necessarily the case with a premium or gift, the monetary value of which may prove impossible, in practice, to establish objectively. The significance of the advantage in question on the financial situation of its recipient is therefore not the only factor capable of characterising the concept of 'promotional offer'. As is apparent from paragraph 28 above, only the inherently incentive nature of the promotional offer in relation to a good or a service and the objective and certain nature of the advantage which it confers on the recipient are decisive.

31 Moreover, in so far as bonprix has also maintained, in that context, that a 'promotional offer' is defined by its exceptional nature, it is sufficient to note that measures such as discounts, premiums and gifts are not necessarily limited in time, but may, depending on the applicable national rules, be systematically and permanently integrated into the promotional policies of service providers. Therefore, the allegedly exceptional nature of such measures cannot be taken as an argument to exclude payment arrangements from the concept of 'promotional offer'.

32 It thus follows from a literal and contextual interpretation of the concept of 'promotional offer', within the meaning of Article 6(c) of Directive 2000/31, that that concept must be understood as referring to any commercial communication by which a service provider seeks to promote goods or services by providing the recipient of that communication with an advantage which is objective, certain and capable of influencing his or her behaviour in the choice of such goods or services. The form of that advantage, as well as its extent, is immaterial, since it may be, inter alia, monetary, legal or mere convenience, such as to enable the recipient to gain time.

33 In the third place, the interpretation set out in the preceding paragraph is supported by a teleological interpretation of Article 6(c) of Directive 2000/31, since the objective of that directive, as is apparent from a combined reading of Article 1(1) and recitals 7, 10 and 60 thereof, is to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States and ensuring a high level of consumer protection without, however, hindering the development of electronic commerce and the competitiveness of European industry. It follows from recital 29 of that directive that the transparency requirements laid down in Article 6 thereof are established in the interests of consumer protection and fair trading.

34 In the context of an online trading activity, the submission of an advertising message setting out a payment arrangement subject to the conditions laid down in Article 6(c) of Directive 2000/31 contributes to a high level of consumer protection, without, however, entailing unreasonable economic burdens for service providers.

35 The service provider's obligation to provide information under Article 6(c) of Directive 2000/31 implies that, as soon as the recipient of an advertising message setting out a specific payment arrangement accesses the sales website displaying it, he or she must be informed of the specific conditions allowing him or her to benefit from the promotional offer, thus enabling him or her to assess from the outset his or her eligibility for that offer, having regard, where appropriate, to his or her financial situation. Such an interpretation is, moreover, consistent with the requirement, inherent in Directive 2000/31, that the interests of consumers must be protected at all stages of contact between the provider and the recipient of a service (see, to that effect, judgment of 16 October 2008, *Bundesverband der Verbraucherzentralen und Verbraucherverbände*, C-298/07, EU:C:2008:572, paragraph 22).

36 It follows that, where the advantage linked to a promotional offer relating to a particular payment arrangement is subject to a favourable outcome of the prior assessment of the consumer's creditworthiness, the consumer must be informed of this, in a simple, precise and unequivocal manner, so that he or she can realise that, by making use of that offer, he or she will probably be refused the conclusion of a contract in the event of an unfavourable outcome of that assessment.

37 In order to provide the referring court with a full answer, it should also be noted that, as is apparent from Article 6 of Directive 2000/31, the transparency requirements contained in that provision are additional to the other information requirements laid down by EU law. The interpretation set out in paragraph 32 above is fully compatible with the information requirements on arrangements for payment laid down in Directives 2005/29 and 2011/83.

38 As regards Directive 2005/29, it should be noted that, in accordance with Article 3(4) thereof, in the case of conflict between the provisions of that directive and other EU rules regulating specific aspects of unfair commercial practices, those other rules prevail and apply to those specific aspects. Thus, the requirements resulting from Article 6 of Directive 2000/31 take precedence over the provisions of Directive 2005/29.

39 In any event, it follows from Article 7(1), (2) and (4)(d) of Directive 2005/29 that, in the case of an invitation to purchase, information relating to the arrangements for payment is to be regarded as material, so that its omission, concealment or provision in an unclear, unintelligible, ambiguous or untimely manner constitutes a commercial practice which is regarded as misleading. The obligation of a service provider to indicate, under Directive 2000/31, from the stage of online advertising relating to a particular payment arrangement, the conditions for benefiting from such an offer, is not inconsistent with that provision.

40 Furthermore, Article 6(1)(g) of Directive 2011/83 provides that, before the consumer is bound by a distance or off-premises contract or any corresponding offer, the trader must inform that consumer of the arrangements for payment. Under that provision, the trader is therefore required to inform the consumer of the conditions enabling him or her to use a particular arrangement for payment only at the time when, during the online ordering process, the consumer is preparing to make the choice as to that arrangement, whereas, as is apparent from paragraph 35 above, the application of Article 6(c) of Directive 2000/31 to advertising messages setting out a particular payment arrangement means that, as regards contracts falling within the scope of Directive 2011/83, the trader must inform the consumer of the conditions as soon as the consumer has access to the online sales site displaying that type of message.

41 Such a situation is not, however, incompatible with Directive 2011/83, since, in accordance with the first subparagraph of Article 6(8) thereof, the information requirements laid down by that directive are in addition to the information requirements contained in Directive 2000/31 and do not prevent Member States from imposing additional information requirements in accordance with the latter directive.

42 In the present case, it is apparent from the order for reference that the case in the main proceedings concerns an advertising message on the bonprix website showing the possibility of a purchase on invoice.

43 In order to assess whether such a commercial communication satisfies the conditions set out in paragraph 32 above, it should be noted, as the referring court has done, that the deferral of payment linked to the purchase of goods on invoice represents a monetary advantage, albeit minimal, in that the sum due in respect of the sale price remains available for longer to the purchaser, thus providing him or her with a cash advance. No *de minimis* rule can be inferred from Article 6(c) of Directive 2000/31 in order to assess the existence of a monetary advantage capable of characterising a ‘promotional offer’ within the meaning of that provision.

44 Furthermore, in the event of extinguishment of the contract following, inter alia, the exercise of a right of withdrawal or termination, the purchaser does not need to claim reimbursement of the price.

45 Subject to verification by the referring court, such circumstances which are advantageous for the purchaser appear capable of encouraging him or her to approach a seller offering a purchase on invoice online rather than another one providing for immediate settlement at the time of the order. It follows that such a payment arrangement may be regarded as giving a purchaser an advantage which is objective, certain and capable of influencing his or her behaviour in the choice of goods or services, with the result that an advertising message setting out that arrangement may be classified as a 'promotional offer' within the meaning of Article 6(c) of Directive 2000/31.

46 In the light of the foregoing, the answer to the question referred for a preliminary ruling is that Article 6(c) of Directive 2000/31 must be interpreted as meaning that the concept of 'promotional offer', within the meaning of that provision, covers an advertising message appearing on the website of an undertaking active in online trading and referring to a particular payment arrangement, in so far as that undertaking procures for the recipient of that message an advantage which is objective, certain and capable of influencing his or her behaviour in the choice of goods or services.

Costs

47 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 (Second Chamber) hereby rules:

Article 6(c) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

must be interpreted as meaning that the concept of 'promotional offer', within the meaning of that provision, covers an advertising message appearing on the website of an undertaking active in online trading and referring to a particular payment arrangement, in so far as that undertaking procures for the recipient of that message an advantage which is objective, certain and capable of influencing his or her behaviour in the choice of goods or services.

[Signatures]