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SIGNIFICANCE OF THE CISG FOR FRANCHISING AND DISTRIBUTION AGREEMENTS IN THE EU MARKET

ABSTRACT

Authors' aim is to answer whether UN Convention on Contracts for the International Sale of Goods (further: CISG) can be applied to contracts such as franchising and distribution. Primarily, it shall be explored if the CISG can be applicable to sale of goods part solely, and secondly, if its application can be stretched to the entire franchise/distribution contracts, when disputes arise as to formation, termination of these contracts or other issues generally covered by the CISG. Franchise/distribution contracts are considered as framework agreements, where the main element is almost regularly a sale of goods "part". However, there is no set of rules which deal with contractual aspects of franchise/distribution contracts on the EU level, except of, for now, a fruitless attempt in Part E of the Book IV of the Draft Common Frame of Reference (further: DCFR). Ultimate goal, in the opinion of the authors is to preserve international character of franchise/distribution contracts and through intensified application of the CISG, as a legal instrument widely adopted and shyly marked as the EU sales law, to achieve a better economic and legal integration of the EU market in the field of franchise/distribution business, including Croatia as a newcomer.

***Keywords**: CISG, franchising, distribution, sale of goods, EU sales law*

***JEL classification**: K120*

1. INTRODUCTION

International trade on which the entire global economy is based usually consists of at least one sale of goods contract. Franchise and distribution agreements are also heavily used for international deliveries of goods and services, thus posing a serious task upon legislators to rather enhance then to pose obstacles for these agreements as are choice of law issues, differing regulation and ignorance of already existing international legal sources. Although contractual aspects of franchise and distribution agreements are not harmonized on international or EU level, authors aim to explore whether the application of some other already existing international legal instrument could significantly enhance the unification process of these agreements. The suggested legal source is the CISG which presents the highest success of unification regarding sales of

goods contract not only on regional, but on the international level as well. Application of the CISG is intended to the sale of goods contract, including certain mixed contracts as well as instalment contracts, though it is clear that framework agreements as are franchising and distribution generally fall outside its scope. Authors shall explore the legal nature of franchise/distribution agreements with the emphasis on the sales of goods contract concluded within or based upon them. Accordingly, it shall be elaborated on the possibility whether CISG can be applicable to the entire franchise/distribution agreement or solely to individual sale of goods contract based on them. Equally, authors shall explore position of the EU legislator in the light of the newest legislative movements as are DCFR and proposed CESL, and whether their adoption could enhance or rather complicate already existing legal environment for international trade where franchise and distribution agreements take an important place. Croatian practitioners should be more aware of international legal instruments, and in that light, authors shall elaborate on the issue that by more frequent application of the CISG, even the disputes arising from franchise/distribution agreements could be resolved on an international level. It shall be discussed whether further unification on EU level with effect in Croatia could, thus, be achieved not solely through new set of rules on international franchise/distribution agreements, but also by using already adopted and more familiar legal sources as is the CISG.

2. LEGAL NATURE OF FRANCHISE AND DISTRIBUTION AGREEMENTS

Franchise and distribution agreements were imported in the EU countries under the strong influence of the USA. While these types of commercial transactions were recognized in the USA already in 1880s, in the EU countries their significance grew since 1950s onward. They owe their popularity to flexible construction of mutual rights and obligations for international traders and enhanced access to foreign markets under lower cost (Horak, 2005; Gemet-Pol, 1997). Authors shall not elaborate on the numerous types of franchise and distribution agreements which appear in the practice, but shall focus on their legal nature and subsequently, legal sources applying on them. Franchising and distribution agreements are forms of business that touch upon a great many different areas of law. In some literature they are marked as "agreements", while in others as "contracts". Authors use both terms, aiming always at a legally binding consensus between the parties.

The legal nature of franchise/distribution contracts is blurred by the elements of agency, sales of goods, intellectual property, competition, joint ventures, transfer of technology, license, services and many others (Horak, 2005; Gemet-Pol, 1997), thus imposing to be a starting point in discussion of whether CISG can be applied on these agreements.

In theory, there are different and even diametrically opposed views on the legal nature of franchise and distribution agreements (Singapore-WIPO Regional Workshop, 2007). We shall emphasis four basic approaches. Under the first, the very existence of these agreements is denied, and rather described as a phenomenon of "Americanization of integrated trade" (Savatier et.al 1967). Under the second approach, they should be regarded as unnamed typical contracts developed in the practice but not regulated by

law (Goldštajn, 1991). According to the third, both franchise and distribution contain elements of different contracts, thus falling under the category of so-called mixed contracts (*mixti iuris, gemischte Verträge*) (Milenković, 1997; Vukmir, 2000; Mlikotin-Tomić, 1986). Finally, these agreements could fall under the category of *sui generis* contracts (Milenković, 1997; Pražetina, 2006; Čuveljak, 1998; Čuveljak, 2001; Horak, 2005).

Authors' note that regardless of the differing views, none of it contests that franchise and distribution agreements can contain elements of sale of goods contract. If they have a sales part, then it is open to discuss whether the sales part can be of such importance to render the entire agreement as a sale of goods contract. In that light, authors shall further discuss possibility and scope of the application of the CISG on them.

3. FRANCHISE AND DISTRIBUTION AGREEMENTS UNDER EU LAW

Trading through franchise and distribution channels was not introduced in EU market by a legislative effort, but through a commercial practice. In fact, although they first appeared in commercial practice in 1950s, and in Croatia in 1970s it was not until 1983 that EU legislator was concerned with issues regarding distribution, and in 1988 with franchising agreement (Alon et.al 2007; Gemet-Pol, 1997). Interestingly, both of them were regulated as an exemption from prohibited agreements in competition law (Regulation No 1983/83, Regulation No 4087/88), where no additional provisions for contractual regulation of franchise/distribution agreements were imposed upon EU Member States (Gemet-Pol, 1997; Ferrier, 2001).

Consequently, franchise and distribution agreements are not harmonized on the EU level, except in the context of competition law. It must be emphasized that most EU Member States, although free to construe their own national rules for franchise and distribution, regulated these agreements solely in the area of competition law (Bueno Diaz, 2008; Hesselink *et al.*, 2006). In other words, they mostly remain a part of autonomous commercial law, thus leaving parties to freely negotiate terms of these agreements to the extent they do not infringe national mandatory provisions which include competition law rules introduced by the EU.

Croatian legislature took the same position. Although Croatian Trade Act from 1996 (furher: CTA) by revision in 1999 (Official Gazette no. 75/99) set a definition for both franchising and distribution agreements, definitions were under the clear influence of EU regulation in the area of competition law. Since it contained sole definitions, authors find that there was no legislative incentive to regulate contractual aspects of franchise and distribution agreements. Later on, legislator put aside the CTA from 1996 and brought a new CTA in 2008, currently in force, which no longer contains these definitions. In accordance with the trend of EU countries, franchising and distribution agreements are mentioned solely in Croatian Competition Act as exemptions from prohibited agreements in competition law, and further defined in its implementing regulations of 2011 (Regulation on block exemption granted to certain categories of vertical agreements; Regulation on block exemption granted to agreements on

distribution and servicing motor vehicles). Thus, franchise/distribution agreements fall under the autonomous commercial law in Croatia as well.

The path of putting franchise/distribution agreements under the EU legislative cap was attached with many difficulties, beginning from the very definition of these agreements. The fact that the content of these agreements depends on the will of the contracting parties and its continued development, creates difficulties of putting each of these agreements under one definition that would encompass complexity and diversity of relationship that appear during their execution (Mlikotin-Tomić, 1986; Draškić, 1983). However, EU legislator was obliged to provide a definition in order to make an exemption rules for these agreements in competition law. It did so for distribution firstly in Regulation No 1983/83 and for franchising in Regulation No 4087/88 after the key *Pronuptia* case, though in later stages it transposed definitions to accompanying guidelines (Regulation No 330/2010/EC and Guidelines on Vertical Restraints, 2010). Nevertheless, definitions set in these two regulations had the greatest influence on both international and EU legal and soft law sources that followed after (Regulation No 2790/1999 on selective distribution, UNIDROIT Model Franchise Disclosure Law; European Code of Ethics of European Franchise Federation), as well as on national legislations of EU Member States.

The fruitless attempt, at least for now, to harmonize contractual aspects of franchising and distribution agreements on the EU level was made in the frame of DCFR. Proposal for regulation of franchise and distribution contracts was set out in 2006 by The Principles of European Law on Commercial Agency, Franchise and Distribution Contracts (PEL CAFDC) as a part E of the Book IV of the DCFR. It equally calls for the application of general rules of contract law set in DCFR (Cashin, 2007.). Thus, if parties opt-in for the application of the DCFR, any dispute arising out of sale of goods contract concluded within or based on franchise/distribution agreements shall equally fall within the scope of DCFR, thus rendering any national or international legal sources as superfluous, expect in the case of legal gap. However, since the DCFR is an optional instrument its application shall depend on the parties' choice, and for that sole reason, it is already intertwined with great difficulties in practice.

4. CISG AS EU SALES LAW

Undisputed goal of the CISG is to unify international sales law, and it is designed to be applied on contracts of sale of goods, with proclaimed exceptions for sale of shares, ships, electricity and other goods specified in article 2 of the CISG (Schlechtriem, 2001). Today, even 79 countries adopted the CISG (UNCITRAL database), and it is anticipated that potentially 80% of world sales of goods contracts could fall within its scope (Schlechtriem and Schwenzer, 2010). Croatia as an independent country became a contracting state of CISG in 1991 (UNCITRAL database). Within EU, from its 27 Member States, only four did not adopt it: Great Britain, Portugal, Ireland and Malta (UNCITRAL database). Non-adoption by Great Britain is considered to be the greatest obstacle in achieving that CISG is closer to unifying international and EU commercial sales law, since it is a major trading partner within EU and has an important impact on common law jurisdictions (Hofmann, 2010). Recently, there are opinions that

traditional reasons for its non-adoption are no longer prevailing, and that, although until now no legislative initiatives are commenced, it is only a matter of time when the CISG shall be adopted in Great Britain as well (Nikolova, 2012; Hofmann, 2010; Moss, 2005).

Role of the CISG on the EU level and on national laws of EU Member States can be examined from two main standpoints. First, CISG as a role-model for EU sales law, and to a certain extent, even for entire EU contract law. Second, influence of the CISG on recently changed sales laws of EU Member States.

Role of the CISG as a model and basis for EU contract law is explicitly declared by EU legislator (European Parliament resolution, 2001). Also, a clear influence of the CISG on already existing EU law is visible for example in Consumer Sales Directive, Directive of Late Payments, Package Travel Directive and others (Schroeter, 2009). EU soft law on contracts is not an exception, providing the Principles of European Contract Law (further: PECL) as the most important example of the CISG influence. Even future EU law is developing under the strong influence of the CISG, where in the field of contract law the most important are the DCFR and CESL (Bonell, 2008; DiMatteo, 2012).

CISG significantly influenced some of the recent changes in domestic sales law of EU Member States, as are Germany and France (Zimmermann, 2005; De Ly, 2005). Also, new Croatian Obligations Act (further: COA), which is in force since 1st January 2006 is argued to be under influence of both PECL and CISG (Crnić, 2005; Ćesić et.al 2005). In fact, it is considered that because COA contains mostly same solutions as the CISG it encouraged Croatian practitioners to use CISG only occasionally, since the same decisions and outcomes were achieved by using familiar national instead of international provisions on sales of goods as is the CISG (Baretić and Nikšić, 2008).

In cases when CISG and EU regional sources of law overlap and contradict, interesting question arises which shall prevail. The answer is rather simple. Since the CISG is a convention, and an implemented EU directive in national law is not, CISG shall always prevail over the EU directives, unless a country made a reservation of a kind when signing the CISG or the parties agreed to exclude a part or the entire CISG (Schroeter, 2009; Ferrari, 2004). In that light, it is necessary to emphasize that Croatia gave no reservation on the CISG.

An exception from the rule that CISG as a convention prevails, is a proposed CESL on the EU level, which provides in its recital 25 that when parties opt-in for CESL it should be considered that they derogated, i.e. opted-out from the CISG. Although CISG can be derogated by parties' choice even implicitly, such a solution endures heavy criticism because the prevailing scholars' opinion is that derogation of the CISG can be considered only according to the rules of CISG and not by any other regulation (Kornet, 2012; Hesselink, 2012; Mišćenić, 2012). It is yet to be seen whether this proposal shall be adopted by EU legislator.

In practice, however, CISG is confronted with the problem that parties often exclude its application, where the recent research shows that approximately 50% of lawyers in

most developed EU countries continuously opt-out from the CISG (Spagnolo, 2009). Unfamiliarity with the CISG and the fact that CISG is incomplete, as it does not refer to issues as are validity of the contract, property of the sold goods and other issues, are considered to be the main reasons why parties and lawyers opt-out from the CISG (Kornet, 2012; Spagnolo, 2009). To compare with the currently proposed CESL, the fact that CESL shall be applicable only if parties choose it, i.e. if they opt-in, leads to the conclusion that its application is even more questionable then the application of the CISG from which the parties must opt-out if they want to avoid it (Magnus, 2012).

CISG is seriously understated in Croatian practice as well. Although there are many scholarly writings on the CISG in Croatia, until now, Croatian lawyers and practitioners demonstrated great unawareness of it (Baretić and Nikšić, 2008). Court practice beginning from 2003 witnessed an important recognition of applying CISG when conditions for its application are met, although far from desirable degree of recognizing its international character and influencing the style of interpretation and making decision (Baretić and Nikšić, 2008). Besides the unfamiliarity issue, additional reason could be that until now Croatian practitioners, particularly lawyers and their clients had little experience with international trade (Baretić and Nikšić, 2008). Further, when trading on international level, instead of using CISG, they rather relied on a developed practice of using standard terms in contracts, thus impliedly opting-out of those parts covered by the CISG (Baretić and Nikšić, 2008). Undoubtedly, when Croatia becomes a full EU Member State, it shall further open its market, and consequently, the need that Croatian practitioners become aware of the CISG in context of the international sales of goods is becoming obligatory and unavoidable.

At last, the issue arises whether there is any need on the EU level for making a uniform contract law. Although there are certain differences in national laws of Member States, there are recent surveys (Orgalime, 2011; American Chamber of Commerce, 2011; Eurobarometer, 2011), indicating that businesses find no serious obstacles for conducting business in current state of national laws, thus threatening to conclude that current EU legislative incentives as are DCFR and CESL rather complicate then enhance the commercial trade in EU (Kornet, 2012). One must note that EU legislator until now primarily focused on the harmonization of contract law in area of consumers' protection, while commercial law is affected solely by few EU directives, as is for example Directive of Late Payments and Commercial Agency Directive. Since proposed CESL invokes for almost the same degree of protection for both consumers and traders which form SMEs, there is a criticism that consumer and commercial sales contracts cannot be dealt with on the same way (Kornet, 2012). Further, it is considered that CESL has the same defects as the CISG. In particular, it is argued that EU Member States which did not adopt the CISG shall have even greater reasons for not supporting CESL (Kornet, 2012). Example for it would be the scope of good faith principle which is one of the main obstacles for adopting the CISG in Great Britain (Hofmann, 2010), and which is heavily emphasized and used in CESL (DiMatteo, 2012; Hofmann, 2010). Further, if one claims that CISG is incomplete since it does not solve all issues connected with sales contracts, the same can be said for CESL as well (Kornet, 2012; Mišćenić, 2012).

For all it has been said, it is to conclude that CISG in spite of all its deficiencies presents the highest success in unifying not only EU, but rather international commercial sales law. Besides its international character, its main advantages are that its application solves the issue of applicable law on the dispute arising from the sales contract and that it already has a rather developed practice before national and arbitral courts, thus loudly promoting its further application by offering an insight in how certain provisions were interpreted in practice of courts (Bonell, 2008). In the light of global economy, China's accession to the CISG and the fact that Chinese lawyers often contract its application (Spagnolo, 2009), together with the impact of proclaimed inclination of the Great Britain towards adopting the CISG on common law jurisdictions (Hofmann, 2010), importance of the CISG for commercial contracts is all but diminishing. Thus, CISG presents the most relevant set of rules for international commercial contracts, clearly dominating over current proposals for EU common sales law, which impact and importance should be also more recognized by Croatian practitioners.

5. APPLICATION OF THE CISG ON FRANCHISE AND DISTRIBUTION AGREEMENTS

Generally, franchise and distribution agreement fall outside of the scope of the CISG (Schlechtriem and Schwenzer, 2010; Honnold and Flechtner, 2009; Lookofsky, 2008). However, the issue arises whether CISG should be applied on an individual sale of goods contract concluded based upon franchise/distribution agreements. Further, authors shall explore whether CISG can be applied even on the entire franchise/distribution agreement, and if it can, then under which circumstances.

First step towards bringing in relation the CISG with framework contracts, as are franchise and distribution, is recognizing the distinction between the framework contract and the individual sale of goods contract concluded on its basis. The case Benetton II of 1997 is of great importance due to the court's elaborations where the German Federal Supreme Court went so far in order to make this distinction that it ruled that individual sale of goods contract can be valid even if the framework contract itself is void. In that case, the parties concluded a franchise agreement with the application of the German law, which since they failed to exclude it, determined the applicability of the CISG as well. The issue in dispute concerned the validity of both franchise agreement and individual sales contract based on it. Since the issue of the validity of the contract is not covered by the CISG, the answer was provided by German national law. The court decided that the framework franchise agreement is void because it infringed competition law rules. However, it held that the individual sale of goods contract concluded based on it are valid due to the fact that they are independent contracts and do not form a unified legal transaction (Schlechtriem, 2001). These individual sales of goods contract were considered to fall under the application of the CISG.

Accordingly, prevailing scholarly opinion is that CISG should be applied on the individual sales of goods contract concluded based on framework contracts which itself are not covered by the CISG (Djordjevic, 2011; Honnold and Flechtner, 2009;

Lookofsky, 2008; Schlechtriem, 2001). It is also heavily supported in court practice (Leather Goods case of 1997; Fitness Equipment case of 1997; Blood Infusion Devices case of 1997; Lawn Mower Engines case of 1996; Computer Chip case of 1993). Thus, CISG should be applicable to individual sale of goods contract concluded on the basis of franchise/distribution agreement if the conditions for its application are met.

Further step is to investigate whether parties can expressly choose that their franchise or distribution agreement is governed by the CISG. Parties' autonomy is one of the main principles in commercial law. It includes the right of the parties to choose applicable law or set of rules to be applied on their contract to the extent that these rules are in accordance with the applicable national mandatory rules. In that light, parties are free to choose CISG as the applicable set of rules for their contract, even if the contract itself is not the sale of goods contract (Lookofsky, 2008). Accordingly, ICC court in case no. 11849 of 2003 concluded that CISG is applicable on an exclusive distributorship agreement due to the express parties' will. ICC court started from the wording of the parties' agreement, where it was stated that the CISG shall be applicable "[...] for what is not expressly or implicitly provided for under the contract." Disputed issues in that case was the breach of the duties and consequent right on termination of the distributorship agreement. ICC court admitted that CISG is regularly applicable to sales of goods contract, but it correctly argued that parties' will in the agreement at hand clearly determined the CISG to govern all issues arising from it, and not solely the sales part. Further, it is understood that CISG can be applied only on issues covered by it, while issues not covered by the CISG should be governed in accordance with the gap-filling rules of the CISG provided in its article 7(2), with emphasis on preserving the international character of the dispute. Since the CISG contains provisions on breach and termination of the contract, ICC court concluded that termination of exclusive distributorship agreement should be solved by application of the CISG due to the expressly stated parties' will. Thus, parties can choose the CISG to be applicable to their agreements as are franchise and distribution.

At the end, the hardest question that should be answered is whether the CISG could be applied to the entire franchise/distribution agreement even in cases when parties did not expressly agree on its application. The answer lies in determining the legal nature of the franchise/distribution agreements, where in this light it should be answered whether these agreements could be determined as a sale of goods contracts. Naturally, framework contracts, as are franchise and distribution, are not sale of goods contracts by their legal nature. However, if for example, they oblige one party to deliver or buy certain amount of goods in a defined time-frame, it could be argued that the agreement itself already forms a sale of goods contract. This standpoint is supported among scholars (Schlechtriem and Butler, 2009; Newhouse and Tsuneyoshi, 2012; Bridge, 2007).

Possible application of the CISG to franchise/distribution agreements has also been discussed in court practice. In the ICC arbitration case no. 8817 of 1997, parties concluded an exclusive distribution agreement, and the issue concerned before the court was whether conditions for termination of the contract were fulfilled. As to the applicable law, parties did not expressly agree on the applicability of the CISG. However, it was questionable whether CISG can be applied to distributorship

agreement when not expressly chosen by the parties. ICC court did not dismiss its application solely because of the general notion of non-applicability of the CISG to distribution agreements, but it rather investigated whether the sales part of the agreement forms a preponderant part of the agreement in accordance with the article 3 (2) of the CISG.

The fact is that general standpoint which excludes franchise/distribution agreement from the application of the CISG is based on the argument that these agreements are mainly focused on providing the services as are the organization of distribution channels (Djordjevic, 2011) or organization of working schemes in franchise agreements and other services, instead of selling the goods. However, each agreement should be analyzed for itself, and depending on each particular case, courts should investigate whether framework contracts have a preponderant sales part, and consequently, whether CISG should be applied. In the mentioned ICC arbitration case no. 8817 of 1997, ICC court established that sales of goods forms a preponderant part of distributorship agreement, and thus, it ruled that issue of its termination shall be resolved under the application of the CISG. The same reasoning was applied before other courts as well (Metallurgical sand case of 2006; Manufactured goods case of 1999; Forklifts case of 1995).

Worthy of mentioning is yet another standpoint which offers more neutral solution. Namely, defining franchise/distribution agreements as sale of goods contracts by their legal nature is the greatest obstacle in discussing the application of the CISG on them. A sort of compromise would be determining franchise/distribution agreements as pre-contracts by which the parties are obliged to conclude individual sale of goods contracts as the main contract. Pre-contract is well recognized in Croatian law as well (article 268 of COA), and it is easy to argue that franchise/distribution agreements already contain sufficiently defined obligations for the parties in order to be determined as pre-contracts to a contract of sale of goods. Naturally, it always depends on each particular case. Pre-contracts as such are not expressly covered by the CISG, and they are not mentioned as a part of the formation of the sale of goods contract. However, pre-contract, as known in Croatia, is undoubtedly a contract, with main obligations for the parties to conclude the main contract on its basis (article 268 (1) of COA). If franchise/distribution agreements are considered to be pre-contracts for the sale of goods contract, then it should be answered whether CISG should be applied on them. Firstly, it is clear that the CISG shall be applicable if the agreement contains a general provision which call for the application of the CISG on the entire agreement. If such an express choice is lacking, and the CISG is applicable as a part of national law, then we argue that the courts should again apply the preponderant test in order to determine whether pre-contract has a preponderant sales part. If it has, then it is clear that the CISG should be applicable to franchise/distribution agreement as a pre-contract of sale of goods contract (Schlechtriem and Butler, 2009; Bridge, 2007). Thus, although coming to the same conclusion that the CISG should be applied to franchise/distribution agreement, this standpoint offers a middle solution by which it does not determine these agreements as a sale of goods contract, but it rather gives them a probably more acceptable neutral pre-contract legal nature.

6. CONCLUSION

Eliminating obstacles in unification of the EU market is one of the fundamental goals of the EU. Unification of legal aspects concerning commercial transactions seems as a desirable path for EU legislator. However, commercial law traditionally prefers autonomous sources over strict legal rules which rather limit then enhance trade and development of specific commercial transactions, such as franchise and distribution. Recently, there are legal incentives on the EU level to put commercial transactions under a regulatory cap, as are DCFR for wide range of contracts and CESL for sales transactions. Both of these instruments are intended to be optional, and even if adopted, shall be applicable only if chosen by the parties. On the contrast, CISG stands as a part of national law which must be excluded for its non-application. Equally, CISG represents the highest success in achieving unification of sales goods transactions not only on the EU level, but on the international as well. However, CISG itself is flawed. To begin with, it does not cover all the issues arising from the sale of goods contract, as it also does not cover all types of sales contract. Further, although even 79 countries adopted the CISG, there is still a significant resilience towards its full application, shown primarily by lack of knowledge by practitioners and their preference of standard terms contracts already tested in international trade. In this article, authors elaborated whether CISG can be applied on framework contracts as are franchise and distribution, and whether its intensified application can achieve better unification of these transactions then burdensome process of creating new rules. The application of the CISG depends on determination of the legal nature of franchise/distribution agreements. While it was easily deducted that CISG should be applicable on the individual sales of goods contracts concluded based on franchise/distribution agreement, the hardest issue was to answer whether CISG should be applied on the entire franchise/distribution transaction. In that regard, authors found court practice which went so far as to determine the entire franchise/distribution contract as a sale of goods contract in its legal nature in order to positively answer on the applicability of the CISG on these transactions. Equally, CISG was applicable on all issues arising from franchise/distribution agreements if parties chose the CISG as applicable set of rules on their agreement, always under the condition that disputed issue was covered by the CISG as for example can be considered the termination of franchise/distribution transactions. Thus, to conclude, applicability of the CISG is not necessarily limited to sales transactions. In fact, authors demonstrated that its application can be stretched even to framework contracts which traditionally fall outside of the scope of the CISG. Although intertwined with many difficulties, CISG can still be regarded as a primary source in international trade which is gradually being accepted by international traders who generally rely on self-construed standard terms contracts. In that light, authors consider it is worth of proclaiming that instead of creating new set of rules, full application of the CISG to both sale of goods contracts and certain franchise/distribution contracts, naturally depending on each particular case and wording of these agreements, could, from the legal aspect, most effectively put Croatia in the sphere of recognized international and EU franchising and distribution market.

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