



Press and Information

Court of Justice of the European Union

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Judgment in Case C-249/21
Fuhrmann-2

Contract by electronic means: in order to be validly bound by such a contract, consumers must clearly understand on the basis only of the words appearing on the ordering button that as soon they click on that button they will be under an obligation to pay

Fuhrmann-2 is a company governed by German law and the proprietor of the Goldener Anker hotel in Krummhörn-Greetsiel (Germany). The rooms of that hotel can be rented, inter alia, through the www.booking.com website, an online accommodation booking platform. On 19 July 2018, B., a consumer, visited that website to search for hotel rooms in Krummhörn-Greetsiel for the period from 28 May 2019 to 2 June 2019. The search results displayed included rooms in the Goldener Anker hotel. B. then clicked on the image corresponding to that hotel, whereupon the available rooms were displayed together with additional information relating, inter alia, to the facilities and prices offered by that hotel for the selected period. Having decided to book four double rooms at that hotel, B. clicked on the 'I'll reserve' button and entered his personal details and the names of the individuals accompanying him, before clicking on a button labelled with the words 'complete booking'. B. did not appear at the Goldener Anker hotel on 28 May 2019.

Fuhrmann-2 invoiced B., in accordance with its general terms and conditions, for cancellation fees of €2 240, setting him a time limit of five working days for settlement of that sum. B. did not pay the sum claimed. Fuhrmann-2 therefore brought an action for recovery of that sum before the Local Court, Bottrop (Germany).

That court asked the Court of Justice whether, in the context of an ordering process relating to the conclusion of a distance contract by electronic means, for the purpose of determining whether a form of words displayed on the ordering button or on a similar function, such as the formulation 'complete booking', is a formulation 'corresponding' to the words 'order with obligation to pay', only the words that appear on that button should be taken into account, or whether the overall circumstances of the ordering process should also be taken into consideration.

In its judgment delivered today, the Court notes that, according to Directive 2011/83,¹ where a distance contract is concluded by electronic means through an ordering process and entails an obligation on the part of the consumer to pay, the trader must, first, provide that consumer, directly before the placing of the order, with the essential information relating to the contract and, secondly, explicitly inform that consumer that, in placing the order, he or she is bound by an obligation to pay.

As regards the latter obligation, it is apparent from the wording of Directive 2011/83 that **the ordering button or similar function must be labelled in an easily legible and unambiguous manner with words indicating that the placing of the order places the consumer under an obligation to pay the trader**. While the directive mentions the formulation 'order with obligation to pay', it is also apparent from its wording that that formulation serves as an example and that **the**

¹ 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).

Member States are permitted to allow traders to use any other corresponding formulation, provided that it is unambiguous as regards the creation of that obligation.

Therefore, where, as in the present case, national legislation transposing Directive 2011/83 does not, like the directive itself, contain specific examples of corresponding formulations, traders are free to use any words of their choice, provided that it is entirely clear from those words that, as soon as the consumer activates the ordering button or similar function, he or she is bound by an obligation to pay.

The Court adds that it is equally clear from the wording of Directive 2011/83 that **it is the button or similar function that must be labelled with such a formulation, meaning that only the words that appear on that button or similar function must be taken into account for the purpose of determining whether the trader has fulfilled its obligation to ensure that the consumer, when placing his or her order, explicitly acknowledges that the order implies an obligation to pay.**

In those circumstances, the referring court will in particular have to verify whether the term 'booking' is, in the German language, both in everyday language and in the mind of the average consumer who is reasonably well informed, and reasonably observant and circumspect, necessarily and systematically associated with the creation of an obligation to pay. If it is not, it will be for that court to find the expression 'complete booking' to be ambiguous, meaning that it cannot be regarded as a formulation corresponding to the words 'order with obligation to pay' referred to in Directive 2011/83.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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