

Case C-205/07

Criminal proceedings against Lodewijk Gysbrechts and Santurel Inter BVBA

(Reference for a preliminary ruling
from the hof van beroep te Gent)

(Articles 28 EC to 30 EC — Directive 97/7/EC — Consumer protection in distance contracts — Period for withdrawal — Prohibition on requiring from a consumer a deposit or payment before the end of the period for withdrawal)

Opinion of Advocate General Trstenjak delivered on 17 July 2008 I - 9949
Judgment of the Court (Grand Chamber), 16 December 2008 I - 9979

Summary of the Judgment

Free movement of goods — Quantitative restrictions on exports — Measures having equivalent effect — Meaning

(Art. 29 EC; European Parliament and Council Directive 97/7, Art. 6)

Article 29 EC does not preclude national rules which prohibit a supplier, in cross-border distance selling, from requiring an advance or any payment from a consumer before expiry of the withdrawal period, but Article 29 EC does preclude a prohibition, under those rules, on requesting, before expiry of that period, the number of the consumer's payment card.

Such a prohibition on the supplier, even if he undertakes not to use the payment card to collect payment before expiry of the period for withdrawal, constitutes a measure having equivalent effect to a quantitative restriction on exports. The consequences of such a prohibition are generally more significant in cross-border sales made directly to consumers, in particular, in sales made by means of the Internet, by reason, *inter alia*, of the obstacles to bringing any legal proceedings in another Member State against consumers who default, especially when the sales involve relatively small sums. The actual effect of such a prohibition, even if it is applicable to all traders active in the national territory, is none the less greater on goods leaving the market of the exporting Member State than on the marketing of goods in the domestic market of that Member State.

As regard whether such a measure can be justified by the objective of ensuring consumer protection, the prohibition on requiring an advance is clearly an appropriate and proportionate measure to ensure the effective exercise of the right to withdraw. In

that regard, first, the Member States must determine, in compliance with Community law, how the risk of non-performance which is a feature of distance-selling contracts because of the gap between the performance by each party of his contractual obligations ought to be allocated between supplier and consumer. Secondly, even if the prohibition on requiring a payment during the period for withdrawal increases the uncertainty of suppliers as to whether the price for the delivered goods will be paid, that prohibition is none the less clearly necessary to ensure a high level of consumer protection. In fact, a consumer who has made an advance payment to a supplier will be less inclined to exercise his right of withdrawal, even if he finds the delivered goods to be not entirely in accordance with his requirements.

However, the value of the prohibition on a supplier requiring a consumer's payment card number resides only in the fact that it eliminates the risk that the supplier may collect the price before expiry of the period for withdrawal. If, however, that risk materialises, the supplier's action is, in itself, a contravention of the prohibition on requiring a payment before expiry of the period for withdrawal, and consequently the imposition on a supplier of a prohibition on requiring that a consumer provide his payment card number goes beyond what is necessary to attain the objective pursued.

(see paras 42, 43, 52, 54, 56, 60-62, operative part)