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Provisional text

JUDGMENT OF THE COURT (Ninth Chamber)

30 April 2025 (*)

(Reference for a preliminary ruling – Consumer protection – Directive 2011/83/EU – Concept of ‘consumer’ – Article 2(1) – Concept of ‘service contract’ – Article 2(6) – Enrolment contracts for the schooling of children of compulsory school age – Private education – Article 27 – Inertia selling of services – Compulsory subjects in accordance with national education standards)

In Case C429/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski rayonen sad (Sofia District Court, Bulgaria), made by decision of 3 June 2024, received at the Court on 18 June 2024, in the proceedings

St. Kliment Ohridski Primary Private School EOOD

v

QX,

THE COURT (Ninth Chamber),

composed of N. Jääskinen, President of the Chamber, M. Condinanzi and R. Frenndo (Rapporteur), Judges,

Advocate General: A. Biondi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- St. Kliment Ohridski Primary Private School EOOD, by S.A. Logofetova,
- the Czech Government, by S. Šindelková, M. Smolek and J. Vlášil, acting as Agents,
- the German Government, by J. Möller and N. Scheffel, acting as Agents,

– the European Commission, by G. Koleva and I. Rubene, acting as Agents,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(1) and (6) and Article 27 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 St. Kliment Ohridski Primary Private School EOOD ('St. Kliment Ohridski'), a private educational establishment, and QX, a natural person, concerning the payment by QX of a contractual penalty resulting from the unilateral termination of enrolment contracts which she had concluded with that establishment for the schooling of her children of compulsory school age.

Legal context

European Union law

Directive 93/13

3 Article 2 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) provides:

'For the purpose of this Directive:

...

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

(c) "seller or supplier" means any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned.'

Directive 2011/83

4 Recital 60 of Directive 2011/83 states:

'Since inertia selling, which consists of unsolicited supply of goods or provision of services to consumers, is prohibited by Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market [and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council] ("Unfair Commercial Practices Directive") [(OJ 2005 L 149, p. 22)] but no contractual remedy is provided therein, it is necessary to introduce in this Directive the contractual remedy of exempting the consumer from the obligation to provide any consideration for such unsolicited supply or provision.'

5 Article 2 of Directive 2011/83, headed 'Definitions', provides:

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

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

(2) “trader” means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive;

...

(5) “sales contract” means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;

(6) “service contract” means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof;

...’

6 Article 3 of that directive, headed ‘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 Article 27 of that directive, headed ‘Inertia selling’, is worded as follows:

‘The consumer shall be exempted from the obligation to provide any consideration in cases of unsolicited supply of goods, water, gas, electricity, district heating or digital content or unsolicited provision of services, prohibited by Article 5(5) and point 29 of Annex I to Directive 2005/29/EC. In such cases, the absence of a response from the consumer following such an unsolicited supply or provision shall not constitute consent.’

Bulgarian law

Law on pre-school and school education

8 Article 8 of the Zakon za preduchilishtnoto i uchilishtnoto obrazovanie (Law on pre-school and school education) (DV No 79 of 13 October 2015), in the version applicable to the dispute in the main proceedings (‘the ZPUO’), provides, in paragraph 2 thereof:

‘School education shall be compulsory until the age of 16 is reached and shall commence in the school year beginning in the year in which the child reaches the age of 7.’

9 Article 29(3) of the ZPUO provides:

‘Private kindergartens and private schools shall acquire the status of a legal person under the conditions and in line with the procedure set out in the Targovski zakon (Law on Commerce) [(DV No 48 of 18 June 1991)], the Zakon za yuridicheskite litsa s nestopanska tsel (Law on legal persons engaged in non-profit activities) [(DV No 81 of 6 October 2000)], the Zakon za kooperatsiite (Law on cooperatives) [(DV No 113 of 28 December 1991)], or the legislation of another Member State.’

10 Under Article 301(1) and (2) of the ZPUO:

(1) Activities other than those financed by the State under Article 10(3) of this Law, which are provided by private kindergartens or private schools in exchange for payment, shall be governed by the rules of the relevant private kindergarten or private school.

(2) The conditions and procedure for payment for the activities referred to in paragraph 1 and the amounts payable shall be agreed contractually between the private kindergarten or private school and the parent of the child or of the pupil.'

Law on consumer protection

11 Paragraph 13 of the Supplementary Provisions of the Zakon za zashtita na potrebitelite (Law on consumer protection) (DV No 99 of 9 December 2005), in the version applicable to the dispute in the main proceedings, transposes into Bulgarian law, in almost identical terms, Article 2 of Directive 2011/83.

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

12 QX concluded two full-time enrolment contracts with St. Kliment Ohridski for the schooling of her children in the 2022/2023 school year, in return for payment of annual school fees.

13 Under Bulgarian law, those children were of compulsory school age.

14 Both contracts contained a clause stipulating that QX could terminate the contracts unilaterally, subject to one month's prior written notice and the payment of a contractual penalty. That clause stated that, if QX had not paid the last instalment of the contract concerned at the time of giving notice of its termination, the contractual penalty due would correspond to the amount of that last unpaid instalment as at the date of that notice of termination.

15 On 4 April 2023, those two contracts were terminated and QX's children started attending a new educational establishment.

16 St. Kliment Ohridski brought an action against QX before the Sofiyski rayonen sad (Sofia District Court, Bulgaria), which is the referring court, seeking an order that QX pay the contractual penalty stipulated, on the ground that she had unilaterally terminated those contracts by withdrawing her children from that establishment.

17 The referring court states that it is common ground between the parties to the main proceedings that the last instalment of the contracts at issue in the main proceedings was not paid. The amount of that last instalment and the amount of that contractual penalty is also common ground between those parties.

18 However, QX disputes the validity of that contractual penalty, claiming that that penalty is contrary to accepted principles of morality, inasmuch as it would result in unjust enrichment. She argues that that contractual penalty goes beyond its preventive, compensatory and punitive purpose.

19 In those circumstances, the referring court asks, in the first place, whether QX may be classified as a consumer, in so far as she is required by law to send her children to school in order for them to receive an education.

20 In that regard, the referring court observes that, in Bulgaria, school education is compulsory for pupils up to the age of 16. Depending on the way in which they are funded, Bulgarian educational establishments can be public or private. While public educational establishments offer free education, private educational establishments require the payment of school fees, which are to be paid by the pupils' parents. In addition, in private educational establishments, education is provided on the basis of an enrolment contract concluded between the establishment concerned and the parents of the pupil attending the school.

21 The referring court states that there is no difference between public and private educational establishments as regards the compulsory subjects, the number of teaching hours for those subjects and the curriculum. In both cases, education is provided in accordance with the national education standards laid down in regulations issued by the Minister for Education and Science.

22 In that context, the referring court notes that St. Kliment Ohridski is a private educational establishment which is registered as a commercial entity. That establishment does not receive any funding from the State or the municipality concerned and funds its operation solely through school fees, donations and other sources of income. In addition, that establishment does not pursue a non-profit activity or act as a cooperative society, but carries out a commercial activity.

23 Therefore, according to the referring court, first, the contracts at issue in the main proceedings were concluded in the context of St. Kliment Ohridski's commercial activity, and, second, QX acted for purposes which are outside her trade, business, craft or profession.

24 Furthermore, in so far as it is the parent concerned who concluded the enrolment contracts in order for her children to benefit from an education service, the referring court is uncertain as to whether those children may be classified as consumers under those contracts.

25 In the second place, the referring court asks whether a contract for the provision of education by a private establishment, where school education is compulsory, constitutes a 'service contract' within the meaning of Article 2(6) of Directive 2011/83.

26 In that regard, the referring court notes that the fact that that service may be provided by both public and private educational establishments gives rise to uncertainty as to that classification. In those circumstances, the referring court has doubts as to whether the entire contract at issue must be classified as a 'service contract', given that school education is compulsory and education is provided in accordance with national education standards, or whether that classification must apply only to the services stipulated in that contract but not falling within the scope of compulsory education, such as the provision of meals, transport or extracurricular activities.

27 In the third place, in the event that an enrolment contract concluded with a private establishment were to be regarded as a contract concluded with a consumer, the referring court asks whether it is necessary to apply Article 27 of Directive 2011/83, which provides for an exemption from the obligation to pay for the unsolicited provision of services.

28 The referring court is uncertain as to whether it is possible for parents or pupils to claim that they have not requested the teaching of certain subjects in the number of hours provided for the compulsory or optional subjects. More specifically, it asks whether it is possible to limit a consumer's liability for the payment of school fees on the ground that the child concerned has not requested to be taught a given subject in the prescribed number of hours.

29 Ultimately, the referring court emphasises the importance of clarifying the matters raised by those three questions, given that, in disputes relating to consumer law, the national court may apply of its own motion a mandatory rule of law intended to protect the consumer concerned.

30 In those circumstances, the Sofiyski rayonen sad (Sofia District Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the term "consumer" within the meaning of Article 2(1) of [Directive 2011/83] to be interpreted as including a parent who has concluded a contract with a private school registered as a commercial company for the compulsory schooling of his or her children at that school?

(2) Is the term “consumer” within the meaning of Article 2(1) of [Directive 2011/83] to be interpreted as including a pupil who, under a contract for payable education concluded between a parent and a private school registered as a commercial company, receives compulsory schooling at that private school?

(3) Is the term “service contract” within the meaning of Article 2(6) of [Directive 2011/83] to be interpreted as including a contract concluded between a parent and a private school registered as a commercial company on the provision to pupils of compulsory schooling under which the financing by the parent takes the form of the payment of school fees?

(4) If the answer to one or more of the preceding three questions is in the affirmative, [must] Article 27 of [Directive 2011/83] ... be interpreted as meaning that the pupil or parent may be exempted from payment of school fees if they have not requested education, or are not satisfied with the education provided, in a particular school subject, and that subject is compulsory under the state education standards?’

Consideration of the questions referred

The first and second questions

31 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 2(1) of Directive 2011/83 must be interpreted as meaning that a parent who alone has concluded an enrolment contract with a private educational establishment, registered as a commercial entity, for the schooling of his or her children of compulsory school age, or a pupil who attends that establishment under such a contract, is covered by the concept of ‘consumer’ within the meaning of that provision.

32 As a preliminary point, it must be recalled that, in accordance with Article 3(1) of Directive 2011/83, that directive is to apply, under the conditions and to the extent set out in its provisions, to any contract concluded between a trader and a consumer, with the exception of the contracts referred to in paragraph 3 of that article. Given that enrolment contracts concluded with private educational establishments are not covered by that paragraph 3, it must be stated that those contracts fall, by virtue of their purpose, within the scope of Directive 2011/83.

33 Under Article 2(1) of Directive 2011/83, the concept of ‘consumer’ is defined as any natural person who, in the contracts covered by that directive, is acting for purposes which are outside his or her trade, business, craft or profession.

34 In order to ensure compliance with the objectives pursued by the EU legislature in the sphere of consumer contracts, and the consistency of EU law, account must be taken of the definition of ‘consumer’ in other rules of EU law (judgment of 8 June 2023, *YYY*, (*Concept of ‘consumer’*), C570/21, EU:C:2023:456, paragraph 40 and the case-law cited).

35 In particular, in order to interpret Article 2(1) of Directive 2011/83, account must be taken of the interpretation previously provided by the Court as regards the concept of ‘consumer’ in the context of Directive 93/13.

36 Besides the fact that Article 2 of Directive 2011/83, which amended Directive 93/13, defines the concept of ‘consumer’ in a manner broadly equivalent to that of Article 2 of Directive 93/13, both directives have the same purpose. Directive 2011/83 concerns consumer rights with regard to contracts concluded with traders and seeks to provide a high level of consumer protection by ensuring that consumers are informed and secure in transactions with traders (see, to that effect, judgment of 8 June 2023, *YYY*, (*Concept of ‘consumer’*), C570/21, EU:C:2023:456, paragraph 42 and the case-law cited).

37 In the context of Directive 93/13, the Court has held that the status of ‘consumer’ of the person concerned must be assessed by reference to a functional criterion, consisting in an assessment of whether the contractual relation at issue has arisen in the course of activities outside a trade, business or profession. The Court has also had occasion to state that the concept of ‘consumer’, within the meaning of Article 2(b) of that directive, is objective in nature and is distinct from the concrete knowledge the person in question may have, or from the information that person actually has (judgment of 24 October 2024, *Zabitoń*, C347/23, EU:C:2024:919, paragraph 25 and the case-law cited).

38 Along the same lines as the ruling of the Court with regard to Article 2(b) of Directive 93/13, it must be stated that that interpretation applies also to Directive 2011/83. The mandatory nature of the provisions contained in Directive 2011/83 and the specific consumer-protection requirements linked to them require that a broad interpretation of the concept of ‘consumer’ within the meaning of Article 2(1) of that directive be given preference, in order to ensure the effectiveness of that directive (judgment of 24 October 2024, *Zabitoń*, C347/23, EU:C:2024:919, paragraph 28 and the case-law cited).

39 In the present case, it is apparent from the request for a preliminary ruling, in the first place, that QX concluded two full-time enrolment contracts with St. Kliment Ohridski for the schooling of her children in the 2022/2023 school year, in return for payment of annual school fees. It is also apparent that that establishment, which is privately funded, is registered as a commercial entity.

40 Accordingly, it appears that the conclusion of the enrolment contracts at issue in the main proceedings did not pursue, for QX, a professional purpose, but was intended solely to ensure the schooling of her children at a private educational establishment.

41 That assessment cannot be invalidated by the fact that those contracts had been concluded for a period during which schooling is compulsory under Bulgarian law. First, the definition of the concept of ‘consumer’ in Article 2(1) of Directive 2011/83, which, as recalled in paragraph 37 above, is an objective concept, does not contain any requirement or condition relating to the subject matter of the contract, in so far as it falls within the scope of that directive. In particular, the reasons which led the person concerned to conclude that contract, including where they result from the need to satisfy a legal obligation, are irrelevant for the purpose of determining whether that person is covered by the concept of consumer. Second, the compulsory nature of schooling in no way requires the conclusion of a contract with a private educational establishment. In other words, although the parent concerned is required to enrol his or her child in an educational establishment, that parent remains entirely free to choose whether to entrust the education of that child to a public or private establishment.

42 In the second place, according to the information provided by the referring court, the contracts at issue in the main proceedings were concluded between QX alone and that establishment, with the result that the contractual commitments are binding on QX, rather than on QX’s children. Since those children are not parties to those contracts, they cannot be regarded as having acted, for the purposes of Article 2(1) of Directive 2011/83, and are therefore not covered by the concept of ‘consumer’ in accordance with that provision.

43 In the light of the foregoing, the answer to the first and second questions is that Article 2(1) of Directive 2011/83 must be interpreted as meaning that:

- a parent who alone has concluded an enrolment contract with a private educational establishment, registered as a commercial entity, for the schooling of his or her children of compulsory school age is covered by the concept of ‘consumer’ within the meaning of that provision, and
- a pupil attending that establishment under such a contract is not covered by that concept.

The third question

44 By its third question, the referring court asks, in essence, whether Article 2(6) of Directive 2011/83 must be interpreted as meaning that an enrolment contract for the schooling of children of compulsory school age, concluded between a parent and a private educational establishment registered as a commercial entity, in return for payment of school fees by that parent, is covered by the concept of a 'service contract' within the meaning of that provision.

45 In that regard, it must be recalled that the term 'service contract' in Article 2(6) of that directive is defined broadly as 'any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof'. It follows from the wording of that provision that that term must be understood as covering all contracts which do not fall within the term 'sales contract' (judgment of 21 December 2023, *BMW Bank and Others*, C38/21, C47/21 and C232/21, EU:C:2023:1014, paragraph 154 and the case-law cited).

46 Enrolment contracts such as those at issue in the main proceedings, by which a private educational establishment undertakes to provide education services to a parent's children in accordance with national education standards, as well as additional services, in return for payment of annual school fees by that parent, do not concern the transfer of ownership of goods, within the meaning of Article 2(5) of Directive 2011/83. Consequently, those contracts, subject to checks which it will be for the referring court to carry out, are covered by the concept of a 'service contract' within the meaning of Article 2(6) of that directive.

47 In the light of the foregoing, the answer to the third question is that Article 2(6) of Directive 2011/83 must be interpreted as meaning that an enrolment contract for the schooling of children of compulsory school age, concluded between a parent and a private educational establishment registered as a commercial entity, in return for payment of school fees by that parent, is covered by the concept of a 'service contract' within the meaning of that provision.

The fourth question

48 By its fourth question, the referring court asks, in essence, whether Article 27 of Directive 2011/83 must be interpreted as meaning that, in the context of an enrolment contract concluded between a parent and a private educational establishment, that parent may be exempted from the obligation to pay the school fees stipulated in that contract on the ground that that parent or his or her child has not requested that that child be taught a specific subject, where the teaching thereof is compulsory in accordance with national education standards, or on the ground that that parent or his or her child is not satisfied with the quality of the education services provided under that contract.

49 It must be noted that, in accordance with Article 27 of Directive 2011/83, the consumer is to be exempted from the obligation to provide any consideration in cases of unsolicited supply of goods, water, gas, electricity, district heating or digital content or unsolicited provision of services, prohibited by Article 5(5) and point 29 of Annex I to Directive 2005/29, and that the absence of a response from that consumer in such a situation does not constitute consent.

50 Inertia selling is defined in recital 60 of Directive 2011/83 as the 'unsolicited supply of goods or provision of services to consumers'. The Court has held in that regard that 'inertia selling' within the meaning of point 29 of Annex I to Directive 2005/29, to which Article 27 of Directive 2011/83 refers, includes conduct whereby the trader demands payment from a consumer for a product or service which has been provided to that consumer without the consumer soliciting it (judgment of 5 December 2019, *EVN Bulgaria Toplofikatsia and Toplofikatsia Sofia*, C708/17 and C725/17, EU:C:2019:1049, paragraph 64 and the case-law cited).

51 Article 27 of Directive 2011/83 thus seeks to prevent a trader from imposing a contractual relationship on the consumer concerned to which he or she has not freely consented (judgment of

5 December 2019, *EVN Bulgaria Toplofikatsia and Toplofikatsia Sofia*, C708/17 and C725/17, EU:C:2019:1049, paragraph 65).

52 In the present case, it is apparent from the information provided by the referring court that the contracts at issue in the main proceedings concern full-time education provided to QX's children, in return for payment of annual school fees by QX. That education is provided in accordance with the national education standards laid down by regulations of the Minister for Education and Science.

53 It therefore appears, subject to checks which it will be for the referring court to carry out, that, according to those national standards, in the context of enrolment contracts concluded between a parent and a private educational establishment, that parent freely subscribes to a single overall service, without it being possible to choose the subjects taught or to adjust the number of teaching hours. It is not apparent from the documents before the Court that an additional payment was required for unsolicited services. Therefore, there can be no question of a service provided without that parent soliciting it.

54 In those circumstances, the provision of compulsory education, in accordance with national education standards, cannot be regarded as 'unsolicited provision' of services within the meaning of Article 27 of Directive 2011/83.

55 As regards a situation in which the parent or his or her child is not satisfied with the quality of the education services provided under those contracts, it must be recalled that, as is apparent from Article 3(5) of Directive 2011/83, that directive 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 in that directive. Accordingly, that situation must be assessed in accordance with national contract law.

56 In the light of the foregoing, the answer to the fourth question is that Article 27 of Directive 2011/83 must be interpreted as meaning that, in the context of an enrolment contract concluded between a parent and a private educational establishment:

- that parent cannot be exempted from the obligation to pay the school fees stipulated in that contract on the ground that that parent or his or her child has not requested that that child be taught a specific subject, where the teaching thereof is compulsory in accordance with national education standards;
- that article does not apply to a situation in which that parent or his or her child is not satisfied with the quality of the education services provided under that contract, since that situation comes within the scope of national contract law.

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 (Ninth Chamber) hereby rules:

1. Article 2(1) 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:

- **a parent who alone has concluded an enrolment contract with a private educational establishment, registered as a commercial entity, for the schooling of his or her children of compulsory school age is covered by the concept of 'consumer' within the meaning of that provision;**

- a pupil attending that establishment under such a contract is not covered by that concept.

2. Article 2(6) of Directive 2011/83

must be interpreted as meaning that an enrolment contract for the schooling of children of compulsory school age, concluded between a parent and a private educational establishment registered as a commercial entity, in return for payment of school fees by that parent, is covered by the concept of a 'service contract' within the meaning of that provision.

3. Article 27 of Directive 2011/83

must be interpreted as meaning that, in the context of an enrolment contract concluded between a parent and a private educational establishment:

- that parent cannot be exempted from the obligation to pay the school fees stipulated in that contract on the ground that that parent or his or her child has not requested that that child be taught a specific subject, where the teaching thereof is compulsory in accordance with national education standards;
- that article does not apply to a situation in which that parent or his or her child is not satisfied with the quality of the education services provided under that contract, since that situation comes within the scope of national contract law.

[Signatures]

***** Language of the case: Bulgarian.