

JUDGMENT OF THE COURT (Second Chamber) - 20 January 2005 (1)

(Brussels Convention – Article 13, first paragraph – Conditions for application – Definition of ‘consumer contract’ – Purchase of tiles by a farmer for roofing a farm building used partly for private and partly for business purposes)

In Case C-464/01,

REFERENCE for a preliminary ruling under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, from the Oberster Gerichtshof (Austria), made by decision of 8 November 2001, received at the Court on 4 December 2001, in the proceedings
Johann Gruber

v

Bay Wa AG,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann, R. Schintgen (Rapporteur), G. Arestis and J. Klůčka, Judges,

Advocate General: F.G. Jacobs,

Registrar: M.-F. Contet, Principal Administrator,

having regard to the written procedure and further to the hearing on 24 June 2004,

after considering the observations submitted on behalf of:

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Mr Gruber, by W. Graziani-Weiss, Rechtsanwalt,

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

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the German Government, by R. Wagner, acting as Agent,

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the Italian Government, by I.M. Braguglia, acting as Agent, and G. Aiello and G. Albenzio, Avvocati dello Stato,

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the Portuguese Government, by L. Fernandes and M. Telles Romão, acting as Agents,

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the Swedish Government, by A. Kruse, acting as Agent,

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the Commission of the European Communities, by A.-M. Rouchaud and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 September 2004,

gives the following

Judgment

1

This reference for a preliminary ruling concerns the interpretation of the first paragraph of Article 13 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and – amended text – p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1), and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1) ('the Brussels Convention').

2

The reference was made in the course of proceedings between Mr Gruber, domiciled in Austria, and Bay Wa AG ('Bay Wa'), a company incorporated under German law, established in Germany, on account of the alleged defective performance of a contract that Mr Gruber had concluded with Bay Wa.

Legal background

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The rules on jurisdiction laid down by the Brussels Convention are set out in Title II thereof, which consists of Articles 2 to 24.

4

The first paragraph of Article 2 of the Brussels Convention, which forms part of Title II, Section 1, entitled 'General Provisions', sets out the basic rule in the following terms:

'Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.'

5

The first paragraph of Article 3 of the Brussels Convention, which appears in the same section, provides:

'Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.'

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Articles 5 to 18 of the Brussels Convention, which make up Sections 2 to 6 of Title II thereof, lay down rules governing special, mandatory or exclusive jurisdiction.

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Article 5(1) of the Brussels Convention, which is part of Title II, Section 2, entitled 'Special jurisdiction', provides:

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

(1) in matters relating to a contract, in the courts for the place of performance of the obligation in question; ...'.

8

Section 4, entitled 'Jurisdiction over consumer contracts', in Title II of the Brussels Convention, consists of Articles 13 to 15.

9

Article 13 of the Brussels Convention is worded as follows:

'In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called "the consumer", jurisdiction shall be determined by this Section ... if it is:

1. a contract for the sale of goods on instalment credit terms; or
2. a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
3. any other contract for the supply of goods or a contract for the supply of services, and
 - (a) in the State of the consumer's domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising; and
 - (b) the consumer took in that State the steps necessary for the conclusion of the contract. ...'

10

The first paragraph of Article 14 of the Brussels Convention provides:

'A consumer may bring proceedings against the other party to a contract either in the courts of the Contracting State in which that party is domiciled or in the courts of the Contracting State in which he is himself domiciled.'

11

That rule of jurisdiction may be departed from only if the conditions laid down in Article 15 of the Brussels Convention are complied with.

Dispute in the main proceedings and the questions referred for a preliminary ruling

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According to the documents in the main proceedings Mr Gruber, a farmer, owns a farm building constructed around a square ('Vierkanthof'), situated in Upper Austria, close to the German border. He uses about a dozen rooms as a dwelling for himself and his family. In addition over 200 pigs are kept there, and there are fodder silos and a large machine room. Between 10% and 15% of the total fodder necessary for the farm is also stored there. The area of the farm building used for residential purposes is slightly more than 60% of the total floor area of the building.

13

Bay Wa operates a number of separately managed businesses in Germany. In Pocking (Germany), not far from the Austrian border, it has a building materials business and a DIY and garden centre. The latter published brochures which were also distributed in Austria.

14

Wishing to replace the roof tiles of his farm building, Mr Gruber became aware of those advertising brochures, which were sent out with the *Braunauer Rundschau*, a local periodical distributed to households. The tiles offered for sale by Bay Wa's building materials department in Pocking did not feature in those brochures.

15

Mr Gruber made several telephone enquiries to an employee of Bay Wa concerning the different types of tiles and the prices, stating his name and address, but not mentioning the fact that he was a farmer. The employee made him an offer by telephone but Mr Gruber wished to inspect the tiles on site. On his visit to Bay Wa's premises, he was given by the employee a written quotation dated 23 July 1998. During that meeting Mr Gruber told Bay Wa's employee that he had a farm and wished to tile the roof of the farm building. He stated that he also owned ancillary buildings that were used principally for the farm, but did not expressly state whether the building to be tiled was used mainly for business or for private purposes. The following day, Mr Gruber called the employee, from

Austria, to say that he accepted Bay Wa's quotation. Bay Wa then faxed a confirmation of the order to Mr Gruber's bank in Austria.

16

Mr Gruber considered that the tiles delivered by Bay Wa to tile the roof of his farm building showed significant variations in colour despite the warranty that the colour would be uniform. As a result the roof would have to be re-tiled. He therefore decided to bring proceedings on the basis of the warranty together with a claim for damages, seeking reimbursement of the cost of the tiles (ATS 258 123) and of the expense of removing them and re-tiling the roof (ATS 141 877) and a declaration of liability for any future expenses.

17

For that purpose, Mr Gruber commenced proceedings on 26 May 1999 before the Landesgericht Steyr (Austria), designated as the competent court in Austria by the Oberster Gerichtshof in accordance with Paragraph 28 of the Law of 1 August 1895 on the allocation of jurisdiction and the territorial jurisdiction of the ordinary courts in civil matters (Jurisdiktionsnorm, RGBl. 111).

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By judgment of 29 November 2000, the Landesgericht (Regional Court) Steyr dismissed Bay Wa's objection of lack of jurisdiction and ruled that it was competent to hear the dispute.

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According to the Landesgericht Steyr, the conditions for the application of Article 13 of the Brussels Convention are satisfied. Where a contract has a dual purpose, the predominant purpose, whether private or business, must be ascertained. Since the dividing line between private and business supplies is difficult to distinguish in the case of agricultural enterprises, the court found that the seller had had no way of ascertaining objectively whether one or other purpose predominated at the time when the contract was concluded so that, given the uncertainty, the contract was to be regarded as a consumer contract. Furthermore, in the context of Article 13(3)(a) of the Brussels Convention it mattered little whether the product ultimately bought by the consumer had itself been advertised. It was sufficient that there had been advertisements drawing attention to a particular undertaking. It was thanks to that advertising that Bay Wa was able to conclude a contract with Mr Gruber, even though it came from a department other than the one which supplied the goods. Finally, the condition that there be a 'specific invitation' by the seller within the meaning of that provision was satisfied in this case, since Mr Gruber had received an offer by telephone. Whether that offer was accepted was irrelevant.

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By judgment of 1 February 2001 the Oberlandesgericht (Higher Regional Court) Linz (Austria) upheld Bay Wa's appeal, however, and dismissed Mr Gruber's claim on the ground that the Austrian courts do not have jurisdiction to hear the dispute.

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According to the Oberlandesgericht Linz, for there to be a consumer contract within the meaning of Article 13 of the Brussels Convention the contract must constitute an act attributable to a purpose outside the trade or profession of the person concerned. In order to identify that purpose the intention of the recipient of the service is irrelevant. What matters are the circumstances of the supply which could be objectively ascertained by the other party to the contract. Articles 13 to 15 of the Brussels Convention are applicable only if the person concerned has acted predominantly outside his trade or profession and if the other party to the contract knew or should have been aware of the fact at the time when the contract was concluded, the existence of such knowledge being determined on the basis of all the objective evidence.

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On the basis of the facts which could be objectively ascertained by Bay Wa, the supply at issue had at least essentially a business purpose. The purchase of tiles by a farmer to tile the roof of his farm building is, prima facie, connected with his agricultural business. In the case of an agricultural enterprise, the farm building is by nature business premises which also, but not primarily, serve as a

residence for the farmer and his family. Living on a farm is usually a consequence of carrying on agricultural activities and thus has a particular connection with them; for a large majority of the population, it is the farmer's place of work. When Mr Gruber stated that he owned an agricultural enterprise and wished to replace the tiles on the roof of his farm building Bay Wa was led, rightly, to assume that he was acting essentially for business purposes. The findings as to the floor areas used for private and for business purposes respectively cannot invalidate that conclusion, since those facts were not made known to Bay Wa. The seller had no reason to believe that Mr Gruber would use the tiles exclusively or principally for private purposes. Finally, from the seller's point of view, the large quantities purchased, 24 000 tiles in total, could reasonably constitute a decisive factor for concluding that the building was used essentially for business purposes.

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Mr Gruber then brought an appeal before the Oberster Gerichtshof (Supreme Court) against the judgment of 1 February 2001 of the Oberlandesgericht Linz.

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In support of his appeal, Mr Gruber claims that in order for him to be regarded as a consumer within the meaning of Article 13 of the Convention the private purpose of the supply must predominate. In this case, the private use of the farm building is greater than the business use thereof. The other party to the contract is under an obligation to make enquiries and to advise the client in that regard and bears the risk of any mistake. Mr Gruber argues that in this case Bay Wa had sufficient reason to consider that the farm building was used essentially for private purposes, and in case of doubt it should have made enquiries of the purchaser about this. Furthermore, the sale of the tiles was preceded by an advertisement circulated in Austria by Bay Wa which led Mr Gruber to deal with it, whereas before that advertisement he was unaware of that company. Finally, all the preparatory steps for the conclusion of the contract were taken by Mr Gruber in Austria.

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Bay Wa replies that in an agricultural enterprise the farm building is above all a place of work, and that in general supplies relating to it cannot be made on the basis of consumer contracts. In this case, the private use was in any event secondary and Bay Wa was unaware of such use. The consumer should clearly state in which capacity he is acting where, as in this case, it is possible to suppose, *prima facie*, that he is acting for a business purpose. The other party to the contract has no obligation to make enquiries in that respect. Where there is doubt as to whether a party is a consumer the Brussels Convention rules of jurisdiction on consumer contracts should not be applied. Furthermore, Bay Wa's building materials department, from which the tiles were ordered, did not benefit from the advertising by brochure, and its DIY and garden centres, for whose benefit the advertising was undertaken, do not sell roof tiles. In any event there was no advertising for the tiles. The steps necessary for the conclusion of the contract were not taken in Austria but in Germany, as, under German law, the statement of acceptance of the quotation by telephone constitutes evidence of intention requiring an acknowledgement, and the confirmation of the order by the seller was made by fax from Germany. Where offer and acceptance are not simultaneous, which is the case where the order is made by telephone on the basis of an earlier quotation, the contract is deemed to have been concluded in the place where the defendant is domiciled.

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The Oberster Gerichtshof observes that whilst it follows from the case-law of the Court that the jurisdictional rules on consumer contracts in the Brussels Convention constitute a derogation from the principle that the courts of the Contracting State where the defendant is domiciled should have jurisdiction, so that the concept of consumer must be given a strict interpretation, the Court has not yet ruled on some of the conditions for the application of Article 13 of the Brussels Convention which are at issue in the case before it.

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Taking the view that in those circumstances the resolution of the dispute before it depends on the interpretation of the Brussels Convention, the Oberster Gerichtshof decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

1. Where the purposes of a contract are partly private, does the status of “consumer” for the purposes of Article 13 of the Convention depend on which of the private and the trade or professional purposes is predominant, and what criteria are to be applied in determining which of the private and the trade or professional purposes predominates?
2. Does the determination of the purpose depend on the circumstances which could be objectively ascertained by the other party to the contract with the consumer?
3. In case of doubt, is a contract which may be attributed both to private and to trade or professional activity to be regarded as a consumer contract?
4. Is the conclusion of a contract preceded by advertising within the meaning of Article 13(3)(a) of the Convention where the other party to the subsequent contract with the consumer advertised his products by brochure in the Contracting State of the consumer but did not advertise the products the consumer subsequently bought in it?
5. Is there a consumer contract within the meaning of Article 13 of the Convention where the seller makes an offer by telephone from his own State to the buyer who lives in a different State, and the offer is not accepted but the buyer subsequently buys the product thus offered in response to a written offer?
6. Does the consumer take the steps necessary for the conclusion of the contract in his own State within the meaning of Article 13(3)(b) of the Convention where an offer is made to him in the State of his contracting partner and he accepts that offer by telephone from his own State?

The first three questions

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By its first three questions, which it is appropriate to consider together, the national court asks, essentially, whether the rules of jurisdiction laid down by the Brussels Convention must be interpreted as meaning that a contract of the kind at issue in the main proceedings, which relates to activities which are partly business and partly private, must be regarded as having been concluded by a consumer for the purposes of the first paragraph of Article 13 of the Convention.

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As is clear from the order for reference, the Oberster Gerichtshof wishes to know essentially whether, and if so in what circumstances, a contract which has a dual purpose, such as the contract that Mr Gruber concluded with Bay Wa, is covered by the special rules of jurisdiction laid down in Articles 13 to 15 of the Brussels Convention. More specifically, the national court asks for clarification as to the circumstances of which it must take account in order to classify such a contract, the relevance of whether the contract was made predominantly for private or for business purposes, and the effect of knowledge of the party to the contract other than the party served by those purposes of either the purpose of the contract or the circumstances in which it was concluded.

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As a preliminary point, it must be recalled that Title II, Section 4, of the Brussels Convention lays down the rules of jurisdiction for consumer contracts. The notion of a consumer contract is defined, as shown by the wording of the first paragraph of Article 13 of the Convention, as ‘a contract

concluded by a person for a purpose which can be regarded as being outside his trade or profession’.

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According to settled case-law, the concepts used in the Brussels Convention – which include, in particular, that of ‘consumer’ for the purposes of Articles 13 to 15 of that Convention – must be interpreted independently, by reference principally to the scheme and purpose of the Convention, in order to ensure that it is uniformly applied in all the Contracting States (see, in particular, Case 150/77 *Bertrand* [1978] ECR 1431, paragraphs 14, 15 and 16; Case C-89/91 *Shearson Lehman Hutton* [1993] ECR I-139, paragraph 13; Case C-269/95 *Benincasa* [1997] ECR I-3767, paragraph 12; Case C-99/96 *Mietz* [1999] ECR I-2277, paragraph 26; and Case C-96/00 *Gabriel* [2002] ECR I-6367, paragraph 37).

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First of all, within the scheme of the Brussels Convention, the jurisdiction of the courts of the Contracting State in which the defendant is domiciled constitutes the general principle enshrined in the first paragraph of Article 2, and it is only by way of derogation from that principle that the Convention provides for an exhaustive list of cases in which the defendant may or must be sued before the courts of another Contracting State. As a consequence, the rules of jurisdiction which derogate from that general principle are to be strictly interpreted, so that they cannot give rise to an interpretation going beyond the cases envisaged by the Convention (see, in particular, *Bertrand*, paragraph 17; *Shearson Lehman Hutton*, paragraphs 14, 15 and 16; *Benincasa*, paragraph 13, and *Mietz*, paragraph 27).

33 **RESTRICTIVE INTERPRETATION**

That interpretation must apply a fortiori with respect to a rule of jurisdiction, such as that contained in Article 14 of the Convention, which allows a consumer, within the meaning of the first paragraph of Article 13 of the Convention, to sue the defendant in the courts of the Contracting State in which the claimant is domiciled. Apart from the cases expressly provided for, the Convention does not appear to favour the attribution of jurisdiction to the courts of the claimant’s domicile (see Case C-220/88 *Dumez France and Tracoba* [1990] ECR I-49, paragraphs 16 and 19; *Shearson Lehman Hutton*, paragraph 17; *Benincasa*, paragraph 14; and Case C-168/02 *Kronhofer* [2004] ECR I-0000, paragraph 20).

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Second, the Court has repeatedly held that the special rules introduced by the provisions of Title II, Section 4, of the Brussels Convention, which derogate from the general rule laid down in the first paragraph of Article 2, and from the rules of special jurisdiction for contracts in general enshrined in Article 5(1) of the Convention, serve to ensure adequate protection for the consumer as the party deemed to be economically weaker and less experienced in legal matters than the other, commercial, party to the contract, who must not therefore be discouraged from suing by being compelled to bring his action before the courts in the Contracting State in which the other party to the contract is domiciled (see in particular *Shearson Lehman Hutton*, paragraph 18, and *Gabriel*, paragraph 39).

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From the scheme of the rules of jurisdiction put in place by the Brussels Convention, as well as the rationale of the special rules introduced by the provisions of Title II, Section 4, the Court has concluded that those provisions only cover private final consumers, not engaged in trade or professional activities, as the benefit of those provisions must not be extended to persons for whom special protection is not justified (see to that effect inter alia *Bertrand*, paragraph 21; *Shearson Lehman Hutton*, paragraphs 19 and 22; *Benincasa*, paragraph 15; and *Gabriel*, paragraph 39).

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In paragraphs 16 to 18 of the judgment in *Benincasa* the Court stated in that respect that the concept of ‘consumer’ for the purposes of the first paragraph of Article 13 and the first paragraph of Article 14 of the Brussels Convention must be strictly construed, reference being made to the position of

the person concerned in a particular contract, having regard to the nature and aim of that contract and not to the subjective situation of the person concerned, since the same person may be regarded as a consumer in relation to certain supplies and as an economic operator in relation to others. The Court held that only contracts concluded outside and independently of any trade or professional activity or purpose, solely for the purpose of satisfying an individual's own needs in terms of private consumption, are covered by the special rules laid down by the Convention to protect the consumer as the party deemed to be the weaker party. Such protection is unwarranted in the case of contracts for the purpose of a trade or professional activity.

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It follows that the special rules of jurisdiction in Articles 13 to 15 of the Brussels Convention apply, in principle, only where the contract is concluded between the parties for the purpose of a use other than a trade or professional one of the relevant goods or services.

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It is in the light of those principles that it is appropriate to examine whether and to what extent a contract such as that at issue in the main proceedings, which relates to activities of a partly professional and partly private nature, may be covered by the special rules of jurisdiction laid down in Articles 13 to 15.

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In that regard, it is already clearly apparent from the purpose of Articles 13 to 15 of the Brussels Convention, namely to properly protect the person who is presumed to be in a weaker position than the other party to the contract, that the benefit of those provisions cannot, as a matter of principle, be relied on by a person who concludes a contract for a purpose which is partly concerned with his trade or profession and is therefore only partly outside it. It would be otherwise only if the link between the contract and the trade or profession of the person concerned was so slight as to be marginal and, therefore, had only a negligible role in the context of the supply in respect of which the contract was concluded, considered in its entirety.

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As the Advocate General stated in paragraphs 40 and 41 of his Opinion, inasmuch as a contract is entered into for the person's trade or professional purposes, he must be deemed to be on an equal footing with the other party to the contract, so that the special protection reserved by the Brussels Convention for consumers is not justified in such a case.

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That is in no way altered by the fact that the contract at issue also has a private purpose, and it remains relevant whatever the relationship between the private and professional use of the goods or service concerned, and even though the private use is predominant, as long as the proportion of the professional usage is not negligible.

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Accordingly, where a contract has a dual purpose, it is not necessary that the purpose of the goods or services for professional purposes be predominant for Articles 13 to 15 of the Convention not to be applicable. **A lawyer buying a computer which he will use at home!**

43

That interpretation is supported by the fact that the definition of the notion of consumer in the first paragraph of Article 13 of the Brussels Convention is worded in clearly restrictive terms, using a negative turn of phrase ('contract concluded ... for a purpose ... outside [the] trade or profession'). Moreover, the definition of a contract concluded by a consumer must be strictly interpreted as it constitutes a derogation from the basic rule of jurisdiction laid down in the first paragraph of Article 2, and confers exceptional jurisdiction on the courts of the claimant's domicile (see paragraphs 32 and 33 of the present judgment).

44

That interpretation is also dictated by the fact that classification of the contract can only be based on an overall assessment of it, since the Court has held on many occasions that avoidance of

multiplication of bases of jurisdiction as regards the same legal relationship is one of the main objectives of the Brussels Convention (see to that effect, in particular, Case C-256/00 *Besix* [2002] ECR I-1699, paragraph 27; *Gabriel*, paragraph 57; and Case C-18/02 *DFDS Torline* [2004] ECR I-0000, paragraph 26).

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An interpretation which denies the capacity of consumer, within the meaning of the first paragraph of Article 13 of the Brussels Convention, if the link between the purpose for which the goods or services are used and the trade or profession of the person concerned is not negligible is also that which is most consistent with the requirements of legal certainty and the requirement that a potential defendant should be able to know in advance the court before which he may be sued, which constitute the foundation of that Convention (see in particular *Besix*, paragraphs 24 to 26).

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Having regard to the normal rules on the burden of proof, it is for the person wishing to rely on Articles 13 to 15 of the Brussels Convention to show that in a contract with a dual purpose the business use is only negligible, the opponent being entitled to adduce evidence to the contrary.

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In the light of the evidence which has thus been submitted to it, it is therefore for the court seised to decide whether the contract was intended, to a non-negligible extent, to meet the needs of the trade or profession of the person concerned or whether, on the contrary, the business use was merely negligible. For that purpose, the national court should take into consideration not only the content, nature and purpose of the contract, but also the objective circumstances in which it was concluded.

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Finally, as regards the national court's question as to whether it is necessary for the party to the contract other than the supposed consumer to have been aware of the purpose for which the contract was concluded and the circumstances in which it was concluded, it must be noted that, in order to facilitate as much as possible both the taking and the evaluation of the evidence, it is necessary for the court seised to base its decision mainly on the evidence which appears, *de facto*, in the file.

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If that evidence is sufficient to enable the court to conclude that the contract served to a non-negligible extent the business needs of the person concerned, Articles 13 to 15 of the Brussels Convention cannot be applied in any event because of the status of those provisions as exceptions within the scheme introduced by the Convention. There is therefore no need to determine whether the other party to the contract could have been aware of the business purpose.

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If, on the other hand, the objective evidence in the file is not sufficient to demonstrate that the supply in respect to which a contract with a dual purpose was concluded had a non-negligible business purpose, that contract should, in principle, be regarded as having been concluded by a consumer within the meaning of Articles 13 to 15, in order not to deprive those provisions of their effectiveness.

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However, having regard to the fact that the protective scheme put in place by Articles 13 to 15 of the Brussels Convention represents a derogation, the court seised must in that case also determine whether the other party to the contract could reasonably have been unaware of the private purpose of the supply because the supposed consumer had in fact, by his own conduct with respect to the other party, given the latter the impression that he was acting for business purposes.

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That would be the case, for example, where an individual orders, without giving further information, items which could in fact be used for his business, or uses business stationery to do so, or has goods delivered to his business address, or mentions the possibility of recovering value added tax.

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In such a case, the special rules of jurisdiction for matters relating to consumer contracts enshrined in Articles 13 to 15 of the Brussels Convention are not applicable even if the contract does not as such serve a non-negligible business purpose, and the individual must be regarded, in view of the impression he has given to the other party acting in good faith, as having renounced the protection afforded by those provisions. **MANDATORY RULES TO PROTECT THE CONSUMER!!!**

54

In the light of all the foregoing considerations, the answer to the first three questions must be that the rules of jurisdiction laid down by the Brussels Convention are to be interpreted as follows:

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a person who concludes a contract for goods intended for purposes which are in part within and in part outside his trade or profession may not rely on the special rules of jurisdiction laid down in Articles 13 to 15 of the Convention, unless the trade or professional purpose is so limited as to be negligible in the overall context of the supply, the fact that the private element is predominant being irrelevant in that respect;

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it is for the court seised to decide whether the contract at issue was concluded in order to satisfy, to a non-negligible extent, needs of the business of the person concerned or whether, on the contrary, the trade or professional purpose was negligible;

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to that end, that court must take account of all the relevant factual evidence objectively contained in the file. On the other hand, it must not take account of facts or circumstances of which the other party to the contract may have been aware when the contract was concluded, unless the person who claims the capacity of consumer behaved in such a way as to give the other party to the contract the legitimate impression that he was acting for the purposes of his business.

The last three questions

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Since the last three questions were referred only if the capacity of consumer within the meaning of the first paragraph of Article 13 of the Brussels Convention was established, and in view of the answer given in that respect to the first three questions, there is no longer any need to answer the last three questions, relating to the other conditions for the application of that provision.

Costs

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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 (Second Chamber) rules as follows:

The rules of jurisdiction laid down by the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden must be interpreted as follows:

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a person who concludes a contract for goods intended for purposes which are in part within and in part outside his trade or profession may not rely on the special rules of

jurisdiction laid down in Articles 13 to 15 of the Convention, unless the trade or professional purpose is so limited as to be negligible in the overall context of the supply, the fact that the private element is predominant being irrelevant in that respect;

—
it is for the court seised to decide whether the contract at issue was concluded in order to satisfy, to a non-negligible extent, needs of the business of the person concerned or whether, on the contrary, the trade or professional purpose was negligible;

—
to that end, that court must take account of all the relevant factual evidence objectively contained in the file. On the other hand, it must not take account of facts or circumstances of which the other party to the contract may have been aware when the contract was concluded, unless the person who claims the capacity of consumer behaved in such a way as to give the other party to the contract the legitimate impression that he was acting for the purposes of his business.

[Signatures]