

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;
- (d) Of stocks, shares, investment securities, negotiable instruments or money;
- (e) Of ships, vessels, hovercraft or aircraft;
- (f) Of electricity.

OVERVIEW

1. This provision identifies an exhaustive list¹ of sales that are excluded from the Convention's sphere of application. This provision requires courts to determine whether the sale compares to one of the kinds excluded from the Convention's sphere of application before applying the Convention.²
2. The exclusions referred to in article 2 are of three types: those based on the purpose for which the goods were purchased, those based on the type of transaction, and those based on the kinds of goods sold.³

CONSUMER SALES

3. According to article 2 (a), a sale falls outside the Convention's sphere of application when it relates to goods which at the time of the conclusion of the contract are intended to be used exclusively⁴ for personal, family or household use.⁵ It is the buyer's intention at the time of the conclusion of the contract that is relevant,⁶ rather than the buyer's actual use of the goods.⁷ Thus, the purchase of a car,⁸ a motorcycle⁹ or a recreational trailer¹⁰ for exclusive personal use may fall outside the Convention's sphere of application¹¹ as may the sale of leisure boats¹² (which is also excluded pursuant to article 2 (e)).¹³ The same is true as regards "the purchases by tourists, border inhabitants, or by mail order for the purposes of personal, family or household use".¹⁴
4. If the goods are purchased for a commercial or professional purpose, such as furniture to be used in a law firm¹⁵ or a used car to be resold by a car retailer,¹⁶ the sale does not fall outside the Convention's sphere of application,¹⁷ even in those cases where the use to which the individual intends to put the goods is also a personal, household or family use,¹⁸ since only the intended exclusive personal, family or household use excludes the sale from the Convention's sphere of application. Thus, the following situations are governed by the Convention: the purchase of a camera by a professional photographer for use in his business; the purchase of a piece of soap or other toiletries by a business for the personal use

of its employees; the purchase of a single automobile by a dealer for resale.¹⁹

5. If goods are purchased for the aforementioned "personal, family or household use" purposes, the Convention is inapplicable "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".²⁰ This means that the Convention does not apply only if the personal, family or household use was known to the seller or was apparent.²¹ To determine whether the intended personal, family or household use was apparent, resort is to be had, *inter alia*, to objective elements,²² such as the nature of the goods,²³ the quantity of the goods²⁴ and the delivery address.²⁵ The seller can therefore not recognize the intention of personal use if the buyer denominates the sale as "dealer's transaction" ("Händlergeschäft") and signs with "Fa." (for firm) before his name.²⁶ In case law, it has been pointed out that the Convention does not impose upon the seller an obligation to make inquiries into the intended use of the goods.²⁷
6. If this "unless" clause is satisfied CISG applies, provided the other requirements for its applicability are met. This narrows the reach of the article 2 (a) exception, and leads to the possibility of a conflict between domestic consumer protection law and the Convention in those cases where applicability of the domestic law does not require that the seller either knew or ought to have known of the buyer's intended use.²⁸

OTHER EXCLUSIONS

7. The exclusion of sales by auction (article 2 (b)) covers auctions resulting from authority of law as well as private auctions.²⁹ Sales at commodity exchanges do not fall under the exclusion, since they merely constitute a particular way of concluding the contract.
8. Under article 2 (c) sales on judicial or administrative execution or otherwise by authority of law are excluded from the Convention's sphere of application as such sales

are normally governed by mandatory laws of the State under whose authority the execution is made.

9. The exclusion of sales of stocks, investment securities, and negotiable instruments (article 2 (*d*)) is intended to avoid a conflict with mandatory rules of domestic law.³⁰ Documentary sales do not fall within this exclusion. The sale of money is also excluded pursuant to article 2 (*d*). One arbitral tribunal applied the Convention to the sale of souvenir coins.³¹

10. Under article 2 (*e*) sales of ships³² (including sailboats³³ and leisure boats³⁴), vessels, aircraft,³⁵ and hovercraft are

also excluded from the Convention. However, sales of parts of ships, vessels, aircraft, and hovercraft—including essential components, such as engines³⁶—may be governed by the Convention since exclusions from the Convention's sphere of application must be interpreted restrictively. According to one arbitral tribunal, the sale of a decommissioned military submarine is not excluded by virtue of article 2 (*e*).³⁷

11. Although the sale of electricity is excluded from the Convention's sphere of application (article 2 (*f*)), a court has applied the Convention to the sale of propane gas.³⁸

Notes

¹For an express reference to the list being exhaustive, see Oberlandesgericht Schleswig-Holstein, Germany, 29 October 2002, English translation available on the Internet at www.cisg.law.pace.edu.

²For a court decision referring to the lack of applicability of any of the exclusions listed in article 2 as a requirement for the Convention to apply, see U.S. District Court, Southern District of New York, United States, 29 May 2009, available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht München, Germany, 14 January 2009, English translation available at www.cisg.law.pace.edu; Landgericht Landshut, Germany, 12 June 2008, English translation available at www.cisg.law.pace.edu; U.S. District Court, Southern District of New York, United States, 23 August 2006, available on the Internet at www.cisg.law.pace.edu; Landgericht Gera, Germany, 29 June 2006, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 880 [Tribunal cantonal de Vaud, Switzerland, 11 April 2002]; Oberlandesgericht Hamm, Germany, 12 November 2001, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 480 [Cour d'appel de Colmar, France, 12 June 2001]; Landgericht Landshut, Germany, 5 April 1995, English translation available on the Internet at www.cisg.law.pace.edu; Amtsgericht Cloppenburg, Germany, 14 April 1993, English translation available on the Internet at www.cisg.law.pace.edu. For similar reasoning, albeit relating solely to the exclusion provided for in article 2 (*a*), see Oberlandesgericht Hamm, Germany, 2 April 2009, in *Internationales Handelsrecht*, 2010, 61; Obergericht Aargau, Switzerland, 3 March 2009, available on the Internet at www.cisg-online.ch; Hof s'-Gravenhage, the Netherlands, 17 February 2009, unpublished; Polimeles Protodikio Athinon, Greece, 2009 (docket No. 4505/2009), English translation available on the Internet at www.cisg.law.pace.edu; Bundesgericht, Switzerland, 16 December 2008, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Bamberg, Germany, 23 October 2006, English translation available on the Internet at www.cisg.law.pace.edu; Rechtbank Arnhem, the Netherlands, 1 March 2006, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Neubrandenburg, Germany, 3 August 2005, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Kiel, Germany, 27 July 2004, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 590 [Landgericht Saarbrücken, Germany, 1 June 2004]; CLOUT case No. 549 [Audiencia Provincial de Valencia, Spain, 7 June 2003]; Hof 's-Hertogenbosch, the Netherlands, 25 February 2003, unpublished; Landgericht Saarbrücken, Germany, 25 November 2002, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht Saarbrücken, Germany, 2 July 2002, English translation available on the Internet at www.cisg.law.pace.edu; Landgericht München, Germany, 20 February 2002, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 341 [Ontario Superior Court of Justice, Canada, 31 August 1999]; CLOUT case No. 410 [Amtsgericht Alsfeld, Germany, 12 May 1995]; Landgericht Oldenburg, Germany, 15 February 1995, available on the Internet at www.cisg-online.ch; Landgericht Oldenburg, Germany, 9 November 1994, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 199 [Tribunal cantonal du Valais, Switzerland, 29 June 1994]; CLOUT case No. 201 [Gerichtspräsident Laufen, Switzerland, 7 May 1993].

³United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 16.

⁴For an express reference to the need for this requirement to be met to exclude the Convention's applicability pursuant to article 2 (*a*), see CLOUT case No. 992 [Retting i København, Denmark, 19 October 2007].

⁵For this statement in case law, see Oberlandesgericht Hamm, Germany, 2 April 2009, in *Internationales Handelsrecht*, 2010, 61.

⁶See CLOUT case No. 445 [Bundesgerichtshof, Germany, 31 October 2001], also in *Internationales Handelsrecht*, 2002, 16.

⁷See CLOUT case No. 190 [Oberster Gerichtshof, Austria, 11 February 1997].

⁸See CLOUT case No. 190 [Oberster Gerichtshof, Austria, 11 February 1997]; CLOUT case No. 213 [Kantonsgericht Nidwalden, Switzerland, 5 June 1996].

⁹Rechtbank Harleem, the Netherlands, 15 December 2005, available on the Internet at www.cisg-online.ch.

¹⁰See Rechtbank Arnhem, the Netherlands, 27 May 1993, *Nederlands Internationaal Privaatrecht*, 1994, No. 261.

¹¹See, however, Landgericht Düsseldorf, Germany, 11 October 1995, Unilex (applying the Convention to the sale of a generator destined for personal use).

¹²Efetio Pireos, Greece, 2008 (docket number 520/2008), available on the Internet at www.cisg.law.pace.edu.

¹³Ibid.

¹⁴See CLOUT case No. 904 [Tribunal cantonal du Jura, Switzerland, 3 November 2004], English translation available on the Internet at www.cisg.law.pace.edu.

¹⁵Landgericht Bamberg, Germany, 13 April 2005, English translation available on the Internet at www.cisg.law.pace.edu.

¹⁶Landgericht Köln, Germany, 16 November 1995, available on the Internet at www.cisg-online.ch.

¹⁷For an express statement to this effect, see See CLOUT case No. 904 [Tribunal cantonal du Jura, Switzerland, 3 November 2004], English translation available on the Internet at www.cisg.law.pace.edu.

¹⁸See CLOUT case No. 843 [Korkein oikeus, Finland, 14 October 2005], English translation available on the Internet at www.cisg.law.pace.edu.

¹⁹For these examples, see United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 16.

²⁰See Oberlandesgericht Hamm, Germany, 2 April 2009, in *Internationales Handelsrecht*, 2010, 61; CLOUT case No. 445 [Bundesgerichtshof, Germany, 31 October 2001], also in *Internationales Handelsrecht*, 2002, 16.

²¹See CLOUT case No. 1232 [Oberlandesgericht Stuttgart, Germany, 31 March 2008], English translation available on the Internet at www.cisg.law.pace.edu, applying the Convention to the sale of a car, since the intended personal use was not apparent.

²²For this statement, see Oberlandesgericht Hamm, Germany, 2 April 2009, in *Internationales Handelsrecht*, 2010, 61.

²³For an express reference to the nature of the goods as an element to be taken into account when determining whether the personal, family or household use was apparent, see Oberlandesgericht Hamm, Germany, 2 April 2009, in *Internationales Handelsrecht*, 2010, 61 (car); Oberster Gerichtshof, Austria, 10 September 2003, unpublished (Christmas decoration).

²⁴See CLOUT case No. 904 [Tribunal cantonal du Jura, Switzerland, 3 November 2004], English translation available on the Internet at www.cisg.law.pace.edu.

²⁵Ibid.

²⁶Oberlandesgericht Hamm, Germany, 12 September 2011, *Internationales Handelsrecht* 2012, 241 = CISG-online No. 2533.

²⁷Oberlandesgericht Hamm, Germany, 2 April 2009, in *Internationales Handelsrecht*, 2010, 61.

²⁸CLOUT case No. 445 [Bundesgerichtshof, Germany, 31 October 2001], also in *Internationales Handelsrecht*, 2002, 16.

²⁹For a court not applying the Convention due to the sale being a sale by private auction, see Bundesgerichtshof, Germany, 2 October 2002, available on the Internet at www.cisg-online.ch.

³⁰For decisions excluding the Convention's applicability to the sale of shares, see CLOUT case No. 260 [Cour de Justice de Genève, Switzerland, 1998]; Zurich Chamber of Commerce Arbitral Tribunal, ZHK 273/95, *Yearbook Commercial Arbitration*, 1998, 128 ff.

³¹CLOUT case No. 988 [China International Economic and Trade Arbitration Commission, People's Republic of China, 2000 (Arbitral award No. CISG/2000/17)], English translation available on the Internet at www.cisg.law.pace.edu.

³²For cases of inapplicability of the Convention to contract for the sale of ships, see Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 6 April 1998, English translation available on the Internet at www.cisg.law.pace.edu; Foreign Trade Court of Arbitration attached to the Yugoslav Chamber of Commerce, Serbia, 15 April 1999, available on the Internet at www.cisg.law.pace.edu.

³³See Rechtbank Middleburg, the Netherlands, 2 April 2008, Unilex.

³⁴Efetio Pireos, Greece, 2008 (docket number 520/2008), available on the Internet at www.cisg.law.pace.edu. See Hof Leeuwarden, the Netherlands, 31 August 2005, English translation available on the Internet at www.cisg.law.pace.edu, applying the Convention to the sale of a boat.

³⁵For the inapplicability of the Convention to a contract for the sale of an aircraft, see Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 2 September 1997, available on the Internet at www.cisg.law.pace.edu.

³⁶See CLOUT case No. 53 [Legfelsőbb Biróság, Hungary, 25 September 1992].

³⁷See Russian Maritime Commission Arbitral Tribunal, 18 December 1998, available on the Internet at www.cisg.law.pace.edu.

³⁸See CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996].