

Recent developments

FRENCH LAW

- **Referring to French law in an international contract of sale amounts to choosing the application of the Vienna Convention**

Since the entry into force of the United Nations Convention on Contracts for the International Sale of Goods, concluded in Vienna on 11 April 1980 (the "CISG"), nearly 25 years ago, the French Supreme Court had never had the opportunity to answer the following question, which is relatively simple but which could have several consequences: when the parties to an international contract of sale referred to French law as the law applicable to their relationships, should French domestic law on sales or the provisions of the CISG apply? The question is obviously essential given the significant differences between the provisions of French domestic law and the provisions of the CISG (to mention only one example, the obligation to mitigate one's loss, i.e. the obligation imposed on the victim of a loss to reduce the consequences as much as possible, is provided for in the CISG but does not exist under French law).

In the case in question, a French company and a Colombian company had concluded a contract of sale in which they had provided that their relationships would be governed by the "*Laws of France*", without any further details. In the scope of an action initiated by the French seller for the payment of the balance of the price of the equipment sold, the Aix-en-Provence Court of Appeal had ruled that, pursuant to this provision, included in the contract "*with knowledge of the international nature of the sale*", the parties had subjected their contract of sale to French domestic rules and thus excluded the application of the CISG (it being specified that Article 6 of the CISG enables the parties to exclude its application). The French Supreme Court quashed this decision on the ground that the parties had not intended to subject their relationships to French domestic law, but to French substantive law, i.e. the CISG regarding international sales (French Supreme Court, Commercial Chamber, 13 September 2011, *Pourvoi* no. 09-70.305).

The French Supreme Court's position is not surprising. It is, in fact, in line with the solution found by the courts of other Contracting States to the CISG. In any case, it has the merit of settling this tricky question and of providing a clear set solution: the fact of choosing French law, in a general manner, to govern an international sale, amounts, for the parties, to subjecting such sale to the provisions of the CISG.

From a legal standpoint, the solution cannot be criticised as the CISG "makes" the French law governing international sales. Regarding the search for the parties' intention, the solution is probably less obvious as it is very unlikely, in most cases when the contracts are concluded without the presence of lawyers, that the parties really intended to choose the

application of the CISG by solely referring, in their contract, to French law, without any further details.

In any case, the question is now answered and all lawyers, whether specialised in contract law or in dispute resolution, will know what to expect. The parties will naturally always be able, in compliance with the CISG, to exclude its application and subject their relationships to French domestic law governing sales, i.e. mainly to the French Civil Code. However, it will more than ever be necessary to expressly indicate it in the contract so as to avoid the application to their relationships of provisions that are very different to what had been anticipated.

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