



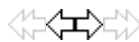
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OPINION OF ADVOCATE GENERAL

SZPUNAR

delivered on 10 November 2016 (1)

Case C-568/15

Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main e.V.

v

comtech GmbH

(Request for a preliminary ruling from the Landgericht Stuttgart (Regional Court, Stuttgart, Germany))

(Directive 2011/83/EU — Consumer protection — Communication by telephone — Operation of a telephone line by a trader to allow consumers to contact him in relation to the contract concluded — Prohibition on applying a rate higher than the basic rate — Concept of ‘basic rate’)

I – Introduction

1. In the present case, the Court is called upon to provide clarification in connection with consumer protection, in particular as regards telephone communications and, more specifically, the provision by a trader of an after-sales-service telephone line for its customers.

2. The questions referred concern the interpretation of the concept of ‘basic rate’ within the meaning of Article 21 of Directive 2011/83/EU (2) while that directive itself does not contain any definition of that concept. This case therefore provides the Court with the opportunity to rule for the first time on the interpretation of that article and, in particular, on the interpretation of the concept of ‘basic rate’ contained in it.

II – Legal framework

A – *EU law*

3. Article 4 of Directive 2011/83, entitled ‘Level of harmonisation’, is worded as follows:

‘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.’

4. Article 6 of that directive, entitled ‘Information requirements for distance and off-premises contracts’, states the following in paragraph 1:

‘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:

...

(f) the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;

...’

5. Article 21 of that directive, entitled ‘Communication by telephone’, provides:

‘Member States shall ensure that where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader is not bound to pay more than the basic rate.

The first subparagraph shall be without prejudice to the right of telecommunication services providers to charge for such calls.’

B – *German law*

6. Paragraph 312a of the Bürgerliches Gesetzbuch (Civil Code, ‘the BGB’), entitled ‘General obligations and principles applying to consumer contracts; limits to agreements on charges’, which transposes Article 21 of Directive 2011/83, provides as follows in subparagraph 5:

‘An agreement under which a consumer is obliged to pay a charge for contacting the trader for the purpose of answering questions or providing explanations in relation to a contract concluded between them, via a telephone line that the trader provides for such purposes, shall be ineffective if the charges agreed upon exceed the charges for the mere use of the telecommunications service. Where an agreement is ineffective under sentence 1, the consumer shall also not be obliged to pay charges for the call to the telecommunications service provider. The telecommunications service provider shall be entitled to claim the charges for the use merely of the telecommunications service as such from the trader who concluded the ineffective agreement with the consumer.’

III – **Facts in the main proceedings, questions referred and procedure before the Court**

7. comtech GmbH is a German company whose economic activity is the marketing of electrical and electronic equipment. On its website, it displays the telephone number of a support service for customers who have already concluded a purchase contract with it and wish to obtain clarifications or explanations in relation to their contract. That telephone number is a special number containing the prefix 0180, which is used in Germany for support services at a single national rate. The cost of a call to that special (non-geographic) number exceeds the amount that the consumer would incur at normal connection rates for calling a standard (geographic) fixed or mobile number. (3)

8. The Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main e.V. (‘the Zentrale’) is an association promoting the commercial interests of its members, in particular associations and undertakings. The Zentrale has brought an action for an injunction before the referring court against comtech for an infringement of Paragraph 312a(5) of the BGB, which transposes Article 21 of Directive 2011/83. In that action, the Zentrale has claimed that the provision of an after-sales-service telephone line having a higher rate than standard calls is an unfair commercial practice. (4)

9. comtech challenges that action for an injunction. That company has contended that Paragraph 312a(5) of the BGB, read in the light of Article 21 of Directive 2011/83,

implies that the trader cannot make profits through a telephone helpline. Therefore, according to that company, there is nothing to preclude the cost of the calls from being higher than the rate for so-called ‘standard’ calls in order to cover the charge payable to the telephone operator for the provision of a helpline, provided that the trader does not profit from it. (5)

10. The referring court states that, in order to resolve the dispute in the main proceedings, it is necessary to interpret the concept of ‘charges for the mere use of the telecommunications service’ contained in Paragraph 312a(5) of the BGB. Since telephone line rates such as the rate at issue in the main proceedings have been harmonised at European level, as established in Article 21 of Directive 2011/83, that provision of Directive 2011/83 must also be interpreted. However, that provision provides that the consumer is not bound to pay more than the ‘basic rate’ for telephone contacts after the contract has been concluded.

11. According to the referring court, the German legislature’s objective was to prevent the trader from profiting from the provision of a non-geographic telephone line. Such an interpretation of Article 21 of Directive 2011/83 and, therefore, of Paragraph 312a(5) of the BGB does not preclude the consumer from paying more for a call to a non-geographic telephone line than for a standard call, provided that the sums received do not exceed the cost of providing such a line.

12. However, the referring court has doubts concerning that interpretation and wonders whether a more restrictive interpretation of the concept of ‘basic rate’ than that of the German legislature should be adopted in order to ensure a higher level of consumer protection. It considers that the wording of Article 21 of Directive 2011/83 and its purpose suggest a more restrictive interpretation. Although, as we have seen, the national provision at issue prohibits profits from being made through the use of a non-geographic telephone line, it nevertheless does not prevent calls made to that line from being charged at a higher rate than calls made to standard lines.

13. Faced with those questions, the Landgericht Stuttgart (Regional Court, Stuttgart, Germany), by order of 15 October 2015, received at the Registry of the Court on 5 November 2015, decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) Is the first paragraph of Article 21 of Directive 2011/83 to be interpreted as meaning that, where a trader operates a telephone line for the purpose of consumers contacting the trader by telephone in relation to contracts concluded with the trader, a consumer contacting the trader by telephone must not incur higher charges than those that the consumer would incur for calling a standard (geographic) fixed or mobile number?’

(2) Does the first paragraph of Article 21 of Directive 2011/83 preclude national legislation according to which, where a trader operates a shared-cost service on an 0180 number for the purpose of consumers contacting the trader by telephone in relation to contracts concluded with the trader, a consumer must pay [the costs] which the

telecommunications service provider charges the consumer for the use of that telecommunications service, even where those charges exceed those which the consumer would incur for calling a standard (geographic) fixed or mobile number?

Does the first paragraph of Article 21 of Directive 2011/83 not preclude such national legislation where the telecommunications service provider does not pass on to the trader part of the charges that he receives from the consumer for contacting the trader on the 0180 number?’

14. Written observations have been submitted by the Zentrale, the Estonian, Lithuanian, Netherlands and Finnish Governments, as well as by the European Commission. Since none of the parties concerned requested a hearing, the Court decided to give judgment without holding one.

IV – Analysis

A – *Joint consideration of the questions referred*

15. By its questions, the referring court asks, first, whether the concept of ‘basic rate’ must be interpreted as meaning that costs which are charged to the consumer when he calls the trader on an after-sales-service telephone line cannot exceed the price that he would have paid for a call to a standard (geographic) fixed or mobile line and, second, what importance must be attached to the question whether or not the trader is making profits from the telephone line.

16. I consider it appropriate, as the Commission has implicitly suggested, to consider those questions together, as they concern the interpretation of one and the same concept.

17. Thus, by its two questions, the referring court asks, in essence, how the concept of ‘basic rate’ contained in Article 21 of Directive 2011/83 must be interpreted.

18. It should be noted at the outset that, in their written observations, the Zentrale, the Estonian and Lithuanian Governments and the Commission have supported the view that the consumer, when he calls the trader on an after-sales-service telephone line, must not pay for the telephone call at a rate higher than that which he would incur for a call to standard (geographic) fixed or mobile line number.

B – *The concept of ‘basic rate’ within the meaning of Article 21 of Directive 2011/83*

1. The wording of Article 21 of Directive 2011/83

19. According to the first paragraph of Article 21 of Directive 2011/83, ‘Member States shall ensure that where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader is not bound to pay more than the basic rate’.

20. In the absence of any definition of the concept of ‘basic rate’ in Directive 2011/83 and in the legal framework created by the EU legislature in relation to the provision of telecommunications services, (6) it is clear from the settled case-law of the Court that the meaning and scope of terms for which EU law provides no definition must be determined by reference to their usual meaning in everyday language, while account is also taken of the context in which they occur and the purposes of the rules of which they form part. (7)

21. As to the usual meaning given to the concept of ‘basic rate’ in German, it suggests, as the referring court has argued, the concept of ‘local rate’, which designates the cost of a local call to an ordinary number. The referring court also states that the interpretation of that concept is not uniform in Germany. (8)

22. In that regard, it is clear from settled case-law that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Provisions of EU law must be interpreted and applied in a uniform manner, in the light of the versions established in all the languages of the European Union. Where there is divergence between the various language versions of a provision of EU law, the provision in question must be interpreted by reference to the general scheme and purpose of the rules of which it forms part. (9)

23. In the present case, as the Commission has rightly observed, even though there is, in principle, no textual ambiguity in the various language versions, (10) in view of the diversity of the rates proposed to end users for the provision of telecommunications services in the Member States (11) and the rapid changes observed in the dynamic telecommunications sector, it does not appear to be possible to determine the usage in everyday language of the concept of ‘basic rate’. Consequently, the ordinary meaning of the terms used in the other language versions clearly does not, in itself, enable a reply to be given to the question referred for a preliminary ruling.

24. The concept of ‘basic rate’ must therefore be interpreted by reference to the general scheme, purpose and regulatory context of Directive 2011/83. The legislative history of that directive may also be a reliable source making it possible, to some extent, to trace the EU legislature’s intention in a sensitive area such as that of consumer protection.

2. The interpretation of Article 21 of Directive 2011/83 placed in its context

25. Article 21 of Directive 2011/83 must be interpreted in the light of the surrounding provisions in that directive.

26. In that regard, it should be noted that Article 6(1)(f) of Directive 2011/83, which concerns pre-contractual information requirements for distance and off-premises contracts, also uses the term ‘basic rate’. That provision states that the trader must inform the consumer before concluding the contract of ‘the cost of using the means of distance

communication *for the conclusion of the contract* where that cost is calculated other than at the basic rate'. (12)

27. In the Commission's view, that requirement to inform the consumer enables him to decide whether or not to agree to the conclusion of the contract with the trader in the knowledge of the cost of using the means of distance communication. (13) The Commission also states that only charges that can be regarded as being at a 'basic rate' within the meaning of Article 6(1)(f) of Directive 2011/83 are those which the consumer must expect, that is to say those of a normal telephone call, charged as a call to a standard (geographic) fixed or mobile telephone line. Since the consumer is aware of these charges on the basis of the contract concluded with his telecommunications service provider, no information requirement is imposed on the trader in that article. On the other hand, if the telephone communication between the consumer and the trader is established by a call number resulting in costs for the consumer exceeding those of a normal standard (geographic) fixed or mobile telephone call, the consumer must be informed by the trader in a clear and comprehensible manner.

28. If the interpretation of Article 6(1)(f) of Directive 2011/83 and of the concept of 'basic rate' contained in it supports the fact that it covers only the costs normally incurred for a standard (geographic) fixed or mobile telephone call, the same must apply in my view to the interpretation of 'basic rate' within the meaning of Article 21 of that directive.

29. Therefore, placed in its context, Article 21 of Directive 2011/83 must be interpreted as referring only to costs incurred by the consumer when making a call to a standard (geographic) fixed or mobile telephone line number.

30. That is the only interpretation which can ensure fulfilment of the objectives pursued by Directive 2011/83, as I shall now endeavour to show.

3. The concept of 'basic rate' in the light of the objective of consumer protection

31. The objective of Directive 2011/83, applied in Article 1 thereof, is 'through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market'. (14)

32. In that regard, recitals 3 (15) to 5 and 7 of Directive 2011/83 point out that the purpose of the directive is to contribute to a 'high level of consumer protection'. In particular, recital 7 of the directive states that 'consumers should enjoy a high common level of protection across the Union'. (16)

33. According to the Netherlands Government, the German legislation at issue in the main proceedings does not run counter to Article 21 of Directive 2011/83 or, in particular, to the objective of consumer protection referred to in recitals 3 to 5 and 7 and Article 1 of that directive. In fact, unlike the Estonian (17) and Lithuanian Governments, the Netherlands Government considers that the concept of 'basic rate' includes additional

costs of the information rate arising from the provision of the service number concerned. (18)

34. I am not convinced by that argument.

35. Recital 2 of Directive 2011/83 states that that directive moves away from the minimum harmonisation approach in Directives 85/577/EEC (19) and 97/7 towards *full harmonisation*. Thus, in the interest of legal certainty, the objective of ‘enjoy[ing] a high common level of protection across the Union’ is achieved by full harmonisation of certain essential aspects of contracts between undertakings and consumers. (20) Therefore, under Article 4 of Directive 2011/83, ‘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’, and I would point out that there is no such other provision in respect of Article 21 thereof. (21)

36. As the Estonian and Lithuanian Governments and the Commission have rightly pointed out, Article 21 of Directive 2011/83 concerns the situation in which, after the contract has been concluded, a consumer contacts the trader about the contract, in particular in order to clarify matters relating to its implementation (22) or, following its implementation, in order to assert rights to a guarantee or seek a legal remedy. As it is the trader who installs the telephone line through which he can be reached, it is in his power to influence the amount of the costs charged to consumers when the call is received. In fact, if the trader opts for a standard (geographic) fixed or mobile line number, the consumer’s call to the trader incurs only costs calculated on the basis of the contract concluded between the consumer and his telecommunications service provider. On the other hand, if the trader opts for a special telephone line with call rates higher than normal market rates, there is a risk that in an attempt to save money a consumer will avoid, to his own detriment, telephone contact with the trader because he would thereby incur additional costs.

37. Therefore, a higher rate than that for a normal telephone line would be likely to deter consumers from contacting the trader because of the additional costs which that would entail. (23) Moreover, it is clear from the general scheme of the directive that there is an irrebuttable presumption that the telephone assistance service is included in the parties’ expectations and therefore in the price already paid by the consumer. The use of a premium rate number would amount to making the consumer pay additional costs for the same service. (24) This is all the more true if the item which is the subject of the contract is of low value.

38. Such an interpretation of the first paragraph of Article 21 of Directive 2011/83 is not called into question by the second paragraph thereof, which simply states that the ‘first subparagraph shall be without prejudice to the right of telecommunication services providers to charge for such calls’. I agree with the argument of the Lithuanian Government and of the Commission that the decisive factor is the fact that the charge to the consumer cannot be higher than that for a standard call at normal market prices.

39. In my view, the full harmonisation established by Directive 2011/83 and the high level of consumer protection would risk losing their effectiveness if the Court adopted in this case an interpretation of Article 21 of Directive 2011/83 that enabled Member States to introduce at national level provisions such as the one at issue in the main proceedings which do not include only normal market charges for a telephone call to a standard (geographic) fixed or mobile line number.

40. As I shall now explain, that interpretation is also supported by the legislative history of Article 21 of Directive 2011/83.

4. Interpretation of Article 21 of Directive 2011/83 in the light of its legislative history

41. The schematic and teleological interpretations of Article 21 of Directive 2011/83 outlined in points 29 and 39 of this Opinion are also consistent with the legislative history of that provision.

42. Having established, in the course of the legislative procedure, (25) the lack of uniform rules concerning chargeable telephone services providing customer assistance, the European Parliament had proposed, in its Amendment 1378, to add a (new) Article 28a entitled ‘Communication and contactability’. (26) The justification for that amendment was that ‘traders increasingly transfer their customer assistance and complaint services to call centres. Consumers then sometimes incur considerable charges when they are referred to *chargeable service numbers* Communication and contactability should therefore be provided for in legislation as secondary contractual obligations for which *no additional remuneration is required during the existing contractual relationship or during the guarantee period*’. (27)

43. In that regard, the Commission, in its written submissions, asserted that the concept of ‘basic rate’ was introduced when the Parliament’s proposal was approved and reworded. (28) Thus, at first reading, following an agreement between the Parliament and the Council of the European Union, the proposal for a directive containing Article 21 was adopted. (29) The EU legislature’s objective was therefore to protect consumers from excessive communication costs where they wish to call the trader or his assistance service by telephone in relation to a contract which has already been concluded.

44. That this was the EU legislature’s intention is also borne out by the DG Justice Guidance Document concerning Directive 2011/83. (30) In paragraph 10 of that document, it is stated, first, that the objective of Article 21 of the directive is to ‘protect consumers against *additional charges* if they need to call the trader with whom they have concluded a contract, for example, if they have a complaint’, and secondly, that ‘such telephone calls must not require the consumer to pay more than the “basic rate”’. Although the Directive does not give an explicit definition of the basic rate, its rationale is to require traders to ensure *that the consumers do not pay more than the pure cost of the electronic communications service* for calls subject to Article 21’. (31) That document also states that, to comply with that ‘basic rate’ requirement, ‘traders should use telephone numbers such as *standard (geographic) fixed or mobile numbers* that are

not subject to any special tariff regime. Non-geographic numbers that electronic communications service providers normally include in their offers of “bundles” of minutes at a fixed monthly price, and numbers charged at no more than rates for calls to geographic numbers would also be examples of numbers charged at the basic rate’. (32)

45. In my view, it clearly follows from points 25 to 40 of this Opinion that an interpretation of Article 21 of Directive 2011/83 to the effect that the concept of ‘basic rate’ covers all costs arising from the use of the telecommunications service, whatever the amount of the costs, would run counter to the regulatory objective pursued by the EU legislature.

C – The question whether or not the trader profits from the telephone line in the context of interpreting Article 21 of Directive 2011/83

46. As I have stated in point 38 of this Opinion, the decisive factor for the interpretation of Article 21 of Directive 2011/83 and of the concept of ‘basic rate’ is that the charge to the consumer cannot be higher than that for a standard call at normal market prices. Therefore, as the schematic and teleological interpretations and the legislative history of that provision have confirmed, if the charges to the consumer exceed the normal communication rates for standard telephone calls, they are not ‘basic rate’ charges within the meaning of Article 21 of Directive 2011/83.

47. As the Estonian, Lithuanian and Finnish Governments and the Commission have rightly observed, the objective of protecting the consumer from premium call rates in the context of contractual or post-contractual communications with the trader prevails irrespective of who ultimately receives the remuneration payable by the consumer for the use of the telecommunications service. (33) Moreover, Article 21 of Directive 2011/83 would lose its effectiveness if the protection of the consumer from excessively high communication costs depended on whether or not the trader receives part of the charges paid.

V – Conclusion

48. In the light of all the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Landgericht Stuttgart (Regional Court, Stuttgart, Germany) as follows:

The concept of ‘basic rate’ contained in Article 21 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 where a trader operates a telephone line for the purpose of consumers contacting the trader by telephone in relation to contracts concluded with the trader, a consumer calling the after-sales service of the trader must not incur charges higher than the normal costs

which the consumer would incur for calling a standard (geographic) fixed or mobile number.

1 – Original language: French.

2 – Directive 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).

3 – It is clear from the order for reference that calls to the special number with the prefix 0180 are charged to the consumer at EUR 0.14 per minute from the German fixed network and EUR 0.42 per minute from a mobile network.

4 – It is also clear from the order for reference that, by dialling that number, the consumer indicates by his behaviour his intention to accept comtech's offer to conclude an agreement within the meaning of Paragraph 312a(5) of the BGB, whereby, when the consumer calls the special number stated at the rate mentioned in the explanation of the offer, questions relating to a contract which was concluded with the consumer are handled on the telephone and explanations relating to it are given by the same method.

5 – It is clear from the order for reference that the telecommunications service provider to whom the defendant has entrusted the provision of the telephone helpline does not pass on to it any part of the charge paid by consumers for calls to the special number in question.

6 – See, in particular, Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

7 – Judgment of 24 June 2015, *Hotel Sava Rogaška* (C-207/14, EU:C:2015:414, paragraph 25 and the case-law cited).

8 – According to one interpretation, Paragraph 312a(5) of the BGB is not regarded as a faithful transposition of Article 21 of Directive 2011/83 in that, although it precludes the direct passing on to the trader, in a visible manner, of the charges incurred for using the telecommunications service, it does not preclude, in particular, the frequent case of ‘cross-subsidies’, which enable a trader to obtain, either at an advantageous price or free of charge, other telecommunication services provided by the same service provider in exchange for a surcharge on the telephone helpline. On the other hand, according to another opinion, the concept of ‘basic rate’ must be understood as also including the charge to be paid to the telecommunications service provider for the use of the telephone helpline, even where the telecommunications service provider does not pass on any payment to the trader for the call.

9 – Judgments of 27 October 1977, *Bouchereau* (30/77, EU:C:1977:172, paragraph 14); 19 September 2013, *Brey* (C-140/12, EU:C:2013:565, paragraph 74), and 7 July 2016, *Ambisig* (C-46/15, EU:C:2016:530, paragraph 48).

10 – In particular, the Bulgarian (*основната тарифа*), German (*Grundtarif*), Estonian (*põhitariifi*), Spanish (*tarifa básica*), Italian (*tariffa di base*), Lithuanian (*bazinė kaina*), Polish (*taryfa podstawowa*) and English (*basic rate*) language versions.

11 – The rates may, in particular, be calculated on the basis of the type (local or long-distance) and duration of the calls, possibly in combination with a flat rate. In the Commission’s view, none of those various interpretations can be excluded on the basis of the usual meaning of the concept of ‘basic rate’. In that regard, it is clear from the Finnish Government’s observations that Chapter 2, Article 14, of the *Kuluttajansuojalaki* (Law on consumer protection) provides that the term ‘basic rate’ means, in particular, any rate laid down by a consumer’s subscription contract.

12 – That provision is similar to Article 4(1)(g) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ 1997 L 144, p. 19), which was repealed by Directive 2011/83. Emphasis added.

13 – In that regard, I note that recital 12 of Directive 97/7 states that ‘in the case of communication by telephone it is appropriate that the consumer receive enough information at the beginning of the conversation to decide whether or not to continue’.

14 – See also recital 4 of that directive.

15 – I note that recital 3 of Directive 2011/83 states that ‘Article 169(1) and point (a) of Article 169(2) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to contribute to the attainment of a high level of consumer protection through the measures adopted pursuant to Article 114 thereof’.

16 – I also note that Article 38 of the Charter of Fundamental Rights of the European Union provides that ‘Union policies shall ensure a high level of consumer protection’.

17 – In its written observations, the Estonian Government submits that, under Article 28¹(3) of the Võlaõiguseadus (Law on the law of obligations), which transposes the first paragraph of Article 21 of Directive 2011/83, the trader cannot require the consumer to pay an additional charge when the consumer contacts him. Thus, that government states that, when transposing Directive 2011/83 into Estonian law, it based its approach on the *raison d’être* of the first paragraph of Article 21 of that directive, which is to ensure that the consumer, when contracting the trader, is not bound to pay a rate additional to that of an ordinary telephone call.

18 – According to the Netherlands Government, the total cost that a consumer pays for a service number is divided into two rates. They are, first, the traffic rate, that is to say the rate that the consumer pays for the electronic communication service itself, in particular the cost charged for a call to a standard (geographic) fixed or mobile telephone number, and, secondly, the information rate, that is to say the rate supplement which is fixed by the trader and consists in a surcharge which the trader applies for the provision of information services, in this case, the service number. According to that government, the additional services which the telecommunications service provider provides to the trader are, in particular, the queuing and menu choice functions.

19 – Council Directive of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31).

20 – Recital 7 of Directive 2011/83 states that ‘full harmonisation of some key regulatory aspects should considerably increase legal certainty for both consumers and traders. ... 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.’

21 – According to recital 13 of Directive 2011/83, Member States ‘may ... maintain or introduce national legislation corresponding to the provisions of this Directive, or certain of its provisions, in relation to contracts that fall outside the scope of this Directive’. However, that margin of freedom concerns only the treatment of matters not governed by the directive, which, I insist, is not the case with Article 21 of the directive.

22 – In particular, in order to determine a delivery date or in respect of matters relating to billing.

23 – In that regard, the legal literature states that ‘the purpose of Article 21 of Directive 2011/83 is ... to prevent overcharging of calls to helpline services offered by the trader. That protective provision therefore sounds the death-knell for additional charges for after-sales telephone services ...’. See, Pôle de droit privé de l’Université Saint-Louis — Bruxelles, ‘La directive 2011/83/UE du 25 octobre 2011 relative aux droits des consommateurs’, *Revue générale de droit civil belge*, 2013, No 4, pp. 174 to 207, and, in particular, pp. 204 and 206. See also, Laffineur, J., and Stretmans, G., ‘La directive 2011/83 relative aux droits des consommateurs: les modifications de la réglementation concernant les ventes aux consommateurs et les “autres droits des consommateurs”’, *Revue européenne de droit de la consommation*, 2013, No 3, pp. 475 to 498. Those authors state that the EU legislature has not tackled the issue of, sometimes long, telephone waiting times before the person being called actually answers. See, in that regard, Rott, P., ‘More coherence? A higher level of consumer protection? A review of the new Consumer Rights Directive 2011/83/EU’, *European Journal of Consumer Law*, 2012, No 3, pp. 371 to 392, and, in particular, p. 391.

24 – See, in that regard, point 42 of this Opinion.

25 – Proposal for a Directive of the European Parliament and of the Council on consumer rights, COM(2008) 614 final.

26 – Doc. PE452.545v01-00, Justification of Amendment 1378.

27 – Doc. PE452.545v01-00, Justification of Amendment 1378. Emphasis added.

28 – See Amendment 165, Proposal for a directive, Article 28a (new), doc. P7_TA(2011)0116 (OJ 2012 C 247 E, p. 99).

29 – See document 9507/11 CONSOM 65 JUSTCIV 107, pp. 4 and 15.

30 – DG Justice Guidance Document concerning Directive 2011/83/EU, June 2014, p. 62.

31 – Emphasis added.

32 – That document states that, by contrast, ‘traders should, in particular, avoid using those telephone numbers that enable them to finance or contribute to the costs of call centres or draw additional revenues from these telephone calls through revenue sharing with telecom operators, such as Premium Rate Service (PRS) numbers’. See DG Justice Guidance Document concerning Directive 2011/83/EU, June 2014, p. 63. Emphasis added.

33 – It also seems to me that certain types of indirect payments to be passed on to the trader in exchange for use of the telephone communication service, such as, inter alia, cross-subsidies, are not easy to verify.
