

insofar as the masculine form is used this refers to all genders (f/m/other) on equal terms (except for individual persons)

International Sales Contracts (including workshop: case studies)

Erasmus+ Teaching Staff Mobility for Teaching
UNWE University of National and World Economy, Sofia
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International Sales Contracts

Introduction

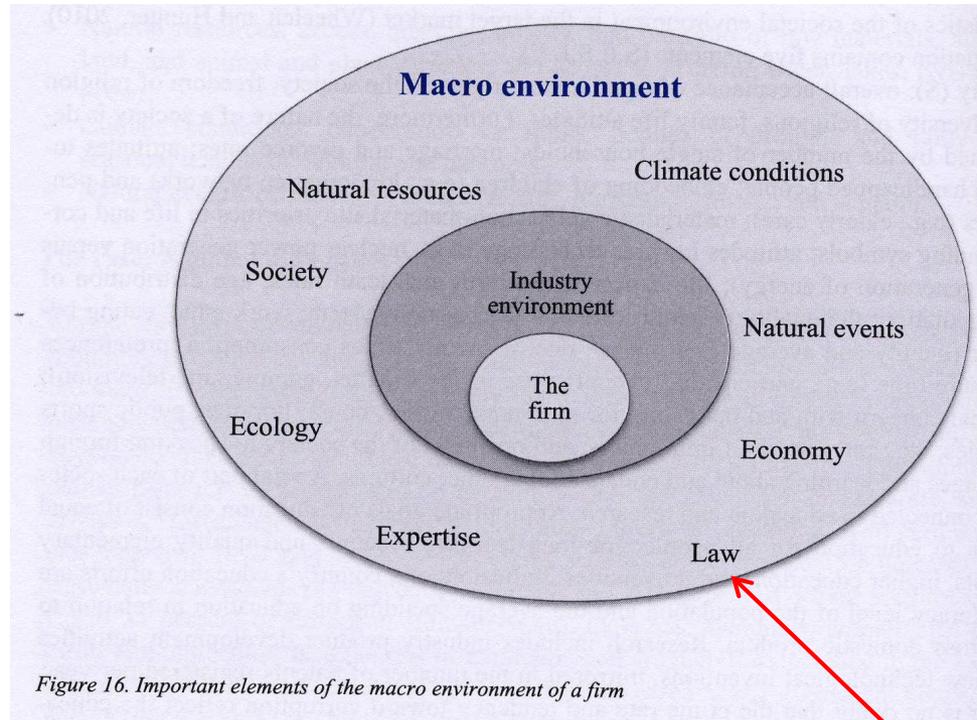
1. Basics and Practice of International Contract Law (including Sales Contracts)
2. In short: Determining the applicable law in transborder cases/ Conflict of laws rules (as far as these rules are needed with regard to international sales contracts)
3. The international sale of goods – CISG (United Nations Convention on Contracts for the International Sale of Goods) = Vienna Convention

Literature

- *M. Bogdan*, Concise Introduction to EU Private International Law, 3rd ed. Groningen 2016
- *C. P. Gillette*, Advanced Introduction to International Sales Law, Cheltenham 2016
- *M. Herdegen*, Principles of International Economic Law, 2nd ed. Oxford 2016
- *ICC (International Chamber of Commerce)*, Incoterms 2020, Paris, 2019
- *J. Lookofsky*, Understanding the CISG, 5th ed. Copenhagen 2017
- *R. Schütze*, European Union Law, 2nd ed. Cambridge 2019
- *I. Schwenzer et al.*, International Sales Law, 2nd ed. Oxford et al. 2012
- *P. Stone*, EU Private International Law, 4rd ed. Cheltenham 2018
- *M. Trebilcock*, Advanced Introduction to International Trade Law, Cheltenham et al. 2015
- *J. Ziller*, Advanced introduction to European Union law, Cheltenham 2019

Introduction

International Business Environment: macro environment of a company



Quelle: M. Glowik & S. Smyczek (2011) International Marketing Management, München: Oldenbourg, p. 70

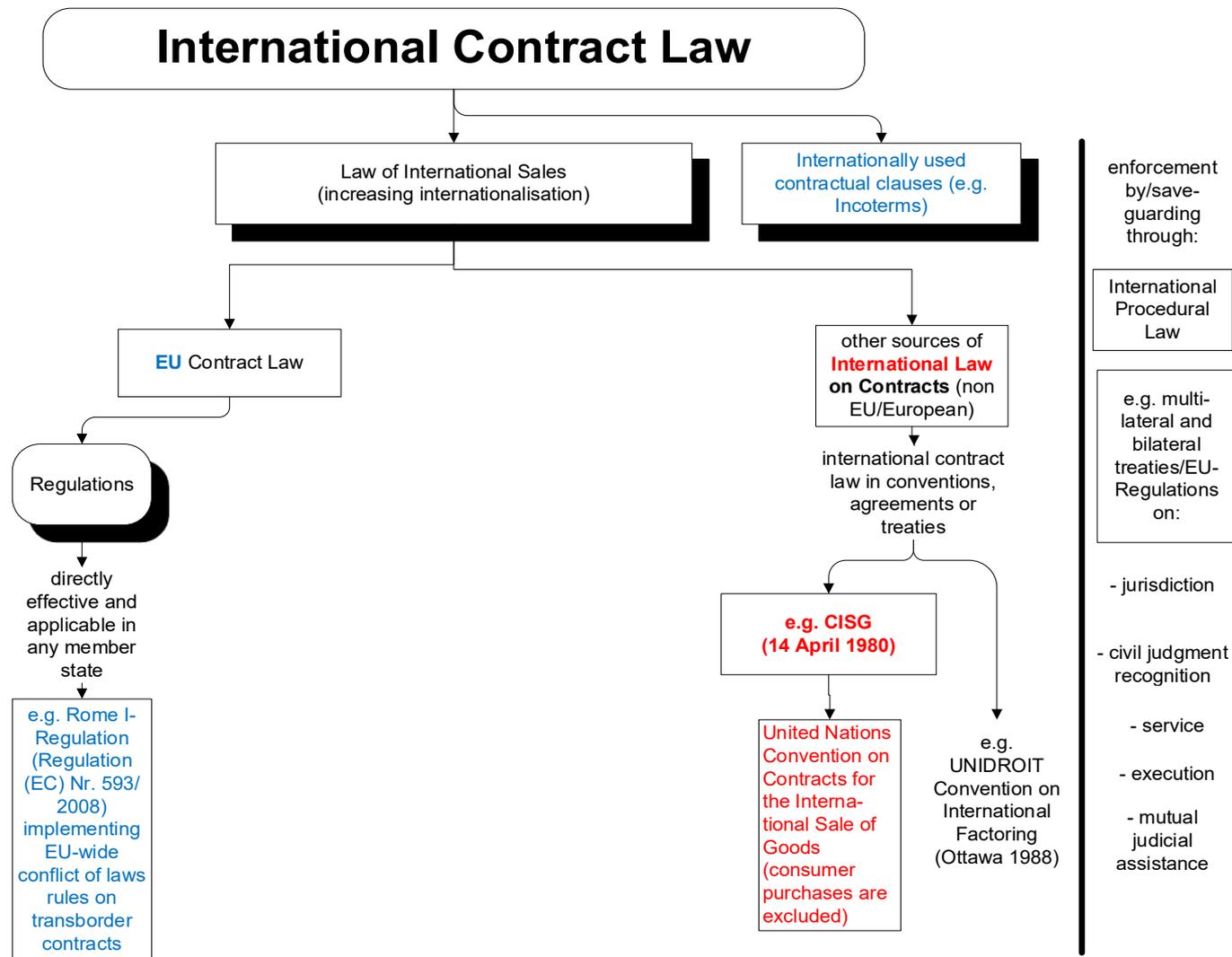
1. Basics and Practice of International Contract Law including sales contracts

1.1 International Contract Law

International contract law is not centered in one legal text. International contract law is hybrid law. It is a **patchwork of laws of various legal sources**, implemented by various players:

- by the EU legislator → [Regulation \(EC\) 593/2008 on the law applicable to contractual obligations \(Rome I Regulation\)](#)
- by means of **international conventions**/agreements/treaties (concluded between states) and ratified by the respective national legislator → **CISG**
- by „soft law“ (created by nonlegislators) → Incoterms 2020, by ICC.

International Contract Law (main components)



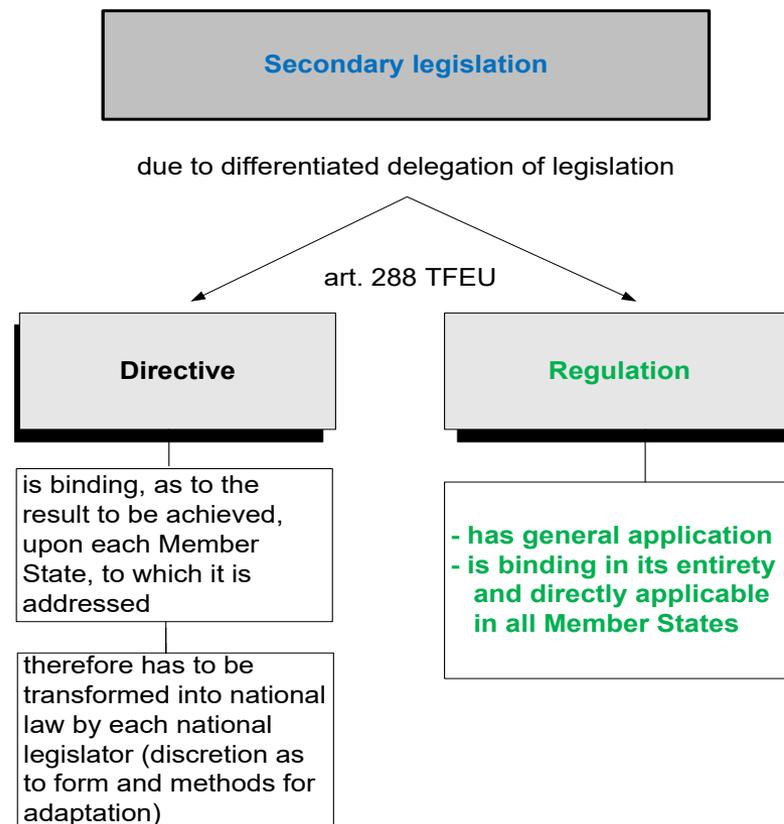
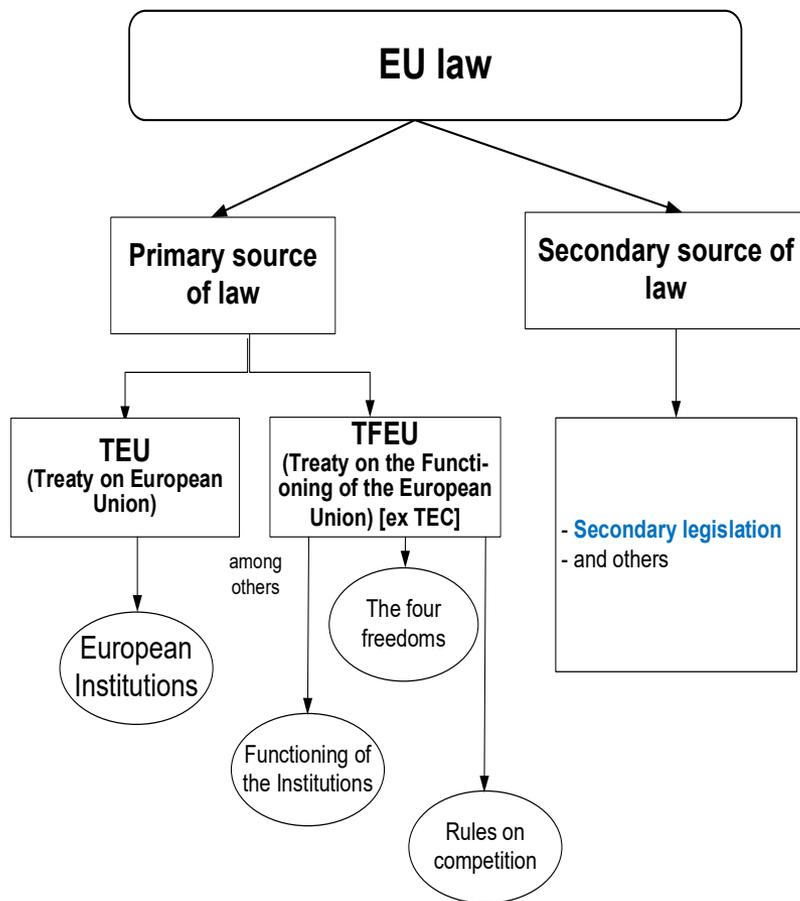
EU law (EU regulations) is valid law in Bulgaria.

The EU after Brexit: 27 Member States and 445 million citizens (Euro zone: 342 million)



Source: http://europa.eu/about-eu/countries/index_en.htm

What is EU law?



How is international law being made?

- There is no legislator with power to legislate law with worldwide effect!
- The only way to create international law is by means of international conventions or agreements.
- Any state in the world has discretion whether to join an international convention or not (international conventions usually are open to all states for signature).
- Incorporation of international law into the national legal system by means of ratification (three steps: negotiating and signing of the convention by the national government, ratification by the national legislator and deposit of the ratification document signed by the head of state) [in Germany international conventions become part of Federal law (Art. 59(2) GG)].

TRANSPARENCY INTERNATIONAL
Deutschland e.V.

Themen Nachrichten Korruptionsindizes Publikationen Veranstaltungen Mitmachen Über uns

Entwicklungszusammenarbeit | Europäische Union | Finanzmarkt | Gesundheitswesen | Hinweisgeber | Informationsfreiheit | Internationale Medien | Pflege und Betreuung | Politik | Sport | Strafrecht | Verwaltung | Vergabewesen | Wissenschaft | Wirtschaft | Zivilg

Transparency International Deutschland e.V. / Themen / Internationales / UN-Konvention

Vereinte Nationen (UN)

CORRUPTION
Your **NO** counts

Wichtigstes Ereignis auf Ebene der Vereinten Nationen ist die UN-Konvention gegen Korruption, die Deutschland gemeinsam mit 110 anderen Staaten am 9. Dezember 2003 in Merida, Mexiko unterzeichnet hat. Die am 31. Oktober 2003 durch die Generalversammlung der Vereinten Nationen verabschiedete Konvention ist das Resultat dreijähriger

140 Bundesgesetzblatt Jahrgang 2015 Teil II Nr. 4, ausgegeben zu Bonn am 5. Februar 2015

**Bekanntmachung
über das Inkrafttreten
des Übereinkommens der Vereinten Nationen gegen Korruption**

Vom 8. Januar 2015

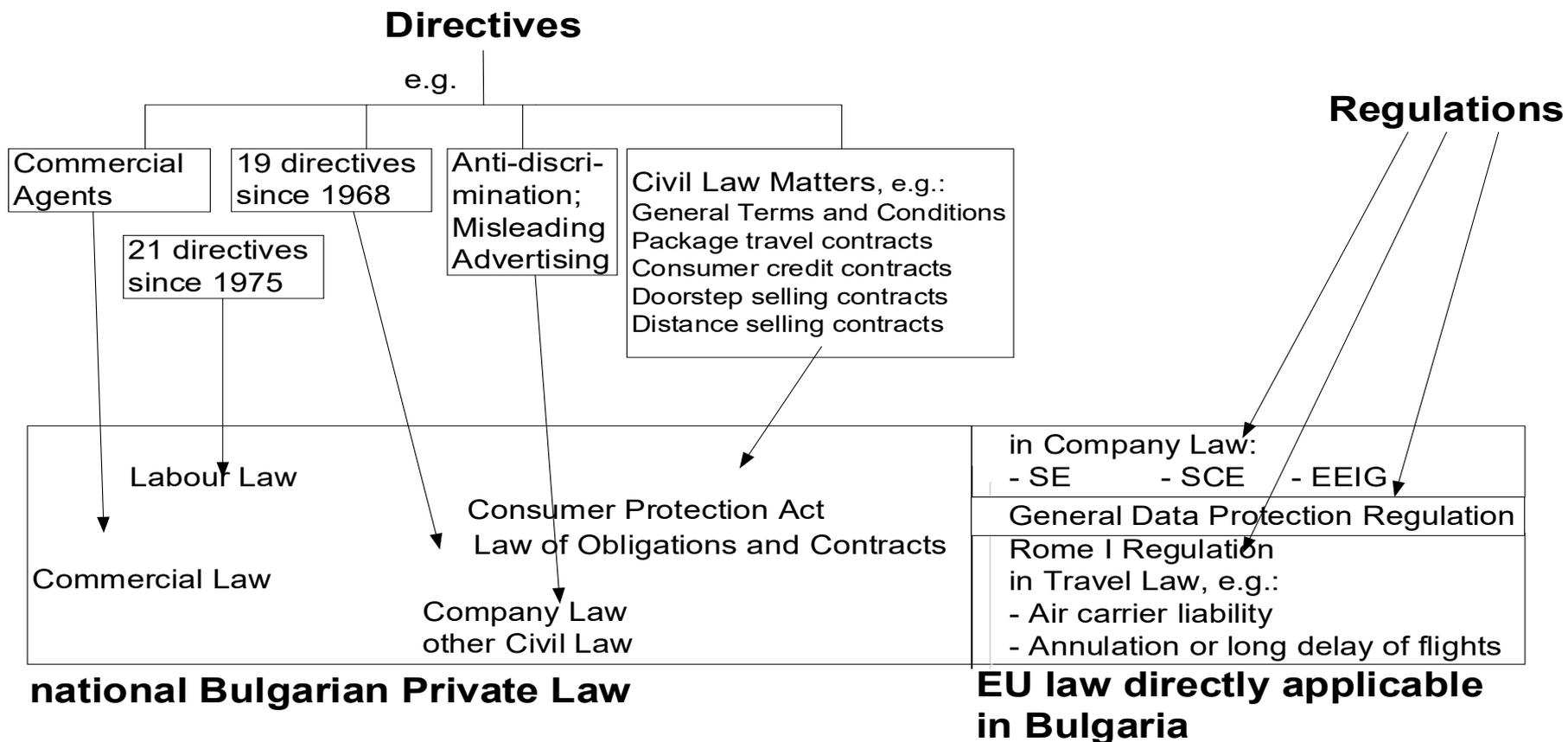
I.

Nach Artikel 2 Absatz 2 des Gesetzes vom 27. Oktober 2014 zu dem Übereinkommen der Vereinten Nationen vom 31. Oktober 2003 gegen Korruption (BGBl. 2014 II S. 762, 763) wird bekannt gemacht, dass das Übereinkommen nach seinem Artikel 68 Absatz 2 für die

Bundesrepublik Deutschland am 12. Dezember 2014 in Kraft getreten ist.

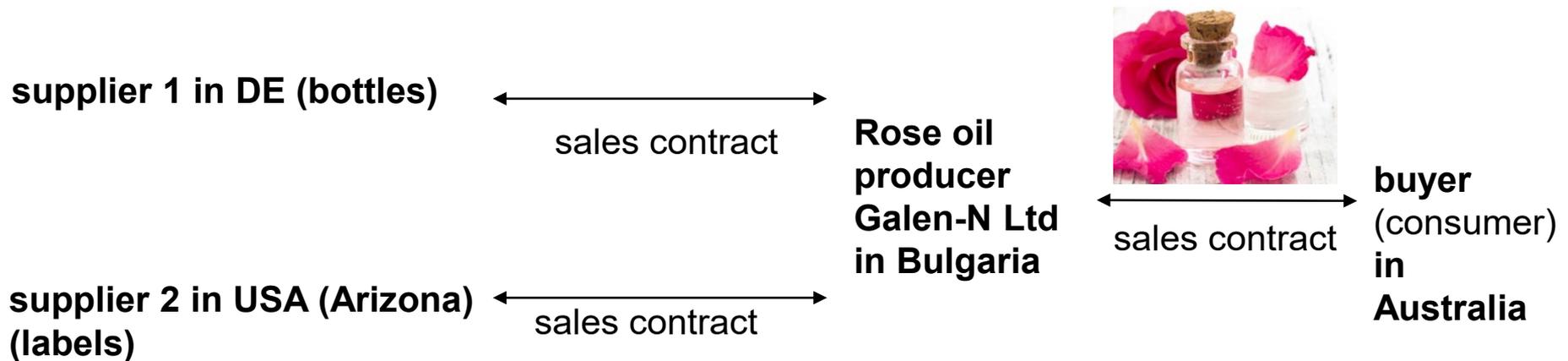
Die deutsche Ratifikationsurkunde ist am 12. November 2014 beim Generalsekretär der Vereinten Nationen in New York hinterlegt worden.

Influences of EU law on the law valid in Bulgaria



{ sum of legal rules valid in Bulgaria in selected fields of private law }

International Contract Law (which legal system has to be applied to sales contracts?)



- If we want to conclude a transborder contract and the situation is covered by a ratified international agreement (especially **the CISG**), that agreement has priority of application (details later).
- (If CISG is not applied, details later) as soon as we want to conclude a transborder contract or we have to solve legal issues of a transborder contract we always have to ask the very first question: **Which national law is applicable to our contract?** (here possibly: Bulgarian, German, US or Australian national law?)

The question:

„Which (national) law is applicable to that contract?“

= **„Which (national) law governs the contract?“**

leads to so-called

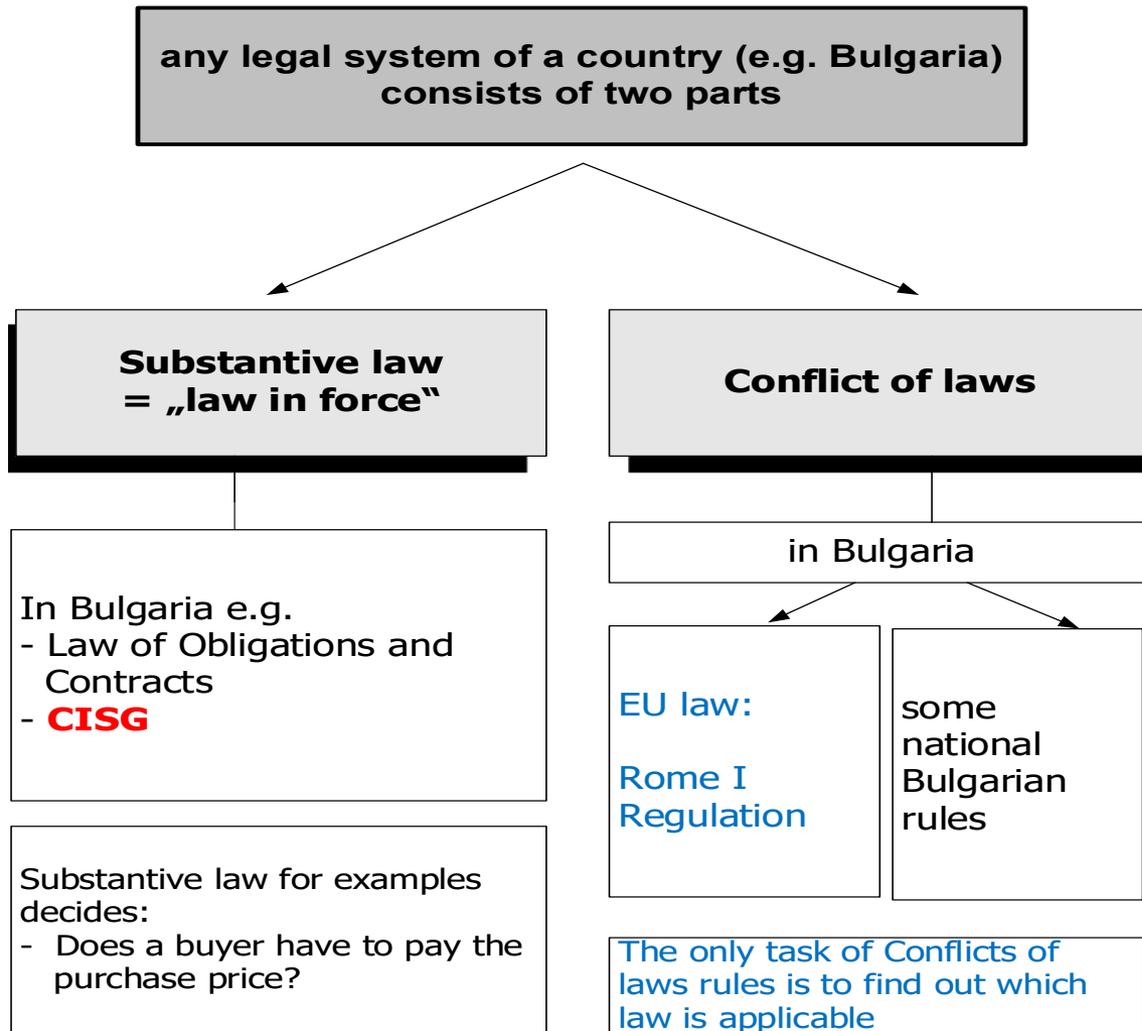
➤ **Private International Law = Conflict of laws rules**

Today, within the EU Member States important parts of Private International Law are governed by EU law

→ mainly **Rome I-Regulation of the EU, dealing with the law applicable to contractual obligations.**

Solution of our case study „Rose Oil“:

- the sales contract between Azimut (buyer) and supplier 1 and 2 (sellers) is governed by **CISG** (details later)
- the sales contract between N-Galen (seller) and the Australian consumer (buyer) is governed by Bulgarian law (according to **art. 4(1)(a) of EU-Regulation Rome I**)

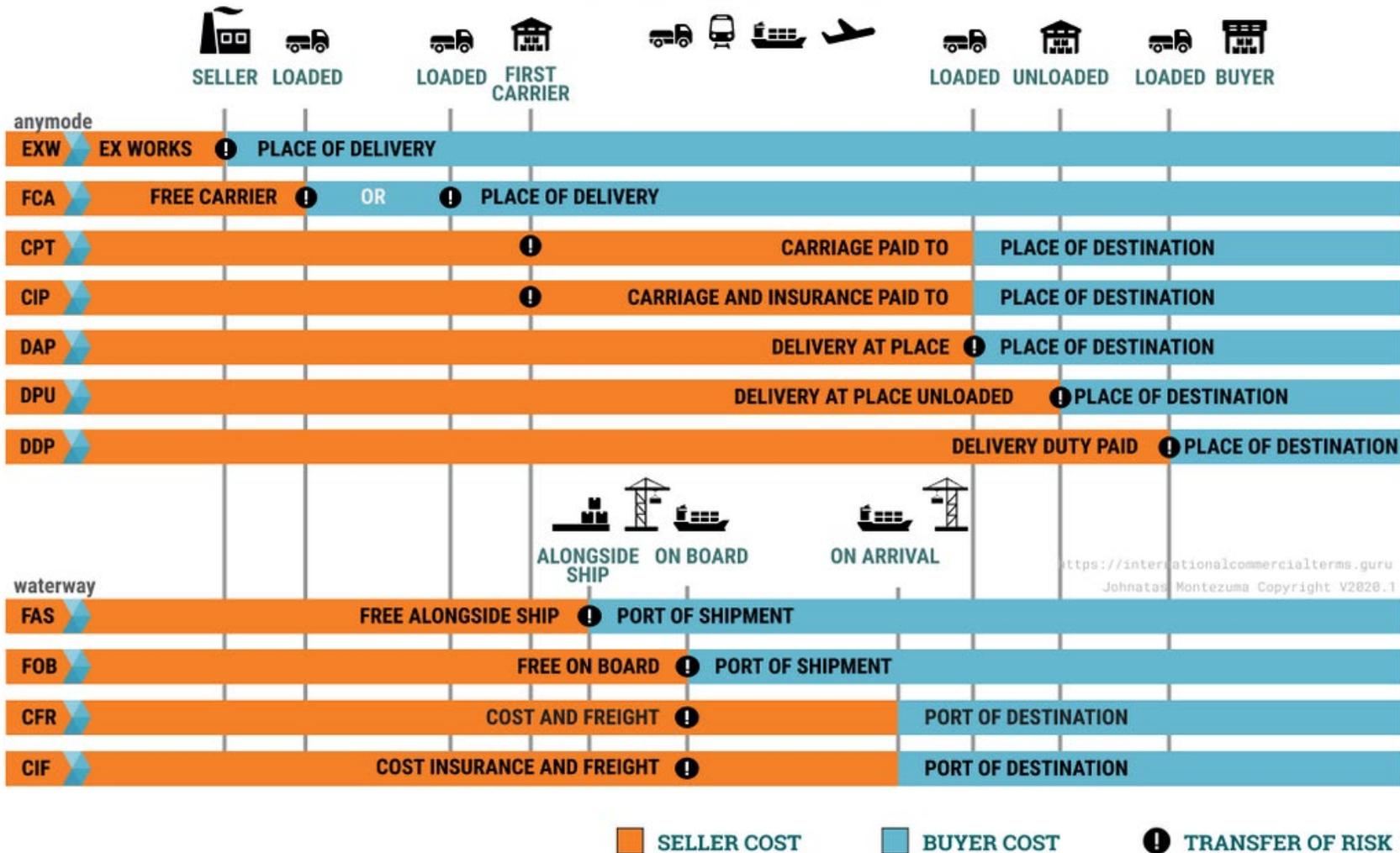


Often business people combine CISG with a rule of Incoterms® 2020

The Incoterms:

- Incoterms® are not set up by a legislator. Rather, they are a proposal by ICC (International Chamber of Commerce, Paris).
- Incoterms® are a set of international rules for the interpretation of 11 trade terms published by ICC. They are the most widely used private trade terms. They are easy to understand. The responsibilities are simply and clearly defined by referring to one of the Incoterms® rules. Incoterms are especially important in **Logistics**.
- An Incoterms® rule chosen by the parties is effective as a part of the contract only if the parties have integrated the rule expressly into the contract.
Example: »FCA ul. "8-mi dekemvri“, Sofia/BG, Incoterms® 2020« .
- At the moment we use **Incoterms® 2020** which came into force on 1 January 2020 (be cautious: Incoterms® 2010 are phased out).
- Incoterms proposes solution for two legal questions:
 - who pays for transportation
 - who bears the risk of transport.

INCOTERMS® 2020



source: <https://internationalcommercialterms.guru/> ;

similar: https://www.hdi.global/downloadcenter/DE_de/Transport/Englisch/20191025_404-TRP114_Incoterms2020_engl.pdf

similar: <https://www.dhl.com/content/dam/dhl/global/dhl-global-forwarding/documents/pdf/glo-dgf-incoterms-2020-brochure.pdf>

Internationally used clauses: Incoterms® 2010 (cont.): The content

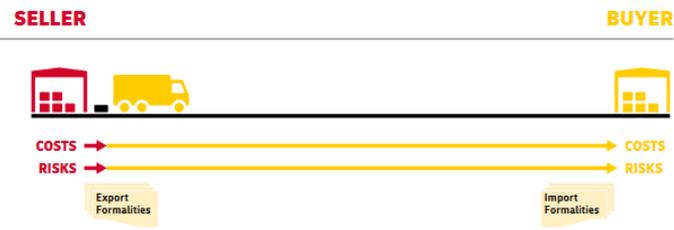
TRANSPORT OBLIGATIONS, COSTS AND RISKS

RED indicates seller's
YELLOW indicates buyer's
GREEN indicates mixed or shared

RULES FOR ANY MODE OR MODES OF TRANSPORT

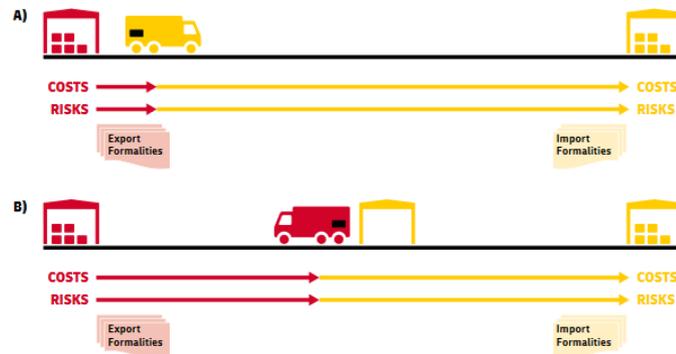
EXW

Ex Works
 (Insert named place of delivery)*
 Incoterms® 2020



FCA

Free Carrier
 (Insert named place of delivery)*
 Incoterms® 2020



CPT

Carriage Paid To
 (Insert named place of destination)*
 Incoterms® 2020



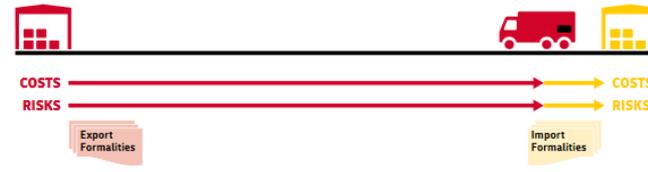
CIP

Carriage and Insurance Paid To
 (Insert named place of destination)*
 Incoterms® 2020



DAP

Delivered at Place
 (Insert named place of destination)*
 Incoterms® 2020



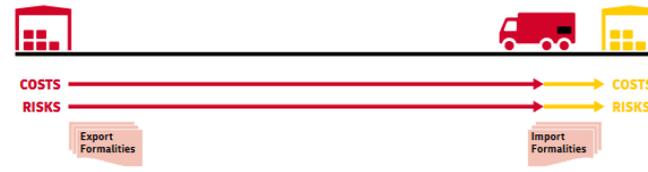
DPU

Delivered at Place Unloaded
 (Insert named place of destination)*
 Incoterms® 2020



DDP

Delivered Duty Paid
 (Insert named place of destination)*
 Incoterms® 2020



RULES FOR SEA AND INLAND WATERWAY TRANSPORT

FAS

Free Alongside Ship

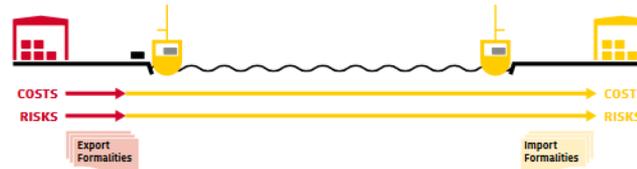
(Insert named port of shipment)*

Incoterms® 2020



SELLER

BUYER

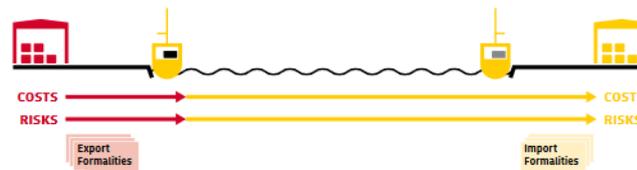


FOB

Free on Board

(Insert named port of shipment)*

Incoterms® 2020



CFR

Cost and Freight

(Insert named port of destination)*

Incoterms® 2020

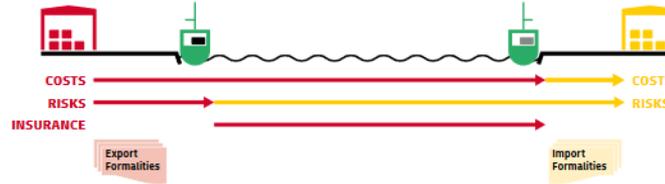


CIF

Cost, Insurance and Freight

(Insert named port of destination)*

Incoterms® 2020



**2. (as far as we need those provisions for international sales contracts):
Conflict of Laws rules**

Conflict of laws rules determine which national law is applicable if we conclude a transborder contract, including a sales contract

Integrated workshop: case study: *A consumer living in Sofia buys a used men's wedding suit from a consumer living in Saarbrücken/Germany by phone; they agree that Austrian law governs the contract.*

Question: *What is the duty of the seller? → the answer seems to be clear: to deliver the suit, however: based on which legal rule?*

- on German BGB (§ 433 I 1) or

- on Bulgarian law (Law of Obligations and Contracts)?

➤ Which law is applicable? To identify the applicable law we use **Conflict of laws rules** = Private International Law → **Rome I Regulation of the EU**

→ **Art. 3(1) Rome I Regulation:** The EU grants their citizens/entrepreneurs freedom including freedom of contracting: The parties have the right to freely choose the applicable law (in our case study: for the whole of the contract). The choice of the parties is made expressly and clear: Austrian law is chosen.

→ therefore our solution: Austrian substantive law governs the sales contract.

Flow chart on the approach how to solve the question “which law governs the contract?”

*transborder
contract*

→ *which law is
applicable?*

→ *use of
Conflict of
laws rules*

↓
*[which Conflict
of laws rules?*

↓
lex fori principle]

↓
*Conflict of laws
rules valid in
Bulgaria*

→ *Rome I
Regulation*

↓
*use of the
respective
rule (e.g. art.
3(1)*

→ *the substantive law of
country X is applicable*

Conflict of laws rules determine which national law is applicable if we conclude a transborder contract, including a sales contract

case study: *A consumer living in Sofia buys a used men's wedding suit from a consumer living in Saarbrücken/Germany by phone.*

Question: *What is the duty of the seller?*

→ **Art. 4(1)(a) Rome I Regulation:** If the parties did not use their freedom to choose the applicable law a contract for the **sale of goods** is governed by the law of the country where the seller has his habitual residence:

→ seller has habitual residence in Germany;

→ therefore our solution: German substantive law governs the sales contract.

Rome I Regulation deals with transborder issues of

- sales contracts
- service contracts
- rental contracts on immovable goods (e.g. renting of storage rooms)
- contracts of carriage of goods and passengers → case study below
- consumer contracts
- insurance contracts
- individual employment contracts → case study below
- and others

case studies (carriage of goods – logistics)

Manufacturer F from F-Fontainebleau concludes a contract with Bulgarian logistics ITX from Sofia on the carriage of a machinery from Fontainebleau to company MTG Dolphin in Varna.

→ art. 5(1) sentence 1: Bulgarian substantive law

Manufacturer F from F-Fontainebleau concludes a contract with Bulgarian logistics company ITX from Sofia on the carriage of a machinery from Fontainebleau to company Beta in D-Berlin.

→ art. 5(1) sentence 2: German substantive law

If the customer (consignor) is a consumer, art. 6 dealing with „consumer contracts“ is not applicable (art. 6(4)(b)); such a logistics case is as well solved with art. 5(1).

case study

Student Maureen domiciling in Sofia concludes a 12 weeks study agreement on student work placement with tour operator K with head quarter in CH-Zürich. She will work in K's tour guide office in South-Africa at the border between South-Africa and Mozambique. Every Monday she will work in K's office in Mozambique.*

** [Switzerland ist not a Member State of the EU]*

→ art. 8(2), art. 2:
South-African substantive law
applies

3. The international sale of goods according to CISG

United Nations **C**onvention on Contracts for the **I**nternational **S**ale of **G**oods

signed in Vienna, 11 April 1980 (Vienna Convention)

The United Nations reports that **94 States** have adopted the CISG.

→ Status (= list of contracting parties):

https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status

→ the legendary, but old fashioned CISG song (first published 1999), by Prof.

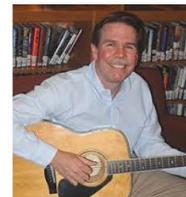
Flechtner, University of Pittsburg/US, <https://www.youtube.com/watch?v=1n9YvPuDTb0>



The CISG Song - Professor Harry Flechtner ...
youtube.com



Vis Moot Song 2017: Harry Flechtner and Inge...
youtube.com



The CISG Song | School ...
law.pitt.edu



The CISG Song - Professor Harry ...
youtube.com



2014 Vis Moot - Prof. Harry Flechtner perfor...
youtube.com

3. The international sale of goods - CISG



- **Missing in Europe:** United Kingdom, Ireland
- **Missing World:** e.g. India, South Africa

<http://www.iicl.law.pace.edu/cisg/page/cisg-table-contracting-states>

The impact of CISG (Online access)

Easy online access to CISG:

- The best and always up-dated list of Member States and of CISG material you may find on www.iicl.law.pace.edu/cisg/cisg
- The complete English version of CISG may be downloaded e.g. from the following homepages:
 - a) www.iicl.law.pace.edu/cisg/page/texts-cisg (all official languages and a variety of translations)
 - b) www.cisg-online.ch/materials-text.html

The application of CISG

- Art. 2(a) CISG excludes transborder sales contracts for private purposes from the application of CISG
→ CISG only applies to b2b sales contracts
- Art. 6 allows that the parties may exclude the application of CISG.
- CISG is **directly applicable** and no detour with Rome I Regulation is necessary **if according to Art. 1 CISG the CISG governs the sales contract.**

“Article 1

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

(a) when the States are Contracting States; or

(b) when the rules of private international law lead to the application of the law of a Contracting State.

(2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

(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.”

The application of CISG

case study

In Geneva/Switzerland the tree nursery T with headquarter in Sydney/Australia (T is owned by a German citizen) concludes an agreement with market gardener Y from Sofia (Y is an Ukrainian citizen) about the delivery of 10,000 eucalyptus trees.

Does CISG govern this contract (Bulgaria and Australia are signatory states)?

art 1(1)(a) CISG

“Article 1

- (1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:*
 - (a) when the States are Contracting States; or*
 - (b) when the rules of private international law lead to the application of the law of a Contracting State.*
- (2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.*
- (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.“*

Full solution of the case study „Tree nursery T“

In this case study the question has to be answered if **CISG** governs the contract.

1. Bulgarian substantive law includes CISG as the Bulgarian legislator has ratified CISG and has integrated it into the substantive law of Bulgaria. Therefore **CISG** can be **applied directly** without the need to use Rome I Regulation.
2. But that **priority is only given if CISG is applicable according to art. 1(1) CISG**.
3. Not of relevance are the (German or Ukrainian) nationalities of the parties (art. 1(3) CISG).
4. Not of relevance is where the contract has been concluded (in Switzerland).
5. Therefore, it must be examined whether CISG is applicable to the contract pursuant to art. 1(1)(a) CISG.
 - a) The contract deals with the sale of goods (trees are movable things = goods).
 - b) The parties have place of business in different countries:
 - T in Australia
 - Y in Bulgaria
 - c) Australia and Bulgaria are both signatory states of CISG.
6. Result: The transborder contract is governed by CISG.

case study

Sofia based entrepreneur X (buyer) concludes a sales contract on the delivery of 1,5 t of meat with London's slaughterhouse/meat dealer Lionel (seller), agreeing upon the choice of Bulgarian law. The United Kingdom is not a member state of CISG. Is this contract governed by CISG?

1-2: cf solution of previous case study.

3. It should be examined whether **CISG** is applicable to the contract pursuant to art. 1(1)(a) **CISG**.
 - a) The contract deals with the sale of goods (meat).
 - b) The parties have place of business in different countries (X in Bulgaria and L in UK-England)
 - c) Bulgaria is a signatory state, UK (including England) not.
 - d) Therefore **CISG** is not applicable according to art. **1(1)(a)**.
4. It has to be examined whether CISG is applicable according to art. **1(1)(b) CISG**. This is the case if the Conflict of laws rules lead to the application of the substantive law of a member state. As the party validly have chosen Bulgarian law ([art. 3\(1\)\(1\) Rome I Regulation](#)), and as Bulgaria is a signatory state of CISG the contract is governed by Bulgarian law. Bulgarian law includes CISG.
5. Result: CISG is applicable to our contract (art. 1(1)(b) CISG).

case study

Sofia based logistics company D buys a container ship from ship manufacturer F in France. Is this purchase governed by CISG?

art. 2 e) CISG

CISG does not apply to sales of ships, vessels, hovercraft or aircraft (art. 2e CISG)

→ According to [art. 4\(1\)\(a\) Rome I Regulation](#) this sales contract (sale of the container ship) is governed by French law, because the seller has habitual residence in France.

How a contract pursuant to CISG is concluded

according art. 14-24 CISG



**1) definite proposal to
a specific person**

**2) proposal reaches the
offeree**

**3) offeree accepts the
offer
[modification constitutes
a counter-offer]**

**4) indication of assent
reaches the offeror**

The contractual obligations of the parties and relating claims

Main obligations of the seller (art. 30-44):

- general rule: art 30
- obligations to deliver the goods and to hand over the documents: art. 31-34
- obligation to deliver goods conform with the contract: art. 35-44
articles 35-44 include the obligation of the buyer to examine the goods and to give notice to the seller, art. 39(1) – otherwise the buyer loses the right to rely on a lack of conformity of the goods!
- obligation to transfer the property: art. 30
[law governing the transfer of property → national Bulgarian Conflict of laws rules apply]
- in case of a breach of contract: claims of the buyer: art. 45-52.

Main obligations of the buyer (art. 53-60):

- general rule: art. 53
- obligation to pay the price: art. 54-59
- obligation to take delivery: art. 60
- (obligation to examine the good and to give notice to the seller: art. 38 and 39, [art. 43])
- in case of a breach of contract: claims of the seller: art. 61-65.

Which issues does CISG cover and which not?

Main issues governed by the CISG (especially art. 4 sentence 1):

- application of the CISG
- formation of the sales contract
- obligations of the parties including remedies for a non-performance or for a breach of the contract
- passing of risk.

Main issues not covered by the CISG (especially art. 4 and art 5):

- validity of the contract or of a provision of the contract (e.g. missing legal capacity of a party)
- transfer of the property of the good sold
- art. 7(2): → substantive law of the applicable legal system = Bulgarian rules apply

Breach of contract by the seller (art. 45-52):

- legal basis for the claim: art 45 + art ...
- claim of performance: art. 46(1)
- warranty claim of substitute delivery: art. 46(2)
- warranty claim to declare the contract avoided: art. 49
- warranty claim for a reduction in the price: art. 50
- warranty claim for damages: art. 74-77.

Breach of contract by the buyer (art. 61-65):

- legal basis for the claim: art. 61 + art ...
- pecuniary claim: art. 62
- claim to take delivery: art. 62
- claim to declare the contract avoided: art. 64
- claim for damages: art. 74-77
- interest claim: art. 78.

Passing of risk according to CISG, if parties have not decided to integrate on of the Incoterms rules into the sales contract

- art. 66-70
- If the contract involves carriage:
 - if the seller has the duty to hand the goods over at a particular place: risk passes at that place: art. 67(1)(1)
 - if nothing is specified in the contract: risk passes when and where according to the contract the goods are handed over to the first carrier: art 67(1)(1) last part of the sentence.
- However, if the parties use one of the Incoterms 2020 clauses, that clause has priority and substitutes art. 67 CISG.

Sample of a contract: sale agreement pursuant to the CISG

➤ **see additional document**