

Article 57

(1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

(a) At the seller's place of business; or

(b) If the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

(2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

INTRODUCTION

1. Article 57 (1) defines the place where payment is to be made, setting out three rules. First, the parties may have contractually specified the place of payment, in which case the buyer must pay the price at that place ("If the buyer is not bound to pay the price at any other particular place," article 57 (1)). Secondly, in the absence of an express or implicit choice, the buyer must pay the price at the place where the handing over of the goods or documents takes place against payment (article 57 (1) (b)). Thirdly, where the parties have not agreed on a place for payment and payment does not have to be made against handover of the goods or documents, the buyer must pay the price at the seller's place of business (article 57 (1) (a)). By thus determining the place of payment, article 57 (1) indirectly settles the question of who bears the risks of loss of the funds allocated for payment and the risks of delay in remittance of the funds.

2. After the conclusion of the contract, the seller might change its place of business, which under article 57 (1) (a) may be the place for payment. In that case, article 57 (2) provides that any increase in the expenses incidental to payment that is caused by the change is to be borne by the seller.

3. Article 57 is often referred to in case law. In addition to its direct effects, article 57 plays an indirect role, which manifests itself particularly in connection with the currency of payment¹ or with regard to determining the court having international jurisdiction.²

CHOICE OF PLACE OF PAYMENT BY THE PARTIES

4. As is stated in the Secretariat Commentary, "the contract will usually contain specific provisions on the (...) place of payment".³ The choice of place may be express or implicit.⁴ The use of payment clauses often determines implicitly the place of payment. This applies to a "cash against delivery" clause, under which payment has to be made at the place of handover.⁵ The indication of a bank account on an invoice from the seller is open to various interpretations. One court held that the mere indication

of a bank account on an invoice may be construed not as an offer to agree on a new place of payment but, on the contrary, as a simple authorization to pay the funds to that account.⁶ The place of payment may also be inferred from practices established between the parties (article 9 (1))⁷ or from commercial usages (article 9 (2)).

PAYMENT OF THE PRICE AGAINST THE HANDING OVER OF THE GOODS OR OF DOCUMENTS WHERE THE HANDING OVER TAKES PLACE (ARTICLE 57 (1) (b))

5. In cases where payment has to be made against the handing over of the goods or documents, article 57 (1) (b) requires the buyer to pay the price at the place of such handing over. Article 57 (1) (b) accordingly relates to the rule set forth in article 58 (1).⁸ It follows from this latter provision that handing over the goods simultaneously with payment of the price is the general rule, which will apply in the absence of any other agreement of the parties (article 58 (1), first sentence). In other words, for article 57 (1) (b) to be applicable there has to be simultaneous performance of the buyer's obligation to pay the price and of the seller's obligation to place the goods or documents at the buyer's disposal. This means that article 57 (1) (b) is inapplicable if one party is obliged to render performance before the other party is required to do so. That was the case in connection with a sale of an industrial plant where 30 per cent of the sale price was payable at the time of the order, 30 per cent at the beginning of assembly, 30 per cent on completion of assembly and 10 per cent on start-up.⁹ The inapplicability of article 57 (1) (b) also occurs, as was noted by one court, where the price is payable 30 days following presentation of the bill of lading.¹⁰

6. Article 57 (1) (b) treats handover of documents in the same way as handover of goods. The provision does not include a definition of documents. Insofar as article 57 (1) (b) reflects (in connection with the place of payment) the rule set forth in article 58 (1) regarding the time of payment, the term "documents" used in article 57 (1) (b) has the same meaning as under article 58 (1).¹¹

7. Where the contract involves carriage of the goods, the seller will generally perform the obligation to deliver before the buyer pays the price. In fact, the obligation to deliver consists, in a case of carriage, in “handing the goods over to the first carrier for transmission to the buyer” (article 31 (a)), whereas the buyer is not required to pay the price until the time when the seller places either the goods or documents controlling their disposition at the buyer’s disposal (article 58 (1)). However, under article 58 (2), the seller may make the dispatch of the goods subject to the condition that the goods or documents controlling their disposition will not be handed over to the buyer except against payment of the price. In that case, handing over the goods and payment of the price will be simultaneous, thus giving rise to application of article 57 (1) (b).

PAYMENT OF THE PRICE AT THE SELLER’S PLACE OF BUSINESS (ARTICLE 57 (1) (a))

8. Article 57 (1) (a) applies on a subsidiary level. Where a place of payment has not been agreed on by the parties or payment does not have to be effected against handover of the goods, the buyer must pay the seller at the seller’s place of business.¹² Article 57 (1) (a) therefore applies only if one party is required to perform its obligations before the other, in which case the price is payable at the seller’s place of business, unless otherwise agreed by the parties. Article 57 (1) (a) is thus applicable, as shown by various decisions, if the seller has to perform all or part of its obligations before the buyer is required to pay the price.¹³

CHANGE IN THE SELLER’S PLACE OF BUSINESS (ARTICLE 57 (2))

9. By providing that the seller must bear any increase in the buyer’s expenses incidental to payment that is caused by a change in the seller’s place of business subsequent to the conclusion of the contract, article 57 (2) implicitly imposes on the buyer the obligation to pay the price at the seller’s new address. The seller must accordingly inform the buyer of the change in a timely manner. Pursuant to the principle set forth in article 80 of the Convention, the seller would be unable to rely on any delay in payment of the price that is caused by late notification of its change of address.

10. A seller often assigns the right to receive payment of the sale price, in particular for refinancing purposes. If the place of payment is that of the seller’s business premises (article 57 (1) (a)), the question arises whether the buyer has to pay the price at the place of business of the assignor or that of the assignee. According to one decision, assignment of the right to receive the sale price results in the transfer of the place of payment from the business premises of the assignor to those of the assignee.¹⁴ That decision may be cited to support the view that article 57 (2) embodies a general principle, within the meaning of article 7 (2), which is applicable in the specific case of the assignment of debts. According to a different interpretation, not yet endorsed by case law, the effects of debt assignment on the place of payment of the price are governed by the law applicable according to choice-of-law rules.

PLACE OF PAYMENT OF THE PRICE AND JURISDICTIONAL COMPETENCE

11. Article 57 (1) can play a role in the determination of jurisdiction when the plaintiff is entitled to bring a case relating to a contractual matter before the court for the place of performance of the obligation forming the basis of the legal proceedings, by virtue of national laws¹⁵ or international instruments. Article 57 (1) has accordingly been applied in numerous court decisions in connection with both the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, of 27 September 1968, which is binding for the States of the European Union, and the Lugano Convention of 16 September 1988, which binds the States of the European Union together with those of the European Free Trade Association. These two instruments have since been replaced by Council Regulation No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and by the Lugano Convention of 30 October 2007. Council Regulation No. 44/2001 of 22 December 2000 applies whenever the defendant, whatever its nationality, is domiciled (article 2) or has its statutory seat, its central administration, or its principal place of business (article 60) in a State that is a member of the Union. A similar rule exists in the 1968 Brussels Convention (articles 2 and 53) and in the Lugano Conventions of 1988 (articles 2 and 53) and 2007 (articles 2 and 60). In relation to the two new instruments, i.e. the Regulation of 22 December 2000 and the 2007 Lugano Convention, article 57 CISG plays only a secondary role.¹⁶

12. Article 5.1 (b) of the 1968 Brussels Convention permits the plaintiff to sue the defendant, “in matters relating to a contract, in the courts for the place of performance of the obligation in question”. This same provision appears in the Lugano Convention of 16 September 1988 (article 5.1 (b)). The result of the combined application of article 5.1 (b) of the Brussels and Lugano Conventions and of CISG article 57 is that, in the case of an international sale governed by the Vienna Convention, a seller can take legal action to seek payment of the price from a defaulting buyer by suing that buyer before the court of the place of payment of the price instead of before the court of the buyer’s place of domicile (article 2 of the Brussels and Lugano Conventions). Any justifiable doubts as to the applicability of CISG article 57 in connection with the implementation of article 5.1 of the Brussels Convention were removed by the Court of Justice of the European Community. The latter in fact stated that the place of performance of the obligation to pay the price “must be determined pursuant to the substantive law applicable to the obligation in issue under the conflict rules of the court seized, even if those rules refer to the application to the contract of provisions such as those of the Uniform Law on the International Sale of Goods [ULIS], annexed to the Hague Convention of 1 July 1964”.¹⁷ What was held in regard to ULIS is, for the same reasons, also valid in respect of the Vienna Convention, which replaces ULIS. Decisions applying CISG article 57 in connection with the implementation of article 5.1 of the Brussels¹⁸ and Lugano¹⁹ Conventions have been numerous.

13. On 1 March 2002, in the countries of the European Union, Council Regulation No. 44/2001 of 22 December

2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters²⁰ entered into force, replacing the Brussels Convention.²¹ For those European States, article 57 of the United Nations Convention on Contracts for the International Sale of Goods ceases to play the role that it previously played in the determination of jurisdictional competence. The provisions on special jurisdiction in contractual matters are in fact revised by the new text. Although the principle rule whereby “[a] person domiciled in a Member State may, in another Member State, be sued: ... in matters relating to a contract, in the courts for the place of performance of the obligation in question” (article 5.1 (a)) is retained, the Regulation specifies the place of performance for two types of contracts—namely contracts for the sale of goods and contracts for the provision of services—unless otherwise agreed between the parties (article 5.1 (b)). For sales of goods, the place in question is “the place in a Member State where, under the contract, the goods were delivered or should have been delivered”. The Regulation accordingly establishes the place of delivery of the goods as a linking factor applicable to all claims relating to a contract for the sale of goods and not merely to claims founded on the obligation to deliver.²² This rule makes it possible to group together actions relating to a sales contract before the court of the place of delivery, whatever the obligations at issue might be. Thus, a claim for payment of the price must, by virtue of the special jurisdiction provision in article 5.1 (b), be filed with the court for the place of delivery of the goods.²³ Both “sale of goods”²⁴ and “place of delivery of the goods”²⁵ are autonomous concepts that have to be defined according to the origin, objectives and scheme of the Regulation.²⁶ The Lugano Convention of 30 October 2007 was aligned with Regulation No. 44/2001 in this and other areas. Article 5.1 of the new Lugano Convention is thus in all respects comparable to article 5.1 of Regulation No. 44/2001. Whether in connection with Regulation No. 44/2001 or the new Lugano Convention, CISG article 57 continues to play its traditional role when the place of delivery is not in a member State. In that case, the basic rule (article 5.1 (a)) is applicable and CISG article 57 retains all its importance if the seller sues the buyer for payment of the price in regard to a contract of sale governed by the Vienna Convention. Similarly, the parties are at liberty to derogate from article 5.1 (b) of the Council Regulation, in which case CISG article 57 will resume its traditional role in the determination of the court having jurisdiction to hear the action for non-payment of the price.²⁷

APPLICATION OF ARTICLE 57 (1) TO SUMS OF MONEY OTHER THAN THE PRICE

14. The question arises whether article 57 (1) is also applicable to determine the place for payment of monetary obligations other than the price. Various courts have been faced with this difficulty in connection with claims for damages and claims for restitution of all or part of the price or payment of a bonus promised by the seller.

15. Several decisions have ruled on the place of performance of the obligation to pay damages, following breach of contract, in order to determine the court having jurisdiction. Decision-makers accordingly avoid resorting to national laws and apply the rules of the Vienna Convention. Two interpretations have been adopted in case law. Some decisions have, in regard to damage claims, opted for the creditor’s place of business, as a general principle inferred from the rule whereby the price is normally payable at the place of business of the seller (article 57 (1) (a)), the party entitled to receive the sale price.²⁸ Other decisions have held that the place of performance for damages claims should be the place of performance of the breached contractual obligation.²⁹ This second line of judicial reasoning can be linked to the approach adopted by the Court of Justice of the European Community, which, in connection with article 5.1 of the Brussels Convention, locates the place of performance in respect of a claim for damages at the place for performance of the obligation whose breach was alleged by the party seeking damages.³⁰

16. Comparable difficulties arise with regard to determining the place of performance of the obligation to refund the price following avoidance of the contract for breach of contract or following termination of the contract by agreement of the contracting parties, or the place of reimbursement of an overpayment to the buyer. These difficulties have also arisen in connection with the implementation of the Brussels Convention. Some decisions refer to the national law governing the contract.³¹ Other decisions rely on the Convention to determine the place of performance by virtue of a general principle of the Convention, according to which the price has to be refunded at the creditor’s place of business.³²

17. It has also been held, in connection with the promise of a bonus made by a mail-order company to a buyer of goods, that the place of performance of that promise was the place of business of the creditor—i.e., in this case, the buyer, by analogous application of CISG article 57 (1) (a).³³

Notes

¹ See the Digest for article 54.

² See paragraphs 11 et seq. *infra*.

³ Secretariat Commentary to draft article 53, paragraph 1.

⁴ Landgericht Trier, Germany, 7 December 2000, *Internationales Handelsrecht*, 2001, 35, English abstract available on the Internet at www.unilex.info (under a long-standing business relationship, the seller regularly debited the price directly to an account of the buyer, which could be regarded as an implicit choice of the manner of payment).

⁵ Landgericht Nürnberg-Fürth, Germany, 27 February 2003, *Internationales Handelsrecht*, 2004, 20, available on the Internet at www.globalsaleslaw.org.

⁶ CLOUT case No. 221 [Zivilgericht des Kantons Basel-Stadt, Switzerland, 3 December 1997], *Revue suisse de droit international et européen*, 1999, 190, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu;

cf. CLOUT case No. 890 [Tribunale di appello Lugano, Switzerland, 29 October 2003], *Revue suisse de droit international et européen*, 2004, 109.

⁷ CLOUT case No. 363 [Landgericht Bielefeld, Germany, 24 November 1998], *Internationales Handelsrecht*, 2001, 199, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (practice established over many years whereby the seller bore the payment costs to the benefit of the distributor (buyer)); CLOUT case No. 221 [Zivilgericht des Kantons Basel-Stadt, Switzerland, 3 December 1997], *Revue suisse de droit international et européen*, 1999, 190, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (the procedure followed under two previous contracts was not sufficient to constitute a practice).

⁸ CLOUT case No. 194 [Tribunal fédéral, Switzerland, 18 January 1996], *Arrêts du Tribunal fédéral*, 122 III, 43, available in German on the Internet at www.globalsaleslaw.org (in connection with determining the court having jurisdiction pursuant to the Lugano Convention of 16 September 1988—article 5.1).

⁹ *Ibid.* (the court found that the price was payable at the seller's place of business, in accordance with article 57 (1) (a)).

¹⁰ CLOUT case No. 221 [Zivilgericht des Kantons Basel-Stadt, Switzerland, 3 December 1997], *Revue suisse de droit international et européen*, 1999, 190, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu.

¹¹ See the Digest for article 58.

¹² CLOUT case No. 605 [Oberster Gerichtshof, Austria, 22 October 2001], *Juristische Blätter*, 2002, 327, also available in German on the Internet at www.globalsaleslaw.org.

¹³ Landgericht Krefeld, Germany, 20 September 2006, *Internationales Handelsrecht* 2007, 161, available in German on the Internet at www.globalsaleslaw.org (in connection with a contract involving sea carriage, in which the price was payable 60 days after arrival in Germany or 85 days after loading); Landgericht Freiburg, Germany, 26 April 2002, *Internationales Handelsrecht* 2002, 72, available in German on the Internet at www.globalsaleslaw.org (in connection with a payment which, in accordance with the invoice, was to be made 14 days after dispatch of the goods); CLOUT case No. 194 [Tribunal fédéral, Switzerland, 18 January 1996], *Arrêts du Tribunal fédéral*, 122 III, 43, available in German on the Internet at www.globalsaleslaw.org (on this decision, see footnotes 8 et seq. *supra*). These three decisions were rendered in regard to determining the court having international jurisdiction (see paragraphs 11 et seq. *infra*).

¹⁴ CLOUT case No. 274 [Oberlandesgericht Celle, Germany, 11 November 1998], *Praxis des Internationalen Privat- und Verfahrensrechts*, 1999, 456, available in German on the Internet at www.globalsaleslaw.org.

¹⁵ See, in connection with the application of section 29 (1) of the German Code of Civil Procedure (Zivilprozessordnung), Oberlandesgericht Saarbrücken, Germany, 12 May 2010, *Internationales Handelsrecht* 2010, 202, available in German on the Internet at www.globalsaleslaw.org; CLOUT case No. 49 [Oberlandesgericht Düsseldorf, Germany, 2 July 1993], *Recht der Internationalen Wirtschaft*, 1993, 845, available in German on the Internet at www.globalsaleslaw.org (from CISG article 57 (1) (a) it is possible to infer a general principle under which the place of settlement of a monetary claim is the creditor's place of business); Landgericht Krefeld, Germany, 19 December 1995, available in German on the Internet at www.globalsaleslaw.org; Landgericht Nürnberg-Fürth, Germany, 26 July 1994, available in German on the Internet at www.globalsaleslaw.org (the debtor's obligation to pay the price has to be performed at the creditor's place of business).

¹⁶ See paragraph 13 *infra*.

¹⁷ CLOUT case No. 298 [Court of Justice of the European Community, European Community, 29 June 1994 (case C-288/92)], *Report of Cases before the Court of Justice and the Court of First Instance*, 1994, I-2913 (Custom Made Commercial).

¹⁸ See, in particular, CLOUT case No. 843 [Korkein oikeus, Finland, 14 October 2005], *Korkeinman oikeuden ratkaisuja II*, KKO 2005:114; Oberlandesgericht Wien, Austria, 1 June 2004, available on the Internet at www.globalsaleslaw.org; Oberster Gerichtshof, Austria, 29 March 2004, available on the Internet at www.globalsaleslaw.org; Bundesgerichtshof, Germany, 25 February 2004, *Neue Juristische Wochenschrift—Rechtsprechungsreport Zivilrecht* (NJW-RR), 2004, 1292, available on the Internet at www.globalsaleslaw.org; Retten i Randers, Denmark, 12 September 2003, available in Danish on the Internet at www.cisgnordic.net; Cour d'appel de Liège, Belgium, 28 April 2003, available in French on the Internet at www.law.kuleuven.be, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 772 [Bundesgerichtshof, Germany, 30 April 2003], *Neue Juristische Wochenschrift—Rechtsprechungsreport Zivilrecht* (NJW-RR), 2003, 1582, English translation available on the Internet at www.cisg.law.pace.edu; Rechtbank van Koophandel Veurne, Belgium, 19 March 2003, available in Dutch on the Internet at www.law.kuleuven.be, available in English on the Internet at www.cisg.law.pace.edu; Oberster Gerichtshof, Austria, 18 December 2002, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; Bundesgerichtshof, Germany, 2 October 2002, *Internationales Handelsrecht*, 2003, 28, available in German on the Internet at www.globalsaleslaw.org; Landgericht Göttingen, Germany, 20 September 2002, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 1017 [Hof van Beroep Gent, Belgium, 15 May 2002], *Tijdschrift voor Belgisch Handelsrecht*, 2003, 155, available in Dutch on the Internet at www.law.kuleuven.be, available in English on the Internet at www.cisg.law.pace.edu; Hof van Beroep Gent, Belgium, 31 January 2002, *Rechtskundig Weekblad*, 2002-2003, 664, available in Dutch on the Internet with an English abstract at <http://www.law.kuleuven.be>; Cour de cassation, 1^{ère} chambre civile, France, 26 June 2001, *Recueil Dalloz*, 2001, 2593, available in French on the Internet at www.cisg-france.org; Landgericht Flensburg, Germany, 19 January 2001, available on the Internet at www.cisg-online.ch; CLOUT case No. 379 [Corte di Cassazione, Sezioni Unite, Italy, 14 December 1999], *Giustizia civile*, 2000, 2333; CLOUT case No. 343 [Landgericht Darmstadt, Germany, 9 May 2000], *Internationales Handelsrecht*, 2001, 27-30 (see full text of the decision); Landgericht Trier, Germany, 7 December 2000, *Internationales Handelsrecht*, 2001, 35, abstract available on the Internet at www.unilex.info; Tribunal de commerce de Charleroi, Belgium, 20 October 2000, available in French on the Internet at www.unilex.info; Landgericht Memmingen, Germany, 13 September 2000, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Stuttgart, Germany, 28 February 2000, *Internationales Handelsrecht*, 2001, 65, available in German on the Internet at www.globalsaleslaw.org; CLOUT case No. 361 [Oberlandesgericht Braunschweig, Germany, 28 October 1999], *Internationales Handelsrecht*, 2000, 4; CLOUT case No. 377 [Landgericht Flensburg, Germany, 24 March 1999], *Internationales Handelsrecht*, 2001, 202, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 725 [Corte di Cassazione, Sezioni Unite, Italy, 1 February 1999]; CLOUT case No. 320 [Audiencia Provincial

de Barcelona, Spain, 7 June 1999], *Actualidad Civil*, 2000, No. 5, 87 (see full text of the decision); CLOUT case No. 274 [Oberlandesgericht Celle, Germany, 11 November 1998], *Praxis des Internationalen Privat- und Verfahrensrechts*, 1999, 456, available in German on the Internet at www.globalsaleslaw.org; Rechtbank van koophandel Hasselt, Belgium, 16 September 1998, available in Dutch on the Internet at www.law.kuleuven.be; CLOUT case No. 223 [Cour d'appel de Paris, France, 15 October 1997], available in French on the Internet at www.cisg-france.org (see full text of the decision); CLOUT case No. 287 [Oberlandesgericht München, Germany, 9 July 1997], *Der Betriebsberater*, 1997, 2295, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 284 [Oberlandesgericht Köln, Germany, 21 August 1997], *Versicherungsrecht*, 1998, 1513, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (see full text of the decision); Gerechtshof Amsterdam, the Netherlands, 20 November 1997, *Nederlands Internationaal Privaatrecht*, 1998, No. 220, available in Dutch on the Internet at www.unilex.info; CLOUT case No. 162 [Østre Landsret, Denmark, 22 January 1996], *Ugeskrift for Retsvaesen (UfR)* 1996, 616 ØLK; CLOUT case No. 205 [Cour d'appel, Grenoble, France, 23 October 1996], *Revue critique de droit international privé*, 1997, 756, available in French on the Internet at www.cisg-france.org; Landgericht Siegen, Germany, 5 December 1995, available in German on the Internet at www.cisg-online.ch; Gerechtshof 's-Hertogenbosch, the Netherlands, 9 October 1995, *Nederlands Internationaal Privaatrecht*, 1996, No. 118, available in Dutch on the Internet at www.unilex.info; CLOUT case No. 286 [Oberlandesgericht München, Germany, 22 September 1995], *Recht der Internationalen Wirtschaft*, 1996, 1035; Gerechtshof 's-Hertogenbosch, the Netherlands, 20 October 1995, *Nederlands Internationaal Privaatrecht*, 1996, No. 279, abstract available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht München, Germany, 28 June 1995, available in German on the Internet at www.cisg-online.ch; CLOUT case No. 153 [Cour d'appel, Grenoble, France, 29 March 1995], *Journal du droit international*, 1995, 964, available in French on the Internet at www.cisg-france.org/decisions/290395v.htm (see full text of the decision); Rechtbank Middelburg, the Netherlands, 25 January 1995, *Nederlands Internationaal Privaatrecht*, 1996, No. 127, available in Dutch on the Internet at www.unilex.info; Oberlandesgericht Hamm, Germany, 27 January 1995, available in German on the Internet at www.globalsaleslaw.org; Gerechtshof 's-Hertogenbosch, the Netherlands, 26 October 1994, *Nederlands Internationaal Privaatrecht*, 1995, No. 261, available in Dutch on the Internet at www.unilex.info; CLOUT case No. 156 [Cour d'appel de Paris, France, 10 November 1993], *Juris-Classeur Périodique*, édition générale, 1994, II, No. 22314, available in French on the Internet at www.cisg-france.org (see full text of the decision); CLOUT case No. 25 [Cour d'appel, Grenoble, France, 16 June 1993], available in French on the Internet at www.cisg-france.org; Sø og Handelsretten, Denmark, 1 July 1992, *Ugeskrift for Retsvaesen*, 1992, A, 920-923, available in Danish on the Internet at www.unilex.info.

¹⁹ Cour suprême du canton de Berne, Switzerland, 19 May 2008, available in French on the Internet at www.globalsaleslaw.org; Handelsgericht Aargau, Switzerland, 5 February 2008, available in German on the Internet at www.globalsaleslaw.org; Handelsgericht Aargau Switzerland, 19 June 2007, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Düsseldorf Germany, 24 July 2007, available on the Internet at www.globalsaleslaw.org; CLOUT case No. 906 [Kantonsgericht Nidwalden, Switzerland, 23 May 2005], *Internationales Handelsrecht*, 2005, 253; Handelsgericht St. Gallen, Switzerland, 29 April 2004, *Revue suisse de droit international et européen*, 2005, 121, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; Oberster Gerichtshof, Austria, 18 November 2003, *Österreichische Juristen-Zeitung*, 2004, 305, available in German on the Internet at www.ris.bka.gv.at; Handelsgericht St. Gallen, Switzerland, 11 February 2003, *Revue suisse de droit international et européen*, 2004, 107, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 882 [Handelsgericht Aargau, Switzerland, 5 November 2002], *Revue suisse de droit international et européen*, 2003, 103, *Internationales Handelsrecht*, 2003, 160; Landgericht Freiburg, Germany, 26 April 2002, *Internationales Handelsrecht*, 2002, p. 72, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; Corte di Appello di Milano, Italy, 23 January 2001, *Rivista di diritto internazionale privato e processuale*, 2001, 1008, available in Italian on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 325 [Handelsgericht Zürich, Switzerland, 8 April 1999], *Revue suisse de droit international et européen*, 2000, 113, *Internationales Handelsrecht*, 2001, 45; CLOUT case No. 221 [Zivilgericht Basel-Stadt, Switzerland, 3 December 1997], *Revue suisse de droit international et européen*, 1999, 190, *Internationales Handelsrecht*, 1999, 11; CLOUT case No. 194 [Bundesgericht, Switzerland, 18 January 1996], *Amtliche Sammlung der Entscheidungen des Schweizerischen Bundesgerichts* (BGE), Jahrgang 122, Band III, 43.

²⁰ *Official Journal of the European Community* L 12 of 16 January 2001, 1.

²¹ The Regulation applies to legal proceedings instituted after 1 March 2002 (article 66). Initially, the Regulation was not applicable to Denmark. It has been applicable to Denmark since 1 July 2007, the date of entry into force of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (*Official Journal of the European Union* L 299 of 16 November 2005, 62; see also the Information on the date of entry into force of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, *Official Journal of the European Union* L 94 of 4 April 2007, 70).

²² Court of Justice of the Community, European Union, 3 May 2007 (case C-386/05), *Report of Cases before the Court of Justice and the Court of First Instance*, 2007, I-03699 (*Color Drack*), available on the Internet at <http://eur-lex.europa.eu> (“[In a case involving] several places of delivery within a single Member State ..., the court having jurisdiction to hear all the claims based on the contract for the sale of goods is that for the principal place of delivery, which must be determined on the basis of economic criteria. In the absence of determining factors for establishing the principal place of delivery, the plaintiff may sue the defendant in the court for the place of delivery of its choice”).

²³ See Bundesgerichtshof, Germany, 23 June 2010, available in German on the Internet at www.cisg-online.ch; Polymeles Protodikio Athinon, Greece, 2009, *Dikeo Epiphiriseon ke Eterion*, 2009, 831, English abstract available on the Internet at www.cisg.law.pace.edu; Oberster Gerichtshof, Austria, 3 April 2008, *Zivilrecht aktuell*, 2008, 259, available in German on the Internet at www.ris.bka.gv.at, available in English on the Internet at www.cisg.law.pace.edu; Monomeles Protodikio Thessalonikis, Greece, 2008, *Hronika Idiotikou Dikeou*, 2008, 146, available in Greek and English on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Köln, Germany, 21 December 2005, *Internationales Handelsrecht*, 2006, 86, available in German on the Internet at www.justiz.nrw.de, available in English on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Hamm, Germany, 6 December 2005, *Internationales Handelsrecht*, 2006, 84, available in German on the Internet at www.justiz.nrw.de, available in English on the Internet at www.cisg.law.pace.edu; Oberster Gerichtshof, Austria, 8 September 2005, *Entscheidungen des OGH in Zivilsachen*, 2005, 128, available in German on the Internet at www.ris.bka.gv.at; Tribunale di Rovereto, Italy, 28 August 2004, *Rivista di diritto internazionale privato e processuale*, 2005, 162, available in Italian on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; Landgericht München, Germany, 23 March 2004, *Praxis des Internationalen Privat- und Verfahrensrechts*, 2005, 143, available in German on the Internet at www.globalsaleslaw.org.

²⁴ Court of Justice of the European Union, European Union, 25 February 2010 (case C-381/08) (Car Trim), available on the Internet at <http://eur-lex.europa.eu>, paragraphs 33 et seq. (in this judgment, the Court relied, inter alia, on CISG article 3 (1) and article 6 (2) of the Convention on the Limitation Period in the International Sale of Goods); Court of Justice of the European Community, European Union, 3 May 2007 (case C-386/05), *Report of Cases before the Court of Justice and the Court of First Instance*, 2007, I-3699 (*Color Drack*), paragraph 18, available on the Internet at <http://eur-lex.europa.eu>.

²⁵ Court of Justice of the European Union, European Union, 25 February 2010 (case C-381/08) (Car Trim), available on the Internet at <http://eur-lex.europa.eu> (in connection with the place of delivery concerning a sale involving carriage of the goods, the Court held that, in the absence of a contractual provision, the place of delivery was that of the physical transfer of the goods, as a result of which the buyer obtained or should have obtained actual power of disposal over the goods, without having to refer to the substantive law applicable to the contract); see also Bundesgerichtshof, Germany, 23 June 2010, available in German on the Internet at www.cisg-online.ch (the judgment reproduces the findings of the judgment of the Court of Justice of the European Union of 25 February 2010); Corte Suprema di Cassazione, Italy, 5 October 2009, available in Italian on the Internet at www.unilex.info (the place of delivery is that of the final destination of the goods); Oberster Gerichtshof, Austria, 3 April 2008, *Zivilrecht aktuell*, 2008, 259, available in German on the Internet at www.ris.bka.gv.at, available in English on the Internet at www.cisg.law.pace.edu (the decisive criterion is that of the place where performance was actually effected).

²⁶ Court of Justice of the European Union, European Union, 25 February 2010 (case C-381/08) (Car Trim), paragraphs 33 et seq., available on the Internet at <http://eur-lex.europa.eu>; Court of Justice of the European Community, European Union, 9 July 2009 (case C-204/08), *Report of Cases before the Court of Justice and the Court of First Instance*, 2009, I-6073 (*Rehder*), paragraphs 30 et seq., available on the Internet at <http://eur-lex.europa.eu> (in connection with the concepts of sale and provision of services); Court of Justice of the European Community, European Union, 3 May 2007 (case C-386/05), *Report of Cases before the Court of Justice and the Court of First Instance*, 2007, I-3699 (*Color Drack*), paragraph 18, available on the Internet at <http://eur-lex.europa.eu>.

²⁷ See Oberster Gerichtshof, Austria, 8 September 2005, *Entscheidungen des OGH in Zivilsachen*, 2005, 128, available on the Internet at www.ris.bka.gv.at.

²⁸ See Oberster Gerichtshof, Austria, 29 March 2004, *Zeitschrift für Europarecht, Internationales Privatrecht und Rechtsvergleichung* (ZfRV), 2004, 156, available in German on the Internet at www.globalsaleslaw.org, English abstract available on the Internet at www.cisg.law.pace.edu (subsidiary argument in connection with the implementation of article 5.1 of the Brussels Convention); CLOUT case No. 589 [Landgericht Gießen, Germany, 17 December 2002], *Internationales Handelsrecht*, 2003, 276 (in connection with the application of Council Regulation No. 44/2001 of 22 December 2000, thus disregarding the scope of article 5.1 (b) of the Regulation); CLOUT case No. 49 [Oberlandesgericht Düsseldorf, Germany, 2 July 1993], *Recht der Internationalen Wirtschaft*, 1993, 845 (in connection with the implementation of section 29 of the German Code of Civil Procedure).

²⁹ Oberster Gerichtshof, Austria, 29 March 2004, *Zeitschrift für Europarecht, Internationales Privatrecht und Rechtsvergleichung* (ZfRV), 2004, 156, available in German on the Internet at www.globalsaleslaw.org (principal argument in connection with the implementation of article 5.1 of the Brussels Convention); Cour d'appel de Liège, Belgium, 28 April 2003, available in French on the Internet at www.law.kuleuven.be, available in English on the Internet at www.cisg.law.pace.edu (in connection with the implementation of article 5.1 of the Brussels Convention); CLOUT case No. 361 [Oberlandesgericht Braunschweig, Germany, 28 October 1999], *Internationales Handelsrecht*, 2000, 4 (in connection with the implementation of article 5.1 of the Brussels Convention).

³⁰ Court of Justice of the European Community, European Union, 6 October 1976 (case C-14/76), *Report of Cases before the Court of Justice*, 1976, 1497 (*De Bloos*).

³¹ CLOUT case No. 421 [Oberster Gerichtshof, Austria, 10 March 1998], *Österreichische Zeitschrift für Rechtsvergleichung*, 1998, 161 (the Vienna Convention is not applicable for determining the place of performance with regard to a claim for restitution of the sale price following termination of the contract by agreement); CLOUT case No. 312 [Cour d'appel de Paris, France, 14 January 1998] (a general principle cannot be inferred from the Convention, since article 57 (1) can correspond both to the principle of payment at the seller's domicile and to that of payment at the creditor's domicile).

³² Oberster Gerichtshof, Austria, 29 June 1999, *Transportrecht-Internationales Handelsrecht*, 1999, 48, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (the gap in the Convention with respect to the performance of restitutionary obligations should be filled by reference to a general principle of the Convention according to which the "place of performance for the obligations concerning restitution should mirror the place of performance for the primary contractual obligations"; the wording is general whereas the obligation in question, following termination by agreement, was concerned with the restitution of the goods); CLOUT case No. 205 [Cour d'appel de Grenoble, France, 23 October 1996], *Revue critique de droit international privé*, 1997, 762 (see full text of the decision) (in an action for restitution of excess payments received by the seller, the court stated that there was a general principle under which "payment is to be made at the creditor's domicile, a principle that is to be extended to other international trade contracts under article 6.1.6 of the UNIDROIT Principles").

³³ Oberster Gerichtshof, Austria, 18 December 2002, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu.