

Article 96

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29 or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

INTRODUCTION

1. Some States consider it important that contracts and related matters—such as contract modifications, consensual contract terminations, and even communications that are part of the contract formation process—be in writing. Articles 12 and 96 of the Convention work together to permit a Contracting State to make a declaration that recognizes this policy: a reservation under article 96 operates, as provided in article 12,¹ to prevent the application of any provision of article 11, article 29 or Part II of the Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, where any party has his place of business in that Contracting State.² Article 96, however, limits the availability of the declaration to those Contracting States whose legislation requires contracts of sale to be concluded in or evidenced by writing. To date Argentina,³ Armenia,⁴ Belarus,⁵ Chile,⁶ Latvia,⁷ Lithuania,⁸ Paraguay,⁹ Russian Federation,¹⁰ and Ukraine¹¹ have made article 96 declarations.¹²

SPHERE OF APPLICATION AND EFFECTS

2. Both the language and the drafting history of article 12 confirm that, under the provision, an article 96 declaration

operates only against the informality effects of article 11, article 29, or Part II of this Convention; thus article 12 does not cover all notices or indications of intention under the Convention, but is confined to those that relate to the expression of the contract itself, or to its formation, modification or termination by agreement.¹³

3. Article 12 provides that the Convention's freedom-from-form-requirements principle is not directly applicable where one party has its relevant place of business in a State that made a declaration under article 96,¹⁴ but different views exist as to the further effects of such a declaration. According to one view, the mere fact that one party has its place of business in a State that made an article 96 declaration does not necessarily bring the form requirements of that State into play;¹⁵ instead, the applicable form requirements—if any—will depend on the rules of private international law (“PIL”) of the forum. Under this approach, if PIL rules lead to the law of a State that made an article 96 reservation, the form requirements of that State will apply; where, on the other hand, the law of a Contracting State that did not make an article 96 reservation is applicable, the freedom-from-form-requirements rule of article 11 governs.¹⁶ Another view is that, if one party has its relevant place of business in an article 96 reservatory State, writing requirements apply.¹⁷

Notes

¹ As provided in the second sentence of article 12—and as confirmed by the drafting history of the provision, the text of article 6, and case law—article 12, unlike most provisions of the Convention, cannot be derogated from. See the Digest for article 12.

² For this statement, albeit with reference to the draft provisions contained in the 1978 Draft Convention, 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 of the Main Committee, 1981, 20.

³ Effective 19 July 1983 upon accession.

⁴ Effective 2 December 2008 upon accession.

⁵ Effective 9 October 1989 upon accession.

⁶ Effective 7 February 1990 upon ratification.

⁷ Effective 31 July 1997 upon accession.

⁸ Effective 18 January 1995 upon accession.

⁹ Effective 13 January 2006 upon accession.

¹⁰ Effective 16 August 1990 upon accession.

¹¹ Effective 3 January 1990 upon accession.

¹² Estonia made an article 96 declaration upon ratification of the Convention on 20 September 1983; however, on 9 March 2004 Estonia withdrew the declaration.

¹³ 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, 20.

¹⁴ See *Rechtbank van Koophandel Hassel*, Belgium, 2 May 1995, available on the Internet at www.law.kuleuven.be, information in English available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 534 [Oberster Gerichtshof, Austria, 17 December 2003], English translation available on the Internet at www.cisg.law.pace.edu; China International Economic & Trade Arbitration Commission, People's Republic of China, 6 September 1996, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 1170 [China International Economic & Trade Arbitration Commission, People's Republic of China, 31 December 1997], English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 770 [Economic & Trade Arbitration Commission, People's Republic of China, 29 March 1999], English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 52 [Fovárosi Birosag] Budapest, Hungary, 24 March 1992], English translation available on the Internet at www.cisg.law.pace.edu. Note, however, that the People's Republic of China has withdrawn a previous article 96 declaration (effective 11 December 1986 upon approval) as of 1 August 2013, see Press release UNIS/L/180 (18 January 2013), available on the Internet at <http://www.unis.unvienna.org/unis/pressrels/2013/unis180.html>.

¹⁵ *Rechtbank Rotterdam*, Netherlands, 12 July 2001, *Nederlands Internationaal Privaatrecht*, 2001, No. 278, English translation available on the Internet at www.cisg.law.pace.edu; U.S. Court of Appeals (3rd Circuit), United States, 21 July 2010 (*Forestal Guarani, S.A. v. Daros International, Inc.*), available on the Internet at www.cisg.law.pace.edu.

¹⁶ *Rechtbank Rotterdam*, Netherlands, 12 July 2001, *Nederlands Internationaal Privaatrecht*, 2001, No. 278, English translation available on the Internet at www.cisg.law.pace.edu; Hoge Raad, Netherlands, 7 November 1997, available on the Internet at www.unilex.info, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 52 [Fovárosi Biróság, Hungary, 24 March 1992], English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 1194 [Comision pare la Proteccion del Comercio Exterior de Mexico, Mexico, 29 April 1996] (*Conservas La Costena v. Lanin*), English translation available on the Internet at www.cisg.law.pace.edu; U.S. Court of Appeals (3rd Circuit), United States, 21 July 2010 (*Forestal Guarani, S.A. v. Daros International, Inc.*), available on the Internet at www.cisg.law.pace.edu (applying choice-of-law rules from forum state to determine which form requirements govern claim).

¹⁷ The High Arbitration Court of the Russian Federation, Russian Federation, 16 February 1998, information available on the Internet at www.cisg.law.pace.edu; *Rechtbank van Koophandel Hasselt*, Belgium, 2 May 1995, available on the Internet at www.law.kuleuven.be, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 534 [Oberster Gerichtshof], Austria, 17 December 2003, English translation available on the Internet at www.cisg.law.pace.edu; China International Economic & Trade Arbitration Commission, People's Republic of China, 6 September 1996, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 1170 [China International Economic & Trade Arbitration Commission, People's Republic of China, 31 December 1997], English translation available on the Internet at www.cisg.law.pace.edu; Vysshii Arbitrazhnyi Sud Rossyiskoi Federatsii, Russian Federation, 25 March 1997, English translation available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 16 February 2004, English translation available on the Internet at www.cisg.law.pace.edu; U.S. District Court, Southern District of Florida, United States, 19 May 2008 (*Zhejiang Shaoxing Yongli Pringing and Dyeing Co., Ltd v. Microflock Textile Group Corporation*), available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 9 June 2004, English translation available on the Internet at www.cisg.law.pace.edu.