

International Trade Law 1

Application of the CISG - articles of Part IV defining the Convention as an international treaty and defining links to other regulations; articles 1 – 5 of Part I. Analysis of article 6 on examples of clauses. Article 7-12.

Preparation for the seminar:

- read thoroughly the above-mentioned articles of the CISG
- study case 23 Cdo 1308/2011, 17.12.2013 regarding the form of the contract
- have other regulations with you, especially the Rome I regulation, Czech Private International Law Act (PILA)
- study the assigned chapters from the textbook or the commentaries
- prepare a solution to the assigned examples for the seminar

Example 1

Chilli, s.r.o., a company with headquarters and place of business in Brno, specializes in the production of quality chilli sauces and other types of hot delicacies. Everything is made from high-quality raw materials, which Chilli buys from suppliers mainly in the Czech Republic, sometimes also from abroad. Chilli has already won numerous awards for its products both at home and abroad. Until 2019, it focused primarily on the Czech market, supplying its products to specialized stores and restaurants. In 2019, representatives of Chilli attended a culinary fair in Austria, where they met representatives of Delikatessen GmbH (headquarters and place of business in Austria). Delikatessen runs a network of stores in Austria. Representatives of both companies discussed the possibility of supplying Chilli products to Delikatessen stores. Based on this meeting, the company Chilli subsequently sent an offer by email, which included the following, among other things:

- *In the period January 2020 - December 2020, we will supply you with 6,000 glasses of chilli sauces from our assortment, which is fully available on our website (link in the header of this offer) at the prices indicated there.*
- *4 deliveries will be made on 10.1., 10.4., 10.7. and 10.10.2020.*
- *The goods will be delivered under the conditions of FCA INCOTERMS, at the seller's plant in Brno. – The composition of the delivery (types of sauces and number of individual types) will be specified by the buyer no later than the 20th day of the month preceding the delivery.*
- *Our terms and conditions are an integral part of this contract available on our website.*
- *Payment shall be made by transfer to the seller's account at UniCredit Bank, IBAN: CZ11 2222 3333 44. The purchase price for each delivery is due within 10 days of delivery.*
- *Contractual penalty for late delivery in the amount of 0.5% of the purchase price for the given delivery.*
- *The obligation to pay a contractual penalty does not exclude the right to compensation for damages in an amount that exceeds the contractual penalty.*

Delikatessen accepted the offer.

1. Analyze the construction of the contract and give an opinion about the application or non-application of the CISG (CISG application test). Does the construction of the contract matter for some of the questions?
2. Consider the objection of one of the parties that in international arbitration, arbitrators are not bound by the CISG - they are not state authorities like courts that are bound by the CISG.
3. If an objection to the invalidity of an agreement (e.g. on a contractual penalty) would be made, analyze its legal regime in the light of the analysis of the relevant article of the CISG.

4. In the event of a dispute over the wording of Article 25 of the CISG, state how it should be interpreted. What principles should the court respect?
5. If there is a dispute about the wording of the clause regarding the delivery of goods, state the rules regarding interpretation. Consider the option of the mutual will of the parties; objective criteria; and business practice.
6. If the buyer does not pay the purchase price on time, indicate how it is possible to "get to" the legal regime of interest on late payment. What options are there?
7. In one of its submissions, the buying party argued international trade practices. Elaborate their essence in the CISG regime. State the legal regime, including the hierarchy of sources of rights and obligations of the parties.
8. In one of its submissions, the seller argued the existing practice of the parties. Analyze the hierarchy of sources of rights and obligations of the parties.
9. Consider the form of the purchase contract - not only its conclusion but also its following changes. Do changes to a contract shall be in writing? Or does one of the provisions of the CISG play a role?
10. Is it possible to conclude a contract electronically? Is such a form valid? Is this a question under Article 4, or do you have to think differently?

Example 1 – Alternative

In the above-given example 1, the contract between the companies was negotiated somewhat differently. The following was agreed upon:

- *Chilli will distribute, promote and sell Delikatessen products to other business entities and consumers in the Czech Republic and Slovakia. Delikatessen undertakes to inform Chilli about its production and new products every 6 months.*
- *Chilli commits to a minimum purchase of 200,000 items from the Delikatessen product list at the prices valid for the given period. Prices are published on the Delikatessen website for six months.*
- *Individual contracts will be implemented quarterly. Orders must be sent no later than the 5th day of the month preceding the quarter in question. They will be carried out under FCA INCOTERMS by the 10th day of the relevant quarter unless expressly agreed otherwise.*
- *Parties agree on interest on delay in the amount of 0.05% for each day of delay in payment of the purchase price.*
- *Chilli is obliged not to promote and sell products of other foreign entrepreneurs.*
- *This contract is governed by Austrian law, including the law of international traders.*

11. Analyze the construction of the contract and give an opinion about the application or non-application of the CISG (perform the CISG application test).
12. If you conclude that the CISG does not apply to the contract(s), consider the legal regime.
13. Consider the application of a non-state law.
14. If a dispute arises over the interpretation of Article 28 of the CISG, what rules must the court follow?
15. A dispute arose over the interpretation of provisions on product prices. Analyze the principles of interpretation.
16. If the parties violate the terms of the order for a long time (it was sent later, applied without reservation), how could you think about this situation in the light of argumentation? A) we have a written contract; it is clearly stated. B) there is a practice of the parties, in the spirit of good faith the change is binding. Also, state any provisions that are affected.
17. Analyze the rules for filling in the gaps of the CISG. Above all, the difference between internal and external gaps.