JUDGMENT OF THE COURT (First Chamber)

4 June 2015 (*)

(Reference for a preliminary ruling — Directive 1999/44/EC — Sale of consumer goods and associated guarantees — Status of the purchaser — Consumer status — Lack of conformity of the goods delivered — Duty to inform the seller — Lack of conformity which became apparent within six months of delivery of the goods — Burden of proof)

In Case C-497/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Gerechtshof Arnhem-Leeuwarden (Netherlands), made by decision of 10 September 2013, received at the Court on 16 September 2013, in the proceedings

Froukje Faber

v

Autobedrijf Hazet Ochten BV,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, S. Rodin, A. Borg Barthet, M. Berger (Rapporteur) and F. Biltgen, Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 11 September 2014,

after considering the observations submitted on behalf of:

– Autobedrijf Hazet Ochten BV, by W. van Ochten, advocaat,

– the Netherlands Government, by M. Bulterman, C. Schillemans and J. Langer, acting as Agents,

– the Belgian Government, by T. Materne and J.-C. Halleux, acting as Agents,

– the Austrian Government, by C. Pesendorfer, acting as Agent,

– the European Commission, by M. van Beek, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 27 November 2014,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 1(2)(a) and 5 of 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).

2 The request has been made in proceedings between Ms Faber and Autobedrijf Hazet Ochten BV (‘the Hazet garage’) concerning a claim for compensation for the damage caused by the lack of conformity which allegedly marred the vehicle that Ms Faber purchased at the Hazet garage.

Legal context

EU law

3 Article 1(2)(a) of Directive 1999/44 defines the concept of ‘consumer’ as referring to ‘any natural person who, in the contracts covered by this Directive, is acting for purposes which are not

related to his trade, business or profession'.

4 Article 2(1) and (2) of that directive provides:

'1. The seller must deliver goods to the consumer which are in conformity with the contract of sale.

2. Consumer goods are presumed to be in conformity with the contract if they:

(a) comply with the description given by the seller and possess the qualities of the goods which the seller has held out to the consumer as a sample or model;

(b) are fit for any particular purpose for which the consumer requires them and which he made known to the seller at the time of conclusion of the contract and which the seller has accepted;

(c) are fit for the purposes for which goods of the same type are normally used;

(d) show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling.'

5 Article 3 of Directive 1999/44, entitled 'Rights of the consumer', provides in paragraph 1 that '[t]he seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered'.

6 Article 5 of that directive, which relates to time-limits, is worded as follows:

'1. The seller shall be held liable under Article 3 where the lack of conformity becomes apparent within two years as from delivery of the goods. …

2. Member States may provide that, in order to benefit from his rights, the consumer must inform the seller of the lack of conformity within a period of two months from the date on which he detected such lack of conformity.

…

3. Unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods shall be presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity.'

7 Article 7 of Directive 1999/44 states that the provisions of that directive are binding in nature and that, in particular, any contractual terms which directly or indirectly restrict the rights resulting from it are, as provided for by national law, not to be binding on the consumer.

Netherlands law

Substantive law

8 Article 7:5(1) of the Netherlands Civil Code (Burgerlijk Wetboek, 'the BW') defines the sale of consumer goods as 'the sale of movable property …, concluded by a seller carrying out a trade, business or profession and a purchaser, a natural person, not carrying out a trade, business or profession'.

9 Article 7:17(1) of the BW provides that the goods delivered must be in conformity with the contract.

10 Article 7:18(2) of the BW, which transposes Article 5(3) of Directive 1999/44 into Netherlands law provides:

'In the case of a consumer sale it is presumed that the goods delivered are not in conformity with the contract if the lack of conformity becomes apparent within six months after delivery, unless the nature of the goods or the nature of the lack of conformity preclude this.'

11 It is apparent from the explanatory memorandum relating to the insertion of that provision that the purchaser must assert, and in the event of a dispute, prove, that the goods are not in conformity with the contract and that that lack of conformity became apparent within 6 months of delivery. It is then for the seller to assert and prove that, when delivered, the goods were in fact in conformity with the contract.

12 Article 7:23(1) of the BW provides:

'The purchaser can no longer rely on a lack of conformity with the contract of the goods delivered, if he has not given notice thereof to the seller within the appropriate period after he discovered or ought reasonably to have discovered it. If, however, it appears that the goods lack a characteristic which according to the seller they possessed, or if the lack of conformity relates to facts which he knew or ought to have known, but which he did not disclose, the notification must then take place within the appropriate time after the discovery. In the case of a consumer sale, the notification must take place within the appropriate time after the discovery, where a notification within a period of two months after the discovery is in good time.'

13 According to the settled case-law of the Hoge Raad (Supreme Court of the Netherlands), it is for the purchaser, if the seller claims that he was not informed within the time-limits, to assert and, in the case of a substantiated challenge, to prove that he informed the seller in good time and in a manner that was clearly identifiable for the seller. In the case of a sale of consumer goods, the question of whether a notification which is made more than two months after the discovery of the lack of conformity may be regarded as having taken place in good time depends on the circumstance of the case.

Procedural law

14 Pursuant to Articles 23 and 24 of the Code of Civil Procedure (Wetboek van Burgerlijke Rechtsvordering, 'the Rv'), the court may rule only on the claims of the parties and must confine itself to the legal matters on which the claim, application or defence are based.

15 In appeal proceedings, the court dealing with those proceedings may rule only on the complaints which were put forward by the parties in the first claims lodged on appeal. The court hearing the appeal must, however, apply of its own motion the relevant provisions of public policy, even if these have not been invoked by the parties.

16 However, under Article 22 of the Rv, 'the court may in all circumstances and at each stage of the procedure ask either or both of the parties to explain certain claims or to provide certain documents relating to the case'.

The facts of the dispute in the main proceedings and the questions referred for a preliminary ruling

17 On 27 May 2008, Ms Faber purchased a secondhand vehicle at the Hazet garage. The contract of sale concluded between the parties was drawn up on a pre-printed form bearing the heading of that garage, entitled 'contract of sale to a private individual'.

18 On 26 September 2008, the vehicle in question caught fire during a journey and was completely destroyed. Ms Faber, who was driving the vehicle, was at that time on her way to a business meeting in the company of her daughter.

19 The vehicle was towed to the Hazet garage by a breakdown lorry and then, at the request of that garage, to a scrapyard to be kept there in accordance with the environmental legislation in force. Ms Faber maintains, but this is disputed by the Hazet garage, that, on that occasion, the parties spoke about the accident and about the possible liability of the garage.

20 At the beginning of 2009, the Hazet garage contacted Ms Faber by telephone who told them that she was waiting for the police report on the fire. In response to a request by Ms Faber, the police, however, informed her that no technical report had been compiled.

21 On 8 May 2009, the vehicle concerned was scrapped, the Hazet garage having been informed of this beforehand.

22 By letter of 11 May 2009, Ms Faber informed the Hazet garage that she was holding it liable for the damage resulting from the fire which had destroyed her vehicle. That damage, corresponding to the purchase price of that vehicle and the value of various objects which were in it, was estimated by Ms Faber to amount to EUR 10 828.55.

23 At the beginning of July 2009, Ms Faber instructed a firm of specialists to carry out a technical investigation into the cause of the vehicle fire. As the vehicle had been scrapped in the meantime, the investigation could not take place.

24 On 26 October 2010, Ms Faber brought an action against the Hazet garage before the Rechtbank Arnhem (District Court, Arnhem, Netherlands)

25 In support of her action, Ms Faber submitted that the vehicle was not in conformity with the contract and that there was therefore non-conformity for the purposes of Article 7:17 of the BW. However, she did not claim to have made her purchase in her capacity as a consumer.

26 The Hazet garage defended itself by disputing that there was a lack of conformity and by submitting that Ms Faber had made her complaint too late, with the result that, pursuant to Article 7:23(1) of the BW, she had forfeited all her rights.

27 By judgment of 27 April 2011, the Rechtbank Arnhem rejected Ms Faber's claims. That court held that the Hazet garage could rightly rely on Article 7:23(1) of the BW, given that the first contact between the parties had taken place (by telephone) only at the beginning of 2009, that is to say more than three months after the vehicle fire. It also held that there was no need to examine further whether Ms Faber had acted in her capacity as a consumer.

28 On 26 July 2011, Ms Faber appealed against the judgment of the Rechtbank Arnhem to the Gerechtshof Arnhem-Leeuwarden (Regional Court of Appeal, Arnhem-Leeuwarden, Netherlands).

29 In her appeal, Ms Faber put forward two grounds of appeal, the first directed against the assessment of the court at first instance that she had not acted within the statutory time-limits and the second alleging that the members of the fire brigade and police who came to the scene of the fire spoke of a technical fault which affected the vehicle in question.

30 By contrast, Ms Faber did not challenge the Rechtbank Arnhem's assessment that there was no need to ascertain whether the contract concluded between the parties related to consumer goods. She did not, in addition, specify whether she had purchased the vehicle concerned in her capacity as a consumer.

31 In those circumstances the Gerechtshof Arnhem-Leeuwarden decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the national court, either on the grounds of the principle of effectiveness, or on the grounds of the high level of consumer protection within the [European] Union sought by Directive 1999/44, or on the grounds of other provisions or norms of European law, obliged to investigate of its own motion whether, in relation to a contract, the purchaser is (a) consumer within the meaning of Article 1(2)(a) of Directive 1999/44?

(2) If the answer to the first question is in the affirmative, does the same hold true if the case file contains no (or insufficient or contradictory) information to enable the status of the purchaser to be determined?

(3) If the answer to the first question is in the affirmative, does the same hold true in appeal proceedings, where the purchaser has not raised any complaint against the judgment of the court of first instance, to the extent that in that judgment that assessment (of its own motion) was not carried out, and the question of whether the purchaser may be deemed to be a consumer was expressly left open?

(4) Must (Article 5 of) Directive 1999/44 be regarded as a norm which is equivalent to the national rules which in the internal legal system are deemed to be rules of public policy?

(5) Do the principle of effectiveness, the high level of consumer protection within the European Union sought by Directive 1999/44 or other provisions or norms of EU law preclude Netherlands law relating to the burden resting on the consumer-purchaser of presenting the facts and adducing the evidence in relation to the duty of notifying the seller (in good time) of the presumed lack of conformity of delivered goods?

(6) Do the principle of effectiveness, the high level of consumer protection within the European Union sought by Directive 1999/44 or other provisions or norms of EU law preclude Netherlands law relating to the burden resting on the consumer-purchaser of presenting the facts and adducing the evidence that the goods are not in conformity and that that lack of conformity became apparent within six months of delivery? What is the meaning of the words "any lack of conformity which becomes apparent" in Article 5(3) of Directive 1999/44 and in particular: to what extent must the consumer-purchaser establish facts and circumstances concerning (the cause of) the lack of conformity? Is it sufficient in that regard that the consumer-purchaser establish, and in the case of a substantiated challenge prove, that the purchased goods do not function (well), or must he also establish, and in the case of a substantiated challenge prove, which defect in the purchased goods caused the purchased goods not to function (well)?

(7) Does the fact that Ms Faber has been assisted by a lawyer in both instances in these proceedings still play a role when answering the foregoing questions?'

Consideration of the questions referred

The first, second, third and seventh questions

32 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether, in accordance with the principle of effectiveness, a national court before which an action is brought which relates to the guarantee or warranty owed by the seller to the purchaser in the context of a contract of sale relating to tangible moveable goods is required to examine of its own motion whether the purchaser is to be regarded as a consumer within the meaning of Directive 1999/44, even though that party has not relied on that status.

33 It must be pointed out at the outset that the dispute in the main proceedings is between two individuals. Although it is true that, in such an action, neither of the parties may rely on the direct effect of Directive 1999/44, it is, however, settled case-law that a national court, when hearing a case exclusively between individuals, is required, when applying the provisions of domestic law, to consider the whole body of rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the applicable directive in order to achieve an outcome consistent with the objective pursued by that directive (see, inter alia, judgment in *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 54 and the case-law cited).

34 According to the information provided to the Court, Directive 1999/44 was transposed into Netherlands law by the insertion in Book 7 of the BW, entitled 'Special contracts', among the rules in respect of guarantees or warranties that are applicable without distinction to all contracts of sale, of provisions which are specific to contracts of sale relating to consumer goods.

35 However, as regards the contract of sale at issue in the main proceedings, the referring court states that there is a doubt as to the provisions applicable, since it is not known whether that contract of sale was concluded with a consumer.

36 The order for reference states that, although Ms Faber provided a contractual document entitled 'contract of sale to a private individual' in support of her claim based on a guarantee or warranty against the Hazet garage, she did not specify whether that contract had been concluded in the course of her business or profession or not, although that information would make it possible for the court before which the dispute in the main proceedings has been brought to determine whether

she may be regarded as a consumer for the purposes of the applicable national law and of Article 1(2)(a) of Directive 1999/44. Furthermore, at first instance, Ms Faber's action was dismissed as out of time in the light of the time-limits prescribed by national law, without it having been established in what capacity she had concluded that contract. Lastly, in the grounds which she put forward in support of her appeal and which delimit the scope of the dispute transferred to the appellate court, Ms Faber also did not submit that she had acted in her capacity as a consumer.

37 As regards whether, in such a context, the national court is required to examine of its own motion whether the purchaser is to be regarded as a consumer, it must be borne in mind that, in the absence of harmonisation of procedural rules, the detailed procedural rules governing actions for safeguarding an individual's rights under EU law are a matter for the domestic legal order of the Member States, provided, however, that they are no less favourable than those governing similar domestic actions (principle of equivalence) and do not make it in practice impossible or excessively difficult to exercise the rights conferred on consumers by EU law (principle of effectiveness).

38 In that regard, it is, in principle, for the national court, for the purpose of identifying the legal rules applicable to a dispute which has been brought before it, to assign a legal classification to the facts and acts on which the parties rely in support of their claims. That legal classification is a prerequisite in a case in which, like that in the main proceedings, the guarantee or warranty in respect of the goods sold, on which the applicant is relying, may be governed by different rules depending on the purchaser's status. Such a classification does not, in itself, imply that the court is, of its own motion, exercising a discretion, but merely that it is establishing and ascertaining whether there is a statutory condition which determines the applicable legal rule.

39 In the same way that, within the context of the detailed procedural rules of its domestic legal order, the national court is called upon, for the purpose of identifying the applicable rule of national law, to classify the matters of law and of fact which the parties have submitted to it, if necessary by requesting the parties to provide any useful details, it is required, in accordance with the principle of equivalence, to carry out the same process for the purpose of determining whether a rule of EU law is applicable.

40 That may be the case in the main proceedings, in which the national court has, as it itself stated in the order for reference, an 'indication', in the present case the production by Ms Faber of a document entitled 'contract of sale to a private individual', and in which, pursuant to Article 22 of the Rv, that court is able, as the Netherlands Government has pointed out, to order the parties to explain certain claims or to produce certain documents. It is for the national court to undertake the investigations for that purpose.

41 It is thus only if the detailed procedural rules of the domestic legal order were not to provide the national court with any means which would make it possible for it to give the facts and acts at issue their precise classification, if that classification has not been expressly invoked by the parties themselves in support of their claims, that the question of whether the principle of effectiveness may authorise it to classify as a consumer a party who has not relied on that status would arise.

42 In fact, the Court has required, on the basis of the principle of effectiveness and notwithstanding rules of domestic law to the contrary, the national court to apply of its own motion certain provisions contained in European Union directives on consumer protection. That requirement has been justified by the consideration that the system of protection introduced by those directives is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge and that there is a real risk that the consumer, particularly because of a lack of awareness, will not rely on the legal rule that is intended to protect him (see, to that effect, as regards Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), judgment in *Mostaza Claro*, C-168/05, EU:C:2006:675, paragraph 28 and the case-law cited, and, as regards Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48),

judgment in *Rampion and Godard*, C-429/05, EU:C:2007:575, paragraph 65).

43 The Court has stated that every case in which the question arises as to whether a national procedural provision makes the application of EU law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national bodies (see, inter alia, judgment in *Kušionová*, C-34/13, EU:C:2014:2189, paragraph 52 and the case-law cited).

44 Detailed procedural rules which, as may be the case in the main proceedings, would prevent both the court at first instance and the appellate court, before which a guarantee or warranty claim based on a contract of sale has been brought, from classifying, on the basis of the matters of fact and of law which they have at their disposal or may have at their disposal simply by making a request for clarification, the contractual relationship in question as a sale to a consumer, if the consumer has not expressly claimed to have that status, would be tantamount to making the consumer subject to the obligation to carry out a full legal classification of his situation himself, failing which he would lose the rights which the EU legislature intended to confer on him by means of Directive 1999/44. In a field in which, in a number of Member States, the rules of procedure allow individuals to represent themselves before the courts, there would be a real risk that the consumer, particularly because of a lack of awareness, would not be able to satisfy such a level of requirements.

45 It follows that detailed procedural rules such as those described in the preceding paragraph would not comply with the principle of effectiveness inasmuch as they would make the application of the protection which Directive 1999/44 seeks to confer on consumers excessively difficult in actions to enforce a warranty or guarantee which are based on a lack of conformity and to which those consumers are parties.

46 Rather, the principle of effectiveness requires a national court before which a dispute relating to a contract which may be covered by that directive has been brought to determine whether the purchaser may be classified as a consumer, even if the purchaser has not expressly claimed to have that status, as soon as that court has at its disposal the matters of law and of fact that are necessary for that purpose or may have them at its disposal simply by making a request for clarification,

47 It must be added that the question of whether the consumer is assisted by a lawyer or not cannot alter that conclusion, as the interpretation of EU law and also the scope of the principles of effectiveness and equivalence are independent of the specific circumstances of each case (see, to that effect, judgment in *Rampion and Godard*, EU:C:2007:575, paragraph 65).

48 In the light of the foregoing considerations, the answer to the first, second, third and seventh questions is that Directive 1999/44 must be interpreted as meaning that a national court before which an action relating to a contract which may be covered by that directive has been brought is required to determine whether the purchaser may be classified as a consumer within the meaning of that directive, even if the purchaser has not relied on that status, as soon as that court has at its disposal the matters of law and of fact that are necessary for that purpose or may have them at its disposal simply by making a request for clarification.

The fourth question

49 By that question, the referring court asks, in essence, whether Article 5 of Directive 1999/44 may be regarded as a provision which is of equal standing to a rule of public policy for the purposes of its domestic law, that is to say, as a rule which may be raised of its own motion by the national court in the context of an appeal.

50 It is apparent from the order for reference that that question relates specifically to Article 5(3) of that directive, which provides that, unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods is, in principle, to be presumed to have existed at the time of delivery.

51 It must be pointed out that the question asked by the referring court can be relevant only if the national court has determined that the contract in question comes within the material scope of Directive 1999/44, which presupposes, inter alia, that that contract was concluded with a consumer.

52 Under the system of liability established by Directive 1999/44, whereas Article 2(2) of that directive sets out a rebuttable presumption of conformity with the contract, Article 3(1) of the directive states that the seller is to be liable for any lack of conformity which exists at the time the goods were delivered. It is apparent from the combined application of those provisions that the onus is, in principle, on the consumer to furnish the evidence that a lack of conformity exists and that that lack of conformity existed at the time when the goods were delivered.

53 Article 5(3) of Directive 1999/44 provides for a derogation from that principle if the lack of conformity has become apparent within six months of delivery of the goods. In those circumstances, the lack of conformity is presumed to have existed at the time of delivery.

54 That relaxation of the burden of proof in favour of the consumer is based on the determination that where the lack of conformity becomes apparent only subsequent to the time of delivery of the goods, it is 'well-nigh impossible for consumers' to prove that that lack of conformity existed at the time of delivery, whereas it is generally far easier for the professional to demonstrate that the lack of conformity was not present at the time of delivery and that it resulted, for example, from improper handling by the consumer (see the explanatory memorandum to the proposal for a European Parliament and Council Directive on the sale of consumer goods and associated guarantees, COM(95) 520 final, p. 13).

55 The apportionment of the burden of proof under Article 5(3) of Directive 1999/44 is, in accordance with Article 7 of that directive, binding in nature both for the parties, who may not derogate from it by means of an agreement, and for the Member States, which must ensure that it is complied with. It follows that that rule relating to the burden of proof must be applied even though it has not been expressly relied on by the consumer who may benefit from it.

56 In view of the nature and importance of the public interest underlying the protection which Article 5(3) of Directive 1999/44 confers on consumers, that provision must be regarded as a provision of equal standing to a national rule which ranks, within the domestic legal system, as a rule of public policy. It follows that where, under its domestic legal system, it has a discretion as to whether to apply such a rule of its own motion, the national court must of its own motion apply any provision of its domestic law which transposes Article 5(3) of Directive 1999/44 (see, to that effect, judgment in *Asturcom Telecomunicaciones*, C-40/08, EU:C:2009:615, paragraphs 52 to 54 and the case-law cited).

57 In those circumstances, the answer to the fourth question is that Article 5(3) of Directive 1999/44 must be interpreted as meaning that it must be regarded as a provision of equal standing to a national rule which ranks, within the domestic legal system, as a rule of public policy and that the national court must of its own motion apply any provision which transposes it into domestic law.

The fifth question

58 By that question, the referring court asks, in essence, whether the principle of effectiveness precludes a national rule which requires the consumer to prove that he informed the seller of the lack of conformity in good time.

59 It is apparent from the order for reference that the Netherlands legislature provides for such a duty in Article 7:23 of the BW and that, in accordance with the case-law of the Hoge Raad, it is for the consumer, if there is a challenge by the seller, to furnish evidence that he informed the seller of the lack of conformity of the goods delivered. It is also apparent from the particulars provided by the referring court that, under the regime provided for by the Netherlands legislature, that notification is deemed to have been given in good time if it was given within a period of two months after the discovery of the lack of conformity. Furthermore, according to the case-law of the

Hoge Raad, the question of whether a notification which is given after that time-limit has expired may still be regarded as having been given in good time depends on the specific circumstances of each case.

60 In that regard, it must be borne in mind that Article 5(2) of Directive 1999/44 permits Member States to provide that, in order to benefit from his rights, the consumer must inform the seller of the lack of conformity within a period of two months from the date on which he detected such lack of conformity.

61 According to the *travaux préparatoires* in respect of that directive, that option reflects the aim of reinforcing legal certainty, by encouraging 'diligence' on the part of the purchaser, 'taking the seller's interests into account', 'but does not establish a strict obligation to carry out a detailed inspection of the good' (see the explanatory memorandum to the proposal for a directive, COM(95) 520 final, p. 14).

62 As is apparent from the wording of Article 5(2) of Directive 1999/44, read in the light of recital 19 in the preamble thereto, and from the purpose of that provision, the obligation thereby imposed on the consumer cannot go beyond that of informing the seller that a lack of conformity exists.

63 As regards the content of that notification, the consumer cannot be required, at that stage, to furnish evidence that a lack of conformity actually adversely affects the goods that he has purchased. In view of his weak position vis-à-vis the seller as regards the information relating to the qualities of those goods and to the state in which they were sold, the consumer cannot, in addition, be required to state the precise cause of that lack of conformity. By contrast, in order for the notification to be of use to the seller, it must include a certain number of particulars — the degree of precision of which will necessarily vary depending on the specific circumstances of each case — relating to the nature of the goods in question, the wording of the contract of sale in respect of those goods and the way in which the alleged lack of conformity became apparent.

64 The evidence that that notification has been given to the seller must, in principle, comply with the relevant national rules, which must nevertheless comply with the principle of effectiveness. It follows that a Member State cannot impose requirements which are capable of making it impossible or excessively difficult for the consumer to exercise the rights which he derives from Directive 1999/44.

65 The answer to the fifth question is thus that Article 5(2) of Directive 1999/44 must be interpreted as not precluding a national rule which provides that the consumer, in order to benefit from the rights which he derives from that directive, must inform the seller of the lack of conformity in good time, provided that that consumer has a period of not less than two months from the date on which he detected that lack of conformity to give that notification, that the notification to be given relates only to the existence of that lack of conformity and that it is not subject to rules of evidence which would make it impossible or excessively difficult for the consumer to exercise his rights.

The sixth question

66 By that question, the referring court asks, in essence, how the apportionment of the burden of proof under Article 5(3) of Directive 1999/44 functions and, in particular, which matters it is for the consumer to establish.

67 As has been stated in paragraph 53 of the present judgment, that provision provides for a derogation from the principle that it is for the consumer to rebut the presumption of conformity of the goods sold set out in Article 2(2) of that directive and to furnish the evidence of the lack of conformity which he alleges.

68 If the lack of conformity has become apparent within six months of delivery of the goods, Article 5(3) of Directive 199/44 relaxes the burden of proof which is borne by the consumer by

providing that the lack of conformity is presumed to have existed at the time of delivery.

69 In order to benefit from that relaxation the consumer must nevertheless furnish evidence of certain facts.

70 In the first place, the consumer must allege and furnish evidence that the goods sold are not in conformity with the relevant contract in so far as, for example, they do not have the qualities agreed on in that contract or even are not fit for the purpose which that type of goods is normally expected to have. The consumer is required to prove only that the lack of conformity exists. He is not required to prove the cause of that lack of conformity or to establish that its origin is attributable to the seller.

71 In the second place, the consumer must prove that the lack of conformity in question became apparent, that is to say, became physically apparent, within six months of delivery of the goods.

72 Once he has established those facts, the consumer is relieved of the obligation of establishing that the lack of conformity existed at the time of delivery of the goods. The occurrence of that lack of conformity within the short period of six months makes it possible to assume that, although it became apparent only after the delivery of the goods, it already existed 'in embryonic form' in those goods at the time of delivery (see the explanatory memorandum to the proposal for the directive, COM(95) 520 final, p. 12).

73 It is therefore for the professional seller to provide, as the case may be, evidence that the lack of conformity did not exist at the time of delivery of the goods, by establishing that the cause or origin of that lack of conformity is to be found in an act or omission which took place after that delivery.

74 If the seller does not manage to prove to the requisite legal standard that the cause or origin of the lack of conformity lies in circumstances which arose after the delivery of the goods, the presumption laid down in Article 5(3) of Directive 1999/44 enables the consumer to assert the rights which he derives from that directive.

75 The answer to the sixth question is thus that Article 5(3) of Directive 1999/44 must be interpreted as meaning that the rule that the lack of conformity is presumed to have existed at the time of delivery of the goods

– applies if the consumer furnishes evidence that the goods sold are not in conformity with the contract and that the lack of conformity in question became apparent, that is to say, became physically apparent, within six months of delivery of the goods. The consumer is not required to prove the cause of that lack of conformity or to establish that its origin is attributable to the seller;

– may be discounted only if the seller proves to the requisite legal standard that the cause or origin of that lack of conformity lies in circumstances which arose after the delivery of the goods.

Costs

76 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

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 must be interpreted as meaning that a national court before which an action relating to a contract which may be covered by that directive has been brought, is required to determine whether the purchaser may be classified as a consumer within the meaning of that directive, even if the purchaser has not relied on that status, as soon as that court has at its disposal the matters of law and of fact that are necessary for that purpose or may have them at its disposal simply by making a request for clarification.**

2. **Article 5(3) of Directive 1999/44 must be interpreted as meaning that it must be regarded as a provision of equal standing to a national rule which ranks, within the domestic legal system, as a rule of public policy and that the national court must of its own motion apply any provision which transposes it into domestic law.**

3. **Article 5(2) of Directive 1999/44 must be interpreted as not precluding a national rule which provides that the consumer, in order to benefit from the rights which he derives from that directive, must inform the seller of the lack of conformity in good time, provided that that consumer has a period of not less than two months from the date on which he detected that lack of conformity to give that notification, that the notification to be given relates only to the existence of that lack of conformity and that it is not subject to rules of evidence which would make it impossible or excessively difficult for the consumer to exercise his rights.**

4. **Article 5(3) of Directive 1999/44 must be interpreted as meaning that the rule that the lack of conformity is presumed to have existed at the time of delivery of the goods**

– **applies if the consumer furnishes evidence that the goods sold are not in conformity with the contract and that the lack of conformity in question became apparent, that is to say, became physically apparent, within six months of delivery of the goods. The consumer is not required to prove the cause of that lack of conformity or to establish that its origin is attributable to the seller;**

– **may be discounted only if the seller proves to the requisite legal standard that the cause or origin of that lack of conformity lies in circumstances which arose after the delivery of the goods.**