

**Pleas in law and main arguments**

- 1) First Plea: Error in law and manifest error of assessment regarding the application of a general presumption in relation to the exception for the protection of the purpose of EU investigations
  - The Commission's error in law regarding the application of the general presumptions in relation to the application of exception to requests for access to specific and identified pre-existing documents;
  - The Commission's error in law regarding the protection of the purpose of ongoing investigations in relation to requests for access to specific and identified pre-existing documents;
  - The Commission's error in law and manifest error of assessment regarding the assessment of the overriding public interest of ensuring an effective judicial review (Article 47 of the Charter of Fundamental Rights); and
  - The Commission's error in law regarding the application of the fundamental right of access to documents (Article 42 of the Charter of Fundamental Rights).
- 2) Second Plea: Failure to state reasons regarding the refusal of access to a non-confidential version of an on-site access to the documents.

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**Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 30 November 2017 — Planet49 GmbH v Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e. V.**

(Case C-673/17)

(2018/C 112/13)

*Language of the case: German*

**Referring court**

Bundesgerichtshof

**Parties to the main proceedings**

*Applicant:* Planet49 GmbH

*Defendant:* Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e. V.

**Questions referred**

1. a) Does it constitute a valid consent within the meaning of Article 5(3) and Article 2(f) of Directive 2002/58/EC <sup>(1)</sup> in conjunction with Article 2(h) of Directive 95/46/EC <sup>(2)</sup> if the storage of information, or access to information already stored in the user's terminal equipment, is permitted by way of a pre-checked checkbox which the user must unselect to refuse his consent?
- b) For the purposes of the application of Article 5(3) and of Article 2(f) of Directive 2002/58/EC in conjunction with Article 2(h) of Directive 95/46/EC, does it make a difference whether the information stored or accessed constitutes personal data?
- c) In the circumstances referred to in Question 1 a), does a valid consent within the meaning of Article 6(1)(a) of Regulation (EU) 2016/679 <sup>(3)</sup> exist?

2. What information does the service provider have to give within the scope of the provision of clear and comprehensive information to the user that has to be undertaken in accordance with Article 5(3) of Directive 2002/58/EC? Does this include the duration of the operation of the cookies and the question of whether third parties are given access to the cookies?

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<sup>(1)</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37).

<sup>(2)</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

<sup>(3)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

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**Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 6 December 2017 — slewo // schlafen leben wohnen GmbH v Sascha Ledowski**

(Case C-681/17)

(2018/C 112/14)

*Language of the case: German*

**Referring court**

Bundesgerichtshof

**Parties to the main proceedings**

*Appellant:* slewo // schlafen leben wohnen GmbH

*Respondent:* Sascha Ledowski

**Questions referred**

For the purposes of the interpretation of Article 16(e) and — if relevant — Article 6(1)(k) 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, <sup>(1)</sup> the following questions shall be referred to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267 TFEU:

1. Should Article 16(e) of the Consumer Rights Directive be interpreted as meaning that the goods referred to there which are not suitable for return due to health protection or hygiene reasons include goods (such as, for example, mattresses) which, although when used as intended may come into direct contact with the human body, can nevertheless be made saleable again by means of suitable (cleaning) measures by the trader?
2. If Question 1 is answered in the affirmative:
  - a) What requirements must the packaging of goods satisfy for it to be considered that sealing within the meaning of Article 16(e) of the Consumer Rights Directive exists?  
  
and
  - b) Does the information that the trader has to give pursuant to Article 6(1)(k) of the Consumer Rights Directive before the contract becomes binding have to be provided in such a way that the consumer is informed, with specific reference to the article to be purchased (here a mattress) and the seal that is applied, that he will lose the right of withdrawal if he removes the seal?

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<sup>(1)</sup> OJ 2011 L 304, p. 64.