

Case C-143/20**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

24 March 2020

Referring court:

Sąd Rejonowy dla Warszawy-Woli w Warszawie (District Court for Warszawa-Wola, Warsaw, Poland)

Date of the decision to refer:

24 March 2020

Applicant:

A

Defendant:

O

Subject matter of the main proceedings

The subject matter of the main proceedings is an action for payment in connection with the applicant having allegedly been misled by the defendant's employee when concluding a unit-linked life insurance contract.

Subject matter and legal basis of the reference

The question of the referring court concerns the scope of information to be communicated to the insured consumer in the case of unit-linked life insurance contracts where the underlying assets of the fund are derivatives.

Questions referred

1. First question: are Article 185(3)(i) of Directive 2009/138/EC of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II, recast, OJ 2009 L 335, p. 17, 'Directive

2009/138/EC’) and Article 36(1) of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance ... (‘Directive 2002/83/EC’) in conjunction with point 12 of Annex III(A) thereto to be interpreted as meaning that, in the case of unit-linked life insurance contracts where the underlying assets of the fund are derivatives (or structured financial instruments with derivatives embedded in them), the insurer or policyholder (who offers such insurance, distributes the insurance product, or ‘sells’ the insurance) is obliged to communicate to the insured consumer information on the nature and the type specification and characteristics (English: indication of the nature, German: Angabe der Art, French: indications sur la nature) of the underlying instrument (a derivative or a structured financial instrument with a derivative embedded in it), or is it sufficient to indicate only the type of the underlying assets without communicating the characteristics of that instrument?

2. Second question: if the answer to the first question is that the insurer or policyholder (who offers such insurance, distributes the insurance product, or ‘sells’ unit-linked insurance) is obliged to communicate to the consumer information on the nature and the type specification and characteristics of the underlying instrument (a derivative or a structured financial instrument with a derivative embedded in it), are Article 185(3)(i) of Directive 2009/138/EC and Article 36(1) of Directive 2002/83/EC in conjunction with point 12 of Annex III(A) thereto to be interpreted as meaning that information on the nature and the type specification and characteristics of the underlying instrument (a derivative or a structured financial instrument with a derivative embedded in it) communicated to the insured consumer should contain the same information as that required by Article 19(3) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, ... (‘Directive 2004/39/EC’) and Article 24(4) of Directive 2014/65/EU of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, text with EEA relevance, OJ 2014 L 173, p. 349 (‘Directive 2014/65/EU’), that is to say, comprehensive information on the derivatives and proposed investment strategies which should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies, including, in particular, information on the methodology used by the insurer or calculation agent during the term of the insurance cover for pricing the underlying instrument and information on the risks associated with the derivative and its issuer, including on the change in the value of the derivative over time, the various factors determining those changes and the extent to which those factors affect the value?
3. Third question: is Article 185(4) of Directive 2009/138/EC to be interpreted as meaning that, in the case of unit-linked life and endowment insurance

contracts where the underlying asset of the fund is a derivative (or a structured financial instrument with a derivative embedded in it), the insurer or policyholder (who offers such insurance, distributes the insurance product, or ‘sells’ the insurance) is obliged to communicate to the insured consumer the same information as that required by Article 19(3) of Directive 2004/39/EC and Article 24(4) of Directive 2014/65/EU, that is to say, comprehensive information on the derivatives and proposed investment strategies which should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies, including, in particular, information on the methodology used by the insurer or calculation agent during the term of the insurance cover for pricing the underlying instrument and information on the risks associated with the derivative and its issuer, including on the change in the value of the derivative over time, the various factors determining those changes and the extent to which those factors affect the value?

4. Fourth question: if the answer to the second or third question (or both) is in the affirmative, does the failure of the insurer or the policyholder offering unit-linked life insurance to provide the insured consumer with the information required (as referred to in the second and third questions) when offering insurance to the consumer constitute an unfair commercial practice within the meaning of Article 5 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’) ... or does the failure to provide the information required constitute a misleading commercial practice within the meaning of Article 7 of that directive?
5. Fifth question: if both the second and third questions are answered in the negative, does the failure of the insurer or the policyholder (who offers such insurance, distributes the insurance product, or ‘sells’ unit-linked life insurance) to inform the consumer clearly that the assets of the investment fund (unit-linked fund) are invested in derivatives (or structured products with derivatives embedded in them) constitute an unfair commercial practice within the meaning of Article 5 of the Unfair Commercial Practices Directive or does the failure to provide the information required constitute a misleading commercial practice within the meaning of Article 7 of that directive?
6. Sixth question: if both the second and third questions are answered in the negative, does the failure of the insurer or the policyholder offering unit-linked life insurance to explain to the consumer in detail the precise characteristics of the instrument in which the assets of the investment fund (unit-linked fund) are invested, including information on the operating rules

of such an instrument, where it is a derivative (or a structured instrument with a derivative embedded in it) constitute an unfair commercial practice within the meaning of Article 5 of the Unfair Commercial Practices Directive or does the failure to provide the information required constitute a misleading commercial practice within the meaning of Article 7 of that directive?

Provisions of Community law cited

Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), in particular Article 185;

Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, in particular Article 36 and Annex III;

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, in particular Article 24(4);

Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, in particular Article 2 and Article 19;

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, in particular Articles 2, 3, 5, 6 and 7 and Annex II;

Provisions of national law cited

Ustawa z dnia 23 sierpnia 2007 r. o przeciwdziałaniu nieuczciwym praktykom rynkowym (Law of 23 August 2007 on counteracting unfair market practices), in particular Articles 4 to 6;

Ustawa o działalności ubezpieczeniowej z dnia 22 maja 2003 r. (Law on insurance business of 22 May 2003, 'the UoDU'), in particular Articles 2, 12 and 13;

Ustawa z dnia 23 kwietnia 1964 r. — Kodeks cywilny (Law of 23 April 1964 — the Civil Code), in particular Articles 805 and 808.

Brief outline of the facts and procedure

- 1 The applicant, who is a consumer, signed a declaration of accession to a contract – concluded between defendant O and a life insurance company – for group life and endowment insurance with the unit-linked fund XXX. Under that contract, the life insurance company acted as the insurer and the defendant O as the policyholder, while the applicant was to be the insured person.
- 2 The applicant had insurance cover from 8 October 2010, which was confirmed by a certificate. The applicant was to be covered by the insurance contract for 15 years. In connection with the cover, the applicant undertook to pay to the insurer's account the first premium amounting to PLN 4 500 and subsequent monthly premiums amounting to PLN 124 each. In total, the applicant paid PLN 14 420 to the insurer's account under the contract.
- 3 The contract was governed by standard conditions in the form of the terms and conditions of insurance of XXX, the fees and limits table and the regulations of the unit-linked fund XXX, and by the declaration of accession together with an annex.
- 4 The insurance company undertook to pay benefits in the event of the applicant's death or the applicant surviving until the end of its liability period. According to the documents, the purpose of the contract was to accumulate and invest the insured person's (consumer's, applicant's) financial assets with the use of a separate unit-linked fund. The unit-linked fund was established using the first premium paid and also using the continuing premiums (from which an administration fee was deducted).
- 5 The first premium paid at the beginning of the contract was 20% of the premium invested, that is to say, of the sum of all premiums the applicant was to pay throughout the contract term. The premium invested was PLN 22 500.
- 6 The goal of the fund was to increase the value of its assets as a result of an increase in the value of its investments and to protect the premium invested at the end of the liability period, but the insurer did not guarantee that that goal would be achieved. Up to 100% of the assets of the unit-linked fund were invested in certificates issued by B1; the payouts under those certificates were based on the B2 index. The certificates were to be valued in Polish zloty.
- 7 The regulations contained information stating that investment in certificates involved their issuer's credit risk. This risk was understood as the issuer's potential permanent or temporary inability to service its debt, including the redemption of the certificates issued. It was stated that the index was established by B3. The goal was to obtain dynamically adjusted exposure to equities related to developing countries and to the United States bond market. If there is an upward trend in the equity market, the investment strategy linked to the index increases exposure to that market, whereas if a downward trend is recorded, exposure to the United States bond market is increased.

- 8 The value of the account at the end of the liability period was to be calculated on the basis of the value of the certificates. At the end of the liability period, the par value of the certificates was protected, which corresponded to the premium invested as at the end of the contract term.
- 9 After 15 years of the contract term, the applicant was to receive a benefit equal to the value of his account as at the redemption date. According to the regulations, this value was to be no less than the amount corresponding to the premium invested plus any positive change in the index.
- 10 The method for calculating index value was not specified in the contract. There was a clause stating that the index could be replaced by a surrogate index in the event of liquidation of the primary index. The contract not only did not specify the method for calculating the surrogate index; it likewise did not specify the situations in which the primary index could be liquidated and did not indicate who was competent to make decisions in this respect.
- 11 The applicant had the right to terminate the contract before the expiry of the 15-year period. In this instance, the defendant undertook to fully redeem the certificate. In the event of such termination, the insurer was obliged to return to the insured person an amount equal to the value of the account less a liquidation fee of 75% of the assets if the contract was terminated in the first, second, third or fourth year of the contract term; this fee was gradually reduced to a smaller percentage of the applicant's assets if the contract was terminated in subsequent years.
- 12 The value of a fund unit was calculated by dividing the net asset value of the entire fund by the number of all fund units. The method for calculating the net assets of the entire fund was governed by the regulations. The calculation was to be carried out on the basis of market value in order to fairly reflect the fund's net asset value while observing the prudence principle.
- 13 The contract did not specify the rules according to which the fund's units were valued or the rules according to which the net assets of the entire fund were valued; nor did it specify the rules for valuing the certificates in which the fund's assets were to be invested.
- 14 The first premium was converted into fund units according to a fixed contractual conversion rate; the initial unit value was set at PLN 200. The applicant claims that upon subsequent transactions related to the account, that is to say, after the payments of monthly premiums had started, the conversion of those payments into fund units and the calculation of the value of all units recorded in the insured person's account were conducted in a manner, not revealed to the applicant, which resulted from the adoption by the insurer, in a manner known only to the insurer, of the value of units on any given day.

- 15 After more than seven years of the contract term, in view of the significant losses in the value of his investment, the applicant submitted a statement that he wished to terminate the contract.
- 16 The contract was thus terminated. The value of the applicant's account as at 28 June 2017 amounted to PLN 9 045.67 (that is to say, less than the funds invested, which amounted in total to PLN 14 420 less fees charged). A 20% liquidation fee, namely PLN 1 809.13, was deducted from this amount. Ultimately, the insurer paid PLN 7 236.54 to the applicant.
- 17 In the main proceedings, the applicant is seeking payment of PLN 5 373.33 as part of the damage he suffered (PLN 7 183.46).
- 18 The witness examined by the court, who is a former employee of the defendant, indicated that in the sales process he used materials provided by the insurer. Potential rates of return were discussed. He also presented the regulations, general insurance terms and conditions, and the terms governing fees and commissions. The relevant documents were delivered to the insured person (consumer) either in hard copy or as a file sent by e-mail. The customer was able to read the documents freely during the meetings or at home.
- 19 According to the witness, the product in question was purchased as an investment.
- 20 The witness indicated that he discussed the product with the customer. He discussed the fees stated in the fees and limits table. He discussed the product as resulting from the documents — the regulations and general insurance terms and conditions. He stated that the principal was guaranteed at the end of the contract term, after the deduction of management costs. The witness did not say that it was a bank deposit. He could not remember whether he said this specifically to the applicant. He stated that the product did not carry a profit guarantee.
- 21 The witness did not guarantee payment of the full amount at any time during the contract term. He stated that the payment depended on the valuation at the given time.
- 22 The witness indicated that he did not know everything himself, and that, similarly to a car salesman, he provided the information contained in the materials he received. He stated that the principal was guaranteed at the end of the contract term, while during the contract term the valuation was decreased by the liquidation fee. The slogan '100% capital protection' was used.
- 23 As regards the indexes, the witness stated that he did not quite know what they were. He admitted that, despite being an economist, he would have to fully concentrate in order to understand the relevant documents.
- 24 The witness did not know whether the contract offered protection in the event of a change in the index, liquidation of the fund or the issuer's insolvency, or with

respect to the amount of fees; he indicated that those matters would have to be checked in the documentation.

- 25 The witness informed the customer about the liquidation fees and the way they were calculated.
- 26 The witness informed the customer that the funds were invested in an 'index'. The witness explained how this was done by means of a presentation.
- 27 The witness was unable to say in what instruments exactly the funds were invested under the product.
- 28 The witness did not inform customers how the fund's assets were valued. He stated that he would not be able to provide this information, because that is the responsibility of licensed investment advisers, who deal with these instruments at a given financial institution.
- 29 The applicant wished to invest his money in a deposit. He maintained that no insurance risks were discussed. The applicant claimed to have received a guarantee that he would be paid at least as much as he paid in.
- 30 The applicant understood this to mean that at least the amount paid in could be recovered at any time, and that after 15 years he would receive interest as well. If the applicant had known that he might lose some of his capital, he would not have opted for such an investment.
- 31 The applicant questioned the veracity of the witness's testimony and stated that both the course of the meeting and the product sale had been different. The applicant stated that he had not received the documents referred to by the witness.
- 32 However, the court considers the witness to be credible, since the applicant is interested in the dispute being resolved to his satisfaction and, moreover, he confirmed receipt of the documents with his signature on the relevant statement.

Essential arguments of the parties in the main proceedings

- 33 The applicant claimed that he had been misled by the defendant's employee during the sales process. He considers himself to be a victim of unfair market practices by the defendant, including mis-selling.
- 34 According to the applicant, one of the grounds for his claim is that he was misled as to the nature of the investment in which his funds were to be invested. The applicant claims to have been assured that these funds would be blocked in the insurer's special account equivalent to a bank deposit. The investment was supposed to be safe and stable, whereas in fact the applicant's funds were invested in other assets.

Brief statement of reasons for the reference

- 35 Insurance and reinsurance law has been harmonised to a significant extent by Directive 2009/138/EC. Neither Directive 2014/65/EU nor Directive 2004/39/EC applies to insurance undertakings. Competition and consumer protection law has also been in the sphere of interest of the European Union for many years. Directive 2005/29/EC was adopted in order to approximate the legislation of the Member States in this area.
- 36 In order to effect a correct interpretation in line with EU law of the national provisions of the UoDU referred to above, and in particular of Article 13(1)(3) and (4) and Article 13(4)(3) (as regards the mandatory elements of the contract: the information obligations of the insurer and of the policyholder who sells the insurance to the customer who is a consumer), the referring court relied on the directives which were transposed by the UoDU.
- 37 When analysing the content of the directives, the referring court had doubts as to the interpretation of Article 185(3)(i) of Directive 2009/138/EC and of Article 36(1) of Directive 2002/83/EC in conjunction with point 12 of Annex III(A) thereto (as well as of Article 185(4) of Directive 2009/138/EC).
- 38 In the view of the referring court, the Polish language version of the directives' provisions referred to in the preceding paragraph (before the parentheses) has a different meaning from the English, German and French versions of the provisions.
- 39 In the assessment of the referring court, the difference is material as the Polish language version of the provisions in question imposes a lower information obligation on the insurer and on the policyholder who sells such insurance than the English, German and French versions. This is because the Polish version provides only for an obligation involving 'wskazanie rodzaju podstawowych aktywów' ('an indication of the type of the underlying assets'), while the English, German and French versions lay down an obligation to communicate information on the nature, type specification and characteristics of the underlying instruments.
- 40 Where the underlying instrument (investment fund asset) of a unit-linked fund is a derivative (or a structured product with a derivative embedded in it), the difference is material. According to the Polish version of the cited provisions of the directives, it is sufficient to specify the type of the underlying instrument, that is to say, to indicate that the underlying asset is a derivative (or a structured product).
- 41 In the context of the main proceedings, the applicant, who is a consumer, was informed only that the fund's assets were invested in certificates, with the payout from these certificates being based on an index. Up to 100% of the assets were invested in certificates issued by B1, and the payouts under these certificates were based on the B2 index. The certificates were to be priced in Polish zloty.

- 42 If one were to accept that the Polish wording of the provisions, which requires ‘an indication of the type of the underlying assets’, is correct, one would consequently have to conclude that the entities which offered the insurance (which was de facto an investment) complied with this requirement.
- 43 On the other hand, in the view of the referring court, the English, German and French versions include a more far-reaching requirement, namely, to state not just the type of the underlying instrument, but also information on its nature, type specification and characteristics. In order to present such characteristics, it appears necessary to provide the same information as that required by Article 19(3) of Directive 2004/39/EC and Article 24(4) of Directive 2014/65/EU, that is to say, comprehensive information on derivatives and proposed investment strategies, which should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies. In the opinion of the referring court, this will include, in particular, information on the methodology used by the insurer or calculation agent during the term of the insurance cover for pricing the underlying asset (a derivative or a structured instrument with a derivative embedded in it) and information on the risks associated with the derivative and its issuer, including on the change in the value of the derivative over time, the various factors determining those changes and the extent to which those factors affect the value.
- 44 It appears that obligations such as those in the previous paragraph can in addition be deduced from Article 185(4) of Directive 2009/138/EC, which further reinforces the wording of Article 185(3)(i) (in the English, German, French versions); in the Polish version, given the different meaning of Article 185(3)(i), Article 185(4) introduces an entirely new element.
- 45 If, therefore, it were to be assumed that the correct interpretation of Article 185(3)(i) of Directive 2009/138/EC and Article 36(1) of Directive 2002/83/EC in conjunction with point 12 of Annex III(A) thereto is in line with their English, German and French versions, then in the situation in the main proceedings the obligation owed to the consumer to provide information was not properly met by the businesses concerned.
- 46 The national court is inclined to adopt this interpretation of the provisions in question, which in language versions other than Polish grant a higher standard of protection to the consumer by imposing a broader information obligation on the insurer and on the policyholder offering such insurance for sale. However, the national court has doubts whether it can grant such protection to the consumer and has therefore decided to refer questions to the Court of Justice for a preliminary ruling.
- 47 It should be noted that the matter at issue in the main proceedings is ostensibly the protection of consumers in the insurance market, but it de facto concerns the protection of consumers who have purchased an investment product disguised as

insurance, since what the consumer bought was a complex investment product involving a derivative which was wrapped in a group life insurance contract.

- 48 In the light of recitals 27 and 87 of Directive 2014/65/EU (recital 10 of Directive 2004/39/EC), despite the fact that the directive does not apply to insurance undertakings, it appears appropriate to grant special protection, through an enhanced information obligation, also to consumers who conclude unit-linked life insurance contracts (either as policyholders or as insured persons under a group contract) where the underlying asset of the investment fund in question is a derivative (a structured instrument with a derivative embedded in it). This can be ensured by imposing on insurers and on policyholders who offer such insurance the same information obligations as those provided for in Article 24(4) of Directive 2014/65/EU and Article 19(3) of Directive 2004/39/EC.
- 49 In the view of the national court, the failure of the insurer and of the policyholder selling the insurance, which de facto does not serve to provide insurance cover, but is an investment product instead, to provide the same information as that laid down in Article 24(4) of Directive 2014/65/EU and Article 19(3) of Directive 2004/39/EC constitutes an unfair commercial practice which is misleading within the meaning of Articles 5 and 7 of Directive 2005/29/EC.
- 50 The national court's doubts arise from the fact that, on the one hand, pursuant to recital 27 and Article 2(1)(a) of Directive 2014/65/EU (recital 10 and Article 2(1)(a) of Directive 2004/39/EC), the provisions of these directives do not apply to insurance undertakings. However, on the other hand, pursuant to recital 87 of Directive 2014/65/EU, equal protection must be ensured for consumers with respect to investments in the form of insurance contracts. Moreover, recital 10 of Directive 2005/29/EC indicates that particularly high protection standards must be ensured for consumers in the market for high-risk financial products, in respect of which creating false impressions is prohibited. This is further reinforced by the reference made in Article 7(5) of that directive and Annex 2 thereto to Article 19 of Directive 2004/39/EC.
- 51 The referring court has found no indications as to the correct interpretation of the aforementioned provisions of these directives in the existing case-law of the Court. The only two judgments identified by the referring court which concerned a similar issue (unit-linked insurance) do not answer the questions referred for a preliminary ruling (judgments of 1 March 2012, *González Alonso*, C-166/11, ECLI:EU:C:2012:119, and of 29 April 2015, *Nationale-Nederlanden Levensverzekering Mij*, C-51/13, ECLI:EU:C:2015:286).
- 52 Proposed answers to the questions referred for a preliminary ruling:
- 53 In view of the foregoing, the national court proposes that the answer to the first question should be that Article 185(3)(i) of Directive 2009/138/EC and Article 36(1) of Directive 2002/83/EC in conjunction with point 12 of Annex III(A) thereto are to be interpreted in line with the English, German and

French versions. These provisions are to be interpreted as meaning that, in the case of unit-linked life insurance contracts where the underlying assets of the fund are derivatives (or structured financial instruments with derivatives embedded in them), the insurer or policyholder (who offers such insurance) is obliged to communicate to the insured consumer information on the nature and the type specification and characteristics of the underlying instrument (a derivative or a structured financial instrument with a derivative embedded in it).

- 54 The second and third questions should be answered as follows: where a de facto investment product is sold in which a derivative is embedded, the insurer and the policyholder (who sells unit-linked insurance) should communicate to the consumer the same information as that required by Article 19(3) of Directive 2004/39/EC and Article 24(4) of Directive 2014/65/EU, that is to say, comprehensive information on the derivatives and proposed investment strategies which should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies, including, in particular, information on the methodology used by the insurer or calculation agent during the term of the insurance cover for pricing the underlying instrument and information on the risks associated with the derivative and its issuer, including on the change in the value of the derivative over time, the various factors determining those changes and the extent to which those factors affect the value.
- 55 The fourth question should be answered as follows: the failure of the insurer and of the policyholder to communicate to the consumer the information set out in the preceding paragraph constitutes an unfair commercial practice which is misleading, within the meaning of Articles 5 and 7 of Directive 2005/29/EC.
- 56 If questions 1 to 4 are answered as proposed above, it will of course be unnecessary to answer questions 5 and 6.
- 57 Even if the conclusion is that the requirements of Article 24(4) of Directive 2014/65/EU and of Article 19(3) of Directive 2004/39/EC cannot be applied to an insurer or to a policyholder who sells unit-linked insurance (due to the fact, as mentioned above, that these directives do not apply to insurance undertakings), the provision of information to the consumer stating that his funds are invested in derivatives (or structured products with derivatives embedded in them) is so important that a failure to clearly provide this information constitutes an unfair commercial practice which is misleading, within the meaning of Articles 5 and 7 of Directive 2005/29/EC, as is the failure to provide information on the precise characteristics of the instrument in question, including on its operating rules, and therefore the fifth and sixth questions should be answered in the affirmative.