Part one. Sphere of application and general provisions

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 sales that are excluded from the Convention’s sphere of application. The exclusions 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

2. According to article 2 (a), a sale falls outside the Convention’s sphere of application if it relates to goods which at the time of the conclusion of the contract are intended to be used personally, in the family or in the household. It is the buyer’s intention at the time of the conclusion of the contract that is relevant,\(^2\) rather than the buyer’s actual use of the goods.\(^3\) Thus, the purchase of a car or a recreational trailer\(^5\) for personal use falls outside the Convention’s sphere of application.\(^6\)

3. If the goods are purchased by an individual for a commercial or professional purpose, the sale does not fall outside 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 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.\(^7\)

4. 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”.\(^8\) If this “unless” clause is satisfied the 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.\(^9\)

OTHER EXCLUSIONS

5. The exclusion of sales by auction (article 2 (b)) covers auctions resulting from authority of law as well as private auctions. Sales at commodity exchanges do not fall under the exclusion, as they merely constitute a particular way of concluding the contract.

6. 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.

7. 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.\(^10\) Documentary sales do not fall within this exclusion.

8. Under article 2 (e) sales of ships,\(^11\) vessels, aircraft,\(^12\) and hovercraft are also excluded from the Convention. However, sales of parts of ships, vessels, aircraft, and hovercraft—including essential components, such as engines—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 article 2 (e).\(^13\)

9. Although the sale of electricity is excluded from the Convention’s sphere of application (article 2 (f)), a court has applied the Convention to a sale of propane gas.\(^15\)
Notes


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

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

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


7 For these examples, see Official Records, supra note 1, at 16.

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

9 Id.

10 For decisions excluding the Convention’s applicability to the sale of shares, see CLOUT case No. 260, Switzerland, 1998; Zurich Chamber of Commerce Arbitral Tribunal, ZHK 273/95, Yearbook Commercial Arbitration, 1998, 128 ff.


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