



## **Subsequent performance in the commercial law: No additional reimbursement - Civil-Law**

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - [www.grprainer.com/en](http://www.grprainer.com/en) conclude: In its ruling of October 17, 2012 (File No. VIII ZR 226/11), the 8th Civil Division of the Federal Supreme Court (BGH) has found that the judgment passed by the Court of Justice of the European Union (CJEU) of November 16, 2011 (File No. C-65/09. C-87/09) is not applicable to all contracts of sale between companies. For example, the cost of installation and dismantling is not to be refundable.

The CJEU had ruled that a consumer may demand from a company under a claim of subsequent performance that in addition to dismantling the defective item, the replacement item had to be installed a well. While a company is able to demand dismantling and re-installation, it must pay the incurred costs.

In its decision, the BGH has now ruled that this does not apply to a contract between two companies. It ruled that the CJEU judgment applies only to a contract between a consumer and a company. Furthermore, it should not be possible to transfer these principles to contracts of sale between companies in interpretation of the guidelines.

In the law governing the sale of goods, a buyer must never become active himself if a defect is discovered. Contrary to the law governing service contracts, there is no right of self-performance prescribed by this law. The principle is that subsequent performance by the vendor takes precedence. In the law governing the sale of goods, the vendor should be able to remedy existing defects himself and to warrant this at a reasonable cost if possible.

A buyer who purchases a defective item should therefore proceed correctly from the beginning to avoid facing the costs himself. In such a case, it is always recommended to consult a lawyer with experience in civil law who can review the existing claims and plan further action. For companies, it is worthwhile to have a lawyer formulate the contracts from the start.

<http://www.grprainer.com/en/Civil-Law.html>

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Anlage: Bild

