



In the event of the replacement of defective consumer goods, the seller must remove the goods from where they have been installed in good faith by the consumer and install the replacement goods there, or bear the necessary cost of those operations

Reimbursement of the cost may, however, be limited to an amount proportionate to the value of goods in conformity and the significance of the lack of conformity

The directive on the sale of consumer goods¹ provides that the seller is to be liable to the consumer for any lack of conformity of the goods at the time when they are delivered. If the goods are not in conformity, the consumer is entitled to have them brought into conformity, free of charge, by repair or replacement, unless this is impossible or disproportionate. Any repair or replacement must be done without significant inconvenience to the consumer. If he is unable to have the goods brought into conformity, he can claim a reduction of the price or rescission of the contract of sale.

Case C-65/09

Jürgen Wittmer and Gebr. Weber GmbH concluded a contract for the sale of polished tiles at a price of €1 382.27. After having approximately two-thirds of the tiles laid in his house, Mr Wittmer noticed shading on the tiles which was visible to the naked eye. In proceedings brought by Mr Wittmer, the expert appointed by the court came to the conclusion that the shadings were fine micro-brush-marks which could not be removed, and that the only possible remedy was complete replacement of the tiles. The expert estimated the cost of this at €5 830.57.

Case C-87/09

Ingrid Putz and Medianess Electronics GmbH concluded over the internet a contract of sale for a new dishwasher at the price of €367. The parties agreed that the goods would be delivered to the door of Ms Putz's house, in return for a delivery charge. The delivery of the dishwasher and the payment of the price took place as agreed. After Ms Putz had the dishwasher installed in her house, it turned out that it was faulty and could not be repaired, the fault not being attributable to the installation of the machine. The parties therefore agreed on the replacement of the dishwasher. Ms Putz demanded that Medianess Electronics not only deliver a new dishwasher, but also remove the defective machine and install the replacement machine, or bear the cost of removal and new installation, which the company refused.

The German courts hearing the cases ask the Court of Justice whether European Union law requires the seller to bear the cost of removing the goods not in conformity and installing the replacement goods. They point out that German law does not lay down an obligation for a seller who is not at fault to bear the costs of those operations.

By its judgment delivered today, the Court of Justice notes that the European Union legislature intended to make the 'free of charge' aspect of the seller's obligation to bring goods into conformity an essential element of the protection afforded to consumers. The 'free of charge' requirement

¹ 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).

attaching to the seller's obligation to bring the goods into conformity aims to protect consumers against the risk of financial burdens which might dissuade them from asserting their rights in the absence of such protection.

If the consumer, in the event that goods not in conformity are replaced, could not require the seller to bear the cost of removing the goods from the place where they had been installed in a manner consistent with their nature and purpose, and installing the replacement goods there, the replacement would impose an additional financial burden on him that he would not have had to bear if the seller had performed the contract of sale correctly. If the seller had from the outset delivered goods in conformity with the contract, the consumer would only have paid the installation costs once, and would not have had to bear the cost of removing the defective goods.

The Court finds that requiring the seller to bear the cost of removing the defective goods and installing the replacement goods does not lead to an inequitable outcome. Even assuming that the lack of conformity of the goods does not result from fault on the part of the seller, the fact remains that by delivering goods not in conformity he fails correctly to perform the obligation which he accepted under the contract of sale, and he must therefore bear the consequences of that defective performance. On the other hand, the consumer, for his part, has paid the selling price and thus correctly performed his contractual obligations. In addition, the fact that the consumer, relying on the conformity of the goods delivered, installed the defective goods, in good faith, in a manner consistent with their nature and purpose before the defect became apparent cannot constitute fault on the part of the consumer.

Consequently, in a situation in which neither party to the contract was at fault, it is justified to make the seller liable for the cost of removing the goods not in conformity and installing the replacement goods, since those additional costs, which are necessary for carrying out the replacement, would have been avoided if the seller had correctly performed his contractual obligations at the outset. The seller's obligation to bear those costs exists regardless of whether he was obliged under the contract of sale to install the goods delivered. The rights thus conferred on consumers by the directive do not seek to place consumers in a more favourable position than they could claim under the contract of sale, but merely to re-establish the situation which would have prevailed if the seller had delivered goods in conformity at the outset.

The Court also holds that the directive precludes national legislation under which the seller is entitled to refuse to replace goods not in conformity, where that is the only possible remedy, on the ground that replacement would impose costs on him that are disproportionate with regard to the value the goods would have if there were no lack of conformity and the significance of the lack of conformity. Although the directive gives the consumer the right to have the goods brought into conformity by repair or replacement, unless this is impossible or disproportionate, it also states that a remedy is to be deemed disproportionate if it imposes costs on the seller which, in comparison with the alternative remedy, are unreasonable. Therefore, if only one of those two remedies is possible, the seller may not refuse the only remedy which allows the goods to be brought into conformity with the contract.

The Court finds, however, that in the situation in which replacement of the defective goods, as the only possible remedy, involves disproportionate costs because of the need to remove the goods not in conformity from where they have been installed and to install the replacement goods, the directive does not preclude the consumer's right to reimbursement of the cost of removing the defective goods and installing the replacement goods from being limited, where necessary, to an amount proportionate to the value the goods would have if there were no lack of conformity and the significance of the lack of conformity. Such a limitation leaves intact the consumer's right to require replacement of the goods not in conformity. However, the possibility of such a reduction cannot result in the consumer's right to reimbursement of those costs being rendered devoid of substance in practice. Moreover, in the event that the right to reimburse those costs is reduced, the consumer must be able to require, instead of replacement of the goods not in conformity, an appropriate price reduction or rescission of the contract.

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 European Union 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 judgment is published on the CURIA website on the day of delivery.

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