



## **Consumers' right of withdrawal from online purchases applies to mattresses from which the protective film has been removed after delivery**

*As in the case of garments, it may be presumed a trader is in a position to make the mattress, by means of cleaning or disinfection, suitable for resale, without prejudice to the requirements of health protection or hygiene*

Mr Sascha Ledowski purchased a mattress on the website of the German online retailer slewo. On taking delivery of the mattress, he removed the protective film covering it. He then returned the mattress to slewo, requesting reimbursement of the retail price of €1 094.52 and the return transport costs.

slewo takes the view that Mr Ledowski could not exercise the right of withdrawal which a consumer usually has for 14 days in the case of online purchases. It argues that the Consumer Rights Directive<sup>1</sup> excludes the right of withdrawal for 'sealed goods which are not suitable for return due to health protection or hygiene reasons and which have been unsealed by the consumer after delivery'.

The Bundesgerichtshof (Federal Court of Justice, Germany), before which the dispute has been brought, asks the Court of Justice to give an interpretation of the directive. It wishes to know in particular whether goods such as mattresses, from which the protection has been removed by the consumer after delivery, come within the scope of the exclusion provided for by the directive.

**By today's judgment**, the Court of Justice answers that question in the negative. Consequently, **the removal of a protective film, by the consumer, from a mattress purchased online does not prevent that consumer from exercising his right of withdrawal.**

The Court recalls that the right of withdrawal is designed to protect the consumer in the particular situation of distance sales, in which he is not able to see the product before concluding the contract. The right of withdrawal is therefore intended to offset the disadvantage for the consumer resulting from a distance contract by granting him an appropriate period for reflection during which he can examine and test the goods acquired to the extent necessary to establish the nature, characteristics and functioning of those goods.

So far as concerns the exclusion in question, it is the nature of the goods which may justify their packaging being sealed for health protection or hygiene reason. Accordingly, the unsealing of the packaging of the goods deprives them of the guarantee in terms of health protection or hygiene. Once the packaging is unsealed by the consumer and the goods are deprived of the guarantee in terms of health protection or hygiene, such goods may no longer be able to be used again by a third party and, as a consequence, no longer be able to be sold again.

---

<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).

According to the Court, a mattress, such as that at issue, from which the protective film has been removed by the consumer after delivery is not within the scope of the exception to the right of withdrawal in question.

First, although it may potentially have been used, such a mattress does not appear, by that fact alone, to be definitively unsuitable for being used again by a third or for being sold again. It suffices, in that regard, to recall in particular that the same mattress is used by successive guests at a hotel, that there is a market for second-hand mattresses and that used mattresses can be deep-cleaned.

Second, with respect to the right of withdrawal, mattresses may be equated with garments, a category in respect of which the directive expressly provides for the possibility of returning such an item after trying it on. Such an equation may be envisaged, in so far as, even in the case of direct contact of those goods with the human body, it may be presumed that the trader is in a position to make those goods, after they have been returned by the consumer, by means of a treatment such as cleaning or disinfection, suitable for new use by a third party and, accordingly, for resale, without prejudice to the requirements of health protection or hygiene.

However, the Court points out that, according to the directive, the consumer is liable for any diminished value of goods resulting from handling other than that necessary in order to establish the nature, characteristics and functioning of the goods, without the consumer thereby being deprived of his right of withdrawal.

---

**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.

---

*Unofficial document for media use, not binding on the Court of Justice.*

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

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106