



Information to be provided in e-commerce

Judgment of the Court of Justice of the European Union (CJEU) of 5 May 2022 in Case C-179/21

Background

Under EU rules on consumer rights, and on certain aspects of the sale of consumer goods and associated guarantees, the trader is required to provide the consumer buying goods or services over the internet with certain information in order for them to be bound. This information includes the characteristics of the goods or services offered, as well as “where applicable” the existence of after-sales assistance and services, the commercial guarantees and their conditions.

With regard to the information to be provided on guarantees, European legislation provides that their content, basic elements, duration, territorial scope and the guarantor’s identification data (name and address) must be clearly indicated.

Balance and legitimate interest

The CJEU judgment clarifies when it is appropriate for the consumer to be informed about the existence of after-sales assistance and services, commercial guarantees and their conditions. The CJEU states that the expression “where appropriate” must be interpreted as meaning that information must be provided where such guarantees or services exist. This raises new questions: which warranties are to be informed: those offered by the manufacturer or those offered by the distributor? when are such warranties deemed to exist?

In order to answer these questions, the CJEU makes an analysis based on the need to strike a balance between the position of the parties, i.e., the need to achieve a high level of consumer protection and the protection of the competitiveness of businesses, especially small and medium-sized ones.

On the basis of these criteria, the judgment considers that “commercial guarantees” include both those offered by the trader and those offered by the manufacturer. On the other hand, it points out that the distributor is only required to provide information on the guarantees offered by the manufacturer when the distributor relies on these guarantees when presenting the product to the consumer, making them a central or decisive element of his offer.

Advertising of goods and services

Following the same reasoning of this judgment, when certain arguments are used in the context of the advertising of goods or services, full and sufficient information must be provided. Those responsible for any advertising material must ensure not only that it respects the rights of competitors in the framework of fair competition, but must also ensure that it does not include statements that could mislead or confuse the average consumer (who is reasonably well informed and reasonably observant and circumspect) as to the essential characteristics of the offer being presented.