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Lingua del documento :

ECLI:EU:C:2024:436

Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

30 May 2024 (\*)

(Reference for a preliminary ruling – Consumer protection – Directive 2011/83/EU – Article 8(2) – Distance contracts concluded by electronic means – Information requirements for the trader – Order implying an obligation to pay – Order placed by activating a button or similar function on a website – Obligation on the trader to label that button or similar function with the words ‘order with obligation to pay’ or a corresponding formulation – Conditional payment obligation)

In Case C-400/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Berlin (Regional Court, Berlin, Germany), made by decision of 2 June 2022, received at the Court on 16 June 2022, in the proceedings

**VT,**

**UR**

v

**Conny GmbH,**

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, Z. Csehi, M. Ilešič (Rapporteur), I. Jarukaitis and D. Gratsias, Judges,

Advocate General: G. Pitruzzella,

Registrar: K. Hötzel, Administrator,

having regard to the written procedure and further to the hearing on 27 September 2023,

after considering the observations submitted on behalf of:

- VT and UR, by N. Meise, Rechtsanwältin,
- Conny GmbH, by C. Heber, Rechtsanwältin,
- the European Commission, by I. Rubene, E. Schmidt and G. von Rintelen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 November 2023,

gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of the second subparagraph of Article 8(2) of 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).

2 The request has been made in proceedings between VT and UR, the landlords of a dwelling (together ‘the landlords’), and Conny GmbH, and concerns the rights of a tenant (‘the tenant in question’) assigned to Conny, which, in its capacity as assignee of those rights, is claiming from those landlords the repayment of rent overpayments.

## **Legal context**

## *European Union law*

3 Recitals 4, 5, 7 and 39 of Directive 2011/83 are worded as follows:

‘(4) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The harmonisation of certain aspects of consumer distance and off-premises contracts is necessary for the promotion of a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring respect for the principle of subsidiarity.

(5) ... The full harmonisation of consumer information and the right of withdrawal in distance and off-premises contracts will contribute to a high level of consumer protection and a better functioning of the business-to-consumer internal market.

...

(7) Full harmonisation of some key regulatory aspects should considerably increase legal certainty for both consumers and traders. Both consumers and traders should be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the [European] Union. The effect of such harmonisation should be to eliminate the barriers stemming from the fragmentation of the rules and to complete the internal market in this area. Those barriers can only be eliminated by establishing uniform rules at Union level. Furthermore consumers should enjoy a high common level of protection across the Union.

...

(39) It is important to ensure for distance contracts concluded through websites that the consumer is able to fully read and understand the main elements of the contract before placing his order. To that end, provision should be made in this Directive for those elements to be displayed in the close vicinity of the confirmation requested for placing the order. It is also important to ensure that, in such situations, the consumer is able to determine the moment at which he assumes the obligation to pay the trader. Therefore, the consumer’s attention should specifically be drawn, through an unambiguous formulation, to the fact that placing the order entails the obligation to pay the trader.’

4 Article 1 of that directive, entitled ‘Subject matter’, provides:

‘The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts concluded between consumers and traders.’

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

‘For the purpose of this Directive, the following definitions shall apply:

...

(7) “distance contract” means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;

...’

6 Article 3 of that directive, entitled ‘Scope’, provides, in paragraphs 1 and 5 thereof:

‘1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to any contract concluded between a trader and a consumer. ...

...

5. This Directive shall not affect national general contract law such as the rules on the validity, formation or effect of a contract, in so far as general contract law aspects are not regulated in this Directive.’

7 Under Article 4 of Directive 2011/83, entitled ‘Level of harmonisation’:

‘Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection, unless otherwise provided for in this Directive.’

8 Article 6 of that directive, entitled ‘Information requirements for distance and off-premises contracts’, provides, in paragraph 1 thereof:

‘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:

(a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods and services;

...

(e) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated ...

...

(o) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;

(p) where applicable, the minimum duration of the consumer’s obligations under the contract;

...’

9 Article 8 of that directive, entitled ‘Formal requirements for distance contracts’, provides, in paragraph 2 thereof:

‘If a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in points (a), (e), (o) and (p) of Article 6(1).

The trader shall ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words “order with obligation to pay” or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader. If the trader has not complied with this subparagraph, the consumer shall not be bound by the contract or order.’

### *German law*

10 Paragraph 312j of the Bürgerliches Gesetzbuch (Civil Code), in the version applicable to the dispute in the main proceedings (‘the BGB’), provides, in subparagraphs 3 and 4 thereof:

‘(3) In the case of [an e-commerce consumer] contract [for a service provided by the trader for consideration], the trader must configure the ordering situation in such a way that the consumer, when placing his or her order, explicitly acknowledges that he or she assumes an obligation to pay. Where the order is placed by means of a button, the obligation of the trader referred to in the first sentence is fulfilled only if the button is labelled in an easily legible manner only with the words “order with obligation to pay” or a corresponding unambiguous formulation.

(4) [E-commerce consumer] contracts [for a service provided by the trader for consideration] shall be formed only if the trader fulfils his or her obligation under subparagraph 3.’

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

11 The landlords and the tenant in question entered into a lease for a dwelling in respect of which there is, under national law, a ceiling on the rent that can be charged; accordingly, where that ceiling is exceeded, the tenant is entitled to reimbursement of rent overpayments.

12 Conny, a limited liability company governed by German law, registered in the field of debt collection services, offers to tenants of apartments, via its website, to enter into an agency contract pursuant to which it can act as assignee of all the rights that those tenants may assert against their landlords in case the maximum rent ceiling is exceeded.

13 In order to enter into such a contract on that company’s website, tenants must approve its general terms and conditions, in which reference is made to the pecuniary nature of the contract; next, they must click on a button to place the order. Tenants had to pay, by way of consideration, a third of the annual rent saved where Conny’s attempts to assert their rights were successful and, where a letter of formal notice was sent to their landlord, remuneration in the amount that would be payable to a lawyer under the provisions of the Law on the remuneration of lawyers.

14 In the present case, since the monthly rent was higher than the maximum ceiling permitted under national legislation, the tenant in question entered into an agency contract with Conny for the purpose of asserting his rights against the landlords. In order to do so, that tenant registered on Conny’s website, ticked a box to accept the general terms and conditions and confirmed his order by clicking on the corresponding button. He subsequently signed a form provided by Conny,

entitled ‘Confirmation, power of attorney and assignment, authorisation’, which did not contain any information on any obligation to pay on the part of the tenant.

15 By letter of 21 January 2020 Conny asserted against the landlords the rights of the tenant in question stemming from the national legislation on rent levels, arguing for that purpose that the amount of rent stipulated in the contract concluded between that tenant and the landlords exceeded the ceiling set in that legislation.

16 As that letter had no effect, Conny brought an action against the landlords before the Amtsgericht Berlin-Mitte (Local Court, Berlin-Centre, Germany) in respect of the assigned rights.

17 The Amtsgericht Berlin-Mitte (Local Court, Berlin-Centre) upheld that action on the ground, inter alia, that the rent demanded exceeded the rent which the landlords were entitled to charge, in the proportion claimed by Conny.

18 The landlords brought an appeal against that judgment before the Landgericht Berlin (Regional Court, Berlin, Germany), which is the referring court. They submitted, inter alia, that Conny could not assert the rights of the tenant in question, since the agency contract giving rise to the assignment of those rights was null and void, on account of the failure to comply with the requirements laid down in the second sentence of Paragraph 312j(3) of the BGB, which transposes Article 8(2) of Directive 2011/83 into national law.

19 The referring court considers, first of all, that the successful outcome of that appeal depends entirely on the interpretation of the second subparagraph of Article 8(2) of Directive 2011/83. In that regard, it asks, inter alia, whether the requirement laid down in that provision, read in conjunction with Paragraph 312j(3) and (4) of the BGB, according to which the order button must be labelled with an explicit mention of the obligation to pay associated with the order, or a similar formulation, is intended to apply in a situation such as that at issue in the main proceedings.

20 That court states that, in the present case, the obligation to pay of tenant in question does not arise solely from the order he placed on Conny’s website, but requires the satisfaction of subsequent conditions, such as successful enforcement of the tenant’s rights or the sending of a letter of formal notice to the landlord.

21 Consequently, the question arises as to whether the second subparagraph of Article 8(2) of Directive 2011/83 must be interpreted as meaning that a distance contract concluded by electronic means also implies an ‘obligation to pay’, within the meaning of that provision, where pecuniary consideration is due only subject to certain subsequent conditions being satisfied, for example, only in the event of a successful outcome or subsequently putting a third party on formal notice.

22 The referring court observes that the national legislation transposing the second subparagraph of Article 8(2) of Directive 2011/83 is not interpreted uniformly in national case-law.

23 First, the Bundesgerichtshof (Federal Court of Justice, Germany) held that the objective of protection pursued by Paragraph 312j(3) and (4) of the BGB is ‘exceptionally not affected’, since the consumer seeks recovery of a debt which may arise later and payment is due to the trader only under certain conditions, namely exclusively in the event of success.

24 Second, the domestic lower courts and national academic writings consider that the second subparagraph of Article 8(2) of Directive 2011/83 and Article 312j(3) and (4) of the BGB have a considerably broader scope. Indeed, they take the view that those provisions also cover legal acts

whose pecuniary nature arises only indirectly from the conclusion of the contract or is subject to the satisfaction of other conditions or the performance of actions by the consumer.

25 The referring court leans in favour of the latter interpretation. In the first place, the wording of the second subparagraph of Article 8(2) of Directive 2011/83 – from which it is apparent that the obligation to use a button exists where the order ‘implies’ for the consumer an obligation to pay – supports that interpretation. The conclusion of a contract by electronic means already implies in itself an obligation to pay in situations in which that obligation does not necessarily arise, but is merely a possibility or not entirely ruled out.

26 In the second place, the meaning and purpose of the second subparagraph of Article 8(2) of Directive 2011/83 militate in favour of a broad interpretation since it also covers contracts in which pecuniary consideration will be payable by the tenant only under other specific conditions, in the present case exclusively in the event that the tenant’s rights are successfully asserted or a letter of formal notice is issued. It is apparent from Article 1 of that directive and from recitals 4, 5 and 7 thereof that that directive pursues the objective of ensuring a high level of consumer protection by ensuring that consumers are informed and secure in transactions with traders.

27 However, it would not be compatible with such an objective to afford protection under Directive 2011/83 solely to consumers whose subsequent obligation to pay already exists on the date of conclusion of the contract, while depriving of that protection consumers whose obligation to pay is not yet irrevocable at the date of conclusion of the contract, but is dependent on the subsequent occurrence of other conditions over which they have no influence.

28 An interpretation contrary to that set out in paragraphs 24 to 27 of the present judgment would lead to a considerable reduction in the level of consumer protection sought by the EU legislature, or would even render Directive 2011/83 partially or totally devoid of substance in circumstances such as those at issue before the referring court. It cannot be ruled out that traders may in future include in their general terms and conditions terms which make a consumer’s obligation to pay subject to the occurrence of other conditions in order to free themselves from the obligations incumbent on traders laid down in Article 8(2) of Directive 2011/83.

29 In the third place, the referring court considers that, if the EU legislature had wished to restrict the obligation to provide information solely to the case of an unconditional obligation to pay, it would have done so explicitly, by specifying in the recitals or in the provisions of Directive 2011/83 itself that the level of consumer protection guaranteed by that directive does not extend to contracts in which, at the time of the conclusion of the contract, the consumer’s obligation to pay has not yet been established. However, no such reference is made in that directive.

30 In those circumstances, the Landgericht Berlin (Regional Court, Berlin) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is it compatible with the second subparagraph of Article 8(2) of Directive [2011/83] if a national provision (in the present case, Paragraph 312j(3), second sentence, and (4) of the BGB, in the version in force from 13 June 2014 to 27 May 2022) is to be interpreted as meaning that its scope, like that of the second subparagraph of Article 8(2) of Directive [2011/83], also covers a case in which the consumer is not unconditionally obliged to pay the trader at the time of the conclusion of the contract by electronic means, but only under certain further conditions – for example, exclusively in the event that a legal action which the trader has been instructed to bring is subsequently successful, or in the event that formal notice is subsequently given to a third party?’

## **Admissibility of the request for a preliminary ruling**

31 Conny calls into question the relevance of the question referred by the referring court and objects, in particular, to a third party, such as the landlords in the main proceedings, being able to rely on a possible defect in the legal relationship between a consumer (assignor) and a trader (assignee). According to Conny, that would result in a third party being able to cancel a contract which the tenant concluded with a trader precisely in order to exercise his or her rights as a consumer against that third party.

32 In that regard, it should be recalled that, in accordance with settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation or the validity of a rule of EU law, the Court is in principle bound to give a ruling (judgment of 12 October 2023, *KBC Verzekeringen*, C-286/22, EU:C:2023:767, paragraph 21 and the case-law cited).

33 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to give a ruling on a question referred by a national court only where it is quite obvious that the interpretation, or the determination of validity, of a rule of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 12 October 2023, *KBC Verzekeringen*, C-286/22, EU:C:2023:767, paragraph 22 and the case-law cited).

34 In the present case, the referring court's concerns, in particular, relate to the interpretation in conformity with EU law of Paragraph 312j(3) and (4) of the BGB, which transposes into national law the second subparagraph of Article 8(2) of Directive 2011/83 by providing, in essence, that a consumer contract concluded by electronic means for a service provided by a trader for consideration may be regarded as formed only if the trader complies with the obligation to provide information, the aim of which is to ensure that, when the consumer places his or her order, he or she expressly acknowledges that he or she assumes an obligation to pay. The second subparagraph of Article 8(2) of Directive 2011/83 merely states that, in the event of non-compliance by the trader with the obligation laid down in that provision, the consumer is not bound by the contract or order.

35 That being said, it is apparent from the answer given by the referring court to a request for information sent to it by the Court that the national legislation at issue in the main proceedings allows a third party to challenge the validity of an agency contract concluded between a consumer and a trader where, on the basis of that contract, the trader has brought an action on behalf of that consumer against that third party. Such an option could be exercised even if the rule of law relied on in support of that action is aimed exclusively at protecting that consumer, given that, once the infringement of that rule has been established, the consumer retains the possibility of confirming the contract or concluding a new contract with the trader.

36 In the light of that reply, it cannot be considered that it is obvious from the documents before the Court that the interpretation of the second subparagraph of Article 8(2) of Directive 2011/83 sought bears no relation to the actual facts of the main action or its purpose or that the problem is hypothetical.



37 Moreover, since the Court has before it all the factual and legal material necessary to give a useful answer to the question submitted to it, it must be held that the present request for a preliminary ruling is admissible.

### **Consideration of the question referred**

38 By its question, the referring court asks, in essence, whether the second subparagraph of Article 8(2) of Directive 2011/83 must be interpreted as meaning that, in the case of distance contracts concluded through websites, the obligation on the trader to ensure that the consumer, when he or she places his or her order, explicitly agrees to an obligation to pay, applies even where the consumer is required to pay that trader the pecuniary consideration only after a subsequent condition has been satisfied.

39 As a preliminary point, it should be noted that distance contracts are defined under Article 2(7) of Directive 2011/83 as ‘any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded’. It follows that an agency agreement, seeking to assert the rights of a tenant against a landlord, concluded with a trader through the latter’s website, such as that at issue in the main proceedings, falls within the concept of ‘distance contract’ and, therefore, within the scope of that directive, as defined in Article 3(1) thereof.

40 To the extent that Directive 2011/83, in accordance with Article 4 thereof, harmonises the legislation of the Member States, in principle completely, so far as concerns the provisions which it lays down, the scope of the obligation to provide information under the second subparagraph of Article 8(2) of that directive determines – within the limits of the principle that national law must be interpreted in conformity with EU law – the scope of consumer law provided for by the national legislation transposing that provision into the legal order of the Member States (see, to that effect, judgment of 5 October 2023, *Sofatutor*, C-565/22, EU:C:2023:735, paragraph 38).

41 When interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 12 October 2023, *KBC Verzekeringen*, C-286/22, EU:C:2023:767, paragraph 32).

42 As regards, in the first place, the wording of Article 8(2) of Directive 2011/83, it should be recalled that the first subparagraph of that provision states that, if a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader must make the consumer aware in a clear and prominent manner, and directly before the consumer places his or her order, of several items of information provided for in Article 6(1) of that directive relating, in essence, to the main characteristics of the goods or service, the total price, the duration of the contract and, where applicable, the minimum duration of the obligations imposed on the consumer.

43 The second subparagraph of Article 8(2) of Directive 2011/83 provides, for its part, that the trader must ensure that the consumer, when placing his or her order, explicitly acknowledges that the order implies an obligation to pay. That provision makes clear that where a button or similar function must be activated in order for the order to be placed, the button or similar function must be labelled in an easily legible manner only with the words ‘order with obligation to pay’ or a corresponding unambiguous formulation indicating that the placing of the order entails an

obligation for the consumer to pay the trader, failing which that consumer is not to be bound by the contract or order.

44 It follows therefrom that, where a distance contract is concluded by electronic means through an ordering process and entails an obligation on the part of the consumer to pay, the trader must, first, provide that consumer, directly before the placing of the order, with the essential information relating to the contract and, secondly, explicitly inform that consumer that, in placing the order, he or she is bound by an obligation to pay (judgment of 7 April 2022, *Fuhrmann-2*, C-249/21, EU:C:2022:269, paragraph 25).

45 As regards the latter obligation, it is apparent from the clear wording of the second subparagraph of Article 8(2) of Directive 2011/83 that the order button or similar function must be labelled with an easily legible and unambiguous formulation indicating that placing the order entails an obligation for the consumer to pay the trader and that only the formulation on that button or similar function must be taken into account in order to determine whether the trader has fulfilled his or her obligation to ensure that the consumer, when placing his or her order, explicitly acknowledges that that order implies an obligation to pay (see, to that effect, judgment of 7 April 2022, *Fuhrmann-2*, C-249/21, EU:C:2022:269, paragraphs 26 and 28).

46 The wording of the second subparagraph of Article 8(2) of Directive 2011/83, which requires the trader, when concluding a distance contract by electronic means through an ordering process and entails an obligation on the part of the consumer to pay, expressly to inform the consumer of that obligation before the consumer places his or her order, does not make any distinction between payment obligations subject to conditions and those which are unconditional.

47 On the contrary, it is apparent from that wording that the obligation to provide information laid down in that provision applies since an order placed ‘implies’ an obligation to pay. Consequently, it may be inferred therefrom that the obligation on the trader to inform the consumer arises when he or she agrees to be bound by an irrevocable obligation to pay in the event of satisfaction of a condition over which he or she has no control, even if that condition has not yet been satisfied.

48 In that regard, the Court has also stated that the completion of an ordering process entailing a consumer’s obligation to pay is a fundamental step, in that it implies that the consumer has agreed to be bound not only by the distance contract but also by that obligation (judgment of 7 April 2022, *Fuhrmann-2*, C-249/21, EU:C:2022:269, paragraph 30). It is precisely the activation of a button or similar function in order to finalise the order that implies a declaration by the consumer that he or she agrees to be bound by an irrevocable obligation to pay.

49 As regards, in the second place, the context and objectives of which Article 8(2) of Directive 2011/83 is part, it should be noted that that provision forms part of a mechanism based on a set of provisions intended, as is apparent from Article 1 of that directive, read in the light of recitals 4, 5 and 7 thereof, to provide a high level of consumer protection by ensuring that consumers are informed and secure in transactions with traders, while also ensuring the right balance between a high level of consumer protection and the competitiveness of undertakings (see, to that effect, judgments of 7 April 2022, *Fuhrmann-2*, C-249/21, EU:C:2022:269, paragraph 21, and of 5 May 2022, *Victorinox*, C-179/21, EU:C:2022:353, paragraph 39 and the case-law cited).

50 In particular, recital 39 of Directive 2011/83 emphasises the importance, for that purpose, of ensuring that, in the case of distance contracts concluded through websites, the consumer is in a position to determine when he or she enters into the obligation to pay the trader, and of specifically

drawing the consumer's attention, by means of unambiguous wording, to the fact that placing the order entails the obligation to pay the trader.

51 As the Advocate General stated in point 45 of his Opinion, to interpret the second subparagraph of Article 8(2) of Directive 2011/83 as meaning that that provision does not apply where the consumer does not have an unconditional obligation to pay the trader, but is required to pay the trader the pecuniary consideration only after a subsequent condition has been satisfied, would run counter to the objectives pursued by that directive, as set out in paragraphs 49 and 50 of the present judgment, to ensure a high level of consumer protection and, more specifically, to draw the consumer's attention to the fact that placing the order entails the obligation to pay that trader.

52 Such an interpretation would lead to the trader being required to fulfil his or her obligation to provide information, laid down in that provision in order to enlighten the consumer as to the financial consequences of his or her order, not while that consumer can still abandon that order, but only subsequently, when payment becomes due.

53 Consequently, as the referring court essentially pointed out, such an interpretation would give traders the opportunity to disregard the obligation to provide information laid down in the second subparagraph of Article 8(2) of Directive 2011/83 at the very time when that obligation may prove useful to the consumer, simply by inserting in their general terms and conditions terms which make the consumer's obligation to pay subject to the occurrence of objective conditions which are not dependent on the expression of the consumer's will.

54 That being said, it must be noted that the second subparagraph of Article 8(2) of Directive 2011/83 merely provides, in such a case, that the consumer is not bound by the contract concerned. In accordance with Article 3(5) thereof, Directive 2011/83 does not affect national general contract law such as the rules on the validity, formation or effect of a contract, in so far as general contract law aspects are not regulated by that directive itself.

55 Consequently, the interpretation adopted in paragraphs 49 to 53 of the present judgment is without prejudice to the possibility that, after obtaining subsequent information on the obligation to pay, the consumer may decide to maintain the effects of a contract or order which, until then, was not binding on him or her because of the failure of the trader, when concluding it, to comply with his or her obligation laid down in the second subparagraph of Article 8(2) of Directive 2011/83.

56 In the light of the foregoing considerations, the answer to the question referred is that the second subparagraph of Article 8(2) of Directive 2011/83 must be interpreted as meaning that, in the case of distance contracts concluded through websites, the obligation on the trader to ensure that the consumer, when he or she places his or her order, explicitly agrees to an obligation to pay, applies even where the consumer is required to pay that trader the pecuniary consideration only after a subsequent condition has been satisfied.

### **Costs**

57 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:

**The second subparagraph of Article 8(2) of 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,**

**must be interpreted as meaning that, in the case of distance contracts concluded through websites, the obligation on the trader to ensure that the consumer, when he or she places his or her order, explicitly agrees to an obligation to pay, applies even where the consumer is required to pay that trader the pecuniary consideration only after a subsequent condition has been satisfied.**

[Signatures]

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\* Language of the case: German.