

## Annex 3 CISG AC Opinion No. 20

### International and National Statutory provisions dealing with Hardship

<b>I. Introduction</b> .....	1
<b>II. Summary Chart</b> .....	3
<b>III. Statutory provisions (next page)</b> .....	4

#### **I. Introduction**

1. Opinion No. 20 CISG AC makes reference to provisions in three uniform law instruments dealing with hardship: the UNIDROIT PICC, the PECL, the DCFR and the PLACL. None of these bodies provides a fixed standard of excessive onerousness or performance imbalance (although the comments on the 1994 UNIDROIT PICC suggested a 50% value alteration).<sup>1</sup> The four instruments impose a duty to renegotiate the contract.<sup>2</sup> However, only the PECL expressly states the right to claim damages against the party refusing to renegotiate or breaking off negotiations in bad faith.<sup>3</sup> All of them also grant the remedy of contract adaptation or avoidance by a Court or an Arbitral tribunal, subject the parties failure to reach an agreement through negotiation.<sup>4</sup> The remedy of damages exemption is inferred, irrespective of the avoidance or adaptation obtained by the party affected by hardship.
2. With regard to the twenty seven domestic law provisions compared in this opinion, different notions are used to describe the standard of hardship but none sets a fixed formula: twelve legal systems refer to “excessive onerousness”;<sup>5</sup> eight use the words “essential”;<sup>6</sup>

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<sup>1</sup> Art.6:111 PECL, Comment B (ii); Art. 6.2.1 UNIDROIT PICC: "Where the performance ... *becomes more onerous ...*"; Section III- 1:110 DCFR; Art. 84(3) PLACL: "*the contract becomes excessively onerous or the utility of performance considerably decreases*".

<sup>2</sup> Art.6:111 PECL; Art. 6.2.3 UNIDROIT PICC; Section III- 1:110 DCFR; Art. 84(1) PLACL.

<sup>3</sup> Art.6:111 (3)(b) PECL.

<sup>4</sup> Art.6:111 (3)(a)(b) PECL; Art. 6.2.3(4) UNIDROIT PICC; Section III- 1:110(2) DCFR; Art. 84(3) PLACL.

<sup>5</sup> Argentina Art. 1091 CCom; Bolivia Ar. 581 CC; Brazil Art. 478 CC; Colombia Art. 868 CCom; Croatia Art. 369 CO; Egypt Art. 147 CC; France Art. 1195 CC; Greece Art. 388 CC; Italy Art. 1497 CC; Libya Art. 147 CC; Paraguay Art. 672; Qatar Art. 171 CC.

<sup>6</sup> Russia Art. 451 CC; Slovenia Art. 112 CO; The Netherlands Art. 6:258 CC.

“significant”,<sup>7</sup> “substantial”<sup>8</sup> or “abnormal”<sup>9</sup> change of circumstances; one refers to “fundamental disequilibrium” in performances;<sup>10</sup> two laws provide that hardship occurs when performance “becomes too burdensome”<sup>11</sup> and other two when such is “obviously unfair”;<sup>12</sup> one relies on the notion of “impracticability” of performances.<sup>13</sup>

3. Only five domestic laws impose a duty to renegotiate the contract;<sup>14</sup> none expressly states the consequences for its failure. Twenty legal systems grant the remedy of contract adaptation by a Court or an Arbitral tribunal:<sup>15</sup> from the latter, all but four also integrate the alternative remedy of avoidance by the same Court or Tribunal.<sup>16</sup> Five domestic laws contemplate the remedy of contract avoidance alone, with no reference to adaptation.<sup>17</sup> Under five countries’ laws, the remedy of contract adaptation and avoidance by a Court or Arbitral Tribunal is subject to the accomplishment of the Parties’ obligation to have tried to renegotiate the contract first.<sup>18</sup> The remedy of damages exemption is inferred in all of them, irrespective of the avoidance or adaptation obtained by the party affected by hardship.

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<sup>7</sup> Azerbaijan Art. 422 CC; Germany Sec. 313; Ukraine Art. 652 CC.

<sup>8</sup> Armenia Art. 467 CC.

<sup>9</sup> Portugal Art. 437 CC.

<sup>10</sup> Lithuania Art. 5.204 CC;

<sup>11</sup> Iraq Art. 146 CC; Montenegro Art. 128 CO.

<sup>12</sup> China Art. 26 PRC and 227-2 CC; Taiwan Art. 227-2 CC.

<sup>13</sup> United States Section 2-615 UCC, Section 261 Restatement Second on Contracts.

<sup>14</sup> Armenia Art. 467 CC; Azerbaijan Art. 422 CC; France Art. 1195 CC; Lithuania Art. 5.204 CC; Russia Art. 451 CC; Ukraine Art. 652 CC.

<sup>15</sup> Argentina Art. 1091 CCCom; Armenia Art. 467 CC; Azerbaijan Art. 422 CC; China Art. 26 PRC and 227-2 CC; Colombia Art. 868 CCom; Croatia Art. 369 CO; Egypt Art. 147 CC; France Art. 1195 CC; Germany Sec. 313; Greece Art. 388 CC; Iraq Art. 146 CC; Libya Art. 147 CC; Lithuania Art. 5.204 CC; Montenegro Art. 128 CO; Paraguay Art. 672 CC; Portugal Art. 437 CC; Qatar Art. 171 CC; Russia Art. 451 CC; Taiwan Art. 227-2 CC; The Netherlands Art. 6:258 CC.

<sup>16</sup> Except for Egypt, Iraq, Libya, Qatar and Taiwan, the power to adapt the contract goes together with the power to avoid it, see Argentina Art. 1091 CCCom; Armenia Art. 467 CC; Azerbaijan Art. 422 CC; China Art. 26 PRC; Colombia Art. 868 CCom; Croatia Art. 369 CO; France Art. 1195 CC; Germany Sec. 313; Greece Art. 388 CC; Lithuania Art. 5.204 CC; Montenegro Art. 128 CO; Paraguay Art. 672; Portugal Art. 437 CC; Russia Art. 451 CC; The Netherlands Art. 6:258 CC.

<sup>17</sup> Bolivia Ar. 581 CC; Brazil Art. 478 CC; Italy Art. 1497 CC; Slovenia Art. 112 CO; United States Section 2-615 UCC, Section 261 Restatement Second on Contracts.

<sup>18</sup> Armenia Art. 467 CC; Azerbaijan Art. 422 CC; France Art. 1195 CC; Russia Art. 451 CC; Ukraine Art. 652 CC.

The following table summarizes the above domestic law solutions. For relevant excerpts of these provisions, please see Annex 3 “CISG AC Opinion on Hardship - Charts International & Domestic Law provisions”

## II. Summary Chart

Threshold	Laws	Renegotiation of contract	Adaptation by Court	Avoidance by Court	Remedies subject to attempts to renegotiate
Excessive onerousness	Argentina Art. 1091 CCom				
	Bolivia Ar. 581 CC				
	Brazil Art. 478 CC				
	Colombia Art. 868 CCom				
	Croatia Art. 369 CO				
	Egypt Art. 147 CC				
	France Art. 1195 CC				
	Greece Art. 388 CC				
	Italy Art. 1497 CC				
	Libya Art. 147 CC				
	Paraguay Art. 672 CC				
	Qatar Art. 171 CC				
	Russia Art. 451 CC				
	Slovenia Art. 112 CO				

Annex 3 CISG AC Opinion No. 20 - International and National Statutory provisions dealing with Hardship

Rapporteur: Prof. Dr. Edgardo Muñoz

Essential change of circumstance	Netherlands Art. 6:258 CC				
Significant change of circumstance	Azerbaijan Art. 422 CC				
	Germany Sec. 313				
	Ukraine Art. 652 CC				
Substantial change of circumstance	Armenia Art. 467 CC				
Abnormal change of circumstance	Portugal Art. 437 CC				
Fundamental disequilibrium	Lithuania Art. 5.204 CC				
Performance becomes too burdensome	Iraq Art. 146 CC				
	Montenegro Art. 128 CO				
Performance becomes obviously unfair	China Art. 26 PRC and 227-2 CC				
	Taiwan Art. 227-2 CC				
Performance become impracticable	United States Section 2-615 UCC, Section 261 Restatement Second on Contracts				

**III. Statutory provisions (next page)**

	Name /Country	Statute/Art	Standard of hardship	Duty to renegotiate	Consequences of failure to negotiate	Adjudicator's power to adapt the contract	Avoidance by adjudicator	Renegotiation as requirement to adjudicator adaptation or avoidance	Priority of remedy
	CISG	<p style="text-align: center;">Article 79</p> <p>(1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it, or its consequences.</p> <p>(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:</p> <p>(a) he is exempt under the preceding paragraph; and</p> <p>(b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.</p> <p>(3) The exemption provided by this article has effect for the period during which the impediment exists.</p> <p>(4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.(5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.</p>	"impediment beyond control that may not be overcome" There is no fixed threshold for giving rise to a hardship excuse under Article 79 CISG.	No	None	No	Yes (if there is a fundamental breach under Art 25 CISG)	No	Damages, and in second place, exemption from performance
	DCFR	<p>III. – 1:110: Variation or termination by court on a change of circumstances</p> <p>(1) An obligation must be performed even if performance has become more onerous, whether because the cost of performance has increased or because the value of what is to be received in return has diminished.</p> <p>(2) If, however, performance of a contractual obligation or of an obligation arising from a unilateral juridical act becomes so onerous because of an exceptional change of circumstances that it would be manifestly unjust to hold the debtor to the obligation a court may:</p> <p>(a) vary the obligation in order to make it reasonable and equitable in the new circumstances; or</p> <p>(b) terminate the obligation at a date and on terms to be</p>	There is no fixed threshold for giving rise to a hardship excuse	Yes	None	Yes	Yes	Negotiation is a requirement for termination of the	Adaptation of the contract, or termination whenever the

	L	<p>determined by the court.</p> <p>(3) Paragraph (2) applies only if:</p> <p>(a) the change of circumstances occurred after the time when the obligation was incurred; (b) the debtor did not at that time take into account, and could not reasonably be expected to have taken into account, the possibility or scale of that change of circumstances;</p> <p>(c) the debtor did not assume, and cannot reasonably be regarded as having assumed, the risk of that change of circumstances; and</p> <p>(d) the debtor has attempted, reasonably and in good faith, to achieve by negotiation a reasonable and equitable adjustment of the terms regulating the obligation.</p>	under Section III- 1:110 DCFR					termination of the contract	whenever the conditions in para. 3 are met
	PECL	<p>Article 6:111: Change of Circumstances</p> <p>(1) A party is bound to fulfil its obligations even if performance has become more onerous, whether because the cost of performance has increased or because the value of the performance it receives has diminished.</p> <p>(2) If, however, performance of the contract becomes excessively onerous because of a change of circumstances, the parties are bound to enter into negotiations with a view to adapting the contract or terminating it, provided that:</p> <p>(a) the change of circumstances occurred after the time of conclusion of the contract,</p> <p>(b) the possibility of a change of circumstances was not one which could reasonably have been taken into account at the time of conclusion of the contract, and</p> <p>(c) the risk of the change of circumstances is not one which, according to the contract, the party affected should be required to bear.</p> <p>(3) If the parties fail to reach agreement within a reasonable period, the court may:</p> <p>(a) terminate the contract at a date and on terms to be determined by the court ; or</p> <p>(b) adapt the contract in order to distribute between the parties in a just and equitable manner the losses and gains resulting from the change of circumstances.</p> <p>In either case, the court may award damages for the loss suffered through a party refusing to negotiate or breaking off negotiations contrary to good faith and fair dealing.</p>	<p>"Excessively onerous"</p> <p>There is no fixed threshold for giving rise to a hardship excuse under Article 6:111 PECL</p>	Yes	The court may award damages for the loss suffered through a party refusing to negotiate or breaking off negotiations contrary to good faith and fair dealing.	Yes	Yes	Yes	Termination by Court or adaptation by Court (after failure of negotiations)
		<p>ARTICLE 6.2.2 (Definition of hardship)</p> <p>There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the</p>							

UNIDROIT PICC 2016	<p>party's performance has increased or because the value of the performance a party receives has diminished, and</p> <p>(a) the events occur or become known to the disadvantaged party after the conclusion of the contract;</p> <p>(b) the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract;</p> <p>(c) the events are beyond the control of the disadvantaged party; and</p> <p>(d) the risk of the events was not assumed by the disadvantaged party.</p>	<p>"Fundamental alteration of equilibrium" Comment to Article 6.2.2 UNIDROIT PICC, in its first edition of 1994 suggested that an alteration amounting to 50 per cent or more would likely amount to a "fundamental" alteration, but the 2004, 2010 and 2016 UNIDROIT PICC editions refrain from recommending any exact figure.</p>	Yes, they are "entitled to request negotiations"	None	Yes	Yes	Yes, whenever a request for negotiation is requested	Termination by Court or adaptation by Court (after failure of negotiations)
PLACL	<p>ARTICLE 84 Change of Circumstances (1) If after its conclusion, performance of the contract becomes excessively onerous or the utility of performance considerably decreases, due to change of circumstances, the event or magnitude of which could not have been reasonably foreseen, and if the risk of the change of circumstances has not been assumed by the affected party, the latter may request the renegotiation of the contract. (2) Performance of the contract is not suspended during the renegotiation, unless such performance causes irreparable harm to the affected party. (3) If, after a reasonable time, either party may request the court to adapt or terminate the contract. In doing this, the court has to take into consideration the distribution of risks and the costs assumed by the parties.</p>	There is no fixed threshold for giving rise to a hardship excuse under Article 83 PLACL	Yes, they are "entitled to request negotiations"	None	Yes		Yes	Termination by Court or adaptation by Court (after failure of negotiations)
	<p>ARTICLE 6.2.2 (Definition of hardship) There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished, and</p> <p>(a) the events occur or become known to the disadvantaged party after the conclusion of the contract;</p>							



	Armenia	<p>Substantial Change of Circumstances: 1.A substantial change of circumstances from which the parties proceeded in the conclusion of the contract is a basis for its change or rescission unless otherwise provided by the contract or follows from its nature. A change of circumstances shall be recognized as substantial when they have changed to the extent that, if the parties could have reasonably foreseen this, the contract would have been concluded on significantly different terms or would not have been concluded by them at all. 2.If the parties have not attained agreement on bringing a contract in accordance with substantially changed circumstances or on its rescission, the contract may be rescinded or, upon the bases provided by Paragraph 4 of the present Article, changed by a court on demand of an interested party if the following conditions are present simultaneously: 1) at the time of the conclusion of the contract the parties proceeded on the basis that such a change of circumstances would not occur; 2) the change of circumstances was brought about by causes that the interested party could not overcome after they arose with the degree of care and caution that was demanded of it by the nature of the contract and the conditions of trade; 3) performance of a contract without change of its terms would so disturb the correlation of the contract-related property interests of the parties and would entail such harm for the interested party that it to a significant degree would be deprived of that which it had the right to expect upon conclusion of the contract; 4) it does not follow from the customs of trade or the nature of the contract that the risk of change of circumstances is borne by the interested party. 3.In case of rescission of a contract as the result of substantially changed circumstances, a court, on demand of one of the parties, shall determine the consequences of rescission of the contract proceeding from the necessity of just distribution among the parties of the expenses borne by them in connection with the performance of this contract. 4.A change in the contract in connection with a substantial change in circumstances shall be allowed by decision of a court in exceptional cases when the rescission of the contract would contradict societal interests or cause damage to the parties significantly exceeding the expenditures necessary for performance of the contract on the terms as changed by the court.</p>	<p>Substantial change: when the circumstances have changed to the extent that, if the parties could have reasonably foreseen this, the contract would have been concluded on significantly different terms or would not have been concluded by them at all.</p>	Yes	None	Yes	Yes	Yes	<p>First, termination. Second, adaptation (in exceptional cases)</p>
		<p>Section 936, 1052, 1170 Austrian Civil Code (Allgemeines bürgerliches Gesetzbuch (ABGB)) 1811</p>							
<p>§ 936. Die Verabredung, künftig erst einen Vertrag schließen zu wollen, ist nur dann verbindlich, wenn sowohl die Zeit der Abschließung, als die wesentlichen Stücke des Vertrages</p>									



Austria	<p>Ausschreibung, als die wesentlichen Stücke des Vertrages bestimmt, und die Umstände inzwischen nicht dergestalt verändert worden sind, daß dadurch der ausdrücklich bestimmte, oder aus den Umständen hervorleuchtende Zweck vereitelt, oder das Zutrauen des einen oder andern Theiles verloren wird. Ueberhaupt muß auf die Vollziehung solcher Zusagen längstens in einem Jahre nach dem bedungenen Zeitpunkte gedrungen werden; widrigen Falls ist das Recht erloschen.</p>						
	<p>§ 1052: Wer auf die Übergabe dringen will, muß seine Verbindlichkeit erfüllt haben oder sie zu erfüllen bereit sein. Auch der zur Vorausleistung Verpflichtete kann seine Leistung bis zur Bewirkung oder Sicherstellung der Gegenleistung verweigern, wenn diese durch schlechte Vermögensverhältnisse des anderen Theiles gefährdet ist, die ihm zur Zeit des Vertragsabschlusses nicht bekannt sein mußten.</p>						
	<p>§ 1170: In der Regel ist das Entgelt nach vollendetem Werk zu entrichten. Wird aber das Werk in gewissen Abteilungen verrichtet oder sind Auslagen damit verbunden, die der Unternehmer nicht auf sich genommen hat, so ist dieser befugt, einen verhältnismäßigen Teil des Entgelts und den Ersatz der gemachten Auslagen schon vorher zu fordern.</p>						
	<p>Article 422 Civil Code of the Republic of Azerbaijan (1999)</p>						
	<p>Contract Amendment and Dissolution in Connection with Significant Change of Circumstances: 422.1 Significant change of circumstances, which the parties accounted for in the course of entering into contract, can serve as the ground for the amendment or dissolution thereof, if nothing otherwise is stipulated in the contract or results from its contents. The change of circumstances shall be deemed significant, if they have changed to such an extent, that if the parties had been able to reasonably predict them, they could have not entered into the contract or the contract would have been made under significantly different terms. Mistakes in submissions of parties, forming basis of agreement, shall be considered the changes of circumstances. 422.2 If the parties did not reach an agreement on bringing the contract in compliance with the significantly changed circumstances or its dissolution, the contract can be dissolved, and under the grounds envisaged by Article 422.4, amended by court upon a request of the interested party, in the</p>	<p>Significant change: if the circumstances have changed to such an</p>					

	Azerbaijan	<p>event of the simultaneous presence of the following conditions: 422.2.1 at the time of making the contract the parties proceeded from the fact that there will be no such change of circumstances; 422.2.2 the change of circumstances was caused by the reasons, which the interested party could not overcome after their appearance, with the extent of care and caution demanded by the nature and conditions of the contract; 422.2.3 the performance of the contract without changing its terms would so much break the corresponding to the contract proportion of parties' property interests, and result in such a damage to the interested party, that it would be significantly deprived of what it was entitled to in the course of entering into the contract; 422.2.4 the business turnover traditions and the nature of the contract do not provide for the interested party to bear the risk of changing circumstances. 422.3 In the dissolution of the contract, due to significantly changed circumstances, the court, upon a request of any of the parties, shall determine the consequences of the contract's dissolution, accounting for the necessity of a fair distribution of expenses among the parties, invoked in connection with the performance of such contract. 422.4 The contract amendment due to significantly changed circumstances, shall be allowed under a court's decision in exclusive cases, when the dissolution shall contradict with the public interests or lead to a loss for the parties, significantly extending the expenses, required for the performance of the contract under the changed terms, established by the court.(12)</p>	<p>changed to such an extent, that if the parties had been able to reasonably predict them, they could have not entered into the contract or the contract would have been made under significantly different terms.</p>	Yes	None	Yes	Yes	Yes	<p>First, termination. Second, adaptation (in exceptional cases)</p>
	Bolivia	<p>Artículo 581 Código Civil Boliviano (1975)</p> <p>Resolución judicial por excesiva onerosidad de los contratos con prestaciones recíprocas: I. En los contratos de ejecución continuada, periódica o diferida, la parte cuya prestación se ha tornado excesivamente onerosa por circunstancias o acontecimientos extraordinarios e imprevisibles podrá demandar la resolución del contrato con los efectos establecidos para la resolución por incumplimiento voluntario. II. La demanda de resolución no será admitida si la prestación excesivamente onerosa ha sido ya ejecutada, o si la parte cuya prestación se ha tornado onerosa en exceso era ya voluntariamente incumplida o si las circunstancias o los acontecimientos extraordinarios e imprevisibles se presentaron después de cumplirse la obligación. III. Tampoco se admitirá la demanda de resolución si la onerosidad sobrevenida está incluida en el riesgo o álea normal del contrato. IV. El demandado puede terminar el litigio si antes de sentencia ofrece modificar el contrato en condiciones que, a juicio del juez, sean equitativas.</p>	<p>"Excessive onerosness" There is no fixed threshold for giving rise to a hardship excuse under Article 581</p>	No	None	No	Yes	No	<p>Termination of the contract. To avoid termination, the defendant can offer to modify the terms of the contract.</p>

Brasil	Arts. 478 y 479 Código Civil Brasil (2002)	"Excessive onerousness" There is no fixed threshold for giving rise to a hardship excuse under Article 478	No	None	No	Yes	No	Termination of the contract. To avoid termination, the defendant can offer to modify the terms of the contract.
	Art. 478. Nos contratos de execução continuada ou diferida, se a prestação de uma das partes se tornar excessivamente onerosa, com extrema vantagem para a outra, em virtude de acontecimentos extraordinários e imprevisíveis, poderá o devedor pedir a resolução do contrato. Os efeitos da sentença que a decretar retroagirão à data da citação.							
	Art. 479. A resolução poderá ser evitada, oferecendo-se o réu a modificar equitativamente as condições do contrato.							
China	Article 26 PRC Contract Law Interpretation (2009)	It has to be "manifestly unfair" or "impossible to realise the goal of the contract".	No	None	Yes	Yes	None	Termination or adaptation of the contract.
	Where any significant change in the objective environment has taken place after the formation of a contract which could not have been foreseen by the relevant parties at the time of entering into the contract, and does not belong to any commercial risk occasioned by any force majeure cause, rendering the continual performance of the contract manifestly unfair to the relevant party or rendering it impossible to realise the goal of the contract, the People's Court shall confirm whether the contract shall be varied or dissolved in accordance with the principle of justice taking into account the actual circumstance, where a relevant party petitions a People's Court to vary or dissolve the contract.							
	Article 227-2 China's Civil Code (2015) (new)							
	If there is change of circumstances which is not predictable then after the constitution of the contract, and if the performance of the original obligation arising therefrom will become obviously unfair, the party may apply to the court for increasing or reducing his payment, or altering the original obligation. The provision in the preceding paragraph shall apply mutatis mutandis to the obligation not arising from the contract.	The performance of the obligation has to become "obviously unfair", but there is no fixed threshold for giving rise to a hardship excuse under Article 227-2	No	None	Yes	No	None	Adaptation of the contract.
Colombia	Artículo 868 Código de Comercio de Colombia (1971)	"Excessive onerousness" There is no fixed threshold for						Adaptation of the contract, and if it is
	Revisión del contrato por circunstancias extraordinarias: Cuando circunstancias extraordinarias, imprevistas o imprevisibles, posteriores a la celebración de un contrato de ejecución sucesiva, periódica o diferida, alteren o agraven la prestación de futuro cumplimiento a cargo de una de las partes, en grado tal que le							

	Color	<p>resulte excesivamente onerosa, podrá ésta pedir su revisión. El juez procederá a examinar las circunstancias que hayan alterado las bases del contrato y ordenará, si ello es posible, los reajustes que la equidad indique; en caso contrario, el juez decretará la terminación del contrato. Esta regla no se aplicará a los contratos aleatorios ni a los de ejecución instantánea.</p>	<p>giving rise to a hardship excuse under Article 868</p>	NO	None	Yes	Yes	None	<p>not possible, termination of the contract.</p>
	Croatia (new)	<p>Article 369 Civil Obligations Act and Acts on Amendments of Civil Obligations (2015)</p> <p>(1) Should, after entering into a contract, extraordinary circumstances arise, that it was impossible to foresee at the time of entering into a contract, making it excessively onerous for one party to perform or if under such circumstances a party would suffer an excessive loss as a result of the performance, it may request variation or even termination of the contract.</p> <p>(2) Variation or termination of a contract may not be requested by a contracting party invoking the change of circumstances if that party was obliged to take into consideration such circumstances at the time of entering into a contract or if it could have avoided or overcome them.</p> <p>(3) A party requesting variation or termination of the contract may not invoke a change of circumstances that occurred after the expiry of the time limit for performance of the obligation.</p> <p>(4) Where a party requests termination of a contract, the contract shall not be terminated if the other contracting party offers or agrees to an equitable change in the relevant provisions of the contract.</p> <p>(5) Where a court declares termination of a contract, the court shall, at the request of the other party, oblige the party applying for the cancellation, to compensate the other party with an equitable amount for the damage suffered due to the termination.</p>	<p>"Excessive onerousness" There is no fixed threshold for giving rise to a hardship excuse under Article 369. However, the debtor has to be threaten by an excessive loss.</p>	No	None	Yes	Yes	None	<p>Adaptation of termination of the contract. However, the contract cannot be terminated if the other party offers or agrees to an equitable change in the terms. Also, in cases of termination, the court shall, at the request of the other party, oblige the party applying for the cancellation, to compensate the other party with an equitable amount for the damage suffered due to the termination.</p>
	Egypt	<p>Article 147 Egyptian Civil Code (1949)</p> <p>The contract makes the law of the parties. It can be revoked or altered only by mutual consent of the parties or for reasons provided for by law. When, however, as a result of exceptional and unpredictable events of a general character, the performance of the contractual obligation, without becoming impossible, becomes excessively onerous in such way as to threaten the debtor with exorbitant loss, the judge may according to the circumstances, and after taking into</p>	<p>"Excessive onerousness" There is no fixed threshold for giving rise to a hardship excuse under Article 147. However, the debtor has to be threaten by an</p>	No	None	Yes	No	None	<p>Adaptation of the contract.</p>

	consideration the interests of both parties, reduce to reasonable limits, the obligation that has become excessive. Any agreement to the contrary is void.	exorbitant loss.							
France	Article 1195 Code Civil Francais (2016)	"Excessive onerousness" There is no fixed threshold for giving rise to a hardship excuse under Article 1195	Yes	None	Yes	Yes	Yes	Adaptation or termination of the contract.	
	Si un changement de circonstances imprévisible lors de la conclusion du contrat rend l'exécution excessivement onéreuse pour une partie qui n'avait pas accepté d'en assumer le risque, celle-ci peut demander une renégociation du contrat à son cocontractant. Elle continue à exécuter ses obligations durant la renégociation. En cas de refus ou d'échec de la renégociation, les parties peuvent convenir de la résolution du contrat, à la date et aux conditions qu'elles déterminent, ou demander d'un commun accord au juge de procéder à son adaptation. A défaut d'accord dans un délai raisonnable, le juge peut, à la demande d'une partie, réviser le contrat ou y mettre fin, à la date et aux conditions qu'il fixe.								
Germany	Section 313 German Civil Code (Bürgerliches Gesetzbuch)	Significant change: if the parties would not have entered into the contract or would have entered into it with different contents	No	None	Yes	Yes	No	Adaptation of the contract, and if it is not possible, withdrawal or termination of the contract.	
	Interference with the basis of the transaction (1) If circumstances which became the basis of a contract have significantly changed since the contract was entered into and if the parties would not have entered into the contract or would have entered into it with different contents if they had foreseen this change, adaptation of the contract may be demanded to the extent that, taking account of all the circumstances of the specific case, in particular the contractual or statutory distribution of risk, one of the parties cannot reasonably be expected to uphold the contract without alteration. (2) It is equivalent to a change of circumstances if material conceptions that have become the basis of the contract are found to be incorrect. (3) If adaptation of the contract is not possible or one party cannot reasonably be expected to accept it, the disadvantaged party may withdraw from the contract. In the case of continuing obligations, the right to terminate takes the place of the right to withdraw.								
	Article 388 Greek Civil Code (1946)	"Excessive						Adaptation	
	In case of subsequent change in the circumstances on which the contracting parties, under consideration of the principles of good faith and of fairness in transactions, have mainly founded a reciprocal contract, the change being due to extraordinary and unforeseen events, and where because of such a change the								

Domestic Provision

Greece	<p>unforeseen events, and where because of such a change the obligation of the promisor-in comparison with the obligation of the promisee-has become excessively onerous to him, the court may, at the request of the promisor, reduce his obligation to the proper extent, or decree the discharge of the contract as a whole or to the extent of the non-performed part. In the case in which the discharge of the contract has been decreed, all the obligations arising from it cease to exist, and the parties are mutually obliged to return all they have received according to the provisions relating to unjustifiable enrichment.</p>	<p>onerousness" There is no fixed threshold for giving rise to a hardship excuse under Article 388</p>	No	None	Yes	Yes	No	<p>Adaptation (reduction) or total or partial termination of the contract.</p>
Iraq	<p>Article 146 Civil Code of Iraq (1951)</p> <p>(1) Where a contract has been performed it is legally binding and neither party may revoke or amend it except pursuant to a provision in the law or by mutual agreement. (2) Where however as a result of exceptional and unpredictable events of a general nature the performance of the contractual obligation has not become impossible but onerous on the debtor such as will threaten him with exorbitant loss the court after balancing the interests of the parties may if it would be equitable reduce the onerous obligation to a reasonable limit; every agreement otherwise shall be null and void.</p>	<p>"Become onerous" There is no fixed threshold for giving rise to a hardship excuse under Article 146. However, the debtor has to be threaten by an exorbitant loss.</p>	No	None	Yes	No	No	<p>Adaptation (reduction) of the contract.</p>
Italy	<p>Article 1467 Italian Civil Code (1943)</p> <p>In contracts with continuous or periodical execution or adjourned execution and in case that the obligation of one of the parties has become excessively onerous due to extraordinary and unpredictable events, the party who is obliged to such performance can demand the dissolution of the contract with the effects laid down in art. 1458. The dissolution cannot be demanded if the supervening onerosity is part of the normal risk of the contract. The party against which the dissolution is demanded can prevent this by offering to modify equitably the conditions of the contract.</p>	<p>"Excessive onerousness" There is no fixed threshold for giving rise to a hardship excuse under Article 1467</p>	No	None	No	Yes	No	<p>Termination of the contract. However, the defendant can avoid it by offering to modify the terms of the contract.</p>
Libya	<p>Article 147 Libyan Civil Code (1954)</p> <p>ARTICLE 147 (E. C. 147 ) CONTRACT MAKES THE LAW OF THE PARTIES</p> <p>1. The contract makes the law of the parties. It can be revoked or altered only by mutual consent of the parties or for reasons provided for by the law.</p> <p>2. When, however, as a result of exceptional and unpredictable events of a general character, the performance of the contractual obligation, without becoming impossible, becomes excessively onerous la such way as to threaten the debtor with exorbitant</p>	<p>"Excessive onerousness" There is no fixed threshold for giving rise to a hardship excuse under Article 147. However, the debtor has to be threaten by an</p>	No	None	Yes	No	No	<p>Adaptation (reduction) of the contract.</p>

	<p>loss, the Judge may, according to the circumstances, and after taking into consideration the interests of both parties, reduce to reasonable limits the obligation that has become excessive. Any agreement to the contrary is void</p>	exorbitant loss.						
Lithuania	<p>Article 6.204 Lithuanian Civil Code (2000)</p> <p>Performance of contractual obligations upon a change of circumstances.</p> <p>1. Where the performance of a contract becomes more onerous for one of the parties, this party shall be bound to perform the contract in accordance with the procedure established in other Paragraphs of this Article.</p> <p>2. The performance of a contract shall be considered obstructed under such circumstances which fundamentally alter the balance of the contractual obligations, i.e. either the cost of performance has essentially increased, or the value thereof has essentially diminished if:</p> <p>1) these circumstances occur or become known to the aggrieved party after the conclusion of the contract;</p> <p>2) these circumstances could not reasonably have been foreseen by the aggrieved party at the time of the conclusion of the contract;</p> <p>3) these circumstances are beyond the control of the aggrieved party;</p> <p>4) the risk of occurrence of these circumstances was not assumed by the aggrieved party.</p> <p>3. In the event where the performance of a contract becomes obstructed, the aggrieved party shall have the right to make a request to the other party for the modification of the contract. Such request shall have to be made immediately after the occurrence of obstructions and the grounds on which the request is based indicated therein. The request for modification of the contract shall not in itself entitle the aggrieved party with the right to suspend performance of the contract. Where within a reasonable time the parties fail to reach an agreement on the modification of the contractual obligations, any of them may bring an action into a court. The court may:</p> <p>1) dissolve the contract and establish the date and terms of its dissolution;</p> <p>2) modify the conditions of the contract with a view to restoring the balance of the contractual obligations of the parties.</p>	<p>"Fundamental disequilibrium". There is no fixed threshold for giving rise to a hardship excuse under Article 6.204. The circumstances must fundamentally alter the balance of the obligations.</p>	Yes	None	Yes	Yes	Yes	Termination or adaptation of the contract.
	<p>Article 128 Law on Obligations (2008)</p> <p>1) Should after concluding of the contract such circumstances emerge which could not have been predicted and which hinder</p>							

	Montenegro (new)	<p>the performance of the obligation of one party to such extent that the performance of the obligation would be too burdensome or would incur too large loss to such party, the court may, following the claim of such party alter or rescind such contract.</p> <p>2) Alteration or rescission may not be claimed if the party setting up the changed circumstances had a duty, at the time of concluding of the contract, to take into account such circumstances, or if such party could have avoided or overcome them.</p> <p>3) A party claiming alteration or rescission of the contract may not refer to circumstances emerging after the expiration of time limit determined for the performance of that party's obligation.</p> <p>4) A contract shall not be rescinded should the other party offer or accept that the relevant terms of contract be altered in an equitable way.</p> <p>5) After pronouncing rescission of contract, the court shall, at the request of the other party, impose a duty against the party claiming it, to compensate to the other party an equitable part of the loss sustained due to rescission.</p>	<p>There is no fixed threshold for giving rise to a hardship excuse under Article 128. However, the performance of the obligation has to become too burdensome or entail a too large gross.</p>	No	None	Yes	Yes	No	<p>Adaptation or termination of the contract. However, termination is not possible if the other party accepts to alter the contract in an equitable way. In termination cases, the court can grant an equitable compensation.</p>
	Paraguay	<p>Artículo 672 Código Civil Paraguayo (1985)</p> <p>Art.672.- En los contratos de ejecución diferida, si sobrevinieren circunstancias imprevisibles y extraordinarias que hicieren la prestación excesivamente onerosa, el deudor podrá pedir la resolución de los efectos del contrato pendientes de cumplimiento. La resolución no procederá cuando la onerosidad sobrevinida estuviera dentro del alea normal del contrato, o si el deudor fuere culpable. El demandado podrá evitar la resolución del contrato ofreciendo su modificación equitativa. Si el contrato fuere unilateral, el deudor podrá demandar la reducción de la prestación o modificación equitativa de la manera de ejecutarlo.</p>	<p>"Excessive onerosness" There is no fixed threshold for giving rise to a hardship excuse under Article 672.</p>	No	None	Yes (only in unilateral contracts)	Yes	No	<p>Termination of the contract. Termination can be prevented if the other party accepts to alter the contract in an equitable way. In unilateral contracts, the debtor may request an adaptation of the contract.</p>
	Portugal	<p>Article 437 Civil Code of Portugal (1966)</p> <p>Resolução ou modificação do contrato por alteração das circunstâncias, Artigo 437.º (Condições de admissibilidade)</p> <p>1. Se as circunstâncias em que as partes fundaram a decisão de contratar tiverem sofrido uma alteração anormal, tem a parte lesada direito à resolução do contrato, ou à modificação dele segundo juízos de equidade, desde que a exigência das obrigações por ela assumidas afecte gravemente os princípios da boa fé e não esteja coberta pelos riscos próprios do contrato.</p> <p>2. Requerida a resolução, a parte contrária pode opor-se ao pedido, declarando aceitar a modificação do contrato nos termos</p>	<p>"abnormal alteration" There is no fixed threshold for giving rise to a hardship excuse under Article 437</p>	No	None	Yes	Yes	No	<p>Termination or adaptation of the contract. Termination is avoided if the other party accepts to change the terms of the contract to equitable ones.</p>

	do número anterior.							
Qatar	Article 171 Civil Code of Qatar (2004)							
	<p>Pacta sunt servanda i.e., a contract duly and properly concluded between the parties must be kept, and non-fulfilment of the respective obligations is a breach of that contract. Such a contract may be revoked or altered only by mutual consent of the parties or for reasons provided for by law. Where, however, as a result of exceptional and unforeseeable events, the fulfilment of the contractual obligation, though not impossible, becomes excessively onerous in such a way as to threaten the obligor with exorbitant loss, the judge may, according to the circumstances and after taking into consideration the interests of both parties, reduce the excessive obligation to a reasonable level. Any agreement to the contrary shall be void.</p>	"Excessive onerousness" There is no fixed threshold for giving rise to a hardship excuse under Article 171. However, the debtor has to be threaten by an exorbitant loss.	No	None	Yes	No	No	Adaptation (reduction) of the contract.
Russia	Article 451 Russian Civil Code							
	<p>Article 451. The Amendment and the Cancellation of the Contract Because of an Essential Change of Circumstances</p> <p>1. An essential change of the circumstances, from which the parties have proceeded when concluding the contract, shall be the ground for its amendment or cancellation, unless otherwise stipulated by the contract or following from its substance. The change of the circumstances shall be recognized as essential, if they have changed to such an extent that in case the parties could have wisely envisaged it, the contract would not have been concluded by them or would have been concluded on the essentially different terms.</p> <p>2. If the parties have failed to reach an agreement on bringing the contract into correspondence with the essentially changed circumstances or on its cancellation, the contract may be cancelled, and on the grounds, stipulated by Item 4 of the present Article, it may be amended by the court upon the claim of the interested party in the face of the simultaneous existence of the following conditions:</p> <p>1) at the moment of concluding the contract, the parties have proceeded from the fact that no such change of the circumstances will take place;</p> <p>2) the change of the circumstances has been called forth by the causes, which the interested party could not overcome after they have arisen, while displaying the degree of care and circumspection, which have been expected from it by the nature of the contract and by the terms of the circulation.</p>	Essential change of circumstances: no fixed threshold leading to hardship	Yes	None	Yes	Yes	Yes	Termination, and in second place, adaptation in extraordinary

	<p>of the contract and by the terms of the circulation,</p> <p>3) the execution of the contract without amending its provisions would so much upset the balance of the property interests of the parties, corresponding to the contract, and would entail such a loss for the interested party that it would have been to a considerable extent deprived of what it could have counted upon when concluding the contract;</p> <p>4) neither from the customs of the business turnover, nor from the substance of the contract does it follow that the risk, involved in the change of the circumstances, shall be borne by the interested party.</p> <p>3. In case of the cancellation of the contract because of the essentially changed circumstances, the court shall, upon the claim of any one of the parties, define the consequences of the cancellation of the contract, proceeding from the need to justly distribute the expenses, borne by them in connection with the execution of this contract, between the parties. 4. The amendment of the contract in connection with an essential change of the circumstances shall be admitted by the court decision in extraordinary cases, when the cancellation of the contract contradicts the public interests, or if it entails the losses for the parties, considerably exceeding the expenses, necessary for the execution of the contract on the terms, amended by the court.</p>	partnership.						cases.
	<p>Article 994 Slovenian Commercial Code</p> <p>Obligations Code, Article 994: (1) Each partner shall be entitled to part of the benefit achieved in the partnership, unless stipulated otherwise by the contract. (2) Each partner shall be obliged to bear part of the loss incurred by the partnership's functioning. (3) Unless stipulated otherwise by the contract, the partners shall participate in the benefits and loss with shares equal to their shares in the contributions.</p>							
	<p>Article 112 Code of Obligations</p>							
	<p>Article 112</p> <p>(1) If after the conclusion of a contract circumstances arise that render the performance of obligations by one party more difficult or owing to which the purpose of the contract cannot be achieved and in both cases to such an extent that the contract clearly no longer complies with the expectations of the</p>							<p>Termination of the contract. Termination can be prevented if the other party accepts</p>

	Slovenia	<p>contracting parties and in the general opinion it would be unjust to retain it in force as it is, the party whose obligations have been rendered more difficult to perform or the party that owing to the changed circumstances cannot realise the purpose of the contract may request the rescission of the contract.</p> <p>(2) It shall not be possible to request the rescission of a contract if the party making reference to the changed circumstances should have taken such circumstances into consideration when the contract was concluded, or could have avoided them or could have averted the consequences thereof.</p> <p>(3) The party requesting the rescission of the contract may not make reference to changed circumstances that arose after the deadline stipulated for the performance of such party's obligations.</p> <p>(4) A contract shall not be rescinded if the other party offers to have the relevant contract conditions justly amended or allows such.</p> <p>(5) If a court rescinds a contract owing to changed circumstances it shall at the request of the other party instruct the party that requested the rescission to reimburse the other party for an appropriate part of the damage incurred for reason of the rescission of the contract.</p>	The circumstances have to change to such an extent that the contract clearly no longer complies with the expectations of the contracting parties and in the general opinion it would be unjust to retain it in force as it is	No	None	No	Yes	No	to alter the contract in an equitable way. Also, in cases of termination, the court shall, at the request of the other party, oblige the party applying for the termination, to compensate the other party with an equitable amount for the damage suffered due to the termination.
	Taiwan	<p>Article 227-2 Civil Code of Taiwan (amended in 2015)</p> <p>If there is change of circumstances which is not predictable then after the constitution of the contract, and if the performance of the original obligation arising therefrom will become obviously unfair, the party may apply to the court for increasing or reducing his payment, or altering the original obligation. The provision in the preceding paragraph shall apply mutatis mutandis to the obligation not arising from the contract.</p>	"Obviously unfair". There is no fixed threshold for giving rise to a hardship excuse under Article 227-2.	No	None	Yes	No	None	Adaptation of the contract.
	The Netherlands	<p>Article 6:258 Dutch Civil Code (1992)</p> <p>Article 6:258 Unforeseen circumstances: 1. Upon a right of action (legal claim) of one of the parties to an agreement, the court may change the legal effects of that agreement or it may dissolve this agreement in full or in part if there are unforeseen circumstances of such a nature that the opposite party, according to standards of reasonableness and fairness, may not expect an unchanged continuation of the agreement. The court may change or dissolve the agreement with retroactive effect. - 2. The court shall not change or dissolve the agreement as far as the unforeseen circumstances, in view of the nature of the agreement or of common opinion, should remain for account of the party who appeals to these circumstances. - 3. For the purpose of this</p>	There is no fixed threshold for giving rise to a hardship excuse under Article 6:258.	No	None	Yes	Yes	No	Partial or total termination, or adaptation of the contract.

	<p>Article, a person to whom a right or obligation from the agreement has passed, is equated with an original party to that agreement.</p>							
	<p>Article 652 Civil Code of Ukraine (2003)</p> <p>Article 652. Amendment or Cancellation of the Agreement Due to Significant Change of Circumstances 1. In case of significant change of the circumstances guiding the parties during the agreement conclusion, the agreement may be amended or cancelled by the parties' consent, unless otherwise is established by the agreement or results from the essence of the obligation. Change of the circumstances shall be significant in case they have changed to the extent the parties could not envisage and in case they could they would not conclude an agreement or would have concluded it upon other terms and conditions. 2. In case the parties did not reach consensus to comply the agreement with the circumstances that have changed significantly or to terminate an agreement, the agreement may be cancelled and due to the reasons established in part 4 of this Article – may be amended by the court decision on the request of the concerned party, provided the following conditions are observed: 1) while concluding an agreement the parties thought that such change of circumstances would not occur; 2) change of circumstances is due to the conditions which the concerned party failed to remove after their emergence in spite of all its diligence and prudence; 3) fulfillment of the agreement would disturb the balance of the parties' property interests and would deprive the concerned party of everything it expected to get while concluding the agreement; 4) the essence of the agreement or business practices do not result in the risk of the circumstances' change to be born by the concerned party. 3. In case of the agreement termination due to significant change of circumstances, the court upon the request of any party shall determine the consequences of the agreement termination based on the necessity to fairly distribute the expenses between the parties incurred in connection with this agreement fulfillment. 4. Amendment of the agreement due to significant change of circumstances shall be allowed upon the court decision in unique cases when termination of the agreement contradicts the public interests or entails the parties' losses substantially exceeding the expenses required for the agreement fulfillment under conditions changed by the court</p>	<p>Significant change of the circumstances: whenever they have changed to the extent the parties could not envisage and in case they could they would not conclude an agreement or would have concluded it upon other terms and conditions.</p>	<p>Yes</p>	<p>None</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Termination of the contract, and in extraordinary cases, its adaptation.</p>

Ukraine

