JUDGMENT OF THE COURT (Fourth Chamber)

16 October 2008 *

In Case C-298/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesgerichtshof (Germany), made by decision of 26 April 2007, received at the Court on 22 June 2007, in the proceedings

Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV

v

deutsche internet versicherung AG,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the of Chamber, G. Arestis, R. Silva de Lapuerta, E. Juhász and J. Malenovský (Rapporteur), Judges,

* Language of the case: German.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV, by H. Büttner, Rechtsanwalt,

— deutsche internet versicherung AG, by J. Kummer, Rechtsanwalt,

— the Italian Government, by I.M. Braguglia, acting as Agent, and F. Arena, avvocato dello Stato,

— the Polish Government, by T. Nowakowski, acting as Agent,

— the Swedish Government, by S. Johannesson, acting as Agent,

— the Commission of the European Communities, by E. Montaguti and G. Braun, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 5(1)(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) ('the Directive').

2 The reference was made in the course of proceedings between the Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV ('the Bundesverband') and deutsche internet versicherung AG ('DIV') concerning whether a service provider operating exclusively on the Internet is under an obligation to communicate its telephone number to clients prior to the conclusion of a contract.

Legal background

Community law

3 Article 2 of the Directive provides:

'For the purpose of this Directive, the following terms shall bear the following meanings:

(a) "information society services": services within the meaning of Article 1(2) of Directive 98/34/EC [of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37)] as amended by Directive 98/48/EC [of the European Parliament and of the Council of 20 July 1998];

(b) "service provider": any natural or legal person providing an information society service;

...

(d) "recipient of the service": any natural or legal person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

…'

4 Article 5(1) of the Directive provides:

'1. In addition to other information requirements established by Community law, Member States shall ensure that the service provider shall render easily, directly and permanently accessible to the recipients of the service and competent authorities, at least the following information:

(a) the name of the service provider;

(b) the geographic address at which the service provider is established;

(c) the details of the service provider, including his electronic mail address, which allow him to be contacted rapidly and communicated with in a direct and effective manner;

…'

National legislation

5 Points 1 and 2 of Paragraph 5(1) of the Law on electronic media (Telemediengesetz), of 26 February 2007 (BGBl. 2007 I, p. 179), provides:

'1. With respect to electronic media provided for commercial purposes, as a general rule, for consideration, service providers are to render easy, direct and permanent access to the following information:

(1) the name and address at which they are established and, with respect to legal persons, their legal form, their authorised representatives and, in so far as information on the company capital exists, the share capital and, if the cash contributions have not been paid up, the total amount of the share capital outstanding;

(2) their details, including their electronic mail address, which allow them to be contacted rapidly and communicated with in a direct manner electronically …'

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

6 DIV is an automobile insurance company which offers its services exclusively on the Internet. On its web pages DIV mentions its postal and electronic mail addresses but not its telephone number. Its telephone number is communicated only after the conclusion of an insurance contract. However, persons interested in DIV's services are able to ask questions via an on-line enquiry template, the answers to which are sent by electronic mail.

7 The Bundesverband, the German Federation of Consumers' Associations, takes the view that DIV has an obligation to mention its telephone number on its Internet site. That is the only means of guaranteeing direct communication between a potential client and the insurance company. Therefore, the Bundesverband brought an action before the Landgericht Dortmund (Regional Court, Dortmund) against DIV seeking an order that it cease advertising its insurance services to consumers on the Internet without allowing them to communicate with it directly by telephone.

8 The Landgericht Dortmund upheld the Bundesverband's application. The court of appeal, however, rejected it. The court of appeal took the view that it was unnecessary to mention a telephone number in order to allow direct communication between the client and the service provider. Such communication could in fact be guaranteed by means of the enquiry mask, since no independent third party was an intermediary in the communication between the potential client and DIV. Furthermore, in so far as DIV replies to the questions sent by consumers within a period of 30 to 60 minutes the requirement of rapid communication was also satisfied.

9 The Bundesverband brought an appeal on a point of law before the Bundesgerichtshof in which it sought a ruling against DIV.

10 According to the Bundesgerichtshof, although the text of Article 5(1)(c) of the Directive does not require a telephone number to be supplied, the purpose of that provision may however require it. That issue is also a matter of dispute in German case-law and legal writing. In the same way, the explanatory memorandum for the governmental bill on electronic commerce (Elektronischer Geschäftsverkehr-Gesetz) declared it necessary to mention a telephone number. The Bundesgerichtshof also submits that it is only by telephone that a communication in the form of an exchange of words, in the sense of an actual dialogue, is possible.

11 On the other hand, the constraint resulting from the obligation to answer telephone enquiries from potential clients would require DIV to change its business model which consists in acquiring clients exclusively via the Internet which might hinder the promotion of electronic commerce. Furthermore, an overburdened telephone number discourages consumers from contacting the service provider, the consequence of which is to render that means of communication ineffective.

12 In those circumstances, the Bundesgerichtshof decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) Is a service provider required under Article 5(1)(c) of Directive 2000/31/EC to provide a telephone number before entering into a contract with a recipient of the service, so that he can be contacted rapidly and communicated with in a direct and effective manner?

(2) If the answer to Question 1 is in the negative:

(a) Is a service provider required under Article 5(1)(c) of Directive 2003/31/EC to offer a second means of communication, in addition to indicating his electronic mail address, prior to entering into a contract with a user of the service?

(b) If so, does it suffice, for purposes of a second means of communication, that the service provider installs an enquiry template enabling the user to consult the service provider via the Internet, the user's enquiry then being answered by the service provider by means of electronic mail?'

The questions referred for a preliminary ruling

13 By its questions, which it is appropriate to examine together, the referring court asks essentially whether Article 5(1)(c) of the Directive must be interpreted as meaning that the service provider must provide recipients of the service, before conclusion of a contract with them, in addition to its electronic mail address, other information giving access to an additional means of communication and, if such an obligation exists, whether that information must necessarily include a telephone number or whether an on-line enquiry template is sufficient.

14 The Bundesverband and the Italian Government take the view that in addition to the electronic mail address other information giving access to an additional means of communication must be supplied by the service provider to recipients of the service. DIV, the Polish and Swedish Governments and the Commission of the European Communities take the opposite view.

15 First of all, it should be recalled that according to settled case-law, in interpreting a provision of Community law it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, in particular, Case C-301/98 *KVS International* [2000] ECR I-3583, paragraph 21; Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraph 50; Case C-53/05 *Commission* v *Portugal* [2006] ECR I-6215, paragraph 20; and Case C-300/05 *ZVK* [2006] ECR I-11169, paragraph 15).

16 Pursuant to Article 5(1)(c) of the Directive, the service provider must enable users to access certain basic information, among which are its details, including its electronic mail address, which allow recipients of the service to contact it rapidly and to communicate with it in a direct and effective manner.

17 Thus, it is clear from the wording of Article 5(1)(c), and in particular the word 'including', that the Community legislature intended to require the service provider to supply recipients of the service, in addition to its electronic mail address, with other information in order to achieve the result intended by that provision.

18 Such a literal interpretation is confirmed by the background to Article 5(1)(c) of the Directive. According to Article 5(1)(b) of the Directive, the information that

the service provider must render accessible to recipients of the service includes its geographic address. It is therefore clear from the wording of that provision that the Community legislature did not intend to limit the possibility of entering in contact and communicating with the service provider solely to electronic mail, but that it sought to offer recipients of the service access to a postal address.

19 As regards the objectives pursued by the Directive, it is appropriate to note from the outset that, according to Article 1(1) and recitals 3 to 6 and 8 in the preamble thereto, it aims to contribute to the development of information society services and to maximise the opportunities afforded to electronic commerce by the internal market.

20 Although the Community legislature thereby intended to encourage the development of electronic commerce it does not follow, however, from any of the recitals in the preamble to the Directive that it sought to isolate electronic commerce from the rest of the internal market. Accordingly, the mention of the 'electronic mail address' in Article 5 (1)(c) of the Directive reflects the Community legislature's wish to ensure that information giving access to an electronic communication is to be supplied by the service provider to the recipients of the service, but does not mean that it intended to dispense with other types of non-electronic communication which may be used in addition to it.

21 In the event that they were unable to make use of another type of communication if necessary, in a situation where after making contact electronically with the service provider they were temporarily deprived of access to the electronic network, the recipients of the service might find themselves unable to conclude a contract and, thereby excluded from the market. Such exclusion is likely to undermine and cut off the sector concerned from the rest of the market and, therefore, is liable to constitute an obstacle to the functioning of the internal market, depriving the Directive of part of its effectiveness.

22 Second, the Directive, as is clear in particular from Article 1(3) and the 7th, 10th and 11th recitals in the preamble, also intends to guarantee the protection of consumer interests. Such protection must be ensured at all stages of contact between the service provider and recipients of the service.

23 It follows that, in so far as the information communicated by the service provider enables recipients of the service to evaluate the extent of their future commitments, protecting them in particular against the risk of errors which might lead to the conclusion of an unfavourable contract, an additional means of communication may also be necessary prior to the conclusion of a contract.

24 Offering the recipients of the service an additional non-electronic means of communication where necessary cannot be regarded as a heavy financial burden for service providers which offer their services on the Internet. Such service providers usually offer their services to consumers who have easy access to the electronic network and are familiar with that type of communication. Therefore, it is only in exceptional circumstances that electronic communication will have to be supplemented by non-electronic means.

25 It is clear from all those considerations that under Article 5(1)(c) of the Directive the service provider is required to offer recipients of the service a rapid, direct and effective means of communication in addition to his electronic mail address.

26 Therefore, the question arises as to whether information giving the recipients of the service access to another means of communication must necessarily include a telephone number.

27 Contrary to the arguments of DIV, the Polish and Swedish Governments and the Commission, the Bundesverband and the Italian Government submit that a service provider must indicate to the recipients of the service his telephone number, because only the telephone is capable of satisfying the requirements of direct and effective communication within the meaning of the Directive. Direct communication, they argue, necessarily involves person-to-person communication, and effective communication requires not postponed handling of the information transmitted, but handling which is virtually instantaneous.

28 It is common ground that communication by telephone may be regarded as direct and effective communication, even if it does not leave any tangible record and does not as a rule provide any evidence of its content once it is terminated.

29 In that connection, it should be noted from the outset that the adverb 'directly' within the meaning of Article 5(1)(c) of the Directive, does not necessarily require communication in the form of an exchange of words, that is an actual dialogue, but only the absence of an intermediary.

30 Furthermore, effective communication does not mean that the response given to a question posed must be instantaneous. On the contrary, a communication is to be regarded as effective if it permits adequate information to be obtained within a period compatible with the needs or legitimate expectations of the recipient.

31 It is clear that there are forms of communication other than by telephone able to satisfy the criteria of direct and effective communication referred to in Article 5(1)(c) of the Directive, that is communication without an intermediary which would be sufficiently fluid, such as those established by personal contact at the premises of the service provider with a person in charge or by fax.

32 In light of all those factors, information giving access to that other means of communication that the service provider is required to supply to recipients of the service before the conclusion of a contract with the latter does not necessarily include a telephone number.

33 The answers arising from the foregoing analysis also provide an answer to the question whether an on-line enquiry template, through which recipients of the service, are able contact the service provider via the Internet, which replies by electronic mail, satisfies the requirements of the Directive.

34 The Bundesverband, supported in substance by the Italian Government, takes the view that the enquiry template is not relevant, in so far as it does not allow rapid direct and effective content. By contrast, DIV and the Commission take the view that an enquiry template is sufficient, in particular because the Directive does not require, 'parallel-simultaneous' communication.

35 It is true that an electronic enquiry template may be regarded as offering a direct and effective means of communication within the meaning of Article 5(1)(c) of the Directive, where, as is clear in the case in the main proceedings from evidence in the file, the service provider answers questions sent by consumers within a period of 30 to 60 minutes.

36 However, in exceptional circumstances where a recipient of the service, after making contact by electronic means with the service provider, is, for various reasons, such as a journey, holiday or a business trip, deprived of access to the electronic network, communication by an enquiry template can no longer be regarded as effective within the meaning of Article 5(1)(c) of the Directive.

37 Since that template is also a means of electronic communication, the need to use a form on the Internet would not, in such situations, enable fluid and therefore effective communication to be maintained between the service provider and the recipient of the service, contrary to Article 5(1)(c) of the Directive.

38 In the circumstances described in paragraph 36 of this judgment, offering only an electronic enquiry template is also incompatible with the intention of the Community legislature, which, as stated in paragraph 20 of this judgment, was to encourage the development of electronic commerce without, however, wishing to isolate it from the rest of the internal market.

39 Therefore, in those circumstances, on request by the recipient of the services, the service provider must provide the latter with access to a non-electronic means of communication, enabling him to maintain effective communication.

40 Taking account of all of the foregoing considerations, the answers to the questions referred must be that Article 5(1)(c) of the Directive must be interpreted as meaning that a service provider is required to supply to recipients of the service, before the conclusion of a contract with them, in addition to its electronic mail address, other information which allows the service provider to be contacted rapidly and communicated with in a direct and effective manner. That information does not necessarily have to be a telephone number. That information may be in the form of an electronic enquiry template through which the recipients of the service can contact the service provider via the Internet, to whom the service provider replies by electronic mail except in situations where a recipient of the service, who, after contacting the service provider electronically, finds himself without access to the electronic network, requests the latter to provide access to another, non-electronic means of communication.

Costs

41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. **Article 5(1)(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 a service provider is required to supply to recipients of the service, before the conclusion of a contract with them, in addition to its electronic mail address, other information which allows the service provider to be contacted rapidly and communicated with in a direct and effective manner. That information does not necessarily have to be a telephone number. That information may be in the form of an electronic enquiry template through which the recipients of the service can contact the service provider via the Internet, to whom the service provider replies by electronic mail except in situations where a recipient of the service, who, after contacting the service provider electronically, finds himself without access to the electronic network, requests the latter to provide access to another, non-electronic, means of communication.**

[Signatures]