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Provisional text

JUDGMENT OF THE COURT (Third Chamber)

5 May 2022 (*)

(Reference for a preliminary ruling – Consumer protection – Directive 2011/83/EU – Article 6(1) (m) – Distance contract between a consumer and a trader – Obligation of the trader to inform the consumer of the existence and the conditions of a manufacturer’s commercial guarantee – Conditions under which such an obligation arises – Content of the information to be provided to the consumer about the manufacturer’s commercial guarantee – Impact of Article 6(2) of Directive 1999/44/EC)

In Case C-179/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 11 February 2021, received at the Court on 23 March 2021, in the proceedings

absoluts -bikes and more- GmbH & Co. KG

v

the-trading-company GmbH,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, N. Jääskinen, M. Safjan (Rapporteur), N. Piçarra and M. Gavalec, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– absoluts -bikes and more- GmbH & Co. KG, by C. Rohnke, Rechtsanwalt,

- the-trading-company GmbH, by A. Rinkler, Rechtsanwalt,
- the Czech Government, by M. Smolek, J. Vláčil and S. Šindelková, acting as Agents,
- the European Commission, by M. Noll-Ehlers, N. Ruiz García 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 6(1)(m) 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), and of Article 6(2) of Directive 1999/44/EC 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).

2 This request has been made in proceedings between absoluts -bikes and more- GmbH & Co. KG ('absoluts') and the-trading-company GmbH concerning whether or not absoluts is obliged to provide its customers with information on the commercial guarantee offered by third parties in respect of products it offers for sale.

Legal context

European Union law

Directive 1999/44

3 Recital 21 of Directive 1999/44 states:

'Whereas, for certain categories of goods, it is current practice for sellers and producers to offer guarantees on goods against any defect which becomes apparent within a certain period; whereas this practice can stimulate competition; whereas, while such guarantees are legitimate marketing tools, they should not mislead the consumer; whereas, to ensure that consumers are not misled, guarantees should contain certain information, including a statement that the guarantee does not affect the consumer's legal rights.'

4 Article 1 of that directive reads:

'1. The purpose of this Directive is the approximation of the laws, regulations and administrative provisions of the Member States on certain aspects of the sale of consumer goods and associated guarantees in order to ensure a uniform minimum level of consumer protection in the context of the internal market.

2. For the purpose of this Directive:

...

(e) guarantee: shall mean any undertaking by a seller or producer to the consumer, given without extra charge, to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising;

...’

5 Article 6(2) of that directive provides:

‘The guarantee shall:

- state that the consumer has legal rights under applicable national legislation governing the sale of consumer goods and make clear that those rights are not affected by the guarantee,
- set out in plain intelligible language the contents of the guarantee and the essential particulars necessary for making claims under the guarantee, notably the duration and territorial scope of the guarantee as well as the name and address of the guarantor.’

Directive 2011/83

6 Recitals 4, 5 and 7 of Directive 2011/83 are worded as follows:

‘(4) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The harmonisation of certain aspects of consumer distance and off-premises contracts is necessary for the promotion of a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring respect for the principle of subsidiarity.

(5) ... The full harmonisation of consumer information and the right of withdrawal in distance and off-premises contracts will contribute to a high level of consumer protection and a better functioning of the business-to-consumer internal market.

...

(7) Full harmonisation of some key regulatory aspects should considerably increase legal certainty for both consumers and traders. Both consumers and traders should be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the Union. The effect of such harmonisation should be to eliminate the barriers stemming from the fragmentation of the rules and to complete the internal market in this area. Those barriers can only be eliminated by establishing uniform rules at Union level. Furthermore consumers should enjoy a high common level of protection across the Union.’

7 Article 1 of that directive provides:

‘The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts concluded between consumers and traders.’

8 Article 2 of that directive states, in points 2, 7 and 14:

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

...

(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;

...

(7) “distance contract” means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;

...

(14) “commercial guarantee” means any undertaking by the trader or a producer (the guarantor) to the consumer, in addition to his legal obligation relating to the guarantee of conformity, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract’.

9 Article 3(1) of that directive provides:

‘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. It shall also apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis.’

10 Article 5(1)(e) of Directive 2011/83 reads:

‘Before the consumer is bound by a contract other than a distance or an off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner, if that information is not already apparent from the context:

...

(e) in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;

...’

11 Article 6 of that directive provides:

‘1. Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner:

(a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;

...

(l) a reminder of the existence of a legal guarantee of conformity for goods;

(m) where applicable, the existence and the conditions of after sale customer assistance, after-sales services and commercial guarantees;

...’

German law

12 Paragraph 312d of the Bürgerliches Gesetzbuch (Civil Code; ‘the BGB’), entitled ‘Information requirements’, provides, in subparagraph 1:

‘Under off-premises and distance contracts, traders shall be required to provide information to consumers in accordance with the provisions of Paragraph 246a of the [Einführungsgesetz zum Bürgerlichen Gesetzbuch (Introductory Law to the Civil Code; ‘the EGBGB’)]. ...’

13 In the version applicable to the facts of the case, Paragraph 479 of the BGB, entitled ‘Special provisions for guarantees’, stated in paragraph 1:

‘Guarantee statements (Paragraph 443) must be written in a clear and comprehensible manner. They must:

1. set out the consumer’s statutory rights and specify that those rights are not restricted by the guarantee, and
2. set out the contents of the guarantee and all essential particulars necessary for making claims under the guarantee, notably the duration and territorial scope of the guarantee as well as the name and address of the guarantor.

...’

14 Paragraph 246a of the EGBGB, entitled ‘Requirements relating to off-premises contracts and distance contracts, with the exception of contracts relating to financial services’, provides, in subparagraph 1:

‘(1) The trader shall be required, pursuant to Paragraph 312d(1) of the BGB, to make the following information available to the consumer:

...

9. where applicable, the existence and the conditions of after sale customer assistance, after-sales services and guarantees;

...’

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

15 absoluts offered a pocket knife of the Swiss manufacturer Victorinox for sale on the internet platform Amazon. The Amazon page offering the knife for sale did not contain any information regarding a guarantee provided by the defendant or a third party for that knife, but provided a link labelled ‘Operating instructions’ under the subheading ‘Further technical information’. By clicking on that link, the user would be taken to a two-page information sheet, designed and written by the manufacturer of the knife. The second page contained, inter alia, a reference to the ‘Victorinox guarantee’, worded as follows: ‘The Victorinox guarantee covers any defects in material and workmanship for an unlimited period (2 years for electronics). Damage caused by normal wear and tear or by improper use is not covered by the guarantee.’

16 the-trading-company, a competitor of absoluts, submits that absoluts did not provide sufficient information about the guarantee offered by the manufacturer of the knife. Consequently, on the basis of the German legislation on unfair competition, it brought an action for an order requiring absoluts to cease offering such goods without at the same time drawing the consumer’s attention to his or her statutory rights and to the fact that the manufacturer’s guarantee does not affect those rights, or without specifying the territorial scope of that guarantee.

17 After an adverse decision at first instance, the-trading-company’s action was upheld on appeal by the Oberlandesgericht Hamm (Higher Regional Court, Hamm, Germany). That court held that, under the combined provisions of the first sentence of Paragraph 312d(1) of the BGB and the first sentence of point 9 of the first subparagraph of Paragraph 246a(1) of the EGBGB, which transpose Article 6(1)(m) of Directive 2011/83, the obligation to provide information on the guarantee lies with the trader where the goods offering contains, as in the present case, a reference, in whatever form, to the existence of a guarantee. Furthermore, after stating that the scope of that obligation to provide information had to be determined in accordance with Paragraph 479(1) of the BGB, which transposes Article 6(2) of Directive 1999/44, that court found that absoluts’ offer did not contain any of the information required by that provision of the BGB and that, moreover, no document in the file indicated that the consumer had received that information at a later stage in the ordering process.

18 absoluts brought an appeal on a point of law before the Bundesgerichtshof (Federal Court of Justice, Germany) against the judgment of the Oberlandesgericht Hamm (Higher Regional Court, Hamm) in order to have the first-instance judgment reinstated.

19 The referring court asks, in the first place, whether a trader in absoluts’ situation is required under Article 6(1)(m) of Directive 2011/83 to inform the consumer of the existence and the conditions of a manufacturer’s commercial guarantee. More specifically, it asks whether, in view of the expression ‘where applicable’ used in that provision of Directive 2011/83, the mere existence of a manufacturer’s guarantee – in the present case Victorinox’s guarantee – gives rise to such an information requirement on the part of traders marketing the product concerned or whether that obligation arises only where the trader mentions the existence of a guarantee by the manufacturer in its offer.

20 In the light of the scheme and purpose of Directive 2011/83, but also the fact that the fundamental rights of traders must not be disproportionately restricted, the referring court is inclined to interpret Article 6(1)(m) of Directive 2011/83 as meaning that the mere existence of a manufacturer’s guarantee does not give rise to an obligation on the part of the trader to provide its customers with information concerning that guarantee.

21 If that is the case, the referring court then raises the question, in the second place, of whether the mere mention of a manufacturer’s guarantee in the trader’s offering, irrespective of its form and

whether or not it has been emphasised, triggers the information requirement under Article 6(1)(m) of Directive 2011/83 or whether, for the trader to be subject to an information requirement, it is also necessary for such a mention to be readily apparent to the consumer, or even for it not to be clear to the consumer that the details regarding the manufacturer's guarantee originate not from the trader, but from the manufacturer itself.

22 In the event that a trader such as *absoluts* is required, under Article 6(1)(m) of Directive 2011/83, to provide the consumer with information concerning a manufacturer's commercial guarantee, the referring court is uncertain, in the third place, what the content of that information must be. More specifically, it wishes to know whether that content must be the same as the content provided for in Article 6(2) of Directive 1999/44 or whether it may include fewer details.

23 In those circumstances the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the mere existence of a manufacturer's guarantee trigger the information requirement under Article 6(1)(m) of Directive [2011/83]?

(2) If Question 1 is answered in the negative: Is the information requirement under Article 6(1)(m) of Directive [2011/83] triggered by the mere mention of a manufacturer's guarantee in the trader's offering or is it triggered only if the mention of such a guarantee is readily apparent to the consumer? Is there also an information requirement if it is readily apparent to the consumer that the trader provides access to only the manufacturer's information concerning the guarantee?

(3) Must the information on the existence and conditions of a manufacturer's guarantee as required under Article 6(1)(m) of Directive [2011/83] contain the same details as a guarantee under Article 6(2) of Directive 1999/44 ... or are fewer details sufficient?'

Consideration of the questions referred

The first two questions

24 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 6(1)(m) of Directive 2011/83 must be interpreted as meaning that, as regards the manufacturer's commercial guarantee, the information requirement imposed on the trader by that provision arises merely through the existence of that guarantee or whether it is only in certain circumstances that the trader is required to inform the consumer of the existence and conditions of such a guarantee.

25 It should be noted from the outset that distance contracts are defined under Article 2(7) of Directive 2011/83 as 'any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded'. It follows that a contract for the sale of goods concluded between a trader and a consumer on an online platform falls under the definition of 'distance contract' and, consequently, since none of the exclusions provided for in Article 3(2) to (4) of Directive 2011/83 apply, the contract falls within the scope of that directive, as defined in Article 3(1) thereof.

26 Following that preliminary point, it should be noted, in the first place, that, under Article 6(1) of Directive 2011/83, before the consumer is bound by a distance or off-premises contract, or any

corresponding offer, the trader is to provide that consumer with various information in a clear and comprehensible manner. That provision seeks to ensure the communication to consumers, before the conclusion of a contract, both of information concerning the contractual terms and the consequences of that conclusion, allowing consumers to decide whether they wish to be contractually bound to a trader, and of information necessary for proper performance of that contract and, in particular, for the exercise of their rights (judgment of 21 October 2020, *Möbel Kraft*, C-529/19, EU:C:2020:846, paragraph 26 and the case-law cited).

27 As regards, more specifically, the obligation to provide pre-contractual information under Article 6(1)(m) of Directive 2011/83, the trader must inform the consumer, ‘where applicable, [of] the existence and the conditions of after sale customer assistance, after-sales services and commercial guarantees’.

28 As regards commercial guarantees, it is clear from the wording of that provision and from the expression ‘where applicable’ that, where a trader grants a commercial guarantee, it is required to inform the consumer of the existence and conditions of that guarantee.

29 On the other hand, the wording of that provision does not make it possible to determine whether a trader is required, where there is a commercial guarantee by the manufacturer, to inform the consumer of the existence and conditions of that guarantee.

30 First, the expression ‘where applicable’ in Article 6(1)(m) of Directive 2011/83 is intended only to specify that the obligation to provide pre-contractual information, referred to in that provision, is designed to apply where there is a commercial guarantee, without, however, providing any useful guidance to answer the question whether, where a commercial guarantee is offered by the manufacturer in addition to the one offered by the trader and the manufacturer’s commercial guarantee is not included in the planned contract between the consumer and the trader, the trader is required, simply because of the existence of that guarantee, to provide details to the consumer not only concerning its own guarantee, but also the manufacturer’s guarantee.

31 Secondly, the use of the expression ‘commercial guarantees’ in the plural in Article 6(1)(m) of Directive 2011/83 may be understood as encompassing both the various commercial guarantees which a trader may offer for the same goods or various goods and the commercial guarantees offered by both the trader and the manufacturer as distinct persons.

32 Since the wording of Article 6(1)(m) of Directive 2011/83 does not, in itself, allow an answer to be given to the referring court’s questions, it is necessary to interpret that provision by reference to the context in which it occurs and to the objectives it pursues (see, to that effect, judgment of 10 July 2019, *Amazon EU*, C-649/17, EU:C:2019:576, paragraphs 35 and 37 and the case-law cited).

33 As regards, first, the context of Article 6(1)(m) of Directive 2011/83, it should be noted that the concept of a ‘commercial guarantee’ is defined in point 14 of Article 2 of Directive 2011/83 as ‘any undertaking by the trader or a producer ... to the consumer ...’. It follows that the concept of a ‘commercial guarantee’, within the meaning of Directive 2011/83, covers not only commercial guarantees offered by the trader, but also commercial guarantees offered by the manufacturer.

34 It is apparent, moreover, from a combined reading of the concepts of ‘trader’ and ‘commercial guarantee’, referred to respectively in points 2 and 14 of Article 2 of Directive 2011/83, that there would have been no sense for the EU legislature to use the expression ‘or a producer’ in point 14 of Article 2 of Directive 2011/83 if the obligation to provide pre-contractual

information, referred to in Article 6(1)(m) of that directive, did not apply, at least in certain circumstances, to the commercial guarantee offered by the manufacturer.

35 Where a manufacturer sells to a consumer – directly or through another person acting in its name and on its behalf – the goods which it produces, it must be considered a ‘trader’ within the meaning of point 2 of Article 2 of Directive 2011/83. Accordingly, the commercial guarantee offered by the manufacturer can only correspond to an ‘undertaking by the trader’ within the meaning of point 14 of Article 2 of that directive, and not to an undertaking by ‘a producer’ within the meaning of the same provision.

36 In those circumstances, the expression ‘or a producer’ in point 14 of Article 2 of Directive 2011/83 refers to a situation in which the trader is not the same person as the manufacturer. In view of the fact that the expression ‘commercial guarantee’ is only used in Article 6(1)(m) of that directive and in the analogous provision laid down, in respect of contracts other than distance or off-premises contracts, in Article 5(1)(e) of the directive, the expression ‘or a producer’ can retain meaning only if, in the context of the obligation to provide pre-contractual information referred to in those two provisions, the trader is required, at least in certain circumstances, to provide the consumer with details concerning not only its own commercial guarantee, but also that of the manufacturer.

37 Furthermore, in a situation in which the main subject matter of the contractual relationship relates to goods manufactured by a person other than the trader, the obligation to provide pre-contractual information in Article 6(1) of Directive 2011/83 must encompass all the essential information relating to that subject matter, namely the goods concerned, so that the consumer may, in accordance with the case-law referred to in paragraph 26 of the present judgment, decide whether he or she wishes to be contractually bound to the trader with regard to that main subject matter. In addition to the ‘main characteristics of the goods’, expressly referred to in Article 6(1)(a) of Directive 2011/83, such information also includes, in principle, all guarantees inherently linked to the goods, which includes the commercial guarantee offered by the manufacturer.

38 As regards, secondly, the objective pursued by Directive 2011/83, it should be recalled that, as follows from Article 1, read in conjunction with recitals 4, 5 and 7, that directive seeks to provide a high level of consumer protection by ensuring that consumers are informed and secure in transactions with traders. Moreover, the protection of consumers within EU policies is set out in Article 169 TFEU and Article 38 of the Charter of Fundamental Rights of the European Union (judgment of 10 July 2019, *Amazon EU*, C-649/17, EU:C:2019:576, paragraph 39).

39 That said, the Court has held that, when interpreting the provisions of Directive 2011/83, it is necessary to ensure, as stated in recital 4 of that directive, the right balance between a high level of consumer protection and the competitiveness of enterprises, while respecting the enterprise’s freedom to conduct a business, as set out in Article 16 of the Charter of Fundamental Rights (see, to that effect, judgment of 10 July 2019, *Amazon EU*, C-649/17, EU:C:2019:576, paragraph 44).

40 In that context, while it is true that the communication to consumers of information on the manufacturer’s commercial guarantee – as an intrinsic element of the goods forming the subject matter of the proposed contractual relationship with the trader – ensures a high level of consumer protection, an unconditional obligation to provide such information, in all circumstances, seems to be disproportionate, in particular in the economic context of the functioning of certain undertakings, in particular small undertakings (see, by analogy, judgment of 14 May 2020, *EIS*, C-266/19, EU:C:2020:384, paragraph 35 and the case-law cited). Such an unconditional obligation would require traders to carry out considerable work collecting and updating information on such a

guarantee, even though they do not necessarily have a direct contractual relationship with the manufacturers, 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.

41 In those circumstances, the weighing up of a high level of consumer protection and the competitiveness of enterprises, as set out in recital 4 of Directive 2011/83, must lead to the conclusion that the trader is required to provide the consumer with pre-contractual information on the manufacturer's commercial guarantee only where the legitimate interest of the average consumer, who is reasonably well informed and reasonably observant and circumspect to a high level of protection must prevail in the light of his or her decision whether or not to enter into a contractual relationship with that trader.

42 It is apparent from the literal, systematic and teleological analysis carried out in paragraphs 27 to 41 above that the obligation to provide pre-contractual information in Article 6(1) (m) of Directive 2011/83 covers the commercial guarantee offered by both the trader and the manufacturer where, as is apparent from paragraph 41 above, the consumer has, in the light of the level of protection referred to in that directive, a legitimate interest in obtaining information on the guarantee allowing him or her to decide whether to enter into a contractual relationship with the trader. It follows that the trader is required to provide the consumer with pre-contractual information on the manufacturer's commercial guarantee not merely because of the existence of that guarantee, but because of the presence of such a legitimate interest.

43 It is therefore necessary, in the second place, to determine whether, in circumstances such as those characterising the offers made by the trader which are at issue in the main proceedings, the consumer has a legitimate interest in obtaining pre-contractual information from the trader on the commercial guarantee offered by the manufacturer and on the conditions relating to that guarantee.

44 In that regard, such a legitimate interest exists where the trader makes the manufacturer's commercial guarantee a central or decisive element of its offer.

45 In particular, where the trader expressly draws the consumer's attention to the existence of a manufacturer's commercial guarantee for sales or advertising purposes and, accordingly, to improve the competitiveness and attractiveness of its offer in comparison with its competitors' offers, the information requirement in Article 6(1)(m) of Directive 2011/83 is intended to apply.

46 First, such information is, as regards consumer protection, necessary for consumers not to be misled by unclear, ambiguous or incomplete information on the various guarantees which exist and their relationship, and to ensure, in particular, that they are able to understand that the manufacturer's commercial guarantee does not originate from the trader and whether it may, where appropriate, be exercised through the trader. Secondly, such an information requirement cannot be regarded as constituting a disproportionate burden for the trader, since the trader itself decides, in full knowledge of the facts, to draw the consumer's attention to the guarantee and intends to derive a competitive advantage from it.

47 On the other hand, if the trader's offer mentions the manufacturer's commercial guarantee incidentally or to an insignificant or negligible extent such that, in the light of the content and general layout of the offer, the guarantee cannot objectively be regarded as being used by the trader for commercial purposes or as being likely to mislead the consumer, the trader cannot be required, by virtue of that mention alone, to provide the consumer with pre-contractual information on that guarantee under Article 6(1)(m) of Directive 2011/83.

48 In order to determine whether the manufacturer's commercial guarantee constitutes a central or decisive element of the trader's offer, within the meaning of paragraph 44 of this judgment, 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.

49 In the light of those criteria, it is for the referring court to verify whether, in the main proceedings, the reference to the manufacturer's commercial guarantee in the trader's offer could be regarded as constituting a central or decisive element of that trader's offer capable of giving rise to the obligation to provide pre-contractual information in Article 6(1)(m) of Directive 2011/83. While that verification is solely a matter for the referring court, the Court, when giving a preliminary ruling on a reference, may, in appropriate cases, nonetheless give clarifications to guide the national court in its decision (judgment of 3 February 2021, *FIGC and Consorzio Ge.Se.Av.*, C-155/19 and C-156/19, EU:C:2021:88, paragraph 59 and the case-law cited).

50 In the present case, the manufacturer's commercial guarantee was not mentioned directly in the actual wording of the offer and was thus not used significantly by the trader for sales or advertising purposes.

51 In particular, first of all, that guarantee was mentioned only incidentally in the offer, namely on the second page of an information sheet from the manufacturer, which could be accessed by means of a link labelled 'Operating instructions' under the subheading 'Further technical information', labels which in principle refer to information provided by the manufacturer in relation to the product concerned. Secondly, that guarantee arises precisely from an information sheet drawn up not by the trader but by the manufacturer in which it is specifically identified as the manufacturer's guarantee. Finally, the risk that consumers might have been misled or confused as to the nature of the guarantee and the real identity of the guarantor is all the more negligible since nowhere in the offer was a guarantee competing with the one offered by the manufacturer mentioned.

52 In those circumstances, it appears, subject to verification by the referring court, that a reference to the manufacturer's commercial guarantee, such as the one at issue in the main proceedings, cannot be regarded as constituting a central or decisive element of the trader's offer.

53 In the light of the foregoing considerations, the answer to the first and second questions is that Article 6(1)(m) of Directive 2011/83 must be interpreted as meaning that, as regards the manufacturer's commercial guarantee, the information requirement imposed on the trader by that provision does not arise from the mere fact that that guarantee exists, but only where the consumer has a legitimate interest in obtaining information concerning that guarantee in order to decide whether to enter into a contractual relationship with the trader. Such a legitimate interest is established, inter alia, where the trader makes the manufacturer's commercial guarantee a central or decisive element of its offer. In order to determine whether the guarantee constitutes a central or decisive element of the 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 – whether or not there might be explanations relating to other guarantees covering the goods, and any other element capable of establishing an objective need to protect the consumer.

The third question

54 By its third question, the referring court asks, in essence, whether Article 6(1)(m) of Directive 2011/83 must be interpreted as meaning that the information which must be provided to the consumer with regard to the conditions of the manufacturer's commercial guarantee corresponds to the information referred to in Article 6(2) of Directive 1999/44.

55 In that regard, it should be recalled that, under Article 1(1) of Directive 1999/44, the purpose of that directive is the approximation of the laws, regulations and administrative provisions of the Member States on certain aspects of the sale of consumer goods and associated guarantees in order to ensure a uniform minimum level of consumer protection in the context of the internal market.

56 As regards, more specifically, Article 6(2) of Directive 1999/44, it is apparent from the wording of that provision, read in conjunction with Article 1(2)(e) and recital 21 of that directive, that both the seller's and the manufacturer's guarantees must contain certain information, listed in Article 6(2) of that directive, in order to ensure that consumers are not misled.

57 It should be noted that although Article 6(2) of Directive 1999/44 and Article 6(1)(m) of Directive 2011/83 both relate to the commercial guarantees offered by the seller or trader and the manufacturer, they pursue different objectives. Whereas the first of those provisions is intended to specify which information must be included in those guarantees, the purpose of the second provision, as is apparent, *inter alia*, from its wording, is to provide the consumer with pre-contractual information on the existence and the conditions of such guarantees.

58 Accordingly, in cases where the trader is required to provide the consumer with pre-contractual information on the manufacturer's commercial guarantee, it must provide, under Article 6(1)(m) of Directive 2011/83, information relating solely to the existence and the conditions of that guarantee, and not to the whole content of that guarantee.

59 It is therefore necessary to determine, among the various factors listed in Article 6(2) of Directive 1999/44, which of them relate to the 'conditions of' commercial guarantees within the meaning of Article 6(1)(m) of Directive 2011/83.

60 In that regard, as the Commission maintains in its written pleadings, the first indent of Article 6(2) of Directive 1999/44 does not concern the conditions applicable to commercial guarantees within the meaning of Article 6(1)(m) of Directive 2011/83, but serves as a reminder of the existence of the legal guarantee of conformity.

61 As regards the second indent of Article 6(2) of Directive 1999/44, it should be noted that the 'contents of the guarantee' and the 'essential particulars necessary for making claims under the guarantee, notably the duration and territorial scope', necessarily cover the conditions of the manufacturer's commercial guarantee for the purposes of Article 6(1)(m) of Directive 2011/83. Furthermore, the 'name and address of the guarantor' are covered by those guarantee conditions, in so far as, in the light of the circumstances, the identity and geographical location of the guarantor provide further relevant information on the conditions of the guarantee.

62 That said, taking into account, first, the generic nature of the expressions ‘contents of the guarantee’ and ‘essential particulars necessary for making claims under the guarantee’, referred to in Article 6(2) of Directive 1999/44, and, second, the illustrative nature of the factors set out therein, the concept of ‘conditions of’ commercial guarantees, within the meaning of Article 6(1)(m) of Directive 2011/83, cannot be limited to the duration and territorial scope of the guarantee, or even to the name and address of the guarantor.

63 That concept necessarily encompasses all the conditions for the application and implementation of commercial guarantees, bearing in mind that, as is apparent from paragraph 53 above, pre-contractual information on the manufacturer’s commercial guarantee must only be provided so as to allow the consumer to decide whether or not to enter into a contractual relationship with the trader.

64 Therefore, the trader is required, under Article 6(1)(m) of Directive 2011/83, read in conjunction with the second indent of Article 6(2) of Directive 1999/44, to provide the consumer, in order to meet his or her legitimate interest, identified in paragraph 53 above, with all details relating to the conditions of application and implementation of the commercial guarantee concerned, which may also include not only, as the Commission states in its written pleadings, the place of reparation in the event of damage or any guarantee restrictions, but also, as has been noted in paragraph 61 above, the name and address of the guarantor.

65 In the light of the foregoing considerations, the answer to the third question is that Article 6(1)(m) of Directive 2011/83, read in conjunction with the second indent of Article 6(2) of Directive 1999/44, must be interpreted as meaning that the information which must be provided to the consumer with regard to the conditions of the manufacturer’s commercial guarantee includes all details relating to the conditions of application and implementation of such a guarantee which allow the consumer to decide whether or not to enter into a contractual relationship with the trader.

Costs

66 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Third Chamber) hereby rules:

1. Article 6(1)(m) 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, as regards the manufacturer’s commercial guarantee, the information requirement imposed on the trader by that provision does not arise from the mere fact that that guarantee exists, but only where the consumer has a legitimate interest in obtaining information concerning that guarantee in order to decide whether to enter into a contractual relationship with the trader. Such a legitimate interest is established, inter alia, where the trader makes the manufacturer’s commercial guarantee a central or decisive element of its offer. In order to determine whether the guarantee constitutes a central or decisive element of the 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 – whether or not there might be explanations relating to other guarantees covering the goods, and any other element capable of establishing an objective need to protect the consumer.

2. Article 6(1)(m) of Directive 2011/83, read in conjunction with the second indent of Article 6(2) of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees must be interpreted as meaning that the information which must be provided to the consumer with regard to the conditions of the manufacturer’s commercial guarantee includes all details relating to the conditions of application and implementation of such a guarantee which allow the consumer to decide whether or not to enter into a contractual relationship with the trader.

[Signatures]

* Language of the case: German.
