

CISG ADVISORY COUNCIL OPINION NO. 24

ANNEX 1

Case law on the application of the CISG to international public procurement and government contracts

Case	Court	Quote	Applicability
ARBITRATION			
The Ministry of Defense of Iran v. Cubic International Sales. 7365/FMS. Award. May 5, 1997.	ICC	<i>As a consequence, parties to a long-term contract are expected to foresee to a reasonable extent the developments, including changes, which may occur, This explains, for instance, why economic hardship of one contracting party does not affect the binding effect of international sales agreements under the United Nations Convention on Contracts for the International Sale of Goods ("CISG"; CISG Article 79). The sanctity of contract is applicable by reference to both specific national law and international (private) law.</i>	No
Decommissioned Russian submarine case. Maritime Commission at the Chamber of Commerce and Industry of the Russian Federation. 18 December 1998.	Chamber of Commerce and Industry of the Russian Federation	[CLOUT Abstract] A Russian organization (the plaintiff) and a Canadian company (the respondent) concluded an agreement under which the plaintiff sold to the respondent marine scrap metal in the form of a decommissioned diesel submarine. The parties explicitly stated that the contract had been drawn up and would be interpreted according to the law of the Russian Federation. The Arbitration Commission considered whether CISG, which had been incorporated into Russian law, was applicable to the contract in question. It concluded that the submarine should be considered a marine vessel,	No

		even though it had been decommissioned by the Russian Navy, since the description “decommissioned” relating to the subject of the contract could denote only the loss of the submarine’s status as a naval vessel, not the loss of its status as a marine vessel. The Arbitration Commission concluded that, while the submarine was capable of remaining afloat, even if it required the assistance of external devices to do so, it should be considered a marine vessel. In the light of the above, the Arbitration Commission decided that CISG was inapplicable by virtue of the provisions of article 2.	
Joy Mining Machinery Limited v. Arab Republic of Egypt, ICSID Case No. ARB/03/11. Award on Jurisdiction. 6 August 2004.	ICSID	<i>The Tribunal is also mindful that if a distinction is not drawn between ordinary sales contracts, even if complex, and an investment, the result would be that any sales or procurement contract involving a State agency would qualify as an investment. International contracts are today a central feature of international trade and have stimulated far reaching developments in the governing law, among them the United Nations Convention on Contracts for the International Sale of Goods, and significant conceptual contributions. Yet, those contracts are not investment contracts, except in exceptional circumstances, and are to be kept separate and distinct for the sake of a stable legal order. Otherwise, what difference would there be with the many State contracts that are submitted every day to international arbitration in connection with contractual performance, at such bodies as the International Chamber of Commerce and the London</i>	No

		<i>Court of International Arbitration?</i>	
Aircraft Manufacturing Co. v. Republic of Korea. KCAB Arbitral Awards (2017), p. 176.	KCAB	<i>The parties chose Korean law as the applicable law to the contract in this case. The sales of aircraft is excluded from the CISG's sphere of application. Furthermore, the parties did not opt into CISG. However, the Arbitral Tribunal takes CISG into account in examining the Claimant's exemption of liability on the ground that CISG is an international standard for international trade.</i>	No
OGI Group Corporation v. Oil Projects Company of the Ministry of Oil, Bahdad, Iraq. 20994/ZF/AYZ. Final Award. April 16, 2018.	ICC	<i>Respondent is Oil Projects Company of the Ministry of Oil, Baghdad, Iraq (SCOP) (SCOP or "Employer" or "Respondent"), an Iraqi public company formed under the State Companies Law No. 22 of 1997 of the Republic of Iraq and wholly owned by the Ministry of Oil of the Republic of Iraq. [...] [Fn. 72] The Arbitral Tribunal notes that Claimant's position concerning the applicable law has changed over the course of these proceedings. Whereas Claimant initially claimed that "The Contract Control" and that it is "so detailed and specific to clearly delineate all obligations and duties within the four corners of the document" (Claimant's Statement of Reply, §S 1-3), it acknowledges the applicability of Iraqi law (including the CISG).</i>	Yes
AUSTRIA			
"Military weapons case" 4 R 224/98p. 24 February 1999.	Oberlandesgericht Graz (Court of Appeal Graz)	<i>(Translated from the original) As no other law has been explicitly or implicitly stipulated under § 11 and § 35 of the Austrian Act concerning Private International Law (Internationales Privatrechtsgesetz; IPRG), and as the CISG has not been excluded under Art. 6 of the</i>	Yes

		<i>Convention, the contract is governed by the CISG.</i>	
CANADA			
Diversitel Communications Inc. v. Glacier Bay Inc. 03-CV-23776 SR. 06 October 2003.	Ontario Superior Court of Justice	[CLOUT Abstract] The plaintiff (Canadian company) required delivery of the insulation to meet the terms of a pre-existing contract with the Canadian Department of National Defence (DND). As a term of its contract with the defendant (American company), the plaintiff set out a specific schedule of delivery of the insulation by the defendant. The plaintiff paid the defendant a certain amount when it issued its purchase order on 26 August 2002. The defendant admits it breached the terms of its contract by failure to deliver on time, as a result of problems it encountered with its principal supplier. The plaintiff eventually terminated the contract in November 2002, and commenced this action for the return of the amount already paid. In its defence, the defendant pleaded that the plaintiff terminated the contract without appropriate justification, and counterclaimed for damages for breach of contract and for loss of profits. [...] The plaintiff argued that under the CISG, breach of the delivery obligation under article 33 could amount to fundamental breach under article 25 which would allow the plaintiff to declare the contract avoided under article 49 and seek restitution under article 81 (2). The plaintiff submitted that the CISG established a lower threshold for the proof	Yes

		of fundamental breach than that required by the common law and provided foreign case law in support. The court was not convinced that these cases evidenced a lower threshold. In any event, the court agreed with the plaintiff that even the common law conditions for avoidance had been met in this case, on the finding that the parties had made time of the essence in the contract by their conduct and communications. The defendant's failure to perform in time was thus a fundamental breach as understood in the common law. The court granted summary judgment to the plaintiff and awarded pre- and post-judgment interest calculated according to local law.	
GERMANY			
"Online auction of car case" 11 U 44/14. CISG-online number 2727. 08 April 2016	Oberlandesgericht Brandenburg (Court of Appeal Brandenburg)	(Translated from the original) <i>The lower court also correctly proceeded on the basis that (substantive) German law applies. Contracts for the sale of movable goods are governed—absent a choice of law made by the parties, as is the case here (Art. 3 Rome I Regulation)—by the law of the country where the seller has their habitual residence (Art. 4(1)(a) Rome I Regulation); Art. 4(1)(g) Rome I Regulation does not lead to a different conclusion, as in the case of online auctions—assuming such transactions qualify as auctions in the legal sense at all—it is not possible to meaningfully determine a place of auction (see BeckOK-BGB/Spickhoff, 38th ed., Regulation [EC] 593/2008 Art. 4 para. 46; also MünchKommBGB/Martiny, 6th ed., Rome I Regulation Art. 4 para. 154; Schulze/Staudinger,</i>	No.

		<i>Hk-BGB, 8th ed., Rome I Regulation Art. 4 para. 8; each with further references).</i> <i>The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are inapplicable in any event, because the international nature of the contract was not apparent to the defendant at the time of its conclusion (Art. 1(2) CISG) and because auctions do not fall within the material scope of the Convention (Art. 2(b) CISG).</i>	
HUNGARY			
Pfv.V.20.666/2021/6. Supreme Court. March 24, 2022.	Supreme Court	<i>As a contracting authority, the plaintiff conducted an open public procurement procedure on the subject of "Development of server infrastructure". On March 21, 2019, cég1 Zrt. acting on its behalf, as a responsible accredited public procurement consultant, stated that the plaintiff does not belong to the government's preferential circle in response to a question regarding the discounted purchase of the license to use the products of cég2 (name) in the context of additional information. On March 25, 2019, in response to a preliminary dispute resolution request received during the tendering stage of the public procurement procedure, the consultant recommended that the contracting authority amend the tender notice and the documentation, taking into account the statement made in the supplementary information, so that none of the company2 license products that it intends to acquire can be government (name) license. [...] The defendant actually - as can be established from the justification of his review</i>	No

		request (page 13, paragraph five) - relied on the previous practice of the company 2 Magyarország Kft. in relation to the performance of the name licenses for the plaintiff, which - as it later proved to be unfounded - reliance cannot be classified as beyond his control. It should also be emphasized that the acquisition of the licenses was not impossible in itself, in the absence of the defendant's name rights, he could have obtained them with a specification without this. However, the Civil Code according to the practice of the Vienna Convention on the Sales of Goods, which served as a codification model in this context, as long as the object of the contract can be obtained on the market - even if at a loss - there is no question of a circumstance outside the scope of control (Ádám Fuglinszky: Law of Compensation, HVG-ORAC, Budapest, 2015. page 113).	
Republic Bank Ltd. v. ETECSA. 97-0150. 16 June 2008	Sala de lo Económico (Chamber for commercial matters), Cuban Supreme Court	(Translated from the original) The Economic Chamber of the People's Supreme Court ruled as Follows: WHEREAS: The United Nations Convention on Contracts for the International Sale of Goods, adopted in Vienna in 1980, was signed by the Government of the Republic of Cuba and ratified on November 2, 1994, entering into force for said country on December 1, 1995; therefore, in accordance with Cuban law, international sales are subject to the aforementioned Convention. WHEREAS: Article 1 of the aforementioned Convention, regarding its territorial scope of application, sets forth two possible grounds for its applicability: firstly, its adoption	Yes

		<i>by the states where the places of business of both contracting parties are located; or secondly—even where adoption has occurred in only one of those states—when the law of such a state has been declared applicable by virtue of a rule of private international law.</i> <i>WHEREAS: In this regard, the fact that South Africa—the home country of ISTATELTELECOM—is not a signatory to the aforementioned Convention should not constitute an obstacle to its application to the sales contract entered into by that firm with ETECSA, a Cuban joint venture whose home country, Cuba, is indeed a signatory to said Convention.</i> <i>WHEREAS: In accordance with the structure of the cited Convention, it is the parties themselves who determine whether or not it applies to their contracts within the scope of international commercial relations; to this end, rather than mandating an affirmative declaration to that effect, the Convention requires the parties to opt to exclude it (Article 6)—an exclusion that may occur either expressly or implicitly when the parties choose a different legal framework for the contractual relationship or designate the law of a non-signatory country as applicable.</i> <i>However, this is not the case with the contract signed by ISTATELTELECOM and ETECSA, which contains no express exclusion and refers solely to Cuban law—a legal system that, in turn, incorporates the validity and application of the</i>	
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		<i>aforementioned Vienna Convention.</i> <i>WHEREAS: It is also important to note that in international commercial practice, when parties make a generic reference to a national law without further specification—as is the case here—such reference is understood to encompass the law of that country in its entirety, including any conventions to which that country is a party.</i>	
NETHERLANDS			
“Sale of horse via internet auction case”. CISG-online number 5398. C/01/360225 / KG ZA 20-386. 31 August 2020	Rechtbank Oost-Brabant (District Court Oost-Brabant)	(Translated from the original) <i>The dispute at hand arises from a purchase agreement concerning a horse concluded between the parties. This agreement was concluded in May 2020. The law applicable to the agreement must be determined on the basis of the Rome I Regulation. It has neither been asserted nor shown that the parties made a choice of law as referred to in Article 3 of the Rome I Regulation. The agreement falls within the scope of Article 4(1)(a) of the Rome I Regulation, as the purchase agreement concerns a movable asset as referred to in that article. In principle, therefore, the purchase agreement is governed by the law of the country where the seller has their habitual residence. In cases with international aspects where the claim relates to a contract of sale, the Vienna Sales Convention applies under Dutch law, even if one of the contracting parties resides in a country that has not acceded to that Convention, such as [country 1]. Given that Article 2(b) of the Vienna Sales Convention stipulates that the Convention does not apply to sales by public</i>	No

		<i>auction, and since the parties' submissions—which are consistent on this point—indicate that the horse was purchased via a public (internet) auction, the Convention does not apply in this case, and the claim must be assessed under (domestic) Dutch law.</i>	
SWITZERLAND			
“Electronic electricity meters case” CLOUT case No. 1824 4A_543/2018. May 28, 2019.	Federal Supreme Court	<i>The buyer is a Swiss state-owned entity organized under Swiss public law. In 2003, it conducted a public tender asking for bids to deliver electricity meters that were to be installed in private households in a canton in Switzerland. [...] With respect to the CISG's applicability, the Swiss Supreme Court clarified that the Convention also applies to multi-party sales contracts involving more than one buyer or/and more than one seller. The CISG's applicability to the entire multi-party sales contract remains unaffected even if only one of two parties on one 'side' of the contract (here: the Slovene seller no. 1) has its place of business in a different State than the opposing party (here: the Swiss buyer) as required by Art. 1(1) CISG, because any other approach would be impractical and result in the splitting-up of a coherent legal transaction.</i> [CLOUT Abstract] The Supreme Court then extensively discussed the prerequisites for an exclusion of the Convention's application by the parties (Art. 6). It confirmed that the contractual choice of the law of a CISG Contracting State (as e.g. 'Swiss law') does generally not amount to an	Yes

		exclusion of the CISG. This can only be different in presence of ‘clear and unambiguous’ indications that both parties intended to exclude the Convention. The burden of proof lies with the party relying on an exclusion. The fact that the buyer’s general conditions of purchase in the present case used a number of legal terms not found in the CISG was held to be insufficient in this regard. The Supreme Court then discussed whether it could amount to an implicit exclusion of the Convention that both parties had based their legal arguments in the court of first instance exclusively on Swiss domestic law. The Supreme Court stressed that the evidentiary standard for an intent to exclude is the same at the contractual and at the post-contractual stage, resulting in an equally high threshold applying to exclusions during court proceedings. Accordingly, restraint should be exercised before deducting an intent to exclude from a party’s mere reference to a domestic law (usually the lex fori), which can only indicate such an intent if there is proof that both parties were positively aware of the CISG’s applicability and nevertheless had reached an agreement to exclude its application. In the present case, the Supreme Court found that no exclusion of the Convention in accordance with Art. 6 CISG had been made.	
“Online auction of photography case.” CISG-online No. 2803. 4A_451/2016. 08 November 2016.	Bundesgericht/Tribunal fédéral (Federal Supreme Court)	[CLOUT Abstract] An Austrian company specializing in photography auctions conducted an online auction of photographs via an internet platform (www._____.com). The	No

		internet platform was run by a company based in New York. During the online auction, the owner of a Swiss photography art gallery successfully bid for seven vintage photographs. The Austrian seller sent an invoice to the buyer, but the buyer failed to pay. When the seller brought suit for payment of the price in the Commercial Court of Zurich, the Commercial Court applied the (domestic) sales law of the State of New York. Upon appeal the Federal Supreme Court confirmed that the CISG was inapplicable to the contract between the seller and the buyer, because Article 2(b) CISG excludes online auctions from the Convention's scope. In doing so, the Federal Supreme Court acknowledged that commentators differ on whether the term "auction" in Article 2(b) CISG also extends to online auctions as those conducted over the Internet, but did not give any reasons for its preferred interpretation. The court went on to rule that the sales contract was governed by domestic Austrian law as the law of the country where the seller had his habitual residence at the time when he received the order (Article 3(1) Hague Convention on the Law applicable to the International Sale of Goods of 1955). It accordingly reversed and remanded the judgment of the Commercial Court of Zurich.	
UNITED STATES OF AMERICA			
<i>Hilaturas Miel, S.L. v. Republic of Iraq.</i> CISG-online No. 1777. 573 F. Supp. 2d 781. 20 August 2008.	U.S. District Court for the Southern District of New York.	<i>Hilaturas asserts, and the Republic of Iraq does not dispute, that the Contract is governed by the United Nations Convention on Contracts for the International Sale of Goods, opened for signature April 11, 1980, 1489 U.N.T.S. 3, 19 I.L.M. 668 ("CISG").</i>	Yes

Matter of New York State Dept. of Health (Rusi Tech. Co., Ltd.). January 25, 2022.	Supreme Court of New York	<i>In this special proceeding brought under CPLR article 75, petitioner New York State Department of Health ("DOH") moves for an order and judgment permanently staying an arbitration commenced by respondent Rusi Technology Company, Limited ("Rusi") before the China International Economic and Trade Arbitration Commission ("CIETAC"). [...] The Court therefore concludes that the parties have not clearly expressed a mutual intention to exclude the Convention in favor of domestic Chinese law (see Hanwha Corp., 760 F Supp 2d at 431). Accordingly, the contract formation and interpretation principles of the Convention must be applied in determining whether the parties agreed to binding arbitration before CIETAC.</i>	Yes
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CASE LAW ON ARTICLE 6 CISG

Case	Court	Quote	Applicability
ARBITRATION			
ICC Case 23570/MK. Perfectvision Manufacturing, Inc. v. Epu Vision, S.A. August 6, 2018.	ICC	<i>"Pursuant to Article 21(1)(2) ICC Rules, the parties are free to agree upon the rules of law to be applied by the arbitral tribunal to the merits of the case and, in deciding the dispute, the arbitral tribunal shall take account of the provisions of the contract, if any, between the parties and of any relevant trade usages. Considering the above provision, both the Agreement and the License Agreement state the Parties expressly agreed that the CISG would not apply and that both agreements would be governed by and construed in accordance with the laws of the State of Arkansas, excluding that body of laws known as conflict of laws (see para. 7 above). In paragraph 51 of the Terms of Reference, the Parties confirmed that the laws of the State of Arkansas shall be the governing law in the arbitration for all intents and purposes."</i>	No
ICC Arbitral Award No. 9781 of 2000.	ICC	<i>"The application of these principles to the case under scrutiny aims at putting aside any voluntary exclusion of the parties in the meaning of Art. 6 CISG. It is true that the May sales agreement expressly states that 'the agreement is deemed to be made in Italy' (above, at [24]). However, this contractual provision -- already discussed above (at [33]) -- cannot be construed -- in the tribunal's view -- as an exclusion clause. This is not argued by the claimant either. The tribunal is bound to conclude from the above analysis that the May sales agreement is actually governed by the CISG."</i>	Yes
ICC Case No. 7754	ICC	[Abstract from UNILEX] The arbitral tribunal held that the parties, by referring to French law,	No

		intended their contract to be governed by French domestic law, i.e., by the rules on the contract of sale laid down in the French Civil Code. Even if the CISG was applicable under Art. 1(1)(b), Art. 6 CISG permitted the parties to exclude its application, and the choice of domestic law by the parties. However, it was the law of a contracting state, in the opinion of the arbitral tribunal amounted to such an exclusion. However, the arbitral tribunal pointed out that since the parties had on several occasions in their pleadings referred to CISG, it would supplement its reasoning by references to the CISG. The arbitral tribunal added that, in its view, in case of conflict between the French domestic law rules and the provisions of CISG, the former should prevail.	
AUSTRIA			
Mobile telescopic grandstand system case. CISG-online No. 8047. 6 Ob 100/25m. 30 June 2026.	Oberster Gerichtshof (Austrian Supreme Court)	(Translated from the original) <i>The appellate court correctly affirmed (pursuant to § 510 para. 3 of the Code of Civil Procedure [ZPO]) the application of the UN Sales Convention.</i> <i>Austria and Slovenia are Contracting States to the UN Sales Convention (CISG); therefore, it applies by virtue of autonomous connecting factors (Art. 1 para. 1 lit. a CISG).</i> <i>The substantive scope of application of the Convention extends to "contracts of sale of goods" (Art. 1 para. 1 CISG). It is extended by Art. 3 para. 1 CISG to "contracts for the supply of goods to be manufactured or produced" (1 Ob 26/23j, para. 32). It is undisputed that a contract for the supply of a grandstand system was concluded in the present case. This constitutes a contract for the supply of goods to be manufactured. The exceptions set</i>	Yes

		out in Art. 3 para. 2 and Art. 2 CISG do not apply. Accordingly, the parties and the appellate court rightly did not question the substantive scope of application of the Convention. [...] While the parties may exclude the application of the UN Sales Convention (CISG) pursuant to Article 6 thereof—and such exclusion may also be effected tacitly (cf. RS0115967 [T4])—the CISG forms part of the Austrian legal order (cf. RS0115967). It takes precedence over the non-unified law that would otherwise apply (RS0113574 [T1]; 8 Ob 121/24p para. 27). Therefore, the decisive factor for excluding the CISG is whether the contracting parties opt for the non-unified law of a specific state. A mere reference to the law of a Contracting State does not in itself constitute such an exclusion (cf. RS0115967 [T4]). The references cited by the defendant regarding Austrian administrative law provisions ("Building Act," "Events Act," "VSVO" [Events and Safety Ordinance 2014]) in the call for tenders, as well as the use of terms common—though not exclusively so—in Austrian legal terminology [...], are insufficient to establish an agreement on Austrian substantive law that excludes the CISG under the principles outlined above.	
Oberster Gerichtshof [Supreme Court]. 5 Ob 190/20g. November 17, 2020.	Supreme Court	(Translated from the original) <i>"The legal question of a permissible subsequent choice of law within the meaning of Art. 3 Para. 2 Rome I-VO, which must be assessed independently, as well as the exclusion of the UN sales law, which is also implicitly permissible in the opinion of the court of appeal (cf. 2 Ob</i>	No

		95/06v; 8 Ob 125/08b; RS0115967 [T3]) are conclusively settled disputes that can no longer be discussed in a third instance (RS0043338 [T13])."	
Auto case. Oberlandesgericht (Appellate Court) (OLG) Linz. 6 R 160/05z. 23 January 2006.	Appellate Court	<i>"[Buyer] based the purported waiver of applicability of the CISG on item XI of [Seller]'s standard terms of delivery and sale, which provided for the application of the HGB.</i> <i>Item XI of [Seller]'s standard terms of delivery and sale (accepted by [Buyer]) contains provisions on contractual warranty. Pursuant to the relevant sub-item 1, the seller will perform warranty services according to the relevant statutory provisions for buyers that are consumers in terms of the Consumer Protection Act. For businessmen, the provisions of the HGB on warranty will apply. In any event, the CISG is not even applicable for sales contracts with consumers. Therefore, this provision is only relevant for the question of the CISG's applicability insofar as it states that sales contracts with businessmen are governed by "warranty provisions laid down in the HGB". It cannot be established that there had been a common intent by both parties to apply this provision also to contracts with entrepreneurs not being businessmen in terms of the HGB (as is [Buyer]). Instead, there had been no negotiations at all concerning an exclusion of a certain law between [Buyer] and [Seller].</i> <i>Even an interpretation under objective standards prohibits an understanding in the way sought by [Buyer]. [...] The parties have not effectively excluded the application of the CISG. Therefore, the CISG applies to the present dispute."</i>	Yes

Oberster Gerichtshof [Supreme Court]. 8 Ob 104/16a. June 29, 2017.	Supreme Court	(Translated from the original) <i>"Decisive for the solution of the question of whether the parties in dispute have effectively waived the validity of the UN sales law is whether the general terms and conditions of the defendant were included in the contractual relationship according to the provisions of Art 14 ff CISG. On the one hand, this requires the will of the user of the GTC, which is clearly recognizable for the contractual partner, that these should be part of his offer and that he is only willing to enter into business transactions under these conditions. An express agreement is not absolutely necessary for this, the inclusion can also arise tacitly, conclusively from the negotiations of the contracting parties or from a custom between them (RIS-Justiz RS0104921; RS0104924). [...] Since an empty reference to non-accessible general terms and conditions does not indicate whether the customer is proposing a significant change in the provider's conditions, this procedure in the CISG's regulatory system cannot be sufficient for an effective inclusion of the general terms and conditions. The Court of Appeal rightly did not follow the defendant's objections based on the validity of its general terms and conditions."</i> [CLOUT Abstract] The Supreme Court recalled that, within its scope of application, the CISG superseded national law, and that article 6 CISG dealt with CISG exclusion. It explained that the defendant's TC had to be validly incorporated into the contract according to part II of the CISG in order for the parties to exclude the application of the CISG, and that this required the	Yes
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		TC to be sent to the other party or for them to be made available to the other party by other means, as mere reference to the TC did not suffice. It also indicated that the other party was under no obligation to actively ask or search for the TC's content ('Erkundungspflicht'). Consequently, the Supreme Court held that the TC had not been validly incorporated in the contract, that the application of the CISG had not been excluded and that the defendant could not rely on the TC to refuse payment.	
Pharmaceutical Glycerin Case. Oberlandesgericht [Appellate Court]. 1 R 207/16t. February 27, 2017.	Appellate Court	(Translated from the original) <i>If the UN sales law is applicable, the parties who do not want its application must make a corresponding express or tacit exclusion agreement (Posch in Schwimann/Kodek, ABGB4, Art. 6 CISG margin no. 8). No such exclusion was claimed here by either party. According to h.M., the UN sales law can only be waived if it is expressly mentioned and the choice of national (here Austrian) law of a CISG member state does not therefore represent a waiver of the UN sales law even if this is in force in the countries where both contractual partners are based (1 Ob 292/99v, 7 Ob 275/03x m.</i>	Yes
Oberster Gerichtshof 2 Ob 95/06v Austria 04-07-2007	Oberster Gerichtshof	[Abstract from UNILEX] The Supreme Court in this case held that the CISG did not apply to the case at hand, at least with respect to the contractual warranties, since the reference to Austrian law (Austrian Consumer Protection Act and Austrian Commercial Code) in the seller's terms had to be seen as an implied exclusion of the Convention.	No
Oberster Gerichtshof 7 Ob 301/01t Austria 14-01-2002	Oberster Gerichtshof	[Abstract from UNILEX] The court in this case noted that the choice of law of a contracting state does not in itself amount to an implied exclusion of CISG as part of the	Yes

		domestic law of the Contracting States. In this case, the reference to German Law as the applicable law did not amount to a tacit exclusion of CISG in accordance with Art. 6 CISG since CISG is a part of German Law. The Supreme Court also held that the seller's standard terms were binding upon the buyer since the seller had expressly referred to them in its offer and the buyer already knew them from previous dealings with the seller.	
Oberlandesgericht Linz 6 R 160/05z Austria 23-01-2006	Oberlandesgericht Linz	[Abstract from UNILEX] The Court of Appeal reversed the decision of the Court of First Instance and held that the CISG was applicable to the case at hand. Earlier, the Court of First Instance found that CISG did not apply because the parties had impliedly excluded it by selecting Austrian law as the law applicable to contractual warranties. The Court of Appeal disagreed and held that the CISG was applicable to the case at hand. In reaching such a conclusion, taking into account the rules on interpretation set forth in Art. 8 CISG, the Appellate Court pointed out, first of all, that the selection of Austrian law in the seller's standard terms could not be interpreted as an implied exclusion of CISG, given that those terms clearly aimed at regulating domestic and not international sales contracts.	Yes
BELGIUM			
Gemini Corporation N.V. v. Kronospan Luxembourg S.A. Cour De Cassation [Supreme Court]. C.19.0109.N. May 7, 2020.	Supreme Court	<i>2. The party, which does not criticize the judgment where, in the absence of any legal basis put forward by the parties, it applies ex officio the Vienna Sales Convention, argues that the appeal courts have ignored the right of defense by not inviting the</i>	Yes

		<i>parties to submit a statement about whether they have not made use of the possibility offered by Article 6 of the Vienna Sales Convention to exclude the application of the Convention or to deviate from its provisions. However, it does not argue that the file contained any indication to that effect. 3. Insofar as the part accuses the judgment of violating the right of defense by applying ex officio the Vienna Sales Convention without inviting the parties to take a position on whether or not they have made use of the option provided for in Article 6 of the treaty, it cannot be adopted. 4. Insofar as the part alleges a violation of Article 6 of the Vienna Sales Convention, it is entirely derived from the vainly argued misrepresentation of the right of defence."</i>	
16. SA P. v. AWS Tribunal de commerce, Namur 985/01 Belgium 15-01-2002	Tribunal de commerce, Namur	[Abstract from UNILEX] The Court held that the fact that the contract was in German did not amount to an explicit reference to German domestic law and to an exclusion of CISG, which is part of German law. Furthermore, the mere reference to the standard terms applicable to domestic sales does not imply an exclusion of CISG, also considering that these terms are not statutory law, but simply recommendations by the German Association of Equipment Constructors.	Yes
Rechtbank van Koophandel, Hasselt Belgium 18-10-1995		[Abstract from UNILEX] The Court in this case held that the contract was governed by CISG since the Belgian Private International law rules led to the application of the law of The Netherlands, a contracting state. The Court also pointed out that the parties are free to exclude or derogate from CISG. The derogation need not be express, but it must clearly result from the common intention of the parties.	Yes

CHINA			
P.H. "PODLASIAK" Andrzej Cylwik v. Yiwu Entuo Import and Export Firm. Intermediate People's Court. November 9, 2018.	Intermediate People's Court	[Pace Law Editorial Remarks] The court found that CISG was applicable to the dispute between the parties, however, given the fact that the parties relied only on Chinses law during the proceedings at the lower court, the court held that the parties had implicitly excluded the application of the CISG.	No
Beijing Chen Guang Hui Long Electronic Technology Development Ltd. v. Thales (France) Co. High People's Court. (2006) Gao Min Zhong Zi Di No. 576. March 18, 2005.	High People's Court	<i>The [Buyer] asserts that Chinese law and the CISG apply to the present dispute. The [Seller] asserts that only Chinese law applies to this dispute, and denied the application of the CISG in the first instance. This Court finds that the parties do not object to the application of Chinese law. The key is whether the CISG is applicable. Article 142 of the General Principles provides, [...]</i> If businesspersons from two Contracting States of the CISG do not exclude the application of the CISG, the CISG shall automatically and preemptively be the law applicable to their transactions. However, the [Seller] in the present case expressly stated that the Chinese domestic law applied to the dispute, which does not include the CISG. Moreover, the [Buyer] did not submit that the Chinese law and the CISG have different provisions. On the other hand, the [Buyer] claimed that under the relevant provisions on 'offer' and 'acceptance' of either Chinese law or the CISG, the contract between the [Buyer] and the [Seller] was sufficiently concluded. Consequently, this Court does not support the [Buyer]'s claim on appeal that the Court of First Instance erred in not applying the CISG. This Court upholds the Court of First Instance's application of Chinese law to the present case.	No

FRANCE			
Meenakshi India Ltd. v. Norki International S.A. International commercial chamber at the Paris Court of Appeal (CCIP-CA). 22/00710. February 7, 2023.	Appellate Court	(Translated from the original) <i>In this case, it was in knowledge of the international nature of the sale that the parties voluntarily placed the solution of their dispute under the regime of French domestic law by invoking and discussing the provisions of the Civil Code to the exclusion of the CISG. so that internal national law will be applied.</i> [Pace Law Editorial Remarks] The court held that the parties had implicitly opted out of the CISG. However, it should be noted that India is not a party to the CISG; as such the CISG does not apply as per Art. 1(1)(a).	No
Ipso Facto S.A.S. v. Win System Int'l Ltd. Cour De Cassation [Supreme Court]. 20-22.528. October 26, 2022.	Supreme Court	(Translated from the original) <i>WHEREAS the Vienna Convention of 11 April 1980 instituting uniform law on international sales of goods is binding on the French judge, who must apply it subject to its exclusion, according to Article 6, which is interpreted as allowing the parties to tacitly avoid it, by refraining from invoking it before the French judge; that considering that the parties had tacitly excluded the application of the Vienna Convention, when the memorials of the judgment (p. 4) establish that the company Ipso Facto invoked the application of the Vienna Convention in the proceedings on the merits having resulted in the judgment of the Commercial Court of Bordeaux of the appeal of which it was seized, the Court of Appeal violated Article 6 of the Vienna Convention by false application;</i> [Pace Law Editorial Remarks] The court considered three matters concerning the application of the CISG: i) Whether the sale of the wine was considered goods as per	Yes

		CISG Art. 3(1); ii) Whether the parties had implicitly opted out of the CISG because they had relied on French law during the proceedings and; iii) Whether CISG was applicable to a party in Hong Kong. The court reversed the decision of the lower court [court of appeals] and held that the parties could not prove that they had implicitly opted-out of the CISG by not referencing it in previous proceedings; the bottles of wine were considered goods within the meaning of CISG Art. 3(1) and the applicable law was French law and the CISG applied as part of it (i.e. the CISG applied to a party from Hong Kong because the seller was located in France, therefore French law applied and CISG was part of French law).	
SA Engie Energie Services v. SPRL Foronex. Cour d'appel [Court of Appeals]. 20/04405. October 13, 2022.	Appellate Court	(Translated from the original) <i>Insofar as the Convention constitutes the substantive French law for the international sale of goods, by choosing French law, without further clarification, the parties did not intend to exclude the Vienna convention, therefore it applies in the present case.</i>	Yes
Isosud S.A.S.U. v. Italpanelli Deutschland GmbH. Cour d'appel [Court of Appeals]. 20/18402. June 28, 2022.	Appellate Court	(Translated from the original) <i>The Italpanelli company opposed the application of the CISG by invoking the existence of a tacit agreement to set aside the CISG which they refrained from invoking and their intention to place themselves voluntarily under the regime of the law French internal sales department. However, it follows from the procedure that the plaintiff Isosud company did not refer to applicable law and that only the Italpanelli company invoked to discuss the request the provisions of articles 1101 and following of the civil code on the Contract so that no common desire, even tacit, to exclude French law as it results from the</i>	Yes

		Vienna Convention can be deduced from this.	
Del Gaudio France S.A. v. Agrenfrut S.L. International commercial chamber at the Paris Court of Appeal (CCIP-CA). CISG-online No. 5790. 20/00977. May 18, 2021.	Appellate Court	22. <i>In the case in point, it is well established that the parties have, with full knowledge of the fact, placed themselves under the aegis of France's Civil Code and Business Code in order to resolve their dispute so it should be considered that they intended to exclude the application of the provisions of this Convention [CISG].</i> 23. <i>Since the application of this Convention is excluded, the determination of the applicable law is governed by the Hague Convention of 15 June 1955 on the law applicable to international sales of goods.</i>	No
Nexter Munitions v. Albemarle Europe. Cour d'appel [Court of Appeals]. 19/01256. November 5, 2020.	Appellate Court	(Translated from the original) <i>If in such a case, the Vienna Convention on the International Sale of Goods has a supplementary purpose to apply to the contract, it is still necessary that the parties <u>or simply one of them</u> has not however expressly excluded this allowed by article 6 of the said convention. However, in this case, the general conditions of the seller provided in its article 16, by an unambiguous provision A..., the express exclusion of the application of the provisions of the Vienna Convention and, in any case indeed, even if it were considered that the French law claimed by the buyer included the Vienna Convention which would be an integral part of it, as he maintains, the fact remains that the exclusion provided for by the seller failure to apply the Vienna Convention.</i> [Pace Law Editorial Remarks] The parties have referred to their own respective standard terms, which contained choice of law provisions, ie. the seller's standard terms excluded the	No

		CISG, the buyer's standard terms stated that the applicable law was French law. Due to the contradiction, the court referenced the 'knock-out' principle and noted that as per Art. 4(1)(a) of the EU Rome I Regulation, Belgian law was the applicable law. Moreover, the court ruled that one party's exclusion of the CISG was sufficient to exclude the CISG as per Art. 6. Thus Belgian law, excluding the CISG was applicable.	
GERMANY			
"Teslas case" CISG-online No. 6210 Oberlandesgericht [Court of Appeal]. 7 U 4810/21. December 12, 2022.	Appellate Court	(Translated from the original) <i>However, the applicability of the CISG can not only be excluded upon conclusion of the contract, but also subsequently - for example during a legal dispute - expressly or by implied behavior, insofar as a concurring will of the parties is sufficiently clear. Such an exclusion can be considered, for example, if the parties, aware of the existence and possible applicability of the CISG, expressly refer to the sales law contained in the BGB and HGB or its warranty right and argue based on it in the court proceedings (cf. Wagner in BeckOGK, as of November 1, 2022, paragraph 14 on Art. 6 CISG and OLG Koblenz, judgment of January 20, 2016 - 5 U 781/15, paragraph 22).</i> Since the parties have argued exclusively on the basis of the Civil Code in the first instance and also in the appeal proceedings so far, the court assumes that the application of the CISG should be excluded <u>if the parties do not object</u>. [Pace Law Editorial Remark] The matter of implicit exclusion and reliance on the parties pleadings has also been addressed by other courts from various jurisdictions. Here, however, a distinguishing feature is that not only has the	No

		appellate court held that the parties have implicitly excluded the CISG, but, the appellate court has held that "The parties may comment on this [applicability of German law or the CISG] within the set period." This ruling can be interpreted as follows: - The appellate court did not assume that the parties had implicitly excluded the CISG per se; - The court did not state that the parties could not plead under the CISG for the first time during appellate review.	
Landgericht [Regional Court]. 1 O 38/19. May 7, 2019.	Regional Court	(Translated from the original) <i>Here the parties have submitted all mutual claims in connection with the MSA and all orders to English law (section 13.6 sentence 1 MSA). In principle, according to Art. 1 and 3 para. 1 CISG, the UN Sales Convention applies to this contract for work and materials.</i> <i>The mere choice of the law of a contracting state also does not exclude the UN sales law according to Art. 6 CISG, because the provisions of the CISG are part of the law of the contracting states (BGH, judgment of July 23, 1997 - VIII ZR 134/96, NJW 1997, 3309, 3310, beck-online; MünchKomm-BGB/Huber, 7th edition 2016, Art. 6 CISG marginal number 12 with further references). However, the CISG expressly does not regulate the effects that the contract can have on the ownership of the goods sold (Art. 4 sentence 2 lit. b) CISG). Since the contractual transfer of ownership – as shown – is subject to the MSA and the choice of law made there for English law, the substantive legal issue of the transfer of ownership for the issuance of the injunction would have to be assessed under English law, if necessary with the help of a legal opinion.</i>	Yes

Oberlandesgericht [Court of Appeal]. 32 U 2098/17. April 12, 2018.	Appellate Court	(Translated from the original) <i>Neither have the parties - by implication - ruled out the applicability of the CISG in accordance with Art. 6 CISG. Both parties initially only argued on the basis of German law. However, this is not sufficient (MüKoBGB/Huber, 7th edition, Art. 6 CISG para. 23). Because behind it must be the actual will of the parties to want to exclude the actually applicable CISG through this argument. This is not evident. In addition, the parties later argued on the basis of the CISG.</i>	Yes
“Porsche Cayenne case”. CISG-online No. 2741. 5 U 781/15. 20 January 2016.	Oberlandesgericht Koblenz (Court of Appeal Koblenz).	(Translated from the original) <i>The regional court applied the provisions of the UN Convention on Contracts for the International Sale of Goods – without first informing the parties. According to Art. 6 CISG, the exclusion of the application of the uniform sales law can occur not only when the contract is concluded, but also subsequently - including during a legal dispute. A subsequent exclusion is also possible through a tacit declaration (see only MünchKomm-BGB/Martiny, 6th edition [2015], Art. 6 CISG Rn. 77). An exclusion comes into consideration in particular if the parties have expressly referred to the sales law of the BGB/HGB or to domestic warranty law as the applicable law (cf. MünchKomm-BGB/Martiny, a.a.O., Art. 6 CISG Rn. 80, as well on the choice of law according to the conflict of laws also BGH, judgment of October 21, 1992 - XII ZR 182/90, NJW 1993, 385 [386]).</i>	No
Landgericht Saarbrücken 8 O 49/02 Germany 02-07-2002	Landgericht Saarbrücken	[Abstract from UNILEX] <i>The Court in this case held that the CISG was applicable in the case at hand. In doing so, it denied that the parties’ reference to provisions of the German Civil and Commercial Codes in their</i>	Yes

		<i>pleadings amounted to an implied exclusion of the Convention.</i>	
ITALY			
SMS Ersanlar Tarim v F.Ili Rinaldi s.n.c. Tribunale [District Court]. CISG-online No. 5787. December 27, 2021.	District Court	[Case Abstract] The buyer contended that CISG was the governing law. On its part, the seller raised two main points of defense: first, the valid exclusion of the Convention due to the parties' indication of Italian domestic law as the law governing the contract; second, the buyer's forfeiture of its right to rely on lack of conformity of the goods, since the defects had been notified three months after delivery. The Court decided in favor of the seller. In so doing, it preliminarily found that the parties had validly excluded the application of the Convention to their contract and, accordingly, Italian domestic law was to apply.	No
Rudolf Hertz v. New GI and Max SRL. Corte Suprema di Cassazione [Supreme Court]. 9340/2013 R.G. / 1867/2018. January 25, 2018.	Supreme Court	(Translated from the original) 2.4. <i>It must also be noted that the art. 6 of the Convention allows the parties to exclude its application and that Italian and foreign jurisprudence has long recognized the possibility of proceeding with this exclusion even tacitly, or by indicating in the contract significant elements of the will to subject it to a different legal framework. The appellant's arguments relating to the fact that the parties opted for the application of German domestic law by affixing the phrase 'Es gilt das Recht der BRD' (literally: the applicable law is that of the Federal Republic of Germany). But even if we want to attribute to this expression the value of an option on the applicable law, it should be noted that the same - in its simple reference to the law 'of the Federal Republic of Germany' - is not suitable for excluding the application of the Convention, which in any case constitutes an integral part of the indicated order,</i>	Yes

		even if it is a supranational law and intended to regulate international and not domestic relations. In other words, and as held by Italian and foreign jurisprudence, in order to exclude the application of the Convention, the parties must demonstrate a clear and conscious intention, the mere designation of a national law being insufficient in this regard, in the absence of further elements from the which it is possible to establish that they intended to refer only to domestic law. 2.5. From all of the foregoing derives the rejection of the pleas, as synergistically aimed at regulating the case on the basis of the German commercial code, albeit for reasons other than those indicated by the court of appeal, i.e. due to the fact that the relationship is instead regulated by the Vienna Convention."	
Corte Suprema di Cassazione [Supreme Court]. 27365/2016. December 29, 2016.	Supreme Court	(Translated from the original) Moreover, in the absence of an expression of will by the parties at the same time as the conclusion of the contract capable of excluding the application of the Convention pursuant to its art. 6, and not being able to attribute this value to the conduct held by the parties during the first instance judgment, in which the question concerning the identification of the applicable law was never peacefully raised, lacking an awareness of the derogatory effects of the behavior, there is no doubt that the solution to the matter cannot disregard the provisions of this convention.	No (other aspects)
Karl Pichler spa v. Felix Clercx B.V., 105, 24-01-2014	Tribunale di Trento	[Abstract from UNILEX] The court in this case held that the contract between the parties was governed by the CISG. In so doing, it excluded that the choice-of-law clause in the seller's standard	Yes

		terms in favour of Dutch law had validly excluded the application of the Convention since such terms were not accepted by the buyer.	
Ostroznik Savo v. La Faraona soc. coop. a r.l., 11.01.2005	Tribunale di Padova - Sez. Este	[Abstract from UNILEX] The Tribunal in this case held that reference to the “laws and regulations of the International Chamber of Commerce” cannot amount to an implied exclusion of CISG. According to the applicable conflict of law rules, parties are free to choose the governing law of their contract, but in doing so, they must opt for a particular domestic law. A reference by the parties to non-state rules of supranational or transnational character such as lex mercatoria, the UNIDROIT Principles of International Commercial Contracts as well as the CISG when the Convention is not per se applicable cannot be considered a veritable choice-of-law clause by the parties, but only amounts to incorporation of such rules into the contract, with the consequence that they will bind the parties only to the extent that they do not conflict with the mandatory rules of the applicable domestic law. In the case at hand, even such incorporation into the contract must be excluded since the reference to the “laws and regulations of the International Chamber of Commerce of Paris, France” was clearly too vague as to permit a precise identification of any specific rule.	Yes
JAPAN			
Sanko Lighting and Technology v. Hansol Technics. Tokyo Chiho Saibansho [District Court]. 2015 (Wa) 12549. June 16, 2020.	District Court	<i>“[B]ecause the parties may, subject to Article 12, derogate from or vary the effect of any of its provisions (CISG Article 6), by adopting provisions different from the CISG, the parties may derogate from or vary the effect of any of its provisions. ...Article 24 [2] of the framework sales contract provides that if the other party breached the framework or</i>	No

		<i>individual sales contracts, the [buyer or seller] could, without any notice, avoid the whole or part of the contracts- if the breach was not cured in spite of the written request granting a reasonable period for cure and the lapse of the period. It stipulates the conditions precedent for avoidance of contract different from those provided in Articles 49(1)(a) and 25 of the CISG. As to the conditions precedent to claims of damages based on the defects of the goods, while the CISG has no explicit provision, Article 14 [2] of the framework sales contract provides that [the seller] shall make reparation or compensation for all the damages, if the buyer incurred loss and expense...by collecting and redelivering the goods and paying the damages to the purchasers...on the ground of the defect of the quality and other defects (including the breach of warranty...) of the goods delivered by [the seller]. CISG Article 25 provides for the conditions precedent to the claim of the damages based on the defect of the goods, stipulating that if one party has incurred loss and expense...from the breach of the framework sales contract or individual sales contracts by the other party, the [aggrieved party] can require of the other party the reparation or compensation for the loss. Accordingly, in this case the framework sales contract should be considered to be applied concerning the conditions precedent to the avoidance of contract and to claims of damages based on the defects of goods."</i> <u>Pace Law Editorial Remarks:</u> <i>"Applying Article 6 of the CISG, the court held that the framework sales contract concluded by the parties prevailed over the</i>	
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		relevant provisions of the CISG. <i>This is the most significant point of this decision. The parties in this case made a framework sales contract, and its article 24 [2] provided for the conditions precedent for avoidance of contract, stipulating that 'if the other party breached the framework or individual sales contracts, the [buyer or seller] could, without any notice, avoid the whole or part of the contracts if the breach was not cured in spite of the written request granting a reasonable period for cure and the lapse of the period.'</i> The court held that this provision excluded Articles 25 and 49(1)(a) of the CISG."	
NETHERLANDS			
Redis Market SRL v. SRG International BV. Rechtbank [District Court]. C/02/395067 / HA ZA 22-97 (E). April 19, 2023.	District Court	(Translated from the original) <i>The question of whether the general terms and conditions apply is, according to settled case law, answered on the basis of the Vienna Sales Convention (Hoge Raad 28 January 2005, ECLI:NL:HR:2005:AR4837). This also applies if the applicability of the Vienna Sales Convention is excluded in the relevant general terms and conditions. Pursuant to Article 8 of the Vienna Sales Convention and rules 2 and 3 of Opinion No. 13 issued by the Advisory Council of the Vienna Sales Convention (CISG-AC Opinion No. 13, Inclusion of Standard Terms under the CISG), general terms and conditions are only part of a purchase agreement if the parties have expressly or tacitly agreed on this during or prior to the conclusion of the agreement and the other party had a reasonable opportunity to take note of the general terms and conditions at the time of entering into the agreement.</i> [Pace Law Editorial Remarks]	No

		CISG is excluded under the standard terms of the defendant. The plaintiff alleged that the standard terms were not included. However based on established Dutch case law and the CISG- AC Opinion No: 13, the court held that the plaintiff had implicitly accepted the standard terms because the standard terms were available on the defendant's website in the English language and the purchase orders stated that the CISG applied. As such, the plaintiff could have reasonably been aware of the said standard terms.	
Willemen Infra NV v. Jura BV. Hoge Raad [Supreme Court]. 22/00265. November 11, 2022.	Supreme Court	[Pace Law Editorial Remarks] The present judgment is issued by the attorney general's office of the Dutch Supreme Court [Hoge Raad]. The matters addressed are, inter alia, the application of the CISG ex officio by the appeals court and whether a choice of law in favor of 'Dutch law' excludes the CISG. The attorney general stated that if the parties do not indicate the applicable law as a ground for appeal, the higher court does not have authority to decide on the matter ex officio. The attorney general also addressed implicit and explicit exclusion of the CISG. It considered different views from international scholars. It ultimately found that the cases for exclusion should be interpreted on a case by case basis and narrowly and the sole fact that the parties had not referenced the CISG in their pleadings alone could not be interpreted as an exclusion of the CISG.	Yes
Rechtbank [District Court]. NCC 21/004 (C/13/667529). June 29, 2022.	District Court	<i>Clause 29.1 of the Sales Agreement stipulates that the agreement is governed by Dutch law.</i> <i>Furthermore, it is clear from the parties' arguments in these proceedings that they consider</i>	No

		<i>Dutch law to be applicable. Hence, Dutch law will be applied. At the hearing the parties, for the avoidance of any doubt in that respect, agreed to exclude the applicability of the Vienna Sales Convention (“CISG”). Article 6 CISG allows the parties to exclude the application of the CISG.</i>	
A.E.B. ter Heide, H. van Loo and P.L.R. Wefers Bettink. Gerechtshof [Appellate Court]. 200.190.760. July 7, 2020.	Appellate Court	(Translated from the original) <i>When assessing the case, it is important to determine which law applies to the purchase agreement. During the oral hearing on appeal, both parties stated that they agree that the Vienna Sales Convention is not applicable. The court considers these statements as an exclusion from the application of the Vienna Sales Convention, as referred to in Article 6 of that convention. This means that internal German law applies to the purchase agreement.</i>	No
Transalex SP. ZO.O v. Defendant. Gerechtshof [Appellate Court]. 200.191.261. November 6, 2018.	Appellate Court	5.6 [respondent] has argued by deed that the Vienna Sales Convention (hereinafter: WKV) is explicitly excluded in the general terms and conditions drawn up by it. [respondent] derives the applicability of these general terms and conditions from a reference on the website of [company A] and a reference in an e-mail from [respondent]. This argument fails. In view of Article 8 of the WCC, read in conjunction with Rules 2 and 3 of Opinion No. 13 (CISG-AC Opinion No. 13, <i>Inclusion of Standard Terms under the CISG</i>), general terms and conditions only form part of a purchase contract if the parties, expressly or tacitly, agreed during or prior to the conclusion of the contract to include these terms and conditions and the other party had a reasonable opportunity to become aware of these terms and conditions. conditions. A single	Yes

		reference on a website to general terms and conditions, without otherwise informing Transalex prior to the conclusion of the purchase that they will be used in the legal relationship of the parties, is not sufficient. That there is a reference to (the applicability of) general terms and conditions in an e-mail to Transalex, as stated by [respondent], has been disputed by Transalex and has not been shown. 5.7 Now that the exclusion of the Vienna Sales Convention has not been proven by the parties, it has been established that the Vienna Sales Convention applies to the present dispute. Insofar as doctrines are involved that are not covered by the Vienna Sales Convention, the provisions of the Dutch Civil Code apply.	
Chevrolet Used Car Case. Gerechtshof [Appellate Court]. 200.199.333/01. January 23, 2018.	Appellate Court	(Translated from the original) <i>In view of the provisions of Article 1 paragraph 1 sub a Vienna Sales Convention, the provisions of the Vienna Sales Convention are therefore in principle directly applicable (as the applicable Dutch law). However, the subdistrict court judge has (tacitly) applied Dutch law in the footsteps of the parties. Since no appeal has been lodged against this, the Court will have to assume the applicability of Dutch law.</i>	No
Rechtbank [District Court]. C/10/512886 / HA ZA 16-1037. April 26, 2017.	District Court	(Translated from the original) <i>At the hearing, the parties agreed that Dutch law applies to their legal relationships, with the exception of the CISG (Vienna Sales Convention). The court interprets this as a choice of law for Dutch law within the meaning of Article 3 Rome I.</i>	No
Silicon Stud Welding Products v. Marvo Feuerungs-und Industriebau. Gerechtshof [Appellate	Appellate Court	(Translated from the original) The Metaalunie conditions mentioned in the offer were not made available to Marvo, but could be consulted on Silicon's	No

Court]. 200.177.212/01. April 25, 2017.		website. These conditions contain a choice of law for Dutch law with the exclusion of the Vienna Sales Convention (articles 20.1 and 20.2) and a choice of forum for the Dutch court of the place of business of the contractor (article 20.3). [...] Silicon confirmed the order on September 18, 2013, not by signing the order ("Gegenzeichnung der Vorliegenden Bestellung"), but by means of its own letter of that date with specifications ("Auftragsbestätigung"). This letter states, among other things: [...] Furthermore, the reference to the Metaalunie terms and conditions cited above under 2.4 has been included.	
Gerechtshof [Appellate Court]. 200.169.701_01. December 6, 2016.	Appellate Court	(Translated from the original) Since both parties are established in a state that, at the time of the conclusion of the agreement, was a party to the United Nations Convention on Contracts for the International Sale of Goods concluded in Vienna on April 11, 1980 (Vienna Sales Convention, hereinafter referred to as WC) and the case at issue is not a case that is excluded from the scope of the aforementioned treaty, the provisions of the WC will apply to the dispute between the parties, unless the parties would have excluded the applicability of this treaty (art. 6 WC). In the memorandum of reply (marginal number 21), [respondent] states that such exclusion exists. To this end, [respondent] refers to the applicability of the Metaalunie conditions (prod. 10 mva) agreed upon in the agreement, in which art. 20.2 expressly states: 'The Vienna Sales Convention (CISG) does not apply, nor does any other international regulation, the exclusion of which is permitted.' Since [plaintiff] has not contested the alleged applicability of the Metaalunie	No

		<i>conditions and the exclusion in those conditions of the Vienna Sales Convention, the court will assume that exclusion and assess the claim of [plaintiff] under Dutch law (excluding the provisions of the World Cup).</i>	
Rechtbank [District Court]. C/16/412611 / HA ZA 16-252. November 16, 2016.	District Court	(Translated from the original) <i>FrieslandCampina has invoked the aforementioned article 17 of its general terms and conditions. This includes a choice of law for Dutch law, with the exception of the CISG (the United Nations Convention on Contracts for the International Sale of Goods). In return, [plaintiff] argued that the general terms and conditions do not apply, so that the choice of law does not apply between the parties. The question of the applicability of the general terms and conditions must therefore first be answered before it can be determined which law is applicable. [...] It follows from the foregoing that the general terms and conditions apply. As a result, the parties choose Dutch law, with the exception of the CISG. This right therefore applies to the question whether a purchase agreement for the period up to and including December 2015 and a distribution agreement have been concluded between the parties.</i>	No
Feinbäckerei Otten GmbH & Co. KG v. Rhumveld Winter & Konijn B.V. CISG-Online 2515. 200.127.516-01. 22 April 2014.	Gerechtshof Den Haag (Court of Appeal The Hague)	[Abstract by Ulrich Schroeter] This appellate decision was rendered in a dispute between a German buyer of apple rings and his insurer (Claimants) and a Dutch seller (Respondent). The Dutch seller had challenged the jurisdiction of the Dutch courts by alleging that the "Conditions of the Netherlands Association for the Trade in Dried Fruit, Spices and Allied Products" (NZV Conditions), which contain an arbitration clause, had been incorporated into the parties' CISG contract.	Yes

		The Court of Appeal The Hague held that Arts. 8 and 14-24 CISG govern the inclusion of standard terms into CISG contracts. Following the German Supreme Court's decision in the "Machinery case" (CISG-online 617) as well as the CISG-AC Opinion No. 13, the Court of Appeal furthermore held that a party aiming at including standard terms into a CISG contract has to make the standard terms' text available to the other party, and that neither a mere reference to the terms' text being registered at a Chamber of Commerce nor an offer to send the terms' text free of charge upon request suffices in this regard. Accordingly, the Court of Appeal concluded that the NZV Conditions had not become part of the parties' contract in the present case and affirmed the Dutch courts' jurisdiction over the dispute.	
POLAND			
Court of Appeals. ACa 344/16. January 18, 2017.	Appellate Court	(Translated from the original) <i>"The District Court pointed out that although pursuant to art. 6 of the Vienna Convention, the parties to the sales contract may exclude its application, which may also be done by choosing the law applicable to the contract of sale - including a subsequent, implied choice - however, in the case there are no grounds to assume that such an exclusion has occurred. There are also no grounds to conclude that the Polish law was implicitly chosen as the law applicable to the contract concluded by the parties."</i>	Yes
B. a.s. (Slovakian seller) v. "S.- I." sp. z o.o (Polish buyer). CLOUT case 1594. IV CSK 611/13. 25/06/2014.	Supreme Court	(Translated from the original) <i>The Court of Appeal pointed out that, pursuant to Art. 3(2) of the Convention on Prescription, the Convention does not apply if the parties have expressly excluded its application. [...] The disputed provision of Art. IX(4) of the</i>	Yes

		contract binding the parties makes no reference whatsoever to the regulations of the Convention on Prescription. The unequivocal provision of Article 3(2) of the Convention on Prescription requires an express—rather than implied—intention of the parties to exclude its application. The provision of Article IX(4) of the agreement merely stipulates the choice of the law of a state that is a party to the agreement and simultaneously a party to the Convention on Prescription. Accordingly, the Court of Appeal relied on Article 91(1) of the Constitution of the Republic of Poland, which establishes that the provisions of the Convention on Prescription form part of the Polish law chosen by the parties to the dispute. [...]. The Supreme Court held (in the appeal challenging the Court of Appeal's judgment) as follows: In Article IX, paragraph 4 of the agreement, the parties stipulated the applicability of Polish law. In the contested judgment, the Court of Appeal correctly and convincingly relied on Article 91, paragraph 1 of the Constitution of the Republic of Poland, under which a ratified international agreement, upon its publication in the Journal of Laws of the Republic of Poland, constitutes part of the domestic legal order and is directly applicable, unless its application is made conditional upon the enactment of a statute. The Convention on Prescription is precisely such an international agreement; it was ratified and published in the Journal of Laws, and its application was not made conditional upon the enactment of a statute. Upon its publication in	
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		<i>the Journal of Laws, the Convention on Prescription thus became effective proprio vigore, without the need for separate implementation into Polish law, and constitutes an integral part of that law. Any exclusion of its application by the parties to the agreement would have to be express rather than implied. A contrary interpretation of the agreement, pursuant to Article 65 § 2 of the Civil Code, would therefore be entirely unfounded.</i>	
RUSSIA			
Firma PROKONSIM Closed joint-stock company v. TEHNOOPT LLC. A40-23277/2019. January 31, 2020.	Arbitration Court	(Translated from the original) <i>"Within the meaning of Clause 8.7 and Clause 8.8 of the Agreement, as applicable law, the parties have determined the current legislation of the Russian Federation, that is, that part of the Russian legal system, which, by virtue of Clause 2 of Article 3 of the Civil Code of the Russian Federation, consists of this Code and other federal laws adopted in accordance with it. laws, not covering international treaties of the Russian Federation. In addition, in the procedural documents filed by the parties, there are no references to the provisions of the Vienna Convention. The above allows us to conclude that the general provisions on the Civil Code of the Russian Federation are applicable to the resolution of this dispute."</i> Abstract: "According to Article 6 of the CISG, the parties can exclude its application or, subject to its Article 12, derogate from or vary the effect of any of its provisions. According to clauses 8.7 and 8.8 of the sales agreement between the parties, they chose the legislation of the Russian Federation as applicable law, that is, that part of the Russian legal system which, by virtue of Article 3(2) of the Civil Code of the Russian Federation, consists of	No

		<i>the Civil Code and other federal laws adopted in accordance therewith and does not cover international treaties of the Russian Federation. In addition, the procedural documents submitted by the parties do not contain references to the provisions of the CISG. Therefore, the court concluded that the general provisions on the Civil Code of the Russian Federation are applicable to the resolution of this dispute between the parties and the CISG is not.</i>	
SPIG S.p.A. v. ZAO PK "Promcontroller". A40-230545/16-29-2261. March 16, 2017.	Arbitration Court	[Pace Law Editorial Remarks] The plaintiff filed for the recognition and enforcement of an arbitral award. The court found that the parties had chosen Russian law and the tribunal had misapplied this provision to include the CISG (as part of Russian law). As such, the court vacated the arbitral award (on grounds of public policy and party autonomy).	No
SLOVAKIA			
AM PNEU s.r.o. v. [Slovak Buyer]. 10Cb/161/2017. July 10, 2019.	Okresny Sud [District Court].	(Translated from the original) <i>When determining the issue of applicable law, the court based its decision on Article 4, paragraph 1 letter a) Regulations of Rome I, the plaintiff and the defendant, as entrepreneurs, entered into an informal commercial relationship in the course of business activity, which the court legally qualified as a purchase contract, while the defendant is not in the position of a consumer. Since there was no choice of applicable law, the contract for the sale of goods is governed by the law of the country of the seller's habitual residence, i.e. with reference to the Rome I Regulation. the legal order of the Czech Republic and the international treaty to which the Czech Republic is bound and which was published in the collection of laws, which takes precedence over the application of national standards, if it contains a</i>	Yes

		<i>different regulation. Such a contract is the UN Convention on Contracts for the International Sale of Goods, which entered into force for the Czech and Slovak Federal Republic in accordance with its Article 99 paragraph 2 on 01.04.1991 and which was adopted into the legal systems of both successor states and applies to the legal relationship between the plaintiff and the defendant as a direct norm. The court did not find that the plaintiff and the defendant agreed to exclude the application of the convention or part of it pursuant to Article 6 hereof. Czech Republic On 22 November 2017 with effect from 01 July 2018, the Czech Republic notified the UN Secretary General of the withdrawal of the reservation under Art. 95 of the convention to be bound by the provisions of article 1 par. 1 letter b) of this Convention, even though the original reservation did not refer to the application of the Convention to legal relations, the parties of which are persons who have a place of business in the Contracting States of the Convention, as is the case in the case at hand. The court therefore applied the Vienna Convention to the legal relationship of the participants, and to claims not regulated by the Vienna Convention, according to Art. 4 point 1 letter a) Regulations Rome I. legal order of the seller's country of habitual residence, namely Act No. 89/2012 Coll.</i>	
SPAIN			
BSC Footwear Supplies v. Brumby SL Audiencia Provincial de Alicante 16-11-2000	Audiencia Provincial de Alicante	[Abstract from UNILEX] The Appellate Court confirmed the decision of the lower courts in holding that CISG was not applicable to the dispute. In reaching this conclusion the Court admitted that, according to the Spanish Constitution, international Conventions are incorporated in	No

		Spanish law, but it pointed out that under Art. 6 CISG, the application of CISG may be excluded by the parties. In this Court's opinion, there were various elements which showcased that the parties did not intend to have their contract regulated by CISG. In particular, according to a standard term printed on the buyer's order, the Contract was to be interpreted following the rules of interpretation of English law, being England a non-contracting State. The Court moreover considered the circumstance that both parties founded their first instance claim and counterclaim on Spanish law as the law regulating the contract and therefore mentioned CISG before the Court of First Instance.	
SWITZERLAND			
Wheel loader case. Obergericht [Appellate Court]. Z1 2022 6. February 23, 2023.	Appellate Court	(Translated from the original) <i>The choice of the law of a contracting state presumably means that there was no implicit exclusion of the CISG, as this is part of national law according to the prevailing case law and doctrine. Therefore, further indications are necessary for an implied exclusion, which clearly and unambiguously indicate a choice of the non-uniform law while deselecting the CISG. It can be seen from the CISG materials that the implied exclusion option was deliberately not expressly included in the Convention to prevent courts from recklessly recognizing it. Therefore, it is even advocated to follow the principle 'in dubio per conventionem' with regard to the assessment of a will to exclude (cf. judgment of the Federal Supreme Court 4A_543/2018 of May 28, 2019 E. 4.1 with further references, not published in: BGE 145 III 383).</i>	Yes

Kantonsgericht [Canton Court]. C1 19 260. August 20, 2020.	Canton Court	(Translated from the original) <i>In doing so [arguing the applicability of Swiss law], they call into question the applicability of the international convention and claim that there is an implied exclusion. She also complains that the court surprised her. The parties can exclude the application of the Convention (Art. 6 CISG). It is regularly not sufficient for a subsequent tacit exclusion of the CISG if you argue on the basis of national law without being aware of the fundamental applicability of the CISG. However, from the point of view of the right to be heard, it may be appropriate for the court to inform the parties of the applicability of the CISG in order to avoid surprise decisions (Manner/Schmitt, in: Brunner [ed.], UN Sales Convention - CISG, 2. A. , 2019, N. 4 to Art. 6 CISG with references). In the present case, only one of the two parties involved cited national law in the course of the process (p. 917 f.). For this reason alone, a consistent choice of law cannot be assumed. The plaintiff must also recognize the possible applicability of the CISG and D _____ law at the latest when accepting the written pleadings of the other party. It was therefore not surprised by the legal considerations in the judgment of the first instance. There is therefore neither a tacit exclusion of contract law nor an unforeseeable legal application of the CISG.</i>	No
Appellationsgericht [Appellate Court]. ZB.2017.20. August 24, 2018.	Appellate Court	(Translated from the original) <i>Whether the necessary will to exclude exists is to be decided according to the autonomous standard of the CISG. Art. 8 CISG must be observed for the interpretation of the declarations and the behavior of the parties</i> (Ferrari, loc.cit., Art.	Yes

		6 N 6; <i>Commercial Court of the Canton of St. Gallen of June 15, 2010, in: CISG-online 2159 E. II.5.c). [...] From the above considerations it follows that, taking into account all the relevant circumstances, there is no real unanimous will of the parties to exclude the application of the CISG, and that a reasonable person in the position of the parties under the given circumstances from the declarations and the other conduct of the parties would not have inferred such a will either. In any case, a will to exclude is not expressed with the clarity and certainty required for the assumption of a tacit exclusion of the CISG. Thus, the application of this convention was not excluded according to Art. 6 CISG. This also corresponds to the findings of the civil court (cf. contested decision E. 2). It follows that the CISG applies to any purchase contract or purchase contracts both in the relationship between the appellant and appellant 1 and in that between the appellant and appellant 2.</i>	
Bezirksgericht Weinfelden 23-11-1998	Bezirksgericht Weinfelden	[Abstract from UNILEX] In this case, the seller's general conditions of sale referred to German law as the law governing the contract. The buyer however, never signed the seller's conditions, although in the court proceeding it never objected to the choice of law clause in favour of German law as the governing law of the contract. The Court held that CISG was not applicable to the contract. It noted that, although there was no evidence of the buyer signing the seller's general conditions of sale, the fact that it made no objection in the court proceeding to the choice of law clause led to the conclusion that the choice of law	No

		clause was to be upheld. The Court, however, without referring directly to Art. 6 CISG, interpreted the choice of law clause in the sense that it was the common intention of the parties to apply only the German Civil Code (BGB) rules to the contract, and not CISG, the German Civil Code, being the only law familiar to the plaintiff.	
UNITED STATES OF AMERICA			
Nucap Industries, Inc. and Nucap US Inc. v. Robert Bosch LLC and Bosch Brake Components, LLC. 15 C 2207. March 31, 2017.	District Court	<i>Bosch maintains that the POTCs allow it to opt out of the CISG in favor of Illinois law. [...] The Supremacy Clause makes the CISG the law of Illinois on formation here, and the CISG therefore governs the parties' battle over what terms were incorporated into Bosch and Nucap's purchase orders.</i>	Yes
Forestal Guarani, S.A. v. Daros Int'l, Inc. CISG-online 1779. 03-4821 JAG. 07 October 2008.	U.S. District Court for the District of New Jersey	<i>The CISG is an international agreement that governs the formation of international sales contracts, as well as the rights and obligations of the parties. Ratified by both the United States and Argentina, amongst other countries, the CISG governs contracts for the sale of goods between parties whose places of business are in these different nations. [...] Parties to a contract normally governed by the CISG may, nevertheless, include an alternative choice of law provision. [...] The inclusion of an alternate choice of law provision must, however, be announced explicitly in the contract. Id. If, as is the case here, the agreement is silent as to choice of law, the CISG applies if both parties are located in signatory nations.</i>	Yes
Skelton Truck Lines v. Peoplenet Communs. Corp. et al. CIVIL NO. 16-46 (JRT/JSM). January 18, 2017.	District Court	<i>Nothing in the language of the CISG, including Article 7(1), suggests that where a contract contains a choice-of-law provision but fails to disclaim the CISG, the entire contract is void. Indeed, Article 6 provides that parties may exclude application of the CISG,</i>	Yes

		<i>not that they must do so. Further, the parties' inclusion of a choice-of-law provision does not constitute a disclaimer of the CISG; rather, the parties must adopt an express statement that the CISG does not apply. Travelers, 474 F. Supp. 2d at 1081-82.</i>	
TeeVee Toons, Inc. v. Gerhard Schubert GmbH. CISG-online 1272 00 Civ. 5189 (RCC). 23 August 2006.	U.S. District Court for the Southern District of New York	<i>Further, none of the exceptions to CISG applicability is present. [...] Article 6 provides that «[t]he parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions, but neither party chose, by express provision in the contract at issue, to opt out of the application of the CISG.</i>	Yes
Ajax Tool Works, Inc. v. Can-Eng Manufacturing Ltd. CISG-online 772. 01 C 5938. 29 January 2003.	U.S. District Court for the Northern District of Illinois	<i>In this case, it is undisputed that [buyer], an Illinois corporation, and [seller], an Ontario corporation, are parties whose places of business are in different States and that these states are Contracting States. Thus, unless the parties have opted-out, the CISG applies here. The parties' contract states that the «agreement shall be governed by the laws of the Province of Ontario, Canada.» Obviously, this clause does not exclude the CISG. Further, although the parties have designated Ontario law as controlling, it is not the provincial law of Ontario that applies; rather, because the CISG is the law of Ontario, the CISG governs the parties' agreement.</i>	Yes
Shantou Real Lingerie Manufacturing Co., Ltd. v. Native Group International, Ltd. 14cv10246-FM23-08-2016	U.S. District Court for the Southern District of New York	<i>[Abstract from UNILEX] The court held that although the seller had relied in its pleadings on the domestic law i.e., the Uniform Commercial Code, this could not amount to an implied exclusion of the Convention. It is an established principle in case law that if the parties wish to exercise their right to exclude the Convention, they must do so explicitly. Therefore, the Court</i>	Yes

		ruled that the Convention applied to the case under its Art. 1(1)(a).	
Zhejiang Shaoxing Yongli PTG v. Microflock Textile 06-22608-CIV-O'SULLIVAN [CONSENT] 19-05-2008	U.S. District Court, S. D. Florida	[Abstract from UNILEX] The parties in this case are from the USA and China, both signatories to the CISG. The court held that since the parties did not agree to exclude the application of the CISG, the CISG provides the substantive law governing this contractual dispute. Domestic law, including the Uniform Commercial Code does not govern the parties' contractual relationship.	Yes
Asante Technologies, Inc. v. PMC-Sierra, Inc. C 01-20230 JW 27-07-2001	U.S. District Court, N.D., California	[Abstract from UNILEX] The buyer in this case filed a claim in the California State Court alleging that the Seller breached express warranties by failing to deliver goods that conformed to agreed upon technical specifications. The case was later removed from the California State Court to a U.S. Federal Court since the State Court's finding that CISG governed the transactions. The buyer argued that the California domestic law on contracts for the sale of goods should apply to the transactions and that the case should be remanded to the California State Court. It claims that the Seller's place of business is in the U.S. as a result of its use of a U.S.-based distributor and U.S.-based engineers, and therefore CISG was not applicable. The buyer also argued that the parties excluded the CISG as a result of the choice of law clauses contained in their respective standard terms. The Court held that the CISG pre-empts the State domestic law of contract since CISG is a part of U.S. federal law and the availability of an independent state contract law causes an action would frustrate the goals of uniformity and certainty embraced	Yes

		by the CISG. Thus, under the general laws of California CISG is applicable to contracts where the contracting parties are from different countries that have adopted CISG. The Court did not uphold the Buyer's contention that the parties opted out of CISG as a result of the choice-of-law clauses contained in their standard terms. The mere reference to the law of a contracting state is not sufficient for parties to opt out of CISG. The parties must state in clear language that they both intend to opt-out.	
American Mint LLC, Goede Beteiligungsgesellschaft, and Michael Goede v. GOSoftware, Inc. Civ.A. 1:05-CV-650 06-01-2006	U.S. District Court, M.D. Pennsylvania	[Abstract from UNILEX] The Federal Court in this case held that the choice of law in favour of the law of Georgia did not amount to per se exclusion of the Convention by virtue of Art. 6 CISG since the parties had failed to indicate by clear language that they intended to exclude its application.	Yes
The Travelers Property Casualty Company of America and Hellmuth Obata & Kassabaum, Inc. v. Saint-Gobain Technical Fabrics Canada Ltd. CISG-online 1435. Civ. 04-4386 ADM/AJB 31-01-2007	U.S. District Court, Minnesota	[Abstract from UNILEX] The Court held that the CISG was applicable since both parties had their places of business in different contracting states and had not expressly excluded its application per Art. 6 CISG. The Court also rejected the seller's argument that the parties had excluded the application of CISG because the buyer's purchase order contained a choice of law clause in favour of the laws of the State of Minnesota.	Yes
Easom Automation Systems, Inc. v. Thyssenkrupp Fabco, Corp. CISG- online 1601. 06-14553, 2007 WL 2875256 28-09-2007	U.S. District Court, Eastern District of Michigan	[Abstract from UNILEX] The Court held that the CISG is applicable either if the seller's quote or the buyer's purchase order were considered as amounting to an offer. Indeed, both parties had their principal places of business in different Contracting States and, lacking a clear intention to the contrary, the choice of law in favour of Ontario law could not be interpreted as an exclusion of the	Yes

		Convention. After pointing out that the seller's quote, being sufficiently precise (Art. 14 CISG), might be considered as offer under CISG and an offer can be accepted also orally (Art. 18 CISG), the Court left open the question as to which document incorporated the contract. Consequently, the court delayed determining whether Michigan or Ontario law governed the contract and, as a result, whether seller was entitled to immediate possession of the machinery.	
Hanwha Corporation v. Cedar Petrochemicals, Inc. 09 Civ. 10559 (AKH) 18-01-2011	U.S. District Court, Southern District of New York	The Court found that CISG governed the case. In reaching such a conclusion, the Court recalled that, if it is true that CISG allows the parties the option of opting out of it, such an intention to this needs to be clear and unequivocal. In the case at hand, both parties attempted to exclude the Convention but could not agree on the law to replace it. As a result, CISG was applicable as per its Art. 1(1)(a).	Yes
Cedar Petrochemicals, Inc. v. Dongbu Hannong Chemical Co., Ltd. CISG-online 1509. 06 Civ. 3972 (LTS) (JCF). 19 July 2007.	U.S. District Court, Southern District of New York	<i>The CISG governs the sale of goods between parties whose principal places of business are in different nations as long as those nations are signatories to the treaty. [...] While the parties to a contract may exclude the applicability of the CISG, any such exclusion must be explicit. [...] In this case, both the United States, where Cedar's principal place of business is located, and Korea, where Dongbu is based, are signatories to the CISG. Furthermore, there is no indication that these parties opted out of the CISG's provisions. Nevertheless, Dongbu contends that «the purpose of the proposed amended complaint is to assert a theory that permits Cedar to override the express provisions of the [c]ontract and hold Dongbu liable</i>	Yes

		<i>for the condition of the phenol after it was delivered FOB to Cedar.... The CISG, however, does not preempt a private contract between parties. [...] It would be premature at this juncture to reach the merit of Dongbu's argument. Even if Dongbu is correct, Cedar would still be left with a breach of contract claim, albeit not one based on the CISG. The proposed amendment, then, simply offers a new legal theory, and amendments that merely propose alternative legal theories for recovery on the same underlying facts should generally be permitted. [...] The appropriate course here is to allow the amendment and adjudicate the merits of Cedar's breach of contract claim, under whatever legal theories may be applicable, on a motion to dismiss or for summary judgment.</i>	
Roser Technologies v. Carl Schreiber GmbH 11 cv302 ERIE 10-09-2013	U.S. District Court, Western District of Pennsylvania	The parties in the case had agreed that either the Uniform Commercial Code or the CISG would apply. After preliminary analysis, the Court held that they do not provide the same results. The court therefore decided that CISG was the governing law, since Germany and USA were parties to the CISG. In so doing, the Court noted that even if the seller's standard conditions had been proven to be included in the contract, this would not mean an exclusion of the Convention. In order for a CISG's exclusion to be effective, the contract must contain the explicit language that the Convention doesn't apply. This condition was not fulfilled in the case at hand, because there was no explicit mention of CISG in the clause. Moreover, the seller's standard conditions aimed at excluding international sales law concerning "moveable objects", whereas not only CISG doesn't	Yes

		use the expression “moveable objects”, but also the term “objects” is used, within the Convention, as a synonym for the word “protests”, not for the word “goods”. In addition, the parties’ reference to either CISG or the UCC as the governing law, and not to German law, demonstrated that they did not intend to contract out from the Convention.	
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