



**Advocate General Pitruzzella proposes that the Court rule that an e-commerce platform such as Amazon cannot be obliged to make a telephone number available to consumers**

*However, consumers must be guaranteed the choice of several different means of communication available for use, as well as rapid contact and efficient communication, and the information concerning those means of communication must be accessible, clear and comprehensible*

The company Amazon EU ('Amazon') manages a platform that operates exclusively on the internet and sells a wide range of goods and services. An action against that company was brought before the German courts by the Bundesverband der Verbraucherzentralen und Verbraucherverbände – Verbraucherzentrale Bundesverband e.V. (the German federation of consumer associations, 'the Bundesverband'). The Bundesverband seeks a declaration that Amazon has infringed German legislation which, in implementation of the Consumer Rights Directive,<sup>1</sup> requires traders to indicate, in a clear and comprehensible manner, their geographical address and telephone number and, where appropriate, their fax number and e-mail address. In particular, according to the Bundesverband, Amazon has failed to fulfil, in a clear and comprehensible manner, its obligations regarding the provision of information to consumers, given that, before the conclusion of online sales, no fax number is given on the website and no telephone number is made immediately available (this being displayed only after a certain procedure is completed by the consumer). Amazon does offer an automated call-back facility and an online chat service, but these are not, according to the Bundesverband, sufficient for it to be regarded as having discharged its legal obligations.

Against that background, the Bundesgerichtshof (Federal Court of Justice, Germany), hearing the case on final appeal, has decided to refer questions to the Court concerning the correct interpretation of the expression 'where available' in connection with the means of communication between consumers and traders in distance and off-premises contracts, and whether the list of means of communication (telephone, fax and e-mail) provided for in that context is exhaustive, as well as the scope of the obligation of transparency incumbent on traders.

In today's Opinion, Advocate General Giovanni Pitruzzella states that the aim of the Directive is to continually increase the level of protection afforded to consumers, which guarantees, at the same time, the competitiveness of businesses. Therefore, the relevant provisions of EU law must be interpreted in such a way as to **ensure the highest possible level of consumer protection without impinging on the organisational freedom of businesses, except to the extent strictly necessary for achieving that level of protection**. In that context, the Advocate General states that effective consumer protection is achieved not by imposing a particular contact method (such as by telephone), but by ensuring that consumers are able to make use of the most effective communication channels for the environment in which the transaction is carried out. By contrast, the imposition of a particular means of communication, such as use of the telephone, unnecessary for ensuring effective consumer protection, could be disproportionate to the objectives of consumer

<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).

protection and liable to impose undue burdens on the undertakings concerned, particularly those which are not 'internet giants' like Amazon.

For the Advocate General, therefore, what matters is not the means of communication considered in the abstract so much as the **actual ability of that means of communication to ensure that the following objectives, set out in the Directive, are met: (i) rapid contact and efficient communication between consumers and traders, and (ii) the provision of clear and comprehensible information.**

The Advocate General therefore proposes that the Court rule that, as regards distance and off-premises contracts, **the list of means of communication (telephone, fax and e-mail) in the Directive is merely illustrative. Traders are therefore free to choose which means to make available** for contact with consumers, including means of communication not expressly mentioned in the Directive, such as, for example, **online chat** (a technical evolution of the fax) or an **automatic call-back facility** (a technological development of the call centre), **provided the abovementioned objectives of the Directive are met.** In addition, it can be inferred from the objective of ensuring a high level of consumer protection and from the illustrative nature of the means of communications that **there is an obligation on traders to make several means of communication available to consumers**, allowing the latter freedom of choice.

Next, focusing on the second of the abovementioned objectives, the Advocate General notes that clarity and comprehensibility of information are aspects of the general requirement that contractual terms and conditions must be transparent. That requirement clearly also applies to contact methods and requires the trader to ensure that the consumer is able to understand unequivocally what contact methods are available to him in the event that he should need to communicate with the trader. Moreover, for the Advocate General, a necessary precondition for transparency is that information should be readily accessible. Therefore, it would be inconsistent with the Directive's purposes if the navigation were so complex as to make it difficult to access the information required. The Advocate General therefore proposes that the Court rule that, **in accordance with the requirement of transparency, the information provided by the trader on the means of communication available to the consumer must be easily, effectively and relatively quickly accessible by the consumer.**

As regards the meaning of the **words 'where available'**, concerning the three typical means of communication between traders and customers (telephone, fax and email), the Advocate General proposes that the Court rule, first, that they are to be **interpreted as not imposing an obligation on traders to set up a new telephone or fax connection or a new email account** if they decide to enter into distance contracts and, second, that that expression means 'where made available for customers' and not 'where they exist in the business organisation'. Indeed, not everything that is present in a given context is available to, or at the disposal of, all who might wish to use it. Therefore, the Advocate General concludes that, **where an undertaking does have a telephone line, it does not necessarily have to be made available for communication with consumers**, provided, as previously mentioned, that the Directive's objectives are attained.

Lastly, the Advocate General, drawing attention to the prohibition, expressly set out in the Directive, on Member States introducing in their national law provisions which diverge from those laid down in that directive, proposes that the Court rule that the **Directive precludes national legislation, such as the German legislation at issue, which imposes an obligation on traders that is not provided for in the Directive, such as the obligation to make a contact telephone line available to consumers in all cases.**

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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

EU 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 Opinion is published on the CURIA website on the day of delivery.

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