



Press and Information

Court of Justice of the European Union

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Judgment in Case C-179/21  
Victorinox

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**A trader who offers, on websites such as Amazon, goods which he has not himself produced must inform the consumer of the manufacturer's guarantee if that guarantee has been made a central or essential element of the offer**

The company absoluts -bikes and more- GmbH & Co. KG ('absoluts') offered for sale, on the internet platform Amazon, a product made by a Swiss manufacturer. The Amazon page offering that product for sale contained no information on any guarantee provided by absoluts or a third party for that product, but contained, under the subheading 'Further technical information', a link by means of which the user could access an information sheet designed by the manufacturer.

Taking the view that absoluts did not provide sufficient information on the guarantee offered by the manufacturer, a competitor brought an action in accordance with the German legislation on unfair competition for an order requiring absoluts to cease offering such goods. With the case now before the Bundesgerichtshof (Federal Court of Justice, Germany), that court had doubts as to whether, under the Consumer Rights Directive,<sup>1</sup> a trader in absoluts' situation is required to inform the consumer of the existence of a manufacturer's commercial guarantee. That court also raised the question of the scope of such an obligation and the conditions under which it arose.

In its judgment, the Court of Justice finds that, under the Consumer Rights Directive, **a trader is required to provide the consumer with pre-contractual information concerning the manufacturer's commercial guarantee where the consumer has a legitimate interest in obtaining that information** in order to decide whether to enter into a contractual relationship with the trader. The Court also finds that that information must include all details relating to the conditions of application and implementation of such a guarantee, enabling the consumer to make such a decision.

### **Findings of the Court**

In the first place, as regards the question of whether the trader is required to inform the consumer of the existence of a manufacturer's commercial guarantee,<sup>2</sup> the Court makes clear that, where the subject matter of the contract relates to goods manufactured by a person other than the trader, that obligation must cover all essential information about those goods so that the consumer can decide whether he wishes to be contractually bound to the trader. According to the Court, that information includes the main characteristics of the goods<sup>3</sup> and, in principle, all guarantees inherently linked to those characteristics, including the commercial guarantee offered by the manufacturer. However, the Court notes that, although the communication of information on the

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<sup>1</sup> 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; 'the Consumer Rights Directive').

<sup>2</sup> Article 6(1)(m) of the Consumer Rights Directive. Under that provision, before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader must provide him, in a clear and comprehensible manner, with information relating to the existence and the conditions of after-sale customer assistance, after-sales services and commercial guarantees.

<sup>3</sup> That obligation is laid down in Article 6(1)(a) of the Consumer Rights Directive.

manufacturer's commercial guarantee ensures a high level of protection for the consumer, **an unconditional obligation to provide such information**, in all circumstances, **seems to be disproportionate**. Such an obligation would require the trader to carry out considerable work collecting and updating information on such a guarantee, even though he does not necessarily have a direct contractual relationship with the manufacturer and the commercial guarantee from that manufacturer does not, in principle, fall within the scope of the contract which the trader intends to conclude with the consumer.

Consequently, the Court considers that, in weighing up a high level of consumer protection and the competitiveness of enterprises, **the trader is required to provide the consumer with pre-contractual information relating to the manufacturer's commercial guarantee only if the consumer has a legitimate interest in obtaining that information** in order to decide whether to enter into a contractual relationship with the trader. That obligation on the part of the trader therefore arises not merely through the existence of that guarantee, but through the presence of such a legitimate interest on the part of the consumer. In that regard, the Court specifies that **that interest is established if the trader makes the manufacturer's commercial guarantee a central or decisive element of his offer**, in particular where that guarantee has been made for sales purposes in such a way as to improve the competitiveness and attractiveness of its offer in comparison with his competitors' offers.

The Court adds that, in order to determine whether the manufacturer's commercial guarantee constitutes a central or decisive element of the trader's offer, account must be taken of the content and general layout of the offer with regard to the goods concerned, the importance of referring to the manufacturer's commercial guarantee for sales or advertising purposes, the space occupied by that reference in the offer, the likelihood of mistake or confusion which that reference might trigger in the mind of the average consumer, who is reasonably well informed and reasonably observant and circumspect with respect to the different rights which he or she may exercise under a guarantee or to the real identity of the guarantor, of whether there might be explanations relating to other guarantees covering the goods, and of any other element capable of establishing an objective need to protect the consumer.

In the second place, as regards the question of what information must be provided to the consumer with regard to the 'conditions of' the manufacturer's commercial guarantee,<sup>4</sup> the Court finds that the trader is required to provide to the consumer, in order to meet the consumer's legitimate interest in obtaining information on the manufacturer's commercial guarantee allowing him or her to decide whether to enter into a contractual relationship with the trader, any information relating to the conditions of application and implementation of the commercial guarantee concerned. In addition to the duration and territorial scope of the guarantee expressly referred to in the second indent of Article 6(2) of the directive on the sale of consumer goods and associated guarantees,<sup>5</sup> those elements may include not only the place of reparation in the event of damage or any guarantee restrictions, but also, depending on the circumstances, the name and address of the guarantor.

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**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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<sup>4</sup> That concept appears in Article 6(1)(m) of the Consumer Rights Directive.

<sup>5</sup> Directive 1999/44 of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ 1999, L 171, p. 12).