

THE ISSUE OF UNIFORM SALES REGULATION AT EUROPEAN UNION LEVEL

Dan VELICU

lecturer - Faculty of International Relations and Administration
Nicolae Titulescu University
Attorney at law-Bucharest Bar Association (dan.velicu@univnt.ro)

ABSTRACT

The debate regarding the uniformization of European private law can be placed chronologically at least in the first decades of the nineteenth century.

The political unification of the German states has shown that after the formation of a custom union and a common market, commercial legislation can be created at the level of the confederation, legislation that will have the effect of strengthening trade relations in a first stage and political and administrative consolidation in a later stage.

Unfortunately, the interwar initiatives to standardize private law at European level failed with the exception of the international conventions on bills of exchange, promissory notes and cheques.

The resumption of the process of worldwide standardization under the aegis of the UN has recorded only a few notable successes, including the adoption of the Vienna Convention on the International Sale of Goods in 1980.

The process of harmonisation of global commercial law preceded the legislative harmonisation pursued by the founding States of the European Communities.

Against the background in which the interest in ratifying international conventions in the field of commercial law has decreased significantly, but the European Union institutions have been involved in standardizing some segments of private law, the entire vision of uniformity must be revised.

This study aims to provide some conclusions on the recent trends of uniformity of commercial law at the level of the European Union in relation to the sources of international trade law.

Keywords: *international sale of goods, European Union law, business law, European business code, uniform law*

1.Introduction

1.1. As it is well known, the international sale of goods is regulated by an international treaty, officially known as the Convention on Contracts for the International Sale of Goods, adopted in Vienna on 11 April 1980 (abbreviated in the literature as the CISG and the Convention in this study), an act which continues to remain one of the pillars of international trade law despite the fact that it has been ratified by just over half of the UN member states.

However, the fact that its text has become an integral part of the legislation of 97 states today and, above all, because most of the states are home to the most important actors in international trade, leads us to consider that the uniform regulation has been a real success, one of the few large-scale projects promoted by the UN that has been imposed in the decades following its adoption.

In the European Union at the time of writing this study, with the exception of Ireland, the Convention has been ratified by 26 Member States plus the Member States of the European Economic Area (see Table below).

As such, the provisions of the Convention have become applicable to all sales of goods concluded between parties having their registered office in different states when these states are contracting states or when the rules of private international law lead to the application of the law of a contracting state (art.1).

However, not all sales of goods will have fallen under the Convention. Thus, according to the provisions of art. 2, the following sales are and remain excluded:

- a) goods purchased for personal, family or household use, unless the seller, at any time before the conclusion or at the time of the conclusion of the contract, did not know or was not considered to know that these goods were purchased for such use;
- b) at auctions;
- c) from seizure or carried out in any other way by the judicial authorities;
- d) securities, commercial papers and currencies;
- e) ships, ships, hovercraft and aircraft;
- f) electricity.

Table - CISG Contracting States by entry into force

Contracting State	Since	Reservations (currently in effect)
Portugal	1 October 2021	
Cyprus	1 April 2006	
Greece	1 February 1999	
Latvia	1 August 1998	
Luxembourg	1 February 1998	
Belgium	1 November 1997	
Poland	1 June 1996	
Lithuania	1 February 1996	
Estonia	1 October 1994	
Czech Republic	1 January 1993	
Slovak Republic	1 January 1993	Art. 95
Romania	1 June 1992	
Netherlands	1 January 1992	Art. 93
Croatia	8 October 1991	
Bulgaria	1 August 1991	
Spain	1 August 1991	
Slovenia	25 June 1991	
Germany	1 January 1991	declaration regarding Art. 95
Denmark	1 March 1990	Art. 93; Art. 94 (1), (2)
Austria	1 January 1989	
Finland	1 January 1989	Art. 94 (1), (2)
Sweden	1 January 1989	Art. 94 (1), (2)
France	1 January 1988	
Hungary	1 January 1988	
Italy	1 January 1988	

Source: <https://cisg-online.org/cisg-contracting-states/chronological-order>

Consequently, it is clear from the wording of the first two articles of the Convention that the authors of the Convention intended to provide a regulation intended for the exchange of goods between parties of different nationalities by excluding the sale of goods to consumers or certain sales which, by their material object or special procedure, are either intrinsically linked to national law, or could cause impediments in the ratification procedure.

In other words, what was sought was a standardization of the regulation of the sale of goods that are characterized by less particular features (movable goods sold between traders and intended for unrestricted marketing).

1.2. In parallel with the ratification of the Convention, the Community institutions supported, on the one hand, the drafting of complex legislation aimed at the marketing of goods on the internal market of the future European Union and, on the other, the drafting of legislation designed protect the consumers.

1.3. As is well known, although the Treaty of Rome, like the Treaty signed in Lisbon, requires the recognition of the four freedoms as fundamental principles of the economic mechanisms of the European Community and, subsequently, of the European Union, there is a complete lack of uniform regulation of the sale of goods, a regulation which is an integral part of European Union law.

In other words, at present, the contract for the sale of goods is governed in principle by the Convention as an international act, but not by a normative act of the European Union, although the standardization of the regulation in this area is clearly an indirect concretization of the freedom of movement of goods, since uniformity removes a barrier to the sale of goods on the domestic market.

1.4. In response to such a situation, the European Commission drafted a proposal for a Regulation of the European Parliament and of the Council on Common European Sales Law in 2011 .

According to the cited document, it is found that "at the international level, the Vienna Convention on the International Sale of Goods (Vienna Convention) applies by default whenever the parties have not chosen to apply another law. The Vienna Convention regulates certain aspects of contracts for the sale and purchase of goods, but does not address important issues, such as defects of consent, unfair contract terms and prescription. Other limitations on its applicability result from the fact that not all Member States have signed the Vienna Convention and there is no mechanism that could ensure uniform interpretation" .

On the other hand, according to paragraph 12 of the Preamble, it is stated that since the Common European Sales Law contains a complete set of fully harmonised mandatory rules in the field of consumer protection, there will be no discrepancies between the laws of the Member States in this area if the parties have opted for its application .

2.Preliminary conclusions.

2.1. The existence of national regulations on sales, both those governing purely civil sales or the general rules on sales and those governing commercial sales are relatively different.

The transfer of ownership of movable property takes place on French territory by the simple agreement of the parties and on German territory only by handing them over to the buyer, an action of a manifestly material nature.

Differences in laws constitute a less visible obstacle in contracts between traders of different nationalities or a barrier to the free movement of goods. Eliminating these differences would allow for increased cross-border operations and the application of uniform rules known to both sides.

2.2. Even if there is no regulation of European origin, the International Convention on the matter applies as indicated in all the Member States of the European Union, with the exception of Ireland, constituting a stable and legally known source.

On the other hand, irrespective of the major interests of the European Union, even if they were to dictate the drafting of legislation superior to the Convention, the latter cannot be questioned or marginalised, since it constitutes and will probably constitute for a long time the fundamental legal instrument used in trade relations with large industrialised states such as the United States of America or China or with states with emerging economies such as those of the BRICS.

2.3. As a result, on the one hand, the Member States of the European Union have a regulation of the sale of goods within their national legislation and this must constitute a starting point for legislative uniformity.

3.A potential wrong path? Brief milestone conclusions

3.1. In recent decades, the existence of a 'business law' has been argued on the basis of the findings or beliefs of prestigious French authors.

It was thus concluded that "commercial law", as a branch of law, is outdated by the realities of current economic life and, therefore, should be replaced by "business law" that would cover the complex social relations of today at the center of which the entrepreneur or enterprise is located .

By somewhat forced analogy, but accepted in the literature, it has been considered that the business law of the European Union is a branch of European law, which mainly regulates the use of the single currency, the concretization of the four fundamental freedoms and the regulation of competition in the European Union .

3.2. The need for uniformity has now been answered with a new draft, namely that of a European Business Code .

This, based on the existence of 13 books, contains extremely diverse provisions starting with the concept of professional and market and ending with provisions related to the field of insolvency, intellectual property, labour relations or taxation.

An initial observation that deserves extensive discussion is the almost complete neglect of the regulation of commercial contracts and, mainly, of sales.

It is true that, as we have shown, the regulation provided by the Convention remains a solid source of law for international sales on the internal market of the European Union.

However, the failure of uniform regulation of sales including sales to consumers does not justify an entirely opposite approach.

3.3. From our point of view, we cannot conceive of a European Business Code without a broad regulation of the sale of goods, and the safest argument in this regard is the very lack of concretization of Articles 28 and 29 TFEU.

In this perspective, the text of the Convention should be taken up separately in the future European Business Code in order to provide a certain and well-known instrument for economic operators based in the territory of the European Union or in the territory of third countries.

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