CISG ADVISORY COUNCIL* OPINION No 24

Application of the CISG to

International Public Procurement and Government Contracts

To be cited as: CISG-AC Opinion No. 24, Application of the CISG to International Public Procurement and Government Contracts. Rapporteur: Dr. Cesar Pereira, C.Arb FCIArb. Partner at Justen, Pereira, Oliveira & Talamini (Sao Paulo, Brazil). Adopted unanimously by the CISG Advisory Council following its 58th meeting, in Lisbon, Portugal, on 29 September-3 October 2025**.

Reproduction of this opinion is authorized.

Pilar Perales Viscasillas, *Chair*

Yesim Atamer, Joachim Bonell (em), Jean-Sébastien Borghetti, Michael Bridge (em), Sieg Eiselen (em), Lauro Gama, Alejandro Garro, Roy Goode (em), John Gotanda (em), Han Shiyuan, Johnny Herre (em), Edgardo Muñoz, Ingeborg Schwenzer, Ulrich Schroeter, Hiroo Sono, Lisa Spagnolo, Claude Witz (em), *Members*

Milena Djordjević, *Secretary*

** The CISG AC started as a private initiative which was founded and supported by Albert H Kritzer Executive Secretary of the Institute of International Commercial Law at Pace University School of Law and the Centre for Commercial Law Studies, Queen Mary, University of London. The International Sales Convention Advisory Council (CISG-AC) is in place to support understanding of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the promotion and assistance in the uniform interpretation of the CISG.*
At its formative meeting in Paris in June 2001, Prof. Peter Schlechtriem of Freiburg University, Germany, was elected Chair of the CISG-AC for a three-year term. Dr. Loukas A. Mistelis of the Centre for Commercial Law Studies, Queen Mary, University of London, was elected Secretary. The founding members of the CISG-AC were Prof. Emeritus Eric E. Bergsten, Pace University School of Law, Prof. Michael Joachim Bonell, University of Rome La Sapienza, Prof. E. Allan Farnsworth, Columbia University School of Law, Prof. Alejandro M. Garro, Columbia University School of Law, Prof. Sir Roy M. Goode, Oxford, Prof. Sergei N. Lebedev, Maritime Arbitration Commission of the Chamber of Commerce and Industry of the Russian Federation, Prof. Jan Ramberg, University of Stockholm, Faculty of Law, Prof. Peter

Schlechtriem, Freiburg University, Prof. Hiroo Sono, Faculty of Law, Hokkaido University, Prof. Claude Witz, Universität des Saarlandes and Strasbourg University. Members of the Council are elected by the Council.
At subsequent meetings, the CISG-AC elected as additional members Prof. Pilar Perales Viscasillas, Universidad Carlos III, Madrid; Prof. Ingeborg Schwenzer, University of Basel; Prof. John Y. Gotanda, Villanova University; Prof. Michael G. Bridge, London School of Economics; Prof. Han Shiyuan, Tsinghua University and Prof. Yeşim Atamer, Istanbul Bilgi University, Turkey, Prof. Ulrich G. Schroeter, University of Mannheim, Germany, Prof. Lauro Gama Jnr, Pontifical Catholic University, Justice Johnny Herre, Justice of the Supreme Court of Sweden, Prof. Harry M. Flechtner, University of Pittsburgh, Prof. Sieg Eiselen, Department of Private Law of the University of South Africa, Prof. Edgardo Muñoz López, Universidad Panamericana, Guadalajara, México, Assoc. Prof. Lisa Spagnolo, Macquarie Law School, and Prof. Jean-Sébastien Borghetti, Université Paris-Panthéon-Assas.
Prof. Jan Ramberg served for a three-year term as the second Chair of the CISG-AC. At its 11th meeting in Wuhan, People's Republic of China, Prof. Eric E. Bergsten of Pace University School of Law was elected Chair of the CISG-AC and Prof. Sieg Eiselen of the Department of Private Law of the University of South Africa was elected Secretary. At its 14th meeting in Belgrade, Serbia, Prof. Ingeborg Schwenzer of the University of Basel was elected Chair and at its 24th meeting in Antigua, Guatemala, Prof. Michael G. Bridge of the London School of Economics was elected Chair of the CISG-AC. At its 26th meeting in Asunción, Paraguay, Ass. Prof. Milena Djordjević, University of Belgrade, Serbia, was elected Secretary, and she was re-elected short after the 37th meeting in Rio de Janeiro. Prof. Pilar Perales Viscasillas of the University Carlos III of Madrid was elected Chair of the CISG-AC after the 37th meeting in Rio de Janeiro.

*** The meeting was kindly hosted by the Faculty of Law of the University of Lisbon under the auspices of the Research Centre for Private Law (CIDP), with the generous support of Professor Dário Moura Vicente. The Rapporteur wishes to thank the members of the research team involved in this project for their efficient work and invaluable contribution: Leonardo F. Souza-McMurtrie (lead coordinator, Brazil/UK), Lorenzo Galan Miranda (coordinator and researcher, Brazil), Suit Myat Htet (coordinator and researcher, Myanmar/Austria), Izabela Moriggi Costa (researcher, Brazil/USA), Bettina Okinyi (researcher, Kenya), Jolivê da Rocha Filho (researcher, Brazil), and Dhruv Bhatia (researcher, India).*

1. Relevant CISG Provisions

Article 1

[…] (3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

Article 2

This Convention does not apply to sales: (a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use; (b) by auction; (c) on execution or otherwise by authority of law; […].

Article 4

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with: (a) the validity of the contract or of any of its provisions or of any usage; […].

Article 6

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

Article 10

For the purposes of this Convention: (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract; […].

Article 11

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

Article 29

(1) A contract may be modified or terminated by the mere agreement of the parties.

(2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

Article 90

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their place of business in States parties to such agreement.

2. Black Letter Rules

1. **The governmental, public, or administrative character of any of the parties or of the contract is not to be taken into consideration in determining the application of the CISG.**
2. **Sales of goods bought for the use of a government or its entities are not excluded from the CISG by Article 2(a).**
3. **Sales of goods by reverse auctions or other methods of selection of suppliers by a government or its entities are not excluded from the CISG by Article 2(b).**
4. **Sales of goods are not excluded from the CISG by Article 2(c) as 'sales on execution' or 'otherwise by authority of law' solely because they are concluded by a government or its entities.**
5. **For matters governed by the CISG, public procurement statutes or regulations, including their mandatory provisions, do not by themselves override the CISG.**
6. **Exclusion of the application of the CISG to a contract concluded by a government or its entities requires clear manifestation of intent. Consequently, a contractual choice of one or more specific public procurement statutes or regulations that have:**
    a. **the same scope as or wider scope than the CISG generally amounts to an implied exclusion of the CISG under Article 6;**
    b. **a narrower scope than the CISG does not generally amount to an implied exclusion of the CISG under Article 6, but rather to a derogation from or variation of conflicting provisions of the CISG.**
7. **Except for matters not governed by the CISG, the freedom of form provided for in Articles 11 and 29(1) CISG regarding formation, modification or termination of contracts for the international sale of goods concluded by a government or its entities applies, unless these provisions are rendered inapplicable under Article 12 CISG or their application or effect is excluded, varied or derogated from by express or implied agreement.**
8. **If a CISG contract concluded by a government or its entities requires any modification or termination by agreement to be in writing, the second sentence**

of Article 29(2) CISG applies to protect one party's reliance on the other's conduct in connection with such modification or termination.

9. **A requirement that a seller establish, in any form, a place of business in the buyer's country in order to conclude or perform a contract for the sale of goods with a government or its entities does not necessarily negate the international character of the contract for the purposes of the CISG, since Article 10(a) CISG may nonetheless determine that the seller's place of business is located outside the buyer's country.**
10. **Multilateral or bilateral international agreements, conventions, and treaties on government purchases or public procurement that cover matters governed by the CISG prevail over the CISG provided the requirements of Article 90 CISG are fulfilled.**

Summary

3. Introduction[1]

3.1. Overview

1 The CISG's sphere of application under Articles 1 to 3 CISG covers generally contracts concluded by governments and their organs, departments, agencies, or entities. When a government organ, department, agency or entity from a CISG Contracting State enters into an international purchase or sale, the CISG will apply unless one of the exclusions of Article 2 or 3 CISG is applicable or the relevant contract excludes or derogates from the CISG under Article 6 CISG.

2 The effectiveness and scope of any exclusion or derogation from the CISG must be assessed and construed according to Articles 6 to 9 CISG. The CISG governs its own interpretation.

3 Under the well-established interpretation of Article 6 CISG, reflected in CISG Advisory Council Opinion No 16,[2] a contractual reference to a Contracting State's domestic government procurement statutes or regulations will generally not be understood as an agreed-upon exclusion of the CISG, but only as a derogation from conflicting CISG provisions based on Article 6 CISG. Non-conflicting CISG provisions will continue to apply, especially on matters in which the incorporated domestic government procurement law is silent.

4 It is unlikely that domestic government procurement statutes or regulations will provide a comprehensive system of contract law apt to entirely override and exclude the CISG.

5 In most national systems, public procurement legislation is limited to the selection of suppliers, and contract regulation is left to contract law—which includes the CISG in Contracting States. Conflicts between the CISG and procurement law in matters pertaining to the administration of the contract (e.g., obligations and performance, modifications and termination) may be more common in Contracting States whose government procurement legislation comprises not only the selection of the contractor but also the formation and

---

[1] This commentary draws on materials compiled in C Pereira, 'Application of the CISG to International Government Contracts for the Procurement of Goods' (2023) 2 Review of the Kopaonik School of Natural Law 157, which is an updated version of C Pereira, 'Application of the CISG to International Government Procurement of Goods' [2016] PPLR 20.

[2] CISG Advisory Council, 'Opinion No 16: Exclusion of the CISG under Article 6' (Rapporteur: Dr Lisa Spagnolo, Monash University, Australia; adopted following the 19th meeting, Pretoria, South Africa, 30 May 2014).

content of the contract ("cradle to grave"). This is the case, for example, of government procurement legislation adopted in the United States and most Spanish and Portuguese-speaking countries.[3] As the scope of domestic procurement law in those countries is broader, a contractual choice of domestic procurement law will leave less space for application of the CISG. The application of the CISG has wider and more direct impact in public procurement in Contracting States whose government contracts are governed by general contract law.

6 Government agencies and entities, like any other party, must weigh the benefits of adopting the CISG, avoiding unfounded or unreasoned exclusions or derogations.[4] In legal systems that recognize a citizen's standing to challenge or contribute to bidding procedures, bidders and interested third parties may take part in the formation of the administrative decision whether to exclude or derogate from the CISG. Some international (GPA/WTO[5]) and national laws[6] provide prospective contractors with some influence—e.g. through bid protests, challenges, or contributions in public hearings—over the final language of the contract, including about the application, exclusion, or derogation from the CISG.

3.2. Government and Government Entities

7 The CISG does not define terms such as "government" or "government entities". Each State has its own structural definition of a government organisation, with central or sub-central units, and of which organs or entities bind the State to what extent.

8 For the purposes of this CISG Advisory Council Opinion, a government entity may include any department, entity, organ or agency, whether autonomously personified or not, that concludes contracts on behalf of a central or sub-central unit of a State. The legal authority to act on behalf of the State may be assigned to a state-owned enterprise ('SOE') or a private

---

[3] Some examples illustrate this assertion. In the US (which joined the CISG on 11 December 1986), the Federal Acquisition Regulation (FAR) provides for many contractual obligations, such as FAR Part 43 (contract modifications), FAR Part 49 (contract termination) and, more generally, FAR Part 52 (model contract clauses). In Peru (which joined the CISG on 25 March 1999), Law 32.069 of 24 June 2024 contains detailed rules on contracts from art 58 onwards, including on dispute resolution (Title V). In Brazil (which joined the CISG on 4 March 2013), Law 14.133 of 1 April 2021 deals with contract formation and obligations in its Title III and also contains provisions on dispute resolution.

[4] Although the level of transparency and accountability may vary from State to State, unfounded or unreasoned exclusions may be seen as arbitrary expressions of an administrative choice inconsistent with the rule of law: M Justen Filho, *Curso de Direito Administrativo* (16th edn, Forense 2025) 93.

[5] Revised Agreement on Government Procurement (adopted 30 March 2012, entered into force 6 April 2014) (GPA) <https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm> accessed 23 September 2026.

[6] An example is art 164 of Brazil's 2021 Public Procurement Act (Law 14.133 of 1 April 2021), which grants 'any person' standing to challenge or seek clarification of the terms of any solicitation or request for proposals, including the underlying government contract.

entity to which the relevant statutes or regulations assign such authority. State representation may be assigned to government departments or agencies, or various types of government-owned or government-controlled entities such as those responsible for purchasing goods for national defence.

3.3. Public procurement, government contracts, administrative contracts

9 The concept of an "administrative contract" is not universally accepted. It is subject to domestic law and to each State's own constitutional and administrative framework.[7] The French model of a duality of jurisdictions ("ordinary" as opposed to "administrative"), also distinguishing between the sovereign functions of the State ("*jure imperii*") and those of a commercial nature ("*jure gestionis")*, has influenced many States, especially in continental Europe and in their former colonies. Other States follow the Anglo-American tradition of subjecting administrative action to judicial review, leaving a limited role (or none at all) for the notion of administrative contracts. The "administrative" character of a contract, in those jurisdictions which have adopted this concept, typically rests on an imbalance between the parties based on the public purpose underlying the contract, resulting in the recognition that the government party retains certain "exorbitant powers", such as the prerogative to modify or terminate the contract unilaterally.[8]

10 Given the required uniformity and internationality of the CISG, the principle underlying Article 1(3) CISG, which disregards the civil or commercial character of the contract for the purpose of determining the application of the CISG, extends to exclude any consideration of the administrative character of a contract as a relevant factor to determine the CISG's applicability to contracts concluded by a government entity.[9]

11 For easier reference, these comments use 'government contracts' as an all-encompassing concept that includes all public procurement, administrative, public or governmental contracts concluded by governments, their entities, agencies and concessionaires, either public or private. The definition of such terms under domestic law is not material for determining

---

[7] Although national legislation on public procurement differs considerably, the transnationalisation of contracts is leading to greater uniformity, a process assisted by international treaties: S W Schill, 'Transnational Legal Approaches to Administrative Law: Conceptualizing Public Contracts in Globalization' (2014) 1 Rivista Trimestrale di Diritto Pubblico.
[8] The existence of government prerogatives (such as the power of unilateral change) does not exclude the application of private law to contracts with the government: S Lemaire, *Les contrats internationaux de l'administration* (LGDJ 2005) 282–83; R W Jaber, *Le contrat administratif international: essai d'une théorie générale à travers l'exemple du contrat BOT (Build, Operate and Transfer)* (LGDJ 2013) 363–65.
[9] See the commentary on Rule 1.

whether and to what extent the CISG governs a contract. The only material factor in that regard is the contractual incorporation of the State's domestic regulation aimed at excluding the CISG or varying or derogating from conflicting provisions of the CISG. Since domestic law does not by itself exclude, vary or derogate from the CISG, the mechanism for overriding the CISG is contractual (Article 6 CISG), rather than based on rules of private international law.

3.4. General applicability of the CISG to government contracts

12 When the CISG was drafted in the 1970s, international trade in most socialist countries (the then so-called "Second World" countries) was conducted predominantly by the State itself or by state-owned enterprises. Despite affecting an important portion of the global economy of the period, the application of the CISG to government contracts does not seem to have been discussed expressly at the time of drafting of the CISG. The *travaux préparatoires* of the CISG do not show any specific reference to the topic.

13 The only reference relating to government contracts was a rejected proposal by the Belgian delegation to add a paragraph to Article 23 CISG (then Article 21 of the 1978 Draft Convention) regarding public or administrative authorisations.[10]

14 Regardless of whether its drafters intended the CISG to extend to government contracts, a majority of the commentators on the CISG have examined this topic and are in favour of such application.[11]

[10] *United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980: Official Records* (United Nations 1981) UN Doc A/CONF.97/19, 98 <https://cisg-online.org/media/IA0W1003/1980ViennaDiplomaticConference_OfficialRecords.pdf> accessed 24 September 2026.

[11] P Schlechtriem, 'Unification of the Law for the International Sale of Goods' in *German National Reports (Private Law and Civil Procedure): XIIth International Congress of Comparative Law* (Nomos 1987) 126–27; I Schwenzer, 'Introduction' in I Schwenzer and U G Schroeter (eds), *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022) 8 ('Classifying a public body's procurement contracts as "matters subject to public law" could curtail or exclude the application of the CISG or its individual rules almost at will'); J Honnold and H M Flechtner, *Honnold's Uniform Law for International Sales under the 1980 United Nations Convention* (5th edn, Kluwer Law International 2021) 180–83; J S Ziegel, 'The Scope of the Convention: Reaching Out to Article One and Beyond' (2005–06) 25 J L & Com 59; U G Schroeter, 'Grenzfragen des Anwendungsbereichs und international einheitliche Auslegung des UN-Kaufrechts (CISG): Zugleich Anmerkung zu Appellationsgericht Basel-Stadt vom 24.8.2018 – ZB.2017.20 (AG.2018.557)' [2019] IHR 133, 135–36; D Willems, 'Application of the CISG to Contracts with Public Authorities' in B Heiderhoff and I Queirolo (eds), *EU and Private Law: Trending Topics in Contracts, Successions, and Civil Liability* (Editoriale Scientifica 2023) 170; C Pereira, L Souza-McMurtrie and L Galan, 'Government Contracts and the CISG: Frenemies?' (ARIA Blog, 5 November 2024) <https://aria.law.columbia.edu/government-contracts-and-the-cisg-frenemies/> accessed 23 September 2026.

15 The CISG applies to international sales regardless of whether government entities are involved. A *lex specialis* argument favouring the application of domestic government procurement law over the CISG is not persuasive. The government procurement law may be special because it deals with public sales, whether domestic or international, but the CISG is equally special because it deals with international sales, whether public or private. The CISG prevails on matters regarding international sales because its binding force results from an international commitment that cannot be pre-empted by domestic legislation.[12] The full application of the CISG, which can only be excluded or derogated from under its own Article 6, corresponds to a commitment each Contracting State undertakes vis-à-vis all other Contracting States.

16 Additionally, the CISG applies to contracts to which at least one of the parties is a government of a CISG Contracting State unless the relevant Contracting State has declared it will not be bound by Article 1(1)(b) CISG.

3.5. Issues of validity and agency

17 Governments are bound to comply with specific laws and regulations that govern their actions.[13] The authority of government officials and administrative procedures are formalised and subject to formal and social scrutiny. Laws preventing and sanctioning corrupt practices may also impact the validity of government actions.

18 Government contracts are especially susceptible to issues of validity and agency. A government contract may be invalid because certain steps were not complied with during the public tender phase; government officials may have acted outside their powers in concluding or modifying a contract; or an international contract for the sale of goods concluded by a government agency may be invalid for having been obtained through corruption.[14]

---

[12] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT) art 27: the principle that a party may not invoke its internal law to justify non-performance of a treaty obligation is a general rule of the law of treaties.

[13] This conception derives from the 'principle of legality'. However, once incorporated into domestic law, the CISG becomes part and parcel of the principle of legality underlying all government contracts: R W Schwind, *Licitações internacionais: participação de estrangeiros e licitações realizadas com financiamento externo* (Fórum 2022) 126.

[14] I Schwenzer and C Pereira, 'International Sales, Arbitration and Corruption: A CISG Perspective' (Kluwer Arbitration Blog, 15 March 2023) <https://arbitrationblog.kluwerarbitration.com/2023/03/15/international-sales-arbitration-and-corruption-a-cisg-perspective/> accessed .

19 According to Article 4(a) CISG, issues of validity are to a great extent outside the CISG's sphere of application as per its Article 4.[15] Compliance with the method for selecting the contractor or supplier may fall outside the coverage of the CISG while connected to the validity of the procurement process and the ensuing contract. Formation of the contract, obligations of the parties, and other matters covered by the CISG are not directly affected by the selection phase. The selection process will generally be material for the subsequent contract only as part of the negotiation process, which may have a bearing on the interpretation of the contract under Article 8(3) CISG. In countries where the domestic procurement law focuses only on the selection of the contractor, the CISG may apply to the respective government contract concerning the formation, obligations, and other contents of the contract just as it does to any other covered international sales contract.

20 The same reasoning applies to the agent–principal relationship—or, in administrative law parlance, the powers or competence of the procuring agency and its respective officials. Rules pertaining to domestic administrative law will define which government official is empowered or competent to act on behalf of the government. These matters fall outside the CISG and have no bearing on the CISG's application.

21 Although issues of validity are generally outside the scope of application of the CISG (Article 4(a)), those issues must be clearly identified. Confusing issues of validity with those governed by the CISG may lead to an improper expansion of the Article 4(a) exception's field of application.[16]

---

[15] According to Ingeborg Schwenzer and Edgardo Muñoz, in the context of the CISG 'matters of validity can be understood as those where a contract is *void ab initio*': I Schwenzer and E Muñoz, *Global Sales and Contract Law* (2nd edn, OUP 2022) 215. See CISG Advisory Council, 'Opinion No 23: Mistake, Fraud, Misrepresentation and Initial Impossibility in CISG Contracts' (Rapporteur: Professor Hugh Beale, University of Warwick (Emeritus) and University of Oxford, United Kingdom; adopted unanimously following the 47th meeting, Kopaonik, Serbia, 12–14 December 2023) for a detailed view of the scope and effects of Article 4 CISG.

[16] Schroeter observes that the CISG occasionally extends to issues involving agency: 'In cases in which it was unclear whether a person had made an offer or acceptance in his own name or as agent of a principal, or in which it was uncertain which company he had purported to act for, courts have frequently applied the rules on interpretation in Article 8 of the CISG–more often than not, without even mentioning the domestic law on agency. Under this approach, Article 8 of the CISG governs, although laws on agency may (and frequently do) contain rules on the same question that employ a different standard, such as Articles 12 and 13 of the 1983 UNIDROIT Agency Convention': U G Schroeter, 'Contract Validity and the CISG' (2017) 22 Unif L Rev 47, 59–60. Commentators refer to drop-shipment contracts as an example in which identifying the person to whom the buyer made the offer is relevant, as orders placed with an intermediary bind the intermediary alone, 'unless the intermediary has set out unmistakably that the order will be passed on to a third party': C Brunner, T Murmann and M Stucki, 'Article 4 [Issues Covered and Excluded; Validity and the Effect on Property Interest

4. Specific comments

4.1. Rule 1: administrative character of government contracts and Article 1(3) CISG

The governmental, public, or administrative character of any of the parties or of the contract is not to be taken into consideration in determining the application of the CISG.

22 Article 1(3) provides that "[…] nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention". The exclusions in Article 2 and the clarifications in Article 3 further define the sphere of application of the CISG.

23 The irrelevance of the civil or commercial character of the parties or the contract means that the CISG governs any international sales—or, conversely, purchases—of goods, regardless of the character of the parties or the contract. Government entities are active in international sales, mostly as buyers but potentially also as sellers. The CISG sphere of application comprises contracts concluded by national governments at central or sub-central levels, including contracts subject to either private or public law in States that acknowledge such distinction.[17] The commercial or administrative nature of the transactions is a matter governed by domestic law. Regardless of such domestic definition, they all fall under the general scope of application of the CISG.

24 Article 7(2) CISG provides that "[q]uestions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based". The principle that the domestic characterisation of a contract should not play a role in determining the applicability of the CISG extends to its administrative nature, beyond the civil or commercial character mentioned in Article 1(3) CISG. If Article 1(3) is not to apply directly to prevent taking the administrative nature of a contract into consideration, given its more restrictive language, the principle underlying Article 1(3) fills an internal gap in the CISG regarding administrative, governmental or public contracts.

25 CISG Advisory Council Opinion No 16 has expressed a similar view about the irrelevance of the domestic distinction between the procedural or substantive nature of a rule in order to

---

in the Goods Sold]' in C Brunner and B Gottlieb (eds), *Commentary on the UN Sales Law (CISG)* (Kluwer Law International 2019) 60–61.

[17] In CLOUT case No 1824, the Swiss Federal Supreme Court applied the CISG to a contract entered into by a Swiss state-owned entity: Bundesgericht (Switzerland), 28 May 2019, 4A_543/2018.

determine the application of the CISG.[18] The role of the autonomy of the parties under Article 6 CISG must be interpreted without regard to domestic law, as discussed in CISG Advisory Council Opinion No 16.[19]

26 Although the CISG does not make any express reference to public entities as subject (or not) to its provisions, its sister convention on limitations does.[20] The Limitation Convention, in its Article 1(3)(a) and (f), defines ‘person’ as including a ‘corporation, company, partnership, association or entity, whether private or public, which can sue or be sued’. Given the parallel origin, purposes and contexts of the two conventions, the definition under the Limitation Convention reinforces the extension of Article 1(3) CISG to disregard the governmental, public, or administrative character of a party or contract in determining the application of the CISG.

27 In conclusion, the CISG does not contain any restriction as to the character of the parties or the contract involved in an international sale of goods. The CISG governs contracts for the international sale of goods as long as the contract meets the other conditions for the application of the CISG.

4.2. Rule 2: the exception of Article 2(a) CISG

Sales of goods bought for the use of a government or its entities are not excluded from the CISG by Article 2(a).

28 Article 2(a) CISG exclusion does not extend to international purchases made by governments. A government entity does not ordinarily purchase goods for resale or as inputs for industrial or commercial activities. Typically, purchased goods are intended for the government’s use in its own activities. However, the purpose of using the goods does not exclude the sales from the CISG as having been made for personal, family or household use. The requirements for Article 2(a) CISG exclusion[21] are not met in sales contracts through which a government purchases goods for use in pursuing its activities.

[18] Opinion No 16 (n 2) para 2.6.
[19] Opinion No 16 (n 2) paras 6.3–6.4.
[20] K Sono, ‘Commentary on the Convention on the Limitation Period in the International Sale of Goods’ UN Doc A/CONF.63/17, reproduced in (1979) X UNCITRAL Yearbook 145, 149: ‘Public entities often engage in commercial activities and **it** is important to make it clear that such entities are subject to this Convention in the same way as “private” entities. Furthermore, the term public entity covers not only governmental agencies but also States, to the extent that they can sue or be sued.’
[21] See P Hachem, ‘Article 2’ in Schwenzer and Schroeter (n 11) 62–68.

29 The exclusion of Article 2(a) CISG is not dependent on the concept of consumer transactions given by each country's own domestic consumer law.[22] Even if a government entity may receive protection as a consumer under its own law and for certain specific purposes,[23] it does not follow that Article 2(a) CISG will exclude its international purchases as consumer transactions.[24]

4.3. Rule 3: scope of the exception of Article 2(b) CISG in government contracts

Sales of goods by reverse auctions or other methods of selection of suppliers by a government or its entities are not excluded from the CISG by Article 2(b).

30 Article 2(b) CISG excludes sales made by 'auctions'. Auctions were traditionally considered a domestic form of contract. They happened in person, and the backgrounds of the buyers and the sellers, including their places of business, were immaterial for the auction. The elements determining the applicability of the CISG pursuant to Article 1 CISG were generally not apparent in sales by auction.

31 When it comes to government contracts, a different approach is applicable, reflecting the distinct features of procurement auctions ('reverse auctions').[25] Reverse auctions are a method of selection of suppliers, rather than a straightforward sales transaction. Typically, the selected supplier will conclude the final sales contract with the procurement entity subsequently, according to the rules applicable to each reverse auction. The acceptance of a bid does not generally amount to the formation of a sales contract. The fact that an auction-like process, a so-called 'reverse auction', is part of the procurement process does not exclude the application of the CISG under Article 2(b) CISG.

---

[22] For the relationship between the CISG and domestic consumer law, see A C Beneti, 'A Convenção de Viena sobre Compra e Venda Internacional de Mercadorias (CISG) e a questão do Direito do Consumidor' in I Schwenzer, P Costa e Silva and C Pereira (eds), *CISG, Brasil e Portugal* (Almedina 2022) 87–102.

[23] M Justen Filho shows that government contracts are not covered by consumer protection law, but only by government procurement law and the provisions of the solicitation and the contract. Consumer law could apply only in the exceptional circumstance of a purchase of goods or services directly in the marketplace: M Justen Filho, *Comentários à Lei de Licitações e Contratações Administrativas* (2nd edn, Thomson Reuters Brasil 2023) 994. The Brazilian Superior Court of Justice ruled in 2010 that consumer law is not generally applicable to government contracts unless the government entity is the weaker party owing to the specific circumstances of the contract at hand: Superior Tribunal de Justiça (Brazil), RMS 31.073, Rapporteur Justice Eliana Calmon, 26 August 2010.

[24] On the prevalence of the CISG over domestic consumer protection law, see Hachem (n 21) 66–67.

[25] C Pereira, L Souza-McMurtrie and L Galan, 'Auction and Auction-like Processes under the CISG: Two Peas in a Pod?' (Ciarb News, 15 November 2024) <https://www.ciarb.org/news-listing/auction-and-auction-like-processes-under-the-cisg-two-peas-in-a-pod/> accessed 23 September 2026.

32 Reverse auctions are one of the most widely used procurement methods, especially in their electronic format. Given the limited purpose of the exclusion provided by Article 2(b) CISG, commentators consider that those government contracts resulting from reverse auctions are not excluded from the CISG.[26-27]

33 The same goes for framework agreements or those calling for “Indefinite Delivery and Indefinite Quantity” (“IDIQ”)[28]. The CISG covers them when governments are involved in the same way and with the same possible restrictions as when the parties are private.

34 Government agencies often sell in auctions goods that are no longer in use or were seized in connection with criminal prosecutions or convictions. Consistent with the premise that the administrative character of a party or contract is immaterial for the applicability of the CISG, a proper sale by auction involving a government entity falls outside the scope of the CISG due to Article 2(b) CISG under the same conditions as any other sale by auction.

35 Electronic or online auctions may not meet the immediacy requirement presupposed by the exclusion falling under Article 2(b) CISG.[29] Electronic auctions differ in certain material respects from in-person auctions. Bidders may potentially bid online from anywhere, which reinforces the international character of the transactions and may trigger the application of the CISG under Article 1(2) CISG. Unlike in-person auctions, physical location of the bidders is immaterial in auctions conducted remotely. Electronic or remote auctions may fall under the sphere of application of the CISG if the bidder’s relevant place of business is outside the territory of the buyer.

---

[26] Commenting on Article 2(b) CISG, Hachem explains that ‘[…] a contract “awarded” to the highest bidder in a public (international) procurement bid can very well be governed by the CISG’: Hachem (n 21) 68. To the same effect, S Kröll, L Mistelis and P Perales Viscasillas (eds), *UN Convention on Contracts for the International Sale of Goods (CISG): Article-by-Article Commentary* (2nd edn, CH Beck/Hart/Nomos 2018) 47.
[27] Possibly contra, Oberlandesgericht Köln (Germany), 9 January 2025, 0125/DE/2nd. The court noted that the open-house procedure allowed all suppliers who met predefined terms to participate and enter into contracts under identical conditions. It left open whether a competitive reverse auction would be treated differently under Article 2(b) CISG.
[28] For example, the US Army Corps of Engineers (USACE) awards IQID contracts to private parties to support its civil works and military infrastructure programmes across the United States and overseas: USACE, ‘Upcoming Contract Opportunities’ <https://www.usace.army.mil/Strategic-Partnerships/Small-Business/Upcoming-Contract-Opportunities/> accessed 28 August 2026.
[29] U G Schroeter, ‘Die Anwendbarkeit des UN-Kaufrechts auf grenzüberschreitende Versteigerungen und Internet-Auktionen’ [2004] ZEuP 20. Contra, treating electronic auctions as equivalent to traditional auctions and holding the CISG inapplicable under Article 2(b) CISG, see Bundesgericht (Switzerland), 8 November 2016, 4A_451/2016, CISG-online 2803; Oberlandesgericht Brandenburg (Germany), 8 April 2016, 11 U 44/14, CISG-online 2727; Rechtbank Oost-Brabant (Netherlands), 31 August 2020, C/01/360225 / KG ZA 20-386, CISG-online 5398.

4.4. Rule 4: public procurement does not fall under the exception of Article 2(c) CISG

Sales of goods are not excluded from the CISG by Article 2(c) as 'sales on execution' or 'otherwise by authority of law' solely because they are concluded by a government or its entities.

36 Article 2(c) CISG excludes its application on sales on execution or otherwise by authority of law. The underlying reason is that such sales are not conducted in the ordinary course of business aimed by CISG and normally governed by mandatory laws of the State under whose authority the execution is made.[30] In other words, such exclusion is effective due to the compulsory nature of the sales transactions of sale by authority of law. When the transaction of sale is neither compulsory under the laws nor sale on execution of the law, the exception of Article 2(c) CISG will not apply. Since a government concludes contracts in the regular course of its activities, the Article 2(c) exclusion does not extend to its international sales of goods. Contracts are one means to achieve the goals a government may pursue, subject to more or less stringent regulation in accordance with each State's constitutional and administrative rules.

37 The authority of the government to conclude contracts must be distinguished from its power and duty to enforce the law or to act under the authority of law. The CISG has opted to exclude sales "on execution or otherwise by authority of law" (Article 2(c) CISG). This exclusion does not apply merely because the relevant contract concerned is a government contract. The exclusion is limited to transactions that are directly mandated by law or carried out pursuant to an order of the competent authority to enforce the law.[31] In such transactions, the government authority may be exercising its *imperium* through compulsory contracts, leaving limited space for the parties to exercise their autonomy.

38 Article 2(c) CISG excludes those exceptional situations in which a government entity concludes an international sales contract while carrying out an order by a competent authority or complying with a direct legal mandate.

---

[30] UNCITRAL, *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* (2016 edn, United Nations 2016) art 2, 18.

[31] Hachem refers to 'auctions on execution of a judgment or as part of bankruptcy proceedings. The same applies where the creditor has seized property of its debtor and is allowed to sell it, as the seller's authority is based on regulations of execution': Hachem (n 21) 70. Commentators suggest that Article 2(c) CISG 'also includes the freehand sale, as long as a public official participates': C Brunner, F Meier and M Stacher, 'Article 2 [Exclusions from the Convention]' in Brunner and Gottlieb (n 16) 34.

39 An illustration is an international sale of goods seized by the government that are not required to be destroyed nor allowed to be resold within a State's territory, compelling their disposal by the government, thus avoiding the economic inefficiency of their destruction. Another is the conclusion of an international sale of goods by a government official charged with selling assets on behalf of the debtor pursuant to bankruptcy, administration or enforcement proceedings.

40 The exclusion applies only to situations in which a government entity does not exercise its party autonomy. Due to various public law constraints, government entities generally enjoy limited party autonomy in government contracts. Such autonomy is the key to interpreting the exclusion of Article 2(c) CISG. Concluding contracts under varied degrees of restrictions to a government entity's party autonomy is the norm in public procurement. The fact that the government's discretion may be limited does not prevent the application of the CISG nor does it amount to its exclusion under Article 2(c) CISG.

4.5. Rule 5: domestic law does not override the CISG

For matters governed by the CISG, public procurement statutes or regulations, including their mandatory provisions, do not by themselves override the CISG.

41 CISG Contracting States undertake to override their domestic laws in matters governed by the CISG to align with their commitments under the CISG. As a general principle of the law of treaties, a Contracting State may not invoke its internal law to justify non-performance of an obligation arising from a treaty. In the sphere of the CISG, a Contracting State that no longer wishes to be bound may denounce the Convention, but only in the form the Convention prescribes (Article 101 CISG).

42 A Contracting State may not cause the same result indirectly, and selectively, by subordinating CISG-governed contracts to domestic procurement law. Allowing domestic mandatory rules to override the CISG of their own force would imply a partial and informal denunciation that Article 101 does not authorise.[32] Therefore, for matters governed by the CISG, public procurement statutes or regulations do not displace the CISG by themselves.

[32] Article 101 CISG governs denunciation of the Convention and provides that denunciation takes effect only by notification to the depositary and prospectively. On the principle that a party may not invoke its internal law to justify non-performance of a treaty obligation, see VCLT (n 12) art 27.

43 The peculiarity of the CISG vis-à-vis other conventions is that it contains default rules the parties to the contract are free to contract around and override (Article 6 CISG). National law may not displace the CISG, but the parties are free to do so contractually. The mechanism for public procurement statutes or regulations to override the CISG is contractual, not one based on conflict of laws rules.

44 The commentary to Rule 6 below shows that the contractual incorporation of public procurement statutes or regulations may amount to an exclusion of or derogation from the CISG by agreement of the parties if such exclusion or derogation complies with Article 6 CISG. Rules governing the denunciation of the CISG prevent a Contracting State from regulating the same issues differently or from removing certain matters covered by the CISG from its scope of application. The CISG prevails as a matter of law, though the parties to a contract may, pursuant to Article 6 CISG, freely exclude, vary or derogate from the CISG provisions. By doing so, the parties do not disregard the CISG but apply its Article 6 for a purpose (freedom of contract) the CISG intended.

45 For greater clarity, Rule 5 does not assert that the CISG prevails over domestic mandatory laws in absolute terms. It allocates the regulatory spheres between the CISG and domestic laws. Domestic procurement statutes and regulations may govern matters outside the scope of the CISG, including validity of the contract and of its individual terms (Article 4(a) CISG). When they govern matters covered by the CISG, they will displace the CISG only when the parties contractually incorporate them under Article 6 CISG.

46 The scope of Rule 5 is a narrow one. Within the matters covered by the CISG, national non-uniform law may not by itself displace the CISG, since that would amount to an improper, indirect denunciation of the CISG. A State's international law commitment may not be rendered ineffective by an instrument of national law, such as a domestic statute or regulation. The distinction to be drawn is thus between the matters allocated to the CISG and those left to domestic law, not between mandatory and non-mandatory domestic rules.

4.6. Rule 6: when does a choice of public procurement statutes or regulations as applicable law amount to an implied opting-out under Article 6 CISG?

> **Exclusion of the application of the CISG to a contract concluded by a government or its entities requires clear manifestation of intent. Consequently,**

a contractual choice of one or more specific public procurement statutes or regulations that have:

a. **the same scope as or wider scope than the CISG generally amounts to an implied exclusion of the CISG under Article 6;**

b. **a narrower scope than the CISG does not generally amount to an implied exclusion of the CISG under Article 6, but rather to a derogation from or variation of conflicting provisions of the CISG.**

47 An exclusion of or derogation from the CISG should be clearly expressed.[33] The CISG Advisory Council Opinion No 16 addresses the issue of implied opting-out under Article 6 CISG. Paragraph 4(iii) of the Comments states that the intent to exclude the CISG is generally revealed by the "choice of an expressly specified domestic statute or code where that would otherwise be displaced by the CISG's application".[34] As pointed out in paragraph 4.4, "A clear choice of non-CISG domestic law would evince an intent to exclude the CISG, but whether this is achieved by reference to a particular domestic statute or code in a choice of law clause has been controversial".

4.6.1. Implied exclusion of the CISG

48 Public procurement statutes and regulations usually do not provide for a comprehensive, autonomous, and self-sufficient body of contract law.[35] Even in States where government contract regulations deal with contract obligations and performance, many areas of contract

---

[33] Pilar Perales Viscasillas emphasises that the reasoning 'derives from a systematic interpretation of the CISG, which applies *ex officio*, and it ought to be considered the default applicable law. Therefore an exclusion should be clearly expressed': P Perales Viscasillas, 'Applicable Law, the CISG, and the Future Convention on International Commercial Contracts' (2013) 58 Vill L Rev 733, 740.

[34] See eg: 'It seems common ground that the reference to a set of non-unified domestic sales provisions sufficiently indicates an intention to derogate from the entire Convention—e.g., "this contract is governed by the provisions of the German Civil Code (BGB)"': P Hachem, 'Article 6' in Schwenzer and Schroeter (n 11) 130–31. See also F Ferrari, *Contracts for the International Sale of Goods: Applicability and Applications of the 1980 United Nations Sales Convention* (Martinus Nijhoff 2011) 167–69; Honnold and Flechtner (n 11) 135; UNCITRAL Digest (n 30) art 6, 34. Recent case law follows the same reasoning: see eg Oberlandesgericht München (Germany), 12 December 2022, 7 U 4810/21, CISG-online 6210 (*Teslas* case); *Del Gaudio France SA v Agrenfrut SL* (Cour d'appel de Paris, Chambre commerciale internationale, 18 May 2021) RG 20/00977, CISG-online 5790.

[35] Examples of comprehensive domestic procurement legislation include the US Federal Acquisition Regulation (FAR), Part 43 (contract modifications) and Part 49 (contract termination); Peru (Law 32.069 of 24 June 2024); and Brazil (Law 14.133 of 1 April 2021). The US joined the CISG on 11 December 1986, Peru on 25 March 1999 and Brazil on 4 March 2013. By contrast, the Government Procurement Law of China (2003) may be regarded as limited legislation in view of its art 43: 'The Contract Law is applicable to government procurement contract. The rights and obligations of the procuring entity and the supplier respectively shall, on the principle of equality and voluntariness, be agreed on in a contract.' China joined the CISG on 11 December 1986.

law (such as contract interpretation or legal definitions) still depend on the general rules applicable to private contracts.

49 The reasoning in paragraph 4.12 of CISG Advisory Council Opinion No 16 illustrates the difference to be drawn between opting out from the CISG when selecting the UNIDROIT Principles on International Commercial Contracts and a mere derogation of some of the provisions of the CISG by adopting the Incoterms. As expressed in Opinion 16 Comments:

> A choice of law indicating parties have selected a body of rules as opposed to national law will be subject to the applicable rules on the validity of the choice of law. Whether such a choice is a sufficiently clear indication of intent to exclude the CISG depends on the scope of the rules of law validly chosen. If such rules have much the same scope or a wider scope than the CISG, an intention to exclude would normally be sufficiently clear. For example, if parties select the UNIDROIT Principles of International Commercial Contracts, in most cases they would be reasonably understood to be to have intended that the UNIDROIT Principles apply rather than the CISG, provided the choice is valid. Where such a choice is not allowed under applicable law, intent to exclude the CISG in the absence of positive choices of rules of law will not be sufficiently clear. Selection of INCOTERMS concerns a narrow range of issues, therefore cannot of itself objectively manifest a clear intent to exclude the entire CISG rather than mere derogation from some of its provisions, such as risk, documentation, and payment terms.[36]

50 The reference to a domestic public procurement statute differs in nature from the selection of the Incoterms, but they are similar in that both are limited in scope. Reference to a domestic public procurement statute or regulation may amount to an implied exclusion under Article 6 CISG only in the exceptional instance that such statute or regulation provides for a stand-alone body of contract law comparable to, or broader in scope than, that of the CISG. In the language of CISG Advisory Council Opinion No 16, "[i]f such rules have much the same scope or a wider scope than the CISG, an intention to exclude would normally be sufficiently clear".

51 An arbitral award[37] rendered on 29 May 2023 illustrates that point. The arbitral tribunal understood that a mere reference to 'Ecuadorean law' in general would not amount to an Article 6 exclusion of the CISG. However, in a contractual amendment, the parties had introduced a definition of 'Ecuadorean law' that encompassed both Ecuador's public procurement statute and the Ecuadorean Civil Code. The arbitral tribunal ruled that this

[36] Opinion No 16 (n 2) para 4.12.
[37] *Inter RAO UES and others v CELEC EP* (Centro de Arbitraje y Mediación de Santiago, Case No 0523/CL/AR, Award, 29 May 2023) CISG-online 6903.

specific reference to a domestic statute amounted to an implied exclusion of the CISG. The tribunal did not discuss in its award whether the domestic statutes chosen by the parties contained a stand-alone body of contract law. One might assume that by referring to both a public procurement statute and Ecuador's Civil Code the parties reasonably intended to adopt a comprehensive set of contract law, thus displacing the CISG in its entirety. This conclusion is not necessarily valid in all scenarios and must be ascertained on a case-by-case basis.

52 Some domestic procurement laws include supplementary rules operating as a gap-filler to settle matters not covered by the law itself or its subsidiary regulations referring to general contract law, administrative law, and civil code respectively.[38] When interpreting contractual reference to domestic public procurement law, one must ascertain whether the indirect incorporation of other laws by the domestic public procurement law may lead to an implied exclusion of the CISG under Article 6.

53 The criteria laid out by the CISG for interpreting its exclusion or derogation, as stated in the CISG Advisory Council Opinion No 16, will apply to determine the exclusion or the extent of the derogation of the CISG. International scholarship and case law provide interpretative standards. For example, US courts frequently insist on the need for clear intent to exclude or derogate, concluding the CISG will remain applicable in the absence of an unambiguous choice to override it.[39] CISG rules on the formation and interpretation of contracts, including its Articles 8 and 9, apply to the interpretation of an agreement aimed at excluding or derogating from the CISG.

54 Standards of proof for the exclusion of the CISG in unilaterally drafted government contracts may be affected by *contra proferentem* doctrine.

55 The application of *contra proferentem* under the CISG is well recognized in legal scholarship and case law.[40] In a case decided by the Court of Appeal of the Hague, the court ruled against the party making the standard terms (unilateral provisions) for failure of providing the other

[38] See eg Law of Public Contracts (Law No 41/20) (Angola), art 357 (Angola is not a CISG Contracting State); Public Contracts Code (Decree-Law No 18/2008) (Portugal), art 280 (Portugal joined the CISG on 23 September 2020); Law on Acquisitions, Leases and Services of the Public Sector 2025 (Mexico), art 13 (Mexico joined the CISG on 29 December 1987).

[39] The need for a clear and unambiguous exclusion is generally recognised. See *Forestal Guarani SA v Daros International Inc* (DNJ, 7 October 2008) CISG-online 1779; *Easom Automation Systems Inc v Thyssenkrupp Fabco Corp* (ED Mich, 28 September 2007) CISG-online 1601; *Cedar Petrochemicals Inc v Dongbu Hannong Chemical Co Ltd* (SDNY, 19 July 2007) CISG-online 1509; *Travelers Property Casualty Co of America v Saint-Gobain Technical Fabrics Canada Ltd* (D Minn, 31 January 2007) CISG-online 1435.

[40] See generally CISG Advisory Council, 'Opinion No 13: Inclusion of Standard Terms under the CISG'.

party a reasonable opportunity to take notice of such terms as included in their agreement.[41] A *contra proferentem* perspective applies to unilateral provisions introduced by either party, including situations in which terms are defined unilaterally by the private supplier, rather than the government entity (e.g., extraordinary single-source sales such as the supply of vaccines during the COVID-19 pandemic).

56 In a possible *contra proferentem* scenario, a government purchaser might introduce ambiguous contractual provisions in an attempt to exclude the application of the CISG, favouring the application of its own public procurement statutes and regulations. The provision must be interpreted in favour of the application of the CISG (i.e. against its ambiguous exclusion), unless the opposite intention clearly arises from the language of the contract or other circumstances (Article 8(3) CISG).

57 *Contra proferentem* may be unwarranted in a legal system in which parties negotiate government contracts at arm's length, with no prevalence of power in favour of either party—i.e., in which the procuring agency does not unilaterally set the final terms of the contract and a bidder has the right to request modifications of the terms. If a bidder considers the provisions concerning the applicable law are not sufficient, it may be entitled, under domestic administrative law, to exercise its right to propose the CISG, or part of its rules, apply to the contract at issue. Although this mechanism varies from country to country, such level of democratic participation in the drafting of government contracts may prevent the application of *contra proferentem* if the drafting of the relevant provisions in a government contract may not be attributed to the unilateral choice of the relevant government entity.

58 Whether a contractual reference to domestic public procurement laws excludes or derogates from the CISG calls for a case-by-case analysis of the compatibility between the CISG and the adopted domestic public procurement laws and regulations, as the latter tend not to regulate most aspects covered by contract law.

[41] *Feinbäckerei Otten GmbH & Co KG v Rhumveld Winter & Konijn BV* (Gerechtshof Den Haag, 22 April 2014) 200.127.516-01, CISG-online 2515.

4.6.2. Derogation from the CISG by incorporating national laws in the contract

59 The prevailing view from case law construes a contractual reference to a specific domestic body of contract law rules as an Article 6 exclusion, rather than a derogation.[42]

60 A choice of 'Brazilian law', for example, does not amount to an exclusion of the CISG since the Convention is part of Brazilian law.[43] Conversely, a choice of 'Brazilian Civil Code' is likely to be considered an exclusion under Article 6 CISG, reflecting the intent of the parties to adopt an entirely different system of contract law.[44] That conclusion is not absolute, because certain limitations in the statute chosen to govern the contract may cause the CISG to remain as the applicable law.[45] It is also possible that the chosen statute itself enacts the CISG, confirming its application (eg the Goods Act 1958 (Vic), Australia).

61 Government procurement laws usually do not contain a comprehensive and autonomous body of rules of contract law. They tend to regulate specific aspects of a government contract, relying on general principles of contract law found elsewhere under the applicable law—or they simply ignore the post-award phase of public procurement, resorting to general contract law to govern such contracts. There may still be overlaps between the CISG and the national procurement laws. While Article 11 CISG allows freedom of form of the contract, procurement laws often require government contracts to be made in writing, except for small or short-term purchases.[46]

---

[42] The prevailing view is summarised in the reasoning of Opinion No 16: 'It is not necessary for the purposes of exclusion of CISG for the choice of law clause to refer to the specific non-uniform sales law within a Code. A reference to a Code containing the purely domestic sales law should be sufficient, provided the Code does not also enact the CISG': Opinion No 16 (n 2) para 4.5. According to Opinion No 16, case law on the exclusion of the CISG suggests that incorporating a specific domestic statute in the agreement will generally amount to an exclusion of, not a derogation from, the CISG. See eg *Teslas* case (n 34); *Del Gaudio* (n 34); *SMS Ersanlar Tarim v F.lli Rinaldi snc* (Tribunale di Foggia, 27 December 2021) CISG-online 5787; Oberlandesgericht Koblenz (Germany), 20 January 2016, 5 U 781/15, CISG-online 2741 (*Porsche Cayenne* case).

[43] Brazil is a CISG Contracting State; it acceded to the CISG on 4 March 2013.

[44] See Opinion No 16 (n 2) Rule 4(iii), especially para 4.5 of the Comments: 'It is not necessary for the purposes of exclusion of CISG for the choice of law clause to refer to the specific non-uniform Sales Law within a Code. A reference to a Code containing the purely domestic sales law should be sufficient, provided the Code does not also enact the CISG. A reference only to particular provisions may evince only an intent to derogate from parts of the CISG, rather than to exclude it entirely'.

[45] Hachem (n 34) 129–30: 'It seems common ground that the reference to a set of non-unified domestic sales provisions sufficiently indicates an intention to derogate from the entire Convention — e.g. "this contract is governed by the provisions of the German Civil Code (BGB)". Such reference may, however, fail to affect a derogation from the entire CISG where the set of rules designated is only applicable to "merchants" as defined by the domestic set of rules envisaged and this requirement is not fulfilled by both parties.'

[46] See eg Law 14.133 of 1 April 2021 (Brazil), art 95 (Brazil joined the CISG on 4 March 2013); Government Procurement Law 2003 (China), art 44 (China joined the CISG on 11 December 1986).

62 According to Article 6 CISG, a contractual reference to domestic public procurement laws does not amount, in principle, to an exclusion of the CISG, but only to a derogation from its conflicting provisions.[47] Provisions of the CISG that are not derogated from by the public procurement laws remain applicable to the contract. Derogation from certain provisions of the CISG by the incorporation of a domestic public procurement statute does not amount to an implied agreement to exclude the CISG entirely.

63 Incorporating government procurement law into the contract may cause the contract to be governed by the CISG, with the terms incorporated from domestic public procurement law derogating most of the CISG's substantive provisions. This solution may be undesirable and possibly inneficient, but it is correct and acceptable under Article 6 CISG. There is merely a difference in scope between derogating from a single provision of the CISG and derogating from almost all of its provisions. If incorporation by reference of conflicting provisions of the domestic public procurement law renders inapplicable all but one provision of the CISG (e.g. Articles 11 or 29 about freedom of form), the limited scope of the exclusion may still be important and useful for the party seeking the protection of the CISG.

64 The interplay between domestic law rules and the CISG rules on the time-period for giving notice of non-conformity (Article 39(1) CISG) and the cut-off period (Article 39(2) CISG) illustrates the mechanism of derogation from the CISG by contractual incorporation of domestic laws.

65 Article 39(1) CISG provides for a reasonable time for the buyer to give notice of non-conformity of the goods, whereas Article 39(2) sets out a maximum cut-off period of two years unless a longer guarantee period is provided in the contract. The public procurement law or the domestic contract law to which it refers may set out different time bars. The outcome of the interplay between Article 39 CISG and the domestic public procurement law may give rise to different scenarios. Assuming the CISG is not entirely excluded, but only derogated from on the points of conflict with domestic public procurement law, and in the absence of contractual provisions dealing with the time-periods for claiming non-conformity, four scenarios seem possible:

[47] See Pereira (n 1) 172–73.

a) if the public procurement law specifies time periods for a notice or a claim of non-conformity, such time periods prevail over those of the CISG as Article 6 CISG derogations;[48]

b) if the public procurement law does not specify time periods for a notice or a claim of non-conformity, the CISG time periods for notice or a claim of non-conformity apply in full;

c) if the public procurement law does not specify time periods for a notice or a claim of non-conformity, but the law refers to contract law, principles of private law, or similar general references to the law governing matters not covered by public procurement law, the CISG time periods for notice or a claim of non-conformity apply in full because the CISG is part of such contract law or principles of private law;[49]

d) if the public procurement law does not specify time periods for a notice or a claim of non-conformity, but it refers to the country's Civil Code or other specific statute similar in scope to the CISG regarding such time periods, the time periods provided for in the Civil Code or in such other specific statute prevail over those of the CISG as Article 6 CISG derogations.[50]

66 The limitation period (prescription) set out by domestic laws to assert contractual claims may occasionally seem to conflict with the CISG. Unlike the cut-off period, a limitation period (prescription) is generally a statutory provision prescribed in the domestic Civil Code, Limitations Act, or other body of law. The CISG does not provide for a comparable provision

[48] Explicit provisions on the cut-off (warranty) period can be found in the procurement laws of Peru (which joined the CISG on 25 March 1999): one year under art 69 of Law 32.069; Portugal (which joined the CISG on 23 September 2020): three years under art 444(5) of Decree-Law No 18/2008; and Cabo Verde (not a CISG Contracting State): two years under art 213(5) of the Legal Regime of Administrative Contracts.

[49] In the case of China, the Government Procurement Law 2003 refers to general contract law as a supplementary source under its art 43. As China is a CISG Contracting State (having joined the CISG on 11 December 1986), the CISG is recognised as part of its general contract law. Therefore, the CISG governs the relevant cut-off period.

[50] For instance, in jurisdictions such as Mexico (Law on Acquisitions, Leases and Services of the Public Sector 2025, art 13) and Macau (Law No 10/2025, art 148), domestic procurement laws refer to the Civil Code, administrative law or other similar regulations as subsidiary sources governing matters not regulated in the procurement laws themselves. Such references incorporate the Civil Code for the purpose of determining the relevant cut-off (warranty) period: 30 days in Macau (Civil Code, art 909(2)) and six months in Mexico (Federal Civil Code, art 2149), which prevail over Article 39(2) CISG. Macau is acknowledged as having an uncertain status regarding the CISG (see https://cisg-online.org/CISG-by-jurisdiction?command=detail&detail=137), and Mexico joined the CISG on 29 December 1987.

to deal with limitation periods, which prevents any potential conflict between provisions of the CISG and of domestic law relating to time-bar for the exercise of rights.[51]

67 The combination of the CISG and the otherwise applicable law, together with rules from domestic procurement law and specific contractual provisions, as incorporated pursuant to Article 6 CISG, provides the framework of rules governing the parties' rights and obligations under each specific contract. Such framework results from the underlying CISG general principles of freedom of contract and protection of party autonomy.

68 An arrangement arising from the interplay of the CISG and domestic laws incorporated by the contract is valid and legally effective, but it may be inconvenient and lead to uncertainty. For greater efficiency, a procuring government agency should set out clearly the points on which domestic law or contractual provisions should displace the CISG provisions. Lack of clarity in such interplay may result in ambiguities or uncertainties, leading to disputes regarding what portions of the CISG will have been displaced.

69 The policy underlying the application of the CISG favours clarity as to the adoption, derogation, or exclusion of its provisions. Clarity in the application of the CISG is part of any Contracting State's commitments towards the other Contracting States. Such commitments point to ambiguities or uncertainty about exclusion or derogation being resolved in favour of the application of the CISG.

70 International suppliers to a government may expect the uniform law adopted by the State to govern their contracts. This is a legitimate expectation that rests on the protection of trust. By adopting the CISG, a Contracting State promises to its potential international suppliers—or buyers, when the State is a seller—that the uniform law governing the international sale of goods will apply to its contracts. This promise does not preclude a Contracting State to exclude or derogate from the CISG pursuant to Article 6 CISG, which is an option available to any party to a CISG contract. The protection of trust derives from widely accepted public

[51] The CISG's sister convention, the Convention on the Limitation Period in the International Sale of Goods (adopted 14 June 1974, entered into force 1 August 1988) 1511 UNTS 3, as amended by the Protocol of 11 April 1980, may play a significant role in this matter for Contracting States to the Limitation Convention. See UNCITRAL Secretariat, 'Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on Contracts for the International Sale of Goods' para 38: '[t]he United Nations Convention on Contracts for the International Sale of Goods is complemented by the United Nations Convention on the Limitation Period in the International Sale of Goods, 1974, as amended by a Protocol in 1980'.

law principles,[52] including grounded on international treaties that affect administrative law. In public law, the theory is connected with the observance of administrative good faith.[53] Whether this is captured or not under Article 7(1) CISG remains an open question. If it is assumed as an interpretative principle, it may reinforce the expectation of the counterparties in a government contract for the international sale of goods to expect the CISG to apply unless clearly excluded or derogated pursuant to Article 6 CISG.

4.7. Rule 7: freedom of form in government contracts, their amendments, modifications, and termination (Article 11 and 29 CISG)

> **Except for matters not governed by the CISG, the freedom of form provided for in Articles 11 and 29(1) CISG regarding formation, modification or termination of contracts for the international sale of goods concluded by a government or its entities applies, unless these provisions are rendered inapplicable under Article 12 CISG or their application or effect is excluded, varied or derogated from by express or implied agreement.**

71 Freedom of form enshrined in Article 11 is a point of potential conflict with domestic government procurement regulation. The trend towards virtual contracts and contracting through online marketplaces[54] may create a greater role for contracts concluded with less formality. Domestic procurement laws often require government contracts to be made in writing, except for small or simpler purchases.[55]

72 Honnold and Flechtner point out that scholars adopt one of two interpretations about the interplay between Articles 4 and 11 CISG regarding government contracts required to be made in writing by domestic law.[56]

---

[52] P Reynolds, 'Legitimate Expectations and the Protection of Trust in Public Officials' [2011] PL 330. Similarly, Schill argues that '[c]ustomary international law, however, offers, as part of the international minimum standard, some substantive protection to the foreign party's rights under a public contract, provided the breach of the contract or a change of the governing law constitute an independent tort under international law *vis-à-vis* the foreigner's home State': S W Schill, 'The Impact of International Investment Law on Public Contracts' (2017) Amsterdam Law School Legal Studies Research Paper No 2017-08, 7–8.
[53] E Schmidt-Aßmann, *La teoría general del derecho administrativo como sistema* (Marcial Pons 2003) 59.
[54] See generally CISG Advisory Council, 'Opinion No 1: Electronic Communications under CISG' (revised 2024). For example, Amazon Business offers tools for government e-procurement, and some state governments in the United States (eg Utah and Oklahoma) are implementing e-procurement systems through Amazon Business: Amazon Business, 'Government' <https://business.amazon.com/en/industries/government#customer> accessed 23 September 2026.
[55] See eg Law 14.133 of 1 April 2021 (Brazil), art 91; Law 9/2017 (Spain), art 153(1), first sentence; Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC [2014] OJ L94/65, art 2(1)(5), which sets out the definition applicable to government contracts in the EU Member States.
[56] Honnold and Flechtner (n 11) 181–83.

73 One line of thinking considers the domestic law requirement overrides the principle of freedom of form (Article 11 CISG) since this is an issue of validity and Article 4(a) CISG excludes validity from the sphere of application of the CISG, with exceptions.[57] Another view considers that Article 11 CISG is precisely such an exception. Article 4 CISG defines that "[…] except as otherwise expressly provided in this Convention, [*the CISG*] is not concerned with: (a) the validity […]". The provision itself encloses a counter-exception that the CISG is not concerned with the issues of validity "except as otherwise expressly provided in the Convention".[58] For the purpose of Article 4 CISG, CISG Advisory Council Opinion No 23 states in paragraph 2.1 of the Comments that "[a] matter is governed by the Convention if the question is expressly settled in the Convention or [...]." By providing that "[*a*] contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form", Article 11 CISG makes form requirements a matter explicitly governed by the Convention and thus, operates as an exception to Article 4(a) CISG. According to this view, the principle of freedom of form prevails even when domestic law requires written form for government contracts. Once again: it would not be a matter of validity under Article 4(a) CISG because Article 11 CISG is an exception to Article 4(a) CISG, placing this issue under the coverage of the CISG.[59] The CISG Advisory Council Opinion No 3 takes the latter position.

74 The incorporation of a domestic government procurement law may amount to a derogation from the CISG under Article 6 CISG. In this case, Article 11 CISG (or Article 29 CISG) not because of the exclusion provided by Article 4(a) CISG, but due to the derogation Article 6 CISG allows.

75 An open question is to what extent a writing requirement under domestic public procurement law serves purposes that amount to a matter not covered by the CISG, such as administrative accountability or public finance controls. If so, such a writing requirement would be a matter not covered by the CISG, not reached by Rule 7, and therefore not displaced by Articles 11 or 29 CISG and not subject to Article 6 CISG derogations or exclusions. The question is open

---

[57] M Schmidt-Kessel, 'Article 11' in I Schwenzer (ed), *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)* (4th edn, OUP 2016) para 17; Honnold and Flechtner (n 11) 228–29.
[58] Opinion No 23 (n 15) para 2.1.
[59] Schroeter (n 16) 62–63; F Ferrari, 'PIL and CISG: Friends or Foes?' (2013) 31 J L & Com 45, 91; H E Hartnell, 'Rousing the Sleeping Dog: The Validity Exception to the Convention on Contracts for the International Sale of Goods' (1993) 18 Yale J Intl L 1, 65–66 <https://cisg-online.org/files/commentFiles/Hartnell_18_YaleJIntlL_1993_1.pdf> accessed 23 September 2026.

because domestic writing requirements may also be understood exclusively within their domestic context, without affecting the formation or modification of international sales contracts and the obligations arising from them under the CISG. It is common for governments to incur liabilities that are not entirely foreseen or accounted for in public financial controls. Such liabilities may have administrative consequences, such as disciplinary measures against officials or contractors, without necessarily affecting the contractual rights arising from the contract. Under this premise, form of contract, regardless of its underlying purpose, may be understood as a matter indeed covered by the CISG and subject to its Articles 6, 11 and 29, without prejudice to any parallel punitive, disciplinary or economic measures applicable domestically to the responsible persons.

76 Moreover, a breach of a writing requirement does not necessarily render the contract invalid or unenforceable. Whether such a formal defect may render the contract invalid is itself a question for the applicable domestic law governing validity. Legal systems vary widely in this regard. In some jurisdictions, a seemingly defective act of a government official may be preserved and given legal effect on grounds such as administrative good faith or protection of reliance on the appearance of authority. The form defect may expose the official, or even the private party, to administrative sanctions while the contractual obligations remain enforceable in whole or in part. Rule 7 does not equate the existence of a writing requirement to the invalidity of the contract, leaving the consequences of such a formal defect to be determined by the law governing the validity of the contract.

77 Even if the original government contract is in writing, as is the international practice, oral amendments may be recognised pursuant to Article 29 CISG, unless the parties agree otherwise directly or by incorporating public procurement law.

78 According to U.S. government procurement practice, a distinction is drawn between “constructive changes” introduced to the contract (i.e., changes inferred from conduct), as opposed to “formal changes” deriving from formal agreements.[60] In other jurisdictions “constructive changes” may be introduced to the public procurement contract by virtue of an exchange of letters between the contractor and the government agency. Article 29 CISG may apply in such situations to give the nature of a binding agreement to such actions intended

[60] See S W Feldman, *Government Contract Guidebook* (4th edn, Thomson Reuters 2013), especially 532–35 (formal changes) and 535–45 (constructive changes).

to modify the original contract even if they do not take the form of written agreements. It may provide an additional ground of validity by attributing clear contractual character to acts performed even if in a form distinct from that of the original contract. The solution will depend on the limits of the CISG derogation observed in each case.

79 Similarly to the formation and modification of procurement contracts above, form required for termination of contracts will also be governed by Article 29 CISG. Considering the common practice of government entities favouring writing for their official activities, procurement contracts will most likely provide that termination shall be made in writing. Nevertheless, the principle of freedom of form under Article 11 and Article 29(1) CISG will prevail over the written requirement for termination unless the CISG is expressly excluded or derogated under its Article 6, or the CISG is rendered inapplicable under its Article 12.

4.8. Rule 8: limits to the requirements of modification or termination to be in writing

If a CISG contract concluded by a government or its entities requires any modification or termination by agreement to be in writing, the second sentence of Article 29(2) CISG applies to protect one party's reliance on the other's conduct in connection with such modification or termination.

80 Article 29(2) CISG generally serves as an exception to the principles underlying Article 11 and Article 29(1) CISG as discussed in Rule 7.

81 Contracts concluded by a government or its entities routinely incorporate a clause requiring that any modification or termination be made in writing—'No Oral Modification' ('NOM') provisions.[61] Where such a clause is effective, the first sentence of Article 29(2) CISG invalidates a later purported modification or termination; thus, the earlier, unmodified terms of the contract continue to apply.[62]

82 The written form requirement in a government contract is significant for the purpose of interpreting the contract itself as well as the intent of the parties. CISG Advisory Council Opinion No 3, in paragraph 2.8 of the Comments, states that '[t]he special role of a writing

---

[61] On the constitutive effect of NOM clauses under the first sentence of Article 29(2) CISG, see U G Schroeter, 'Article 29' in Schwenzer and Schroeter (n 11) paras 62–67. On the frequent domestic requirement that government contracts be in writing, see the sources cited in the commentary on Rule 7 above.

[62] Schroeter (n 61) para 62; S K Date-Bah, 'Article 29' in C M Bianca and M J Bonell (eds), *Commentary on the International Sales Law: The 1980 Vienna Sales Convention* (Giuffrè 1987) 242 (the parties' declared intention that modification or termination be in writing overrides the freedom of form under Article 11).

[…] must be construed in accordance with the general principles that govern the CISG'.[63] This statement essentially incorporates Articles 8 and 11 CISG in interpreting the intent of the parties.[64] Writing requirements imposed by NOM clauses and upheld pursuant to the first sentence of Article 29(2) CISG are not absolute. When one party engages in conduct amounting to modification or termination other than in writing, the other party's reliance on such conduct must be given weight under the second sentence of Article 29(2) CISG.

83 The second sentence of Article 29(2) CISG reconciles two aspects of party autonomy. It provides that a party 'may be precluded by [their] conduct from asserting such a provision to the extent that the other party has relied on that conduct'. Parties are free to protect the integrity of their written agreement by prescribing a particular form for subsequent changes. A party may not induce reliance on a departure from that form requirement and subsequently invoke the same form requirement against the relying party. The second sentence of Article 29(2) CISG operates as a counterpart to common law doctrines such as 'waiver' and 'estoppel' and the civil-law prohibition of contradictory behaviour (*venire contra factum proprium*).[65] The requirements and effects of a party's reliance must be determined autonomously under Article 7(1) CISG.[66]

84 Government procurement practice in various jurisdictions recognises 'constructive' changes—modifications inferred from the conduct of the contracting authority rather than from a formal written amendment.[67] A NOM clause in a government contract, read together with the first sentence of Article 29(2) CISG, would ordinarily deprive such conduct of modifying effect. The second sentence of Article 29(2) CISG prevents a party from invoking

---

[63] CISG Advisory Council, 'Opinion No 3: Parol Evidence Rule, Plain Meaning Rule, Contractual Merger Clause and the CISG' (Rapporteur: Professor Richard Hyland, Rutgers Law School, Camden, NJ, USA; 23 October 2004).

[64] Opinion No 3 (n 63) para 2.8: 'The special role of a writing, however, must be construed in accordance with the general principles that govern the CISG. The parties' intent with regard to the role of their writing is due the same respect as any other element of their intent. The principles of Article 8 are to be used to determine that intent […]'.

[65] Schroeter (n 61) para 68; P Perales Viscasillas, 'Modification and Termination of the Contract (Art. 29 CISG)' (2005–06) 25 J L & Com 167, 176 (the second sentence limits the writing requirement through the principle of estoppel or *venire contra factum proprium*); R A Hillman, 'Article 29(2) of the United Nations Convention on Contracts for the International Sale of Goods: A New Effort at Clarifying the Legal Effect of "No Oral Modification" Clauses' (1988) 21 Cornell Intl LJ 449; F Ferrari, 'The CISG's Interpretative Goals, Its Interpretative Method and Its General Principles in Case Law (Part II)' [2013] IHR 181 (listing the prohibition of *venire contra factum proprium* and estoppel among the general principles that can be derived from specific provisions such as Articles 16(2) and 29(2) CISG). This coheres with the notion of protection of legitimate expectations discussed elsewhere in this Opinion.

[66] Hillman (n 65) 460–63; Honnold and Flechtner (n 11) para 204; Perales Viscasillas (n 65) 176–79.

[67] See the commentary on Rule 7 above.

the NOM clause if its own conduct has led the other party to rely on an informal modification or termination. Protection of a party's reliance applies irrespective of whether the party responsible for the informal action is the government entity or the private contractor.

85 Article 29(2) CISG operates in two connected steps. Firstly, one party's conduct expressing a modification or termination of the contract must be capable of being understood, by a reasonable party of the same kind in the same circumstances (Article 8(2) CISG), as indicating the NOM clause will not be asserted. It is disputed whether the proposal of or consent to an informal modification is by itself sufficient or additional acts inducing reliance are required. The better view, supported by the wording of Article 29(2) CISG and by the Convention's treatment of a party's conduct and declarations (Article 8 CISG), is that a statement may suffice.[68] Secondly, the other party must have relied on that conduct. The second sentence of Article 29(2) CISG requires active reliance; mere passive reliance is not protected.[69]

86 The doctrine of reliance under Article 29(2) requires that one party act in reliance on the oral statements or physical actions of the other party.[70] Such reliance must cause consequential changes (regardless of whether any damage has been proved) in the ordinary course of business being conducted by the relying party. The forms of reliance recognised by commentators and case law translate readily to government contracts. Reliance has been found, for example, where a party manufactures or prepares contractually agreed goods in accordance with an orally amended specification; incurs considerable expenditure or adjusts its financial planning on the strength of the other party's declaration that it would extend the time for payment or accept partial payments; or ships the goods later than the contractual date after the other party stated that it would accept late shipment.[71] Individual decisions

---

[68] Schroeter (n 61) paras 69–70, discussing the two views and favouring the first. The conduct must nonetheless be assessed under Article 8(2) CISG: reliance may be reasonable, for instance, where a party has indicated that the other 'does not need to worry about the form requirement', but not necessarily where both parties were simply unaware of the NOM clause during their negotiations.
[69] Schroeter (n 61) para 72; the Secretariat Commentary gives the example of partial performance carried out without objection following an oral modification.
[70] Legal Information Institute, 'Reliance' (Wex) <https://www.law.cornell.edu/wex/reliance> accessed 23 September 2026: 'Reliance is legal concept defining the dependence by one person on another person's or entity's statements or actions, particularly where the person acts upon such dependence. The person on whom the person relied may be liable for damages if such reliance was reasonable and resulted in detriment to the relying person, in a doctrine known as promissory estoppel.'
[71] Schroeter (n 61) para 72. In a government-contract setting, a supplier that re-tools its production line or reschedules delivery in reliance on a procuring authority's informal instruction is a paradigmatic case of active reliance.

confirm the point. Where a manufacturer had proposed to its distributor that they would wind up their exclusive distributorship agreement by the distributor's immediately ceasing to trade and the manufacturer taking back the distributor's stock against payment, an arbitral tribunal found the distributor's cessation of trading manifestly occurred in reliance on the manufacturer's conduct.[72]

87 Reliance must have been reasonable under the circumstances. A party may remove its reliance for the future (*ex nunc*) by declaring it wishes to continue with the original contract, so the protection afforded by the second sentence of Article 29(2) CISG is less extensive than that of a genuine informal modification under Article 29(1) CISG. Where the requirements are met, the modification to the contract is not thereby rendered generally valid. Rather, the party whose conduct induced the reliance is merely precluded from asserting the form requirement and only 'to the extent that' this is necessary to protect the other party's reliance. The overall approach is a flexible one, leaving courts and arbitral tribunals considerable discretion in assessing the individual case.[73]

88 Two limits should be kept in mind in the context of government contracts.

89 First, the second sentence of Article 29(2) CISG, is available only where the freedom of form is not displaced under Articles 12 and 96 CISG. If any party has its place of business in a State that has entered an Article 96 CISG reservation, the form requirements of the applicable domestic law govern and the second sentence of Article 29(2) CISG does not operate.[74] Article 29(2) does not cure an independent defect of validity, such as regarding competence, authority, appropriation, or representation governed by the law applicable to the validity of the contract (Article 4(a) CISG). A requirement that an official have legal authority to bind the government entity must therefore be distinguished from a contractual requirement concerning

[72] SCC Arbitration Award, 18 December 2013, CISG-online 2571, (2013) YB Comm Arb 228, 244 para 39. See Schroeter (n 61) para 73.
[73] Schroeter (n 61) paras 75, 78–79. On the burden of proof, which lies on the party claiming protection of its reliance, see ibid para 81.
[74] See also CISG Advisory Council, 'Opinion No 15: Reservations under Articles 92, 93, 94, 95 and 96 CISG', Rule 6.1: '[w]here any party to a sales contract has its place of business in a Contracting State which has made a declaration under Article 96, no Contracting State is under any obligation under public international law to apply any provision of Article 11, Article 29 or Part II of the Convention […]'.

the form in which an otherwise authorised modification is to be made. These qualifications must be understood in parallel with the comments to Rule 7.[75]

90 Second, the prevailing view among commentators is that the second sentence of Article 29(2) CISG may not itself be contractually excluded, so that a clause purporting to reinforce a NOM clause by barring the application of the second sentence of Article 29(2) CISG might arguably be ineffective.[76] Under this premise, a government entity may not generally insulate the application of a NOM clause from this aspect of the CISG, which is designed to protect one party's reasonable reliance on the other party's conduct.

4.9. **Rule 9: special purpose companies, local subsidiaries, and the issue of multiple places of business (Article 10(a) CISG)**

> **A requirement that a seller establish, in any form, a place of business in the buyer's country in order to conclude or perform a contract for the sale of goods with a government or its entities does not necessarily negate the international character of the contract for the purposes of the CISG, since Article 10(a) CISG may nonetheless determine that the seller's place of business is located outside the buyer's country.**

91 Under Article 1 CISG, the Convention will only apply to contracts between parties with places of business in different States. Internationality is one of the requirements for the CISG to apply.

92 In a tender process by a national procuring agency of a Contracting State, assuming that the conflict of laws rules lead to the application of such State's law (Article1(1)(b) CISG), the CISG will apply if the government agency awards the contract to an international supplier located in a Contracting State. The tender process may involve international and domestic bidders, leading to a situation in which each bidder may be subject to a distinct set of substantive rules depending on whether that bidder is domestic or international.

93 A principle that is internationally accepted in government procurement is the equal treatment of the bidders. National systems that follow international standards avoid discriminatory provisions that may subject bidders to different treatments without reasonable justification.

---

[75] See the commentary on Rule 7 above; and Schroeter (n 61) para 77 (no derogation from domestic form requirements applying under Articles 96 and 12, which also rule out the abuse-of-rights defence under the second sentence of Article 29(2) CISG).

[76] Schroeter (n 61) para 76 (majority view rejecting any derogation from the second sentence of Article 29(2)); C Brunner and D O Brand, 'Article 29 [Modification of Contract; Writing Requirement]' in Brunner and Gottlieb (n 16) para 17; Perales Viscasillas (n 65) 179; Hillman (n 65) 462.

Even benefits adopted for small and medium-sized enterprises ("SMEs") and preferences created such as "buy national" in many countries must follow certain requirements and above all must not merely result from arbitrary discrimination against certain bidders, products, or services. A question to be addressed is whether a procuring agency violates an applicable principle of equal treatment when it tenders out a contract that may be subject to the CISG or to domestic law, depending on who the winning bidder is.

94 There is no breach of equal treatment by applying or not the CISG depending on characteristics of the prospective supplier. A government entity is not required to hold separate tender processes for international suppliers (subject to the CISG) and for domestic suppliers to avoid a breach of equal treatment (subject to domestic law). The difference in applicable law (CISG or domestic law) simply reflects a factual difference between the suppliers. Being located in different countries, bidders may be subject to different burdens and benefit from a variety of distinct advantages. A bidder may choose whether to take part in the tender as an international company or it may decide to set up its place of business in the procuring country. This arrangement is not different from any other tax or corporate structure the bidder may adopt. The bidder bears the consequences of its choice.

95 In a 2026 decision, the Austrian Supreme Court upheld the lower court's decision that the CISG was applicable to the contract concluded through a public tender process. The Court rejected the argument that the application of the CISG would violate the EU principle of equal treatment of bidders in public tender procedures. The Court further affirmed that *(i)* conducting the procurement process pursuant to the Austrian Procurement Law did not preclude the application of the CISG, and *(ii)* the CISG also governed sales contracts in which the bidder had been selected through an (international) procurement process.[77]

96 Article 10(a) CISG applies to parties that have more than one place of business. The rule provides the criteria to determine which place of business is material and decisive to the contract.[78] Government purchases are often made through local vendors or with suppliers

---

[77] Oberster Gerichtshof (Austria), 30 June 2026, 6 Ob 100/25m, CISG-online 8047 (*Mobile telescopic grandstand system* case).

[78] See P Hachem, 'Article 10' in Schwenzer and Schroeter (n 11) 218–23. In another work, Hachem states that the preferable view 'operates on a case-by-case basis and relies on the domicile of the place of business which has the strongest influence on the contractual relationship. The strongest influence will typically be exerted by the place of business where customer complaints are ultimately handled, not merely filed, and in particular where the decisions on the next steps to take in handling disputes, including legal measures, are

that have places of business in the country of the purchasing government. In some jurisdictions, to supply goods under a contract that requires substantial local activities—such as assembling, commissioning, and post-sale support—a foreign company must be previously authorised to operate in that jurisdiction. These circumstances may eliminate the international character of the sale and make the CISG inapplicable unless (*i*) the vendor can obtain such authorisation without having a place of business in the destination country or (*ii*) the seller's relevant place of business, as defined by Article 10(a) CISG, remains outside the destination country, despite the vendor setting up a place of business within it.

97 In a 2019 decision, the Swiss Federal Supreme Court examined a matter in which a foreign supplier, in a contract with a Swiss state-owned entity, established a subsidiary in Switzerland. The court held that the seller's places of business were relevant in determining the applicability of the CISG and that the location of the foreign supplier ensured the application of the CISG.[79]

98 A United States case decided in 2018 (*Target v ERS*) excluded the application of the CISG. Although all purchase agreements between the parties identified a Canadian address as ERS's principal place of business, it was found that ERS had opened an Indianapolis facility with substantial infrastructure investment to accommodate Target's product volume. The Court concluded that ERS's place of business for the purposes of ERS's contracts with Target was in the United States. The CISG did not apply.[80]

99 The application of different rules for the contract based on the relevant place of business of the winning bidder is possible and lawful. However, application of rules that are substantially the same to all bidders might allow better comparison among the various offers. The CISG has often served as inspiration for the reform of domestic law on the purchase and sale of goods.[81]

---

made': P Hachem, 'Applicability of the CISG – Articles 1 and 6' in I Schwenzer, Y Atamer and P Butler (eds), *Current Issues in the CISG and Arbitration* (Eleven International Publishing 2014) 34.

[79] Bundesgericht (Switzerland), 28 May 2019, 4A_543/2018, CISG-online 4463 (CLOUT case No 1824, abstract by Ulrich Schroeter). See also the commentary on the 2018 decision of the Appellationsgericht Basel-Stadt (CISG-online 3906) in the *Electronic electricity meters* case, later confirmed by the Swiss Federal Supreme Court: Schroeter (n 11).

[80] *Target Corp v ERS* (D Minn, 9 February 2018) 16-cv-1184, CISG-online 3046.

[81] See Hachem, 'Article 10' (n 78) 218–23.

4.10. Rule 10: prevalence of other international treaties

Multilateral or bilateral international agreements, conventions, and treaties on government purchases or public procurement that cover matters governed by the CISG prevail over the CISG provided the requirements of Article 90 CISG are fulfilled.

100 Article 90 CISG provides priority to other international agreements which contain rules concerning matters governed by the CISG. This provision assists in determining the governing law for a dispute arising out of a contract for the international sale of goods by stipulating that the CISG "[...] does not prevail over any international agreement, which has already been or may be entered into [...]".[82] The two conditions set out under Article 90 CISG are: (*i*) an overlap between the matter covered by the international agreement and the CISG; and (*ii*) the parties to the contract must have their places of business in States that are parties both to such international agreement and to the CISG.

101 Multilateral or bilateral international agreements, conventions, and treaties on government purchases or public procurement ("international agreements") generally stipulate the regulatory framework on public procurement, establishing general principles for procedural fairness (e.g. non-discrimination principle) and defining the conditions and procedures under which procurement is to be conducted.[83]

102 In other words, the international agreements generally focus on the pre-award selection process of suppliers for a particular procurement. They do not regulate the phase of contractual performance and obligations after the conclusion of the procurement contract (post-award contracting stage). Therefore, most existing international agreements do not overlap in scope with the CISG.

103 Despite the lack of substantive overlap, some functional overlaps may arguably occur taking into account that the selection process is viewed as part of the negotiations to conclude a contract (Article 8 CISG).

---

[82] UNCITRAL Digest (n 30) art 90, 417.

[83] See GPA (n 5); Directive 2014/24/EU (n 55) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024> accessed 23 September 2026; EU–Mercosur Partnership Agreement, Council doc ST 12450/2025 INIT <https://data.consilium.europa.eu/doc/document/ST-12450-2025-INIT/en/pdf> accessed 23 September 2026.

104 For example, the WTO Agreement on Government Procurement (GPA),[84] like many international trade agreements covering public procurement, provides that: '[…] a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation'.[85] This provision on submission of tenders may be compare, by analogy, with Article 14 CISG, providing for the requirements to be met by a proposal or offer for concluding a contract. Article 14 CISG does not require that an offer or proposal be made in writing, but rather that it be sufficiently definite. The requirements set out in international public procurement agreements may go beyond those set out in Article 14 CISG, providing for a description of the goods, fixing their quantity and determining the price.[86] Bidders are required to tender their proposals in accordance with all essential requirements set out in the notices and tender documentation. These requirements will prevail under Article 90 CISG.

105 International agreements may sometimes refer to the modification or termination of contracts during their term. For instance, Article 72 of Directive 2014/24/EU[87] defines the conditions under which modifications may be introduced without resorting to a new procurement procedure. That is part of the subject matter covered by Article 29 CISG, as both govern the permissibility and effects of post-conclusion contractual modifications. Whereas Article 29 CISG allows contract modification or termination by the mere agreement of the parties, Article 72 of the Directive sets limits on modifications and their substantive effects. Similarly, Article 20.22(6) of the EU–Mercosur Partnership Agreement[88] prohibits the modification of awarded contracts in a manner that circumvents procurement obligations. These provisions significantly limit the party autonomy granted under Article 29 CISG for contract modification or termination. Article 29 CISG may be overridden by international agreements limiting the procedure for contract modification or termination.

---

[84] GPA (n 5).
[85] GPA (n 5) art XV(4); EU–Mercosur Partnership Agreement (n 83) art 20.22(3); Comprehensive Economic and Trade Agreement between Canada and the European Union (CETA), art 19.14(4); Agreement between the United States of America, the United Mexican States, and Canada (USMCA), art 13.14(4); Agreement establishing an Association between the European Union and Central America, art 222(2); EU–Singapore Free Trade Agreement, art 9.14(4); Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), art 15.15(3).
[86] UNCITRAL Digest (n 30) art 14, 86–88.
[87] Directive 2014/24/EU (n 55).
[88] EU–Mercosur Partnership Agreement (n 83).

106 In summary, whereas international agreements on public procurement mainly focus on rules relating to the pre-award selection stage, the CISG governs the contracting stage and post-award obligations. The potential for overlap between them is limited though not impossible. When there is such overlap, and the parties have their places of business in CISG Contracting States that are also parties to the same international agreement on public procurement, the provisions of the international agreement on public procurement prevail over the CISG.

5. References

Bell G F, 'Why Singapore Should Withdraw Its Reservation to the United Nations Convention on Contracts for the International Sale of Goods (CISG)' (2005) 9 SYBIL 55

Beneti A C, 'A Convenção de Viena sobre Compra e Venda Internacional de Mercadorias (CISG) e a questão do Direito do Consumidor' in Schwenzer I, Costa e Silva P and Pereira C (eds), *CISG, Brasil e Portugal* (Almedina 2022)

Brunner C, Meier F and Stacher M, 'Article 2 [Exclusions from the Convention]' in Brunner C and Gottlieb B (eds), *Commentary on the UN Sales Law (CISG)* (Kluwer Law International 2019)

Brunner C and Brand D O, 'Article 29 [Modification of Contract; Writing Requirement]' in Brunner C and Gottlieb B (eds), *Commentary on the UN Sales Law (CISG)* (Kluwer Law International 2019)

Cirera J, 'Abstract [CISG-online 6903]' <https://cisg-online.org/files/cases/14817/abstractsFile/6903_48860589.pdf> accessed

Date-Bah S K, 'Article 29' in Bianca C M and Bonell M J (eds), *Commentary on the International Sales Law: The 1980 Vienna Sales Convention* (Giuffrè 1987)

Feldman S W, *Government Contract Guidebook* (4th edn, Thomson Reuters 2013)

Ferrari F, *Contracts for the International Sale of Goods: Applicability and Applications of the 1980 United Nations Sales Convention* (Martinus Nijhoff 2011)

Ferrari F, 'PIL and CISG: Friends or Foes?' (2013) 31 J L & Com 45

Ferrari F, 'The CISG's Interpretative Goals, Its Interpretative Method and Its General Principles in Case Law (Part II)' [2013] IHR 181

Hachem P, 'Article 2' in Schwenzer I and Schroeter U G (eds), *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022)

Hachem P, 'Article 6' in Schwenzer I and Schroeter U G (eds), *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022)

Hachem P, 'Article 10' in Schwenzer I and Schroeter U G (eds), *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022)

Hachem P, 'Applicability of the CISG – Articles 1 and 6' in Schwenzer I, Atamer Y and Butler P (eds), *Current Issues in the CISG and Arbitration* (Eleven International Publishing 2014)

Hartnell H E, 'Rousing the Sleeping Dog: The Validity Exception to the Convention on Contracts for the International Sale of Goods' (1993) 18 Yale J Intl L 1

Hillman R A, 'Article 29(2) of the United Nations Convention on Contracts for the International Sale of Goods: A New Effort at Clarifying the Legal Effect of "No Oral Modification" Clauses' (1988) 21 Cornell Intl LJ 449

Honnold J and Flechtner H M, *Honnold's Uniform Law for International Sales under the 1980 United Nations Convention* (5th edn, Kluwer Law International 2021)

Jaber R W, *Le contrat administratif international: essai d'une théorie générale à travers l'exemple du contrat BOT (Build, Operate and Transfer)* (LGDJ 2013)

Justen Filho M, *Comentários à Lei de Licitações e Contratações Administrativas* (2nd edn, Thomson Reuters Brasil 2023)

Justen Filho M, *Curso de Direito Administrativo* (Forense 2023)

Keyes W N, *Government Contracts under the Federal Acquisition Regulation* (3rd edn, Thomson West 2003)

Kröll S, Mistelis L and Perales Viscasillas P (eds), *UN Convention on Contracts for the International Sale of Goods (CISG): Article-by-Article Commentary* (2nd edn, CH Beck/Hart/Nomos 2018)

Lemaire S, *Les contrats internationaux de l'administration* (LGDJ 2005)

Perales Viscasillas P, ‘Modification and Termination of the Contract (Art. 29 CISG)’ (2005–06) 25 J L & Com 167

Perales Viscasillas P, ‘Applicable Law, the CISG, and the Future Convention on International Commercial Contracts’ (2013) 58 Vill L Rev 733

Pereira C, ‘Application of the CISG to International Government Contracts for the Procurement of Goods’ (2023) 2 Review of the Kopaonik School of Natural Law 157

Pereira C, Souza-McMurtrie L and Galan L, ‘Government Contracts and the CISG: Frenemies?’ (ARIA Blog, 5 November 2024) <https://aria.law.columbia.edu/government-contracts-and-the-cisg-frenemies/> accessed 23 September 2026

Pereira C, Souza-McMurtrie L and Galan L, ‘Auction and Auction-like Processes under the CISG: Two Peas in a Pod?’ (Ciarb News, 15 November 2024) <https://www.ciarb.org/news-listing/auction-and-auction-like-processes-under-the-cisg-two-peas-in-a-pod/> accessed 23 September 2026

Reynolds P, ‘Legitimate Expectations and the Protection of Trust in Public Officials’ [2011] PL 330

Schill S W, ‘Transnational Legal Approaches to Administrative Law: Conceptualizing Public Contracts in Globalization’ (2014) 1 Rivista Trimestrale di Diritto Pubblico

Schill S W, ‘The Impact of International Investment Law on Public Contracts’ (2017) Amsterdam Law School Legal Studies Research Paper No 2017-08

Schlechtriem P, ‘Unification of the Law for the International Sale of Goods’ in *German National Reports (Private Law and Civil Procedure): XIIth International Congress of Comparative Law* (Nomos 1987)

Schmidt-Aßmann E, *La teoría general del derecho administrativo como sistema* (Marcial Pons 2003)

Schmidt-Kessel M, ‘Article 11’ in Schwenzer I (ed), *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)* (4th edn, OUP 2016)

Schroeter U G, ‘Die Anwendbarkeit des UN-Kaufrechts auf grenzüberschreitende Versteigerungen und Internet-Auktionen’ [2004] ZEuP 20

Schroeter U G, ‘Contract Validity and the CISG’ (2017) 22 Unif L Rev 47

Schroeter U G, ‘Grenzfragen des Anwendungsbereichs und international einheitliche Auslegung des UN-Kaufrechts (CISG): Zugleich Anmerkung zu Appellationsgericht Basel-Stadt vom 24.8.2018 – ZB.2017.20 (AG.2018.557)’ [2019] IHR 133

Schroeter U G, ‘Article 29’ in Schwenzer I and Schroeter U G (eds), *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022)

Schwenzer I, ‘Introduction’ in Schwenzer I and Schroeter U G (eds), *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022)

Sono K, ‘Commentary on the Convention on the Limitation Period in the International Sale of Goods’ UN Doc A/CONF.63/17, reproduced in (1979) X UNCITRAL Yearbook 145

Willems D, ‘Application of the CISG to Contracts with Public Authorities’ in Heiderhoff B and Queirolo I (eds), *EU and Private Law: Trending Topics in Contracts, Successions, and Civil Liability* (Editoriale Scientifica 2023)

Ziegel J S, ‘The Scope of the Convention: Reaching Out to Article One and Beyond’ (2005–06) 25 J L & Com 59

6. Annexes

6.1. Annex 1 – Case law on the application of the CISG to international public procurement and government contracts

6.2. Annex 2 – Scholarly writings on the application of the CISG to international public procurement and government contracts