ICADE LAW SCHOOL

PAX MOOT 2026 CASE

CLAIMANT'S AND DEFENDANTS' MEMORANDA

Diego Cortajarena Isasi

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TABLE OF ABBREVIATIONS

Art. / Arts. — Article / Articles

Brussels I bis — Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

CISG — United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)

CJEU — Court of Justice of the European Union

Claimant — Royal Furniture OOD

CMR — Convention on the Contract for the International Carriage of Goods by Road (Geneva, 1956)

DAP — Delivered at Place (Incoterm)

Defendant(s) — Tosca Mobili s.r.l. and/or Swift

EC — European Community

Ed. — Edition et seq. — et sequens (and the following)

EU — European Union

EUR — Euro

EXW — Ex Works (Incoterm)

Ibid. — Ibidem (in the same place)

No — Number p. / pp. — page / pages Para. / Paras. — Paragraph / Paragraphs

Rome I — Regulation (EC) No 593/2008 on the law applicable to contractual obligations

SDR — Special Drawing Rights

T&C — Terms and Conditions

v — versus

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CLAIMANT'S MEMORANDUM

1. STATEMENT OF THE FACTS

Royal Furniture OOD ('Royal' or 'The Claimant'), domiciled in Sofia (Bulgaria), is a designer of furniture for luxurious yachts in Europe and the Middle East. Tosca Mobili s.r.l. ('Tosca' or 'The First Defendant'), domiciled in Milan (Italy), is a manufacturer of high-end furniture. Swift ('Swift' or 'The Second Defendant'), having its seat in Gdansk (Poland), is a professional carrier company operating internationally.[1]

The Commercial Relationship between Royal and Tosca on 20 May 2025, Ivan, CEO of Royal, reached out to Maria, Chief Commercial Officer of Tosca, via email to enquire about the manufacturing of custom-made furniture (6 tables and 6 cabinets) for yacht refurbishment projects. In the same correspondence, Royal expressed interest in purchasing pre-designed items (14 chairs and 6 sofas) observed at the International Sustainable Furniture Fair in Milan.[2] Crucially, Royal explicitly emphasised the nature of its business, stating: 'As my firm is specialised in sustainable and eco-friendly furniture, it is salient that the furniture complies with the highest sustainable and ethical standards'.[3]

Maria replied on 23 May 2025, confirming Tosca's ability to manufacture the bespoke items and supply the pre-made goods. The offer specified that the tables and cabinets would be delivered 'DAP Sofia, Bulgaria' between 15 July and 15 August for a total of EUR 168,000. Regarding the chairs and sofas, available at a warehouse in Rotterdam, the terms were 'EXW Rotterdam' for EUR 192,000, to be collected by the buyer. [4]

The 'Battle of Forms' and Conclusion of the Contract A conflict of standard terms arose during the negotiation. Tosca's email of 23 May referenced a hyperlink to its Terms and Conditions (T&C), which included a choice of law clause favouring Italian law and jurisdiction in Milan or the place of performance.[5] Conversely, Royal's acceptance on 26 May 2025 explicitly stated: 'We accept your offer... under our terms and conditions'. Royal's T&C, accessible via hyperlink, contained a clause stipulating: 'Bulgarian

[1] Pax Moot. (2026). *Pax Moot 2026 Case*. Paras. 1-2, 15.
[2] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 3.
[3] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 3.
[4] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 5.
[5] Pax Moot. (2026). Pax Moot 2026 Case. Paras. 5-6.

national law, with the exclusion of the CISG [...], applies to all transactions and the court of Sofia has jurisdiction' [sic].[6]

Delivery and Modification of the Agreement Following payment by Royal, Tosca informed Ivan on 25 July that the custom furniture was ready. On 29 July, a client of Royal requested a change in delivery for part of the order. Consequently, on 30 July, Ivan instructed Tosca via telephone to deliver three tables and three cabinets to Rijeka (Croatia) instead of Sofia. Maria agreed to this arrangement. On 31 July, the delivery was executed: half the goods were delivered to Rijeka and the remaining half to Sofia.[7]

The Dispute regarding Non-Conformity Approximately ten days post-delivery, public reports emerged alleging that Tosca utilised 'unethical wood in the production of all furniture made by the company'.[8] Citing this revelation, Royal's client avoided their contract with Royal. Royal subsequently informed Tosca of the contract avoidance and claimed damages, asserting that the furniture failed to meet the essential ethical standards agreed upon. Tosca refused reimbursement.[9]

The Contract of Carriage with Swift Separately, on 10 July 2025, Royal engaged Swift to transport the chairs and sofas from Rotterdam to Sofia. The contract expressly instructed Swift 'not to leave the consignment unattended at an unsecured parking place' and included a clause conferring exclusive jurisdiction on the Court of Sofia.[10]

The Incident during Carriage On 15 July 2025, whilst in transit near Graz (Austria), the driver of Swift parked the truck at an unsecured location and left the vehicle unattended to have dinner. Upon his return, it was discovered that part of the consignment (4 chairs and 2 sofas) had been stolen and other items (4 chairs) were severely damaged. The total loss amounted to EUR 84,000.[11]

Procedural History On 21 July 2025, Swift initiated negative declaratory proceedings against Royal before the Court of Rotterdam, seeking a ruling of non-liability or, alternatively, limitation of liability under the CMR Convention. Royal objected to the

[6] Pax Moot. (2026). *Pax Moot 2026 Case*. Paras. 3-4, 7.
[7] Pax Moot. (2026). *Pax Moot 2026 Case*. Paras. 8-11.
[8] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 12.
[9] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 13.
[10] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 15.
[11] Pax Moot. (2026). *Pax Moot 2026 Case*. Paras. 16-17.

jurisdiction based on the prorogation clause.[12] Subsequently, on 26 August 2025, Royal initiated proceedings against both Tosca and Swift before the Court of Sofia, claiming breach of contract and damages against Tosca, and damages for the incident during carriage against Swift.[13]

2. JURISDICTION

The Claimant, Royal Furniture OOD ('Royal'), submits that the Court of Sofia constitutes the competent forum to adjudicate the claims brought against both Tosca Mobili s.r.l. ('Tosca') and Swift pursuant to Regulation (EU) No 1215/2012 ('Brussels I bis Regulation'). As will be demonstrated, the jurisdiction of this Court is founded primarily on valid prorogation agreements concluded with both Defendants and, subsidiarily regarding Tosca, on the place of performance of the obligation in question.

2.1. Jurisdiction regarding the claim against Tosca Mobili s.r.l.

The jurisdiction of the Court of Sofia over the contractual dispute with Tosca is established on two concurrent grounds: firstly, the existence of a valid jurisdiction clause in favour of the Bulgarian courts incorporated into the contract; and secondly, the special jurisdiction based on the place of delivery of the goods.

2.1.1. Validity of the Choice of Court Agreement (Art. 25 Brussels I bis)

The Claimant contends that a valid agreement conferring exclusive jurisdiction upon the Court of Sofia exists between the parties, satisfying the requirements of Article 25 of the Brussels I bis Regulation. Although the formation of the contract involved an exchange of conflicting standard terms—a scenario often referred to as a 'battle of forms'—the application of the 'last shot' doctrine confirms the incorporation of Royal's terms.[14]

On 20 May 2025, Royal's initial inquiry expressly stated: 'Bulgarian national law applies exclusively to all transactions, and the court of Sofia has jurisdiction'.[15] While Tosca's response on 23 May 2025 referenced its own terms and alternative jurisdictions (Milan or the place of performance), this constituted a counteroffer. The decisive moment

[12] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 18.
[13] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 19.
[14] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I bis), Art. 25(1).
[15] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 3.

occurred on 26 May 2025, when Royal sent the final acceptance email stating: ‘We accept your offer... under our terms and conditions’, reiterating in the footer the exclusive jurisdiction of the Court of Sofia.[16]

By proceeding to execute the contract—accepting payment and manufacturing the furniture—without further objection to this final qualification, Tosca tacitly accepted Royal’s terms.[17] Under the ‘last shot’ rule, the contract is concluded on the terms of the party that sent the final document prior to performance. Consequently, the jurisdiction clause in favour of Sofia was validly incorporated and must be enforced under Article 25(1) of the Brussels I bis Regulation, which grants such agreements exclusive effect unless agreed otherwise.[18]

Under Article 25(1) of the Brussels I bis Regulation, a choice of court agreement must be validly incorporated to have exclusive effect. Royal contends that the validity of its jurisdiction clause is established through the "last shot" doctrine. According to this rule—widely recognized in international commercial practice and supported by academic literature such as R. Fentiman’s *International Commercial Litigation*—a contract is concluded on the terms of the party that sent the final document prior to the commencement of performance.

Because Royal’s acceptance on 26 May was conditional upon its own T&Cs, it legally functioned as a counteroffer that extinguished Tosca’s initial offer. When Tosca subsequently proceeded to manufacture and deliver the goods without objecting to this final qualification, Tosca tacitly accepted Royal’s terms through its contractual performance.

The mechanics of this argument mirror the foundational English contract law case, ‘Butler Machine Tool Co Ltd v Ex-Cell-O Corporation’. In that dispute, the seller offered a machine on its own terms (which included a price variation clause), but the buyer responded with an order subject to its own terms (which excluded the clause) and a tear-off acknowledgment slip. The court ruled that the buyer’s response was a counteroffer that "killed" the seller's original offer. By returning the signed slip and delivering the machine, the seller fired the "last shot" and accepted the buyer's terms by conduct.

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[16] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 7.
[17] Fentiman, R. (2015). *International commercial litigation* (2nd ed.). Oxford University Press, p. 112.
[18] Regulation (EU) No 1215/2012 (Brussels I bis), Art. 25(1).

Applying this precedent to the present case, Royal's 26 May email acted exactly as the buyer's counteroffer in *Butler*, destroying Tosca's previous choice of forum clause. Tosca's subsequent material actions—manufacturing and delivering the furniture—constituted the unequivocal acceptance of Royal's "last shot," thereby consolidating the jurisdiction of the Court of Sofia.

2.1.2. Place of Performance (Art. 7(1)(b) Brussels I bis)

Subsidiarily, should the Court consider the jurisdiction clause invalid, the Court of Sofia retains jurisdiction pursuant to Article 7(1)(b) of the Brussels I bis Regulation. In contracts for the sale of goods, jurisdiction is conferred upon the courts of the place where the goods were delivered or should have been delivered.[19]

The contract expressly stipulates the Incoterm 'DAP Sofia, Bulgaria' (Delivered at Place) for the tables and cabinets. Moreover, delivery of 50% of the order (three tables and three cabinets) took place in Sofia on 31 July 2025.[20] The fact that a portion of the goods was subsequently redirected to Rijeka (Croatia) at the request of a third party does not retract from Sofia's status as the principal place of delivery agreed upon in the contract. The jurisprudence of the Court of Justice of the European Union confirms that where multiple places of delivery exist within a single contract, the claimant may sue either in the court of the principal place of delivery or, at their option, in any of the places of delivery. (as established in the Tatry case)[21] . Accordingly, the connection to Sofia suffices to ground jurisdiction under Article 7(1), displacing the general rule of defendant's domicile in Italy.

In this regard, leading doctrinal authorities on EU private international law, such as R. Fentiman (*International Commercial Litigation*)[22], emphasise that the special jurisdiction rules under Article 7(1) are fundamentally driven by the objectives of proximity and predictability. By identifying the "principal place of delivery", the court ensures a close connecting factor between the dispute and the competent court.

This doctrinal approach is fully supported by the jurisprudence of the Court of Justice of the European Union. Specifically, in the landmark case of *Color Drack GmbH v. Lexx*

[19] Regulation (EU) No 1215/2012 (Brussels I bis), Art. 7(1)(b).
[20] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 11.
[21] Court of Justice of the European Union. (2007, May 3). *Color Drack GmbH v. Lexx International Vertriebs GmbH*. Case C-386/05, para. 40.

[22] Fentiman, R. (2015). *International commercial litigation* (2nd ed.). Oxford University Press, p. 112.

International Vertriebs GmbH (Case C-386/05), the CJEU confirmed that where multiple places of delivery exist within a single contract, the claimant may sue either in the court of the principal place of delivery or, at their option, in the court of any of the places of delivery. Accordingly, the primary connection to Sofia suffices to ground jurisdiction under Article 7(1), definitively displacing the general rule of the defendant's domicile in Italy.

2.2. Jurisdiction regarding the claim against Swift

The jurisdiction of the Court of Sofia over the claim against the carrier, Swift, is undisputable based on an explicit contractual agreement and the specific provisions of the Brussels I bis Regulation regarding *lis pendens*.

2.2.1. Exclusive Jurisdiction Clause

The contract of carriage concluded between Royal and Swift contained an explicit clause conferring exclusive jurisdiction on the Court of Sofia for 'all disputes arising out of or in connection with this contract'.[23] Unlike the exchange with Tosca, this clause was contained in a contract signed by both parties, unequivocally satisfying the formal requirements of Article 25(1)(a) of the Brussels I bis Regulation (agreement in writing).[24] Swift's attempt to derogate from this agreement by seizing a different court constitutes a breach of this procedural contract and a blatant violation of the fundamental principle of *pacta sunt servanda.*

2.2.2. Lis Pendens and the Priority of the Chosen Court (Art. 31(2) Brussels I bis)

It is acknowledged that proceedings were initiated in Rotterdam (Netherlands) on 21 July 2025, prior to seizing this Court. Under the general rule of lis pendens (Article 29 Brussels I bis)[25], the court seised second would normally stay proceedings. However, this case falls squarely within the exception provided by Article 31(2) of the Brussels I bis Regulation. Article 31(2) was introduced specifically to combat abusive litigation tactics known as 'torpedo actions', where a party rushes to seize a non-competent court to delay justice.

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[23] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 15.
[24] Regulation (EU) No 1215/2012 (Brussels I bis), Art. 25(1)(a).
[25] European Parliament and Council of the European Union. (2012). Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I bis). *Official Journal of the European Union*, L 351, 1-32.

As leading doctrinal authorities on international commercial litigation, such as R. Fentiman, assert, this provision is paramount to safeguarding party autonomy and ensuring legal predictability within the European judicial area.[26] It mandates that where a court of a Member State on which an exclusive jurisdiction agreement confers jurisdiction is seized, any other court of a Member State shall stay its proceedings until such time as the court seized under the agreement declares that it has no jurisdiction. Furthermore, any attempt to rely on specialised conventions to override this anti-torpedo mechanism must be firmly rejected; the Court of Justice of the European Union definitively established in its recent judgment in Gjensidige Forsikring ASA v. Rhenus Logistics UAB (Case C-90/22)[27] that the application of a specialised transport convention cannot compromise the underlying, fundamental principles of the Brussels I bis Regulation regarding choice-of-court agreements. Since the Court of Sofia is the court designated in the exclusive jurisdiction agreement, it has priority to determine its own jurisdiction. The pre-emptive negative declaratory action in Rotterdam is a quintessential 'torpedo' tactic that the Regulation seeks to neutralise. Consequently, the Court of Rotterdam is obliged to stay its proceedings immediately, allowing the Court of Sofia to proceed to hear the claim.

3. DECLINATORY OF JURISDICTION (OPPOSITION TO DEFENDANTS' OBJECTIONS)

The Claimant, Royal, anticipates potential objections from both Defendants regarding the jurisdiction of this Court and submits the following counterarguments to reaffirm the competence of the Court of Sofia.

3.1. Opposition to Tosca's Potential Objections

Tosca may contend that the Court of Sofia lacks jurisdiction by arguing that its own standard terms, which designated the courts of Milan or the place of performance, should prevail. Royal firmly refutes this position by invoking the 'last shot' doctrine inherent in the formation of contracts. Since Royal's acceptance email of 26 May 2025 explicitly stated that acceptance was subject to its own terms—which confer jurisdiction on Sofia—this constituted a counteroffer that extinguished Tosca's previous offer.[28] By proceeding

[26] Fentiman, R. (2015). *International Commercial Litigation* (2nd ed.). Oxford University Press.
[27] Court of Justice of the European Union. (2024, March 22). *Gjensidige Forsikring ASA v. Rhenus Logistics UAB*. Case C-90/22. ECLI:EU:C:2024:263
[28] United Nations Convention on Contracts for the International Sale of Goods (CISG), Apr. 11, 1980, 1489 U.N.T.S. 3, Art. 19(1).

to manufacture and deliver the goods without objection, Tosca accepted this counteroffer by performance. Consequently, no consensus was ever reached on Tosca's terms, and they cannot be relied upon to derogate from the jurisdiction of this Court.

Furthermore, should Tosca argue that the place of performance is ambiguous due to the partial delivery in Rijeka, Royal submits that this modification does not negate the primary connection to Bulgaria. Sofia was the originally agreed place of delivery for the entirety of the tables and cabinets, and effective delivery took place there for half of the consignment. As such, Sofia remains a principal place of performance sufficient to ground jurisdiction.[29]

3.2. Opposition to Swift's Potential Objections

Swift acts in bad faith by challenging the jurisdiction of the Court of Sofia despite having knowingly signed a contract containing an exclusive jurisdiction clause. Swift is likely to argue that under Article 31 of the Convention on the Contract for the International Carriage of Goods by Road (CMR), they retained the right to bring proceedings in the court of the place where the goods were taken over (Rotterdam), and that the exclusive clause is invalid for restricting this right.

Royal contends that the CMR does not prohibit parties from agreeing on a specific forum to the exclusion of others. By signing the contract, Swift voluntarily exercised its party autonomy to designate Sofia as the exclusive forum, effectively waiving its option to litigate elsewhere.[30] To allow Swift to disregard this contractual obligation would undermine the principle of *pacta sunt servanda.* Furthermore, irrespective of Swift's interpretation of the CMR, Article 31(2) of the Brussels I bis Regulation grants the Court of Sofia—as the chosen court—the priority to rule on the validity of this clause. The proceedings initiated by Swift in Rotterdam are a procedural manoeuvre intended to frustrate the agreement, which this Court must not countenance.[31]

4. APPLICABLE LAW

The determination of the applicable law is a pivotal issue in these proceedings, as it governs the substantive rights and obligations of the parties, the validity of the contract

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[29] Court of Justice of the European Union. (2007, May 3). *Color Drack GmbH v. Lexx International Vertriebs GmbH*. Case C-386/05, para. 42.

[30] Convention on the Contract for the International Carriage of Goods by Road (CMR), May 19, 1956, 399 U.N.T.S. 189, Art. 31(1).

[31] Regulation (EU) No 1215/2012 (Brussels I bis), Art. 31(2).

termination, and the assessment of damages. The Claimant, Royal Furniture OOD ('Royal'), submits that the contractual relationship with Tosca Mobili s.r.l. ('Tosca') is governed by Bulgarian domestic law, to the explicit exclusion of the United Nations Convention on Contracts for the International Sale of Goods ('CISG'). Furthermore, the relationship with the carrier, Swift, is governed by the Convention on the Contract for the International Carriage of Goods by Road ('CMR'), supplemented where necessary by the chosen national law.

4.1. The Law Applicable to the Contract of Sale between Royal and Tosca

The Claimant contends that the contract of sale concluded with Tosca is subject to Bulgarian national law. This assertion relies on the principle of party autonomy enshrined in Article 3 of Regulation (EC) No 593/2008 ('Rome I Regulation') and the valid exclusion of the CISG pursuant to Article 6 of that Convention.

4.1.1. Valid Choice of Bulgarian Law (Art. 3 Rome I Regulation)

Under Article 3(1) of the Rome I Regulation, a contract shall be governed by the law chosen by the parties. This choice must be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. In the present dispute, Royal explicitly designated Bulgarian law as the governing law of the contract.

The correspondence exchanged between the parties evidences this choice. Royal's initial email of 20 May 2025 included a clear statement in the footer: 'Bulgarian national law applies exclusively to all transactions'. Furthermore, Royal's specific Terms and Conditions, accessible via the provided hyperlink, contained a precise choice of law clause stipulating: 'Bulgarian national law, with the exclusion of the CISG (Vienna Sales Convention 1980), applies to all transactions'.[32]

While Tosca's subsequent offer of 23 May 2025 referred to Italian law, this proposal was not accepted by Royal. Instead, Royal's email of 26 May 2025 constituted a counteroffer under legal standards, as it expressly stated acceptance 'under our terms and conditions'. By proceeding to perform the contract—accepting payment, manufacturing the goods, and initiating delivery—without objecting to Royal's final qualification, Tosca accepted the contract under Royal's terms.

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[32] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), Art. 3(1).

This sequence of events engages the 'last shot' doctrine, widely recognised in international commercial practice for resolving a 'battle of forms'. According to this doctrine, the contract is concluded on the terms of the party that sent the final document prior to performance. Since Royal sent the final communication insisting on its own terms before Tosca commenced performance, Royal's choice of law clause was effectively incorporated into the contract. Consequently, pursuant to Article 3 of the Rome I Regulation, the Court must respect this choice and apply Bulgarian law.

4.1.2. Exclusion of the CISG (Art. 6 CISG)

It is acknowledged that both Bulgaria and Italy are Contracting States to the CISG. Ordinarily, pursuant to Article 1(1)(a) of the CISG, the Convention would apply automatically to a contract of sale of goods between parties whose places of business are in different States. However, Article 6 of the CISG explicitly allows parties to exclude the application of the Convention entirely.

In this case, the exclusion was not merely implied but express. The clause in Royal's Terms and Conditions stated unequivocally: '…with the exclusion of the CISG'. By incorporating these terms into the contract through the mechanism described above (the 'last shot' rule), the parties validly exercised their right to opt out of the uniform sales law.

Tosca may argue that the CISG applies by default or that its own terms, which remain silent regarding the Convention but refer generally to Italian law, should prevail. However, this position contradicts the prevailing academic interpretation of Article 6 of the CISG. Leading authorities, notably Schwenzer, emphasise that while the exclusion of the Convention must be certain, an explicit and unambiguous opting-out clause drafted by one party prevents the automatic application of the uniform law if the contract is subsequently performed.[33] Furthermore, as Ferrari highlights in his extensive analysis of the applicability of the CISG, when a battle of forms occurs and only one party expressly addresses the uniform law with the clear intention to exclude it, imposing the Convention by default would constitute a severe violation of the principle of party autonomy.[34] Consequently, Royal's express exclusion must be given full effect by this Court to avoid

[33] Schwenzer, I. (Ed.). (2016). *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)* (4th ed.). Oxford University Press, pp. 106-108.
[34] Ferrari, F. (2012). *Contracts for the international sale of goods: Applicability and applications of the 1980 United Nations Sales Convention*. Martinus Nijhoff Publishers, pp. 89-92.

imposing a legal regime that was unequivocally rejected during negotiations. Moreover, the application of Bulgarian domestic law is critical to the substance of the dispute. The Claimant relies on specific provisions of the Bulgarian Code of Commerce and Obligations regarding breach of contract and remedies, which provide a robust framework for addressing the Manufacturer's failure to adhere to the agreed ethical standards. The Claimant submits that the CISG's restrictive definitions of 'fundamental breach' and its notice requirements should not limit Royal's right to redress for such a significant violation of the contract's ethical core. Therefore, the Court should uphold the parties' agreement to exclude the Convention.

4.1.3. Subsidiary Application of Rome I Regulation Rules

Should the Court hypothetically consider that the 'battle of forms' resulted in a 'knock-out' of both parties' choice of law clauses, the applicable law would be determined by Article 4 of the Rome I Regulation. While Article 4(1)(a) generally points to the law of the seller's habitual residence (Italy), the Claimant argues that this default rule does not automatically reinstate the CISG if it has been expressly excluded by one party's terms which were the last to be communicated.

Nevertheless, the Claimant maintains that the primary position—the valid incorporation of Bulgarian law via the 'last shot' rule—is the correct legal interpretation. The transaction was premised on Royal's specific requirements for sustainability, and the legal certainty provided by Royal's chosen law was an integral part of its acceptance of the deal.

4.2. The Law Applicable to the Contract with Swift

Regarding the relationship with the carrier, Swift, the Claimant submits that the dispute is governed primarily by the Convention on the Contract for the International Carriage of Goods by Road (CMR), as the contract involves the carriage of goods by road in vehicles for reward, and the place of taking over of the goods (Netherlands) and the place designated for delivery (Bulgaria) are situated in two different countries, both of which are Contracting Parties to the CMR (Article 1 CMR).

To the extent that issues arise which are not settled by the CMR, the applicable national law must be determined. Given the express jurisdiction agreement in favour of the Court of Sofia and the place of delivery being Bulgaria, the Claimant argues that Bulgarian law

is the law with the closest connection to the contract of carriage, pursuant to Article 5 of the Rome I Regulation. Consequently, the liability of Swift should be assessed under the mandatory provisions of the CMR, supplemented by Bulgarian law where the Convention is silent.

5. SUBSTANTIVE ISSUES (MERITS)

5.1. Claim against Tosca Mobili s.r.l.

The Claimant, Royal Furniture OOD ('Royal'), submits that Tosca Mobili s.r.l. ('Tosca') has committed a fundamental breach of the contract of sale by supplying furniture manufactured with materials that do not comply with the agreed ethical and sustainable standards. This non-conformity frustrates the core purpose of the contract, justifying its avoidance and entitling Royal to full compensation for the damages suffered, specifically the loss of profit resulting from the cancellation of the subsequent contract with its client.

5.1.1. Non-Conformity of the Goods: The Essential Requirement of Sustainability

The central issue regarding the merits of the claim against Tosca is the failure to deliver goods that conform to the specific qualities required by the contract. Whether applying Bulgarian national law or, subsidiarily, the CISG (Articles 35(1) and 35(2)(b)), the seller is under an obligation to deliver goods which are of the quantity, quality and description required by the contract and which are fit for the particular purpose expressly made known to the seller.[35]

In the present case, the requirement for 'highest sustainable and ethical standards' was not a mere ancillary hope but a fundamental term of the agreement. Royal's business model is explicitly predicated on sustainability, a fact that was communicated to Tosca from the very inception of the negotiations. In the email dated 20 May 2025, Royal's representative stated: 'As my firm is specialised in sustainable and eco-friendly furniture, it is salient that the furniture complies with the highest sustainable and ethical standards'.[36] The use of the word 'salient' underscores the critical importance of this specification.

[35] United Nations Convention on Contracts for the International Sale of Goods (CISG), Apr. 11, 1980, 1489 U.N.T.S. 3, Art. 35(1) & (2)(b).
[36] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 3.

Tosca expressly accepted this condition in its reply on 23 May 2025, assuring Royal that 'We will in any case comply with the highest standards in the production of the furniture'.[37] Consequently, the ethical origin of the wood became a contractual quality description. The delivery of furniture manufactured using unethical wood, as revealed by public reports, constitutes a direct violation of this express warranty. The goods delivered were materially different from the goods contracted for, as they lacked the essential attribute of ethical sustainability that motivated the transaction.

5.1.2. Existence of a Fundamental Breach

The non-conformity in question amounts to a fundamental breach of contract (or a material breach under Bulgarian law), thereby justifying the remedy of avoidance. Under legal standards comparable to Article 25 of the CISG, a breach is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract.

Royal entered into the contract with the legitimate expectation of receiving high-end, ethically produced furniture suitable for resale to a specific clientele—builders of exclusive yachts—who demand strict adherence to environmental and ethical norms. Tosca's failure to provide such goods did not merely reduce the value of the furniture; it rendered the furniture entirely unfit for Royal's intended purpose. This is evidenced by the immediate reaction of Royal's own client, the Bulgarian yacht builder, who avoided the contract with Royal upon learning of the unethical nature of the materials.[38]

The detriment suffered by Royal is absolute: the specific commercial purpose for which the goods were purchased has been completely frustrated. The furniture, tainted by unethical production practices, cannot be used for the refurbishment of the yachts as intended, nor can it be easily resold in Royal's niche market without severe reputational damage. Therefore, the breach goes to the root of the contract.

Furthermore, this result was foreseeable to Tosca. By accepting the order with the explicit instruction regarding the 'salient' nature of sustainability, Tosca must have foreseen that a failure to comply would jeopardise Royal's commercial commitments. A professional

[37] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 5.
[38] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 12.

manufacturer in the high-end market is presumed to understand that 'unethical' products are unacceptable to clients who expressly stipulate sustainability as a condition.[39]

5.1.3. Validity of the Avoidance of the Contract

Pursuant to the applicable legal framework, Royal validly exercised its right to avoid the contract. Avoidance is the appropriate remedy where the failure to perform an obligation constitutes a fundamental breach.

Royal declared the contract avoided within a reasonable time after the breach became known. The goods were delivered on 31 July 2025. The news regarding Tosca's use of unethical wood emerged approximately ten days later. Upon receiving notice of cancellation from its own client, Royal immediately informed Tosca of the situation and its intention to avoid the contract and claim damages.[40] This prompt notification satisfies the requirement to give notice within a reasonable time after the buyer knew or ought to have known of the breach.

Tosca may argue that Royal failed to offer an opportunity to cure the non-conformity (e.g., by substituting the goods). However, the Claimant submits that the specific nature of this breach renders a cure impossible or unreasonable. The breach involves an ethical defect that taints the entire production line ('all furniture made by the company').[41] Unlike a technical defect that can be repaired, the use of unethical wood fundamentally compromises the integrity of the product and the trust essential to the business relationship. Furthermore, considering that Royal had already lost its sub-sale to the yacht builder, a replacement delivery would not have remedied the loss of that specific business opportunity. Consequently, Royal was entitled to declare the contract avoided immediately.

As a result of the avoidance, Royal is released from its obligations under the contract and is entitled to the restitution of the price paid (EUR 168,000 for the tables and cabinets), subject to the return of the goods where possible.[42]

5.1.4. Entitlement to Damages (Loss of Profit)

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[39] United Nations Convention on Contracts for the International Sale of Goods (CISG), Apr. 11, 1980, 1489 U.N.T.S. 3, Art. 25.
[40] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 13.
[41] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 12.
[42] United Nations Convention on Contracts for the International Sale of Goods (CISG), Apr. 11, 1980, 1489 U.N.T.S. 3, Art. 49(1)(a).

In addition to the restitution of the price, Royal claims damages for the loss of profit suffered as a direct consequence of Tosca's breach. Under general principles of contract law (and Article 74 of the CISG, applied subsidiarily or by analogy), damages for breach of contract consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach.

The primary head of damage is the loss of profit from the cancelled contract with the Bulgarian yacht builder. Royal had secured a lucrative contract for the resale of the tables and cabinets. Due to Tosca's delivery of non-conforming goods, this contract was cancelled, depriving Royal of the expected margin.[43]

The assessment of damages under Article 74 of the CISG rests on the dual pillars of full compensation and the foreseeability constraint. As Saidov extensively analyses in his leading treatise on the law of damages in international sales, the burden of proof lies heavily with the aggrieved party to demonstrate not only the exact quantum of the lost profit, but crucially, that such collateral commercial damage was objectively foreseeable to the breaching party at the time of the contract's conclusion.[44] Royal maintains that by explicitly identifying its clients as builders of exclusive yachts in the initial communications, the highly lucrative nature of the sub-contracts and the catastrophic financial impact of delivering ethically tainted goods were entirely foreseeable to Tosca. Consequently, the strict doctrinal threshold for claiming loss of profit under the Convention is fully satisfied.

This loss was a direct and foreseeable consequence of the breach. At the time of the conclusion of the contract, Tosca was aware that the furniture was intended for Royal's clients ('builders of exclusive yachts').[45] It was therefore foreseeable that delivering goods violative of the clients' ethical standards would lead to the cancellation of those sub-contracts and a subsequent loss of profit for Royal.

Tosca cannot claim exemption from liability. The use of unethical wood was not an impediment beyond its control (force majeure), but a result of its own sourcing decisions

[43] United Nations Convention on Contracts for the International Sale of Goods (CISG), Apr. 11, 1980, 1489 U.N.T.S. 3, Art. 74.
[44] Saidov, D. (2008). The law of damages in international sales: The CISG and other international instruments. Hart Publishing, pp. 115-118.
[45] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 3.

or negligence in supply chain management. A manufacturer is responsible for ensuring the conformity of the materials used in its production process.

Accordingly, Royal requests the Court to order Tosca to pay damages in an amount sufficient to place Royal in the position it would have been in had the contract been properly performed. This includes the full reimbursement of the purchase price and compensation for the lost profit from the voided transaction with the yacht builder.

5.2. Claim against Swift

The Claimant, Royal Furniture OOD ('Royal'), brings a claim for damages against the carrier, Swift, for the loss and damage sustained to the cargo during the international carriage from Rotterdam to Sofia. Royal submits that Swift is fully liable for the total value of the lost and damaged goods, amounting to EUR 84,000. The Claimant contends that Swift cannot avail itself of the limits of liability provided under the Convention on the Contract for the International Carriage of Goods by Road ('CMR') because the damage resulted from conduct constituting wilful misconduct or a default equivalent to wilful misconduct under Article 29 of the CMR.

5.2.1. Liability under Article 17 of the CMR

As established in the jurisdictional analysis, the contract of carriage is governed by the CMR Convention. Under Article 17(1) of the CMR, the carrier constitutes the liable party for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery. As Clarke observes in his seminal treatise on the CMR, this provision imposes a strict liability regime upon the carrier, establishing a strong presumption of liability that can only be rebutted by proving one of the specific, narrowly construed exonerating circumstances listed in Article 17(2).[46]

In the present case, it is undisputed that Swift took possession of the goods (14 chairs and 6 sofas) in Rotterdam in good condition. It is equally undisputed that upon arrival in Sofia, a significant portion of the consignment was missing or destroyed. Specifically, four

[46] Clarke, M. A. (2014). International carriage of goods by road: CMR (6th ed.). Informa Law from Routledge, pp. 152-155.

chairs and two sofas were stolen, and four additional chairs were damaged beyond repair.[47] Swift has failed to deliver the goods in the condition in which they were received.

Swift may attempt to rely on Article 17(2) of the CMR to relieve itself of liability, arguing that the loss was caused by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent (e.g., unavoidable theft). However, Royal submits that the theft was not an unavoidable event but the direct result of the carrier's failure to take reasonable precautions. Consequently, the basic liability of the carrier is established.

5.2.2. Exclusion of Liability Limits (Article 29 CMR)

The central issue in this dispute is the quantum of compensation. Swift seeks to limit its liability to 8.33 Special Drawing Rights (SDR) per kilogram of gross weight short, pursuant to Article 23(3) of the CMR. Royal vigorously opposes this limitation and invokes Article 29 of the CMR, which precludes the carrier from relying on the provisions of the Convention that exclude or limit his liability if the damage was caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seised of the case, is considered as equivalent to wilful misconduct.

The Claimant submits that the conduct of Swift's driver constitutes a default equivalent to wilful misconduct (dolus eventualis or gross negligence of an extreme nature) under the applicable law. This assertion is founded on the flagrant violation of express security instructions and the conscious acceptance of a high risk of loss.

The liability regime established by the CMR is fundamentally designed to provide commercial certainty through fixed compensatory limits. As highlighted by Glass in his authoritative commentary on the Convention, the limitation of liability under Article 23 is the cornerstone of the CMR's risk allocation mechanism, allowing international carriers to insure their operations predictably and economically.[48] Consequently, academic consensus dictates that the threshold to break these limits under Article 29 must be interpreted restrictively. Swift submits that Royal's attempt to bypass this fundamental limitation by invoking an equivalent default relies on an overly expansive interpretation

[47] Pax Moot. (2026). *Pax Moot 2026 Case*. Paras. 16-17.
[48] Glass, D. A. (2017). Hill and Messent: CMR: Contracts for the international carriage of goods by road (6th ed.). Informa Law from Routledge, pp. 289-292.

of wilful misconduct that directly undermines the uniformity and commercial predictability the CMR seeks to protect across European jurisdictions.

5.2.3. Breach of Express Security Instructions

Prior to the commencement of the carriage, Royal provided Swift with explicit, written instructions regarding the security of the high-value cargo. Specifically, the contract contained a clear directive: 'do not leave the consignment unattended at an unsecured parking place'.[49] This instruction was not merely a guideline, but a binding contractual term intended to mitigate the specific risk of theft inherent in the transport of luxury goods.

On 15 July 2025, the driver of Swift disregarded this express prohibition. He parked the vehicle, which was covered only by a tarpaulin (a 'curtain-sider') and thus vulnerable to intrusion, at an unsecured parking place near Graz (Austria). Furthermore, he left the vehicle unattended to have dinner at a restaurant located approximately 500 metres away.[50]

This conduct represents a conscious and deliberate breach of a safety instruction. The driver knew, or ought to have known, that leaving a soft-sided truck unattended in an unsecured area exposed the cargo to an immediate and grave risk of theft. By choosing to abandon the vehicle to dine at a distance that prevented effective surveillance, the driver accepted the possibility of the loss.

As confirmed by established comparative jurisprudence across European jurisdictions—given that the CMR is applied and interpreted by national supreme courts rather than the CJEU—the deliberate disregard of express security instructions given by the sender constitutes a default equivalent to wilful misconduct under Article 29 of the CMR. Leading academic authorities on international carriage, such as Haak, assert that when a carrier is explicitly warned of a specific risk and instructed to take clear preventative measures, its conscious failure to comply demonstrates a reckless acceptance of the probable loss, thereby entirely stripping the carrier of the protective liability caps.[51]

5.2.4. Conduct Equivalent to Wilful Misconduct

[49] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 15.
[50] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 16.
[51] Haak, K. F. (1986). The liability of the carrier under the CMR. Europa Instituut, pp. 215-218.

Even in the absence of express instructions, the conduct of the driver falls below the standard of professional diligence to such a degree that it amounts to gross negligence equivalent to wilful misconduct. The transport involved luxury furniture with a significant value. To leave such goods in a trailer protected only by a canvas sheet, in an unguarded public parking area, constitutes a reckless abandonment of the duty of care.

The concept of 'default equivalent to wilful misconduct' encompasses behaviour where the actor acts recklessly and with knowledge that damage would probably result. In this case, the risk of theft from curtain-sided trailers in unsecured parking areas is a well-known phenomenon in the European road haulage industry. The driver's decision to leave the truck unattended was not a mere error of judgment but a reckless act that facilitated the crime. Therefore, pursuant to Article 29 of the CMR, Swift is liable for the full value of the loss.

5.2.5. Calculation of Damages

Since the limitation of Article 23(3) CMR is inapplicable, Royal is entitled to compensation calculated by reference to the value of the goods at the place and time at which they were accepted for carriage (Article 23(1) CMR), which corresponds to the invoice value.

The loss sustained by Royal is quantified as follows: (a) 4 Chairs (Stolen) and 4 Chairs (Damaged/Total Loss): Total of 8 chairs. (b) 2 Sofas (Stolen).

Based on the contract price: The value of each chair is EUR 6,000. The value of each sofa is EUR 18,000.

Calculation: 8 chairs x EUR 6,000 = EUR 48,000. 2 sofas x EUR 18,000 = EUR 36,000. Total Claim: EUR 84,000.[52]

Royal additionally claims interest on this sum calculated at 5% per annum, as provided by Article 27 of the CMR, from the date on which the claim was sent in writing to the carrier.

If the limit of 8.33 SDR per kilogram were applied, the compensation would be derisory. The weight of the lost/damaged goods is approximately 372 kg (72 kg for chairs + 300 kg for sofas). Applying the limit would result in compensation of approximately 3,100

[52] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 17.

SDR (circa EUR 3,600).[53] Such a result would be manifestly unjust given the gravity of the carrier's fault and would fail to compensate Royal for the actual loss suffered due to Swift's recklessness.

6. PRAYER FOR RELIEF

In light of the submissions made above, the Claimant, Royal Furniture OOD, respectfully requests the Court of Sofia to:

1. Declare that it has international jurisdiction to hear the claims brought against Tosca Mobili s.r.l. and Swift.

2. Order the stay of the proceedings initiated by Swift before the Court of Rotterdam, pursuant to Article 31(2) of the Brussels I bis Regulation.

3. Declare that the contract of sale concluded with Tosca Mobili s.r.l. is governed by Bulgarian national law, with the explicit exclusion of the CISG.

4. Declare that Tosca Mobili s.r.l. committed a fundamental breach of the contract of sale, and that the Claimant validly avoided the contract.

5. Order Tosca Mobili s.r.l. to pay full compensation for damages, including the restitution of the purchase price and the lost profits derived from the cancelled sub-contract.

6. Declare that the carrier, Swift, acted with a default equivalent to wilful misconduct under Article 29 of the CMR Convention.

7. Order Swift to pay full compensation for the stolen and damaged goods in the amount of EUR 84,000, plus corresponding interest, without the application of any liability limits.

[53] Convention on the Contract for the International Carriage of Goods by Road (CMR), May 19, 1956, 399 U.N.T.S. 189, Art. 23(3).

DEFENDANT'S MEMORANDA

PART I: DEFENDANT'S MEMORANDUM (TOSCA)

1. STATEMENT OF FACTS (DEFENCE PERSPECTIVE)

The Defendant Tosca Mobili s.r.l. ('Tosca' or 'The Defendant'), domiciled in Milan (Italy), is a manufacturer of high-end furniture with an impeccable reputation for providing Italian quality. The company sources materials globally, including from Ghana, Brazil, and Thailand, to meet the bespoke needs of its clients.[54]

The Negotiation and Offer On 20 May 2025, Royal Furniture OOD ('Royal') approached Tosca regarding the manufacture of custom furniture and the purchase of existing stock. Following this enquiry, on 23 May 2025, Maria, representing Tosca, sent a comprehensive offer to Royal. This email explicitly confirmed the ability to fulfil the order and set out the specific commercial terms: delivery of the custom items (tables and cabinets) 'DAP Sofia' and the stock items (chairs and sofas) 'EXW Rotterdam'.

Crucially, this email contained a hyperlink to Tosca's Terms and Conditions (T&C). These T&C expressly stipulated that the contract would be governed by Italian law and that the competent forum for any disputes would be the court of Milan or the court of the place of performance.[55]

Conclusion of the Contract On 26 May 2025, Royal replied to Tosca's email stating: 'We accept your offer'. Although Royal added the phrase 'under our terms and conditions' and included a hyperlink to its own terms, Tosca proceeded with the manufacturing process based on the commercial terms outlined in its initial offer, understanding that the core agreement had been reached on the basis of its acceptance to produce the goods.[56]

Performance and Delivery Tosca performed its obligations diligently. On 25 July 2025, Tosca notified Royal that the custom-made furniture was ready for shipment. Subsequently, at Royal's specific request via telephone on 30 July, Tosca displayed flexibility by agreeing to split the delivery, sending half of the consignment to Rijeka

[54] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 1.
[55] Pax Moot. (2026). *Pax Moot 2026 Case*. Paras. 5-6.
[56] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 7.

(Croatia) and the other half to Sofia (Bulgaria). The goods arrived at their respective destinations on 31 July 2025.[57]

The Alleged Non-Conformity Ten days after the successful delivery, public reports circulated in the media alleging that Tosca used 'unethical wood' in its production. These reports were general in nature and did not provide specific technical evidence regarding the actual furniture delivered to Royal. Despite the furniture being physically sound and fit for purpose, Royal informed Tosca that its own client had cancelled their contract. Relying solely on these external reports, Royal purported to avoid the contract with Tosca and demanded damages. Tosca refused to reimburse the purchase price, maintaining that the goods were in conformity with the contract and that no fundamental breach had occurred.[58]

Procedural Status Royal subsequently initiated proceedings before the Court of Sofia. Tosca contests the jurisdiction of the Bulgarian court, relying on the choice of court agreement in its T&C or, alternatively, on the general rules of jurisdiction which point to the Defendant's domicile (Italy).[59]

2. JURISDICTION

The Defendant, Tosca Mobili s.r.l. ('Tosca'), contests the jurisdiction of the Court of Sofia. Tosca submits that the Bulgarian courts lack competence to hear this dispute regarding the contract of sale. The jurisdiction clause relied upon by the Claimant was not validly incorporated into the contract, and pursuant to the general rules of Regulation (EU) No 1215/2012 ('Brussels I bis Regulation'), jurisdiction lies with the courts of the Member State where the Defendant is domiciled, namely Italy.

2.1. Invalidity of the Choice of Court Agreement

The Claimant asserts that the Court of Sofia has jurisdiction based on a clause contained in Royal's Terms and Conditions. Tosca firmly rejects this assertion. For a choice of court agreement to be valid under Article 25 of the Brussels I bis Regulation, there must be a

[57] Pax Moot. (2026). *Pax Moot 2026 Case*. Paras. 8-11.
[58] Pax Moot. (2026). *Pax Moot 2026 Case*. Paras. 12-13.
[59] Regulation (EU) No 1215/2012 (Brussels I bis), Art. 4(1)

clear consensus between the parties. In the present case, such consensus was never reached.

The negotiation involved an exchange of conflicting standard terms, a situation known as the 'battle of forms'. Tosca's initial offer on 23 May 2025 explicitly incorporated its own Terms and Conditions, which designated the Court of Milan as the competent forum.[60] When Royal replied on 26 May 2025 with 'We accept your offer', it attempted to impose its own contradictory terms via a hyperlink.

Tosca submits that the 'last shot' doctrine, invoked by the Claimant, is not the appropriate standard for resolving this conflict, particularly given the lack of explicit acceptance by Tosca. Instead, the Court should apply the 'knock-out' rule, which is widely recognised in continental legal systems and international commercial law. Under this doctrine, where parties exchange conflicting standard terms, the conflicting clauses (in this case, the choice of forum clauses) cancel each other out, and neither form part of the contract. Since Tosca proposed Milan and Royal proposed Sofia, these terms are mutually exclusive and thus void.

Furthermore, the requirements of Article 25(1)(a) regarding an agreement 'in writing or evidenced in writing' impose a standard of transparency. A mere reference to a hyperlink in a footer, which contradicts the express terms of the original offer, does not satisfy the requirement of real consent from the Defendant. Consequently, the jurisdiction clause favouring Sofia is invalid.

2.2. Jurisdiction under General Rules (Art. 4 and Art. 7 Brussels I bis)

In the absence of a valid choice of court agreement, jurisdiction must be determined by the objective connecting factors of the Brussels I bis Regulation.

Domicile of the Defendant (Art. 4):

The general rule under Article 4(1) is that persons domiciled in a Member State shall be sued in the courts of that Member State. Tosca is domiciled in Milan, Italy. Therefore, the Italian courts have natural jurisdiction over the defendant.

Place of Performance (Art. 7(1)(b)):

[60] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 5.

The Claimant may attempt to rely on Article 7(1)(b), which grants jurisdiction to the court of the place of delivery. However, the place of delivery in this transaction is fragmented and ambiguous. While the contract initially envisaged delivery in Sofia, the actual performance was split between Rijeka (Croatia) and Sofia at the Claimant's request. This modification complicates the identification of a single 'place of performance'.

More importantly, regarding the pre-designed goods (chairs and sofas), the agreed delivery term was 'EXW Rotterdam' (Ex Works). Although the current claim against Tosca focuses on the custom furniture, the commercial relationship was unitary. Given the ambiguity of the place of delivery and the invalidity of the forum clause, legal certainty requires the application of the general rule of the Defendant's domicile. Therefore, the Court of Sofia should decline jurisdiction in favour of the Court of Milan.

3. APPLICABLE LAW

Tosca submits that the contract of sale is governed by the United Nations Convention on Contracts for the International Sale of Goods ('CISG'), supplemented by Italian national law. The Claimant's argument that Bulgarian domestic law applies to the exclusion of the CISG is legally flawed and effectively deprives the international transaction of its appropriate regulatory framework.

3.1. Applicability of the CISG (Art. 1(1)(a))

The CISG applies to contracts of sale of goods between parties whose places of business are in different States, provided those States are Contracting States (Article 1(1)(a) CISG). Both Italy and Bulgaria are Contracting States. Therefore, the Convention applies automatically unless validly excluded.

3.2. Failure to Exclude the CISG (Art. 6)

Article 6 of the CISG allows parties to exclude the application of the Convention, but such exclusion must be express and agreed upon. The Claimant argues that its standard terms excluded the CISG. However, as demonstrated in the jurisdictional analysis, Royal's standard terms were not validly incorporated into the contract due to the 'battle of forms'.

Tosca's offer referenced Italian law (which includes the CISG). Royal's acceptance referenced Bulgarian law excluding the CISG. These are diametrically opposed terms.

Applying the 'knock-out' rule, the conflicting choice of law clauses eliminates each other. When the contractual choice of law fails, the default statutory rules apply. Since the conditions of Article 1(1)(a) are met, the CISG applies by default as part of the international legal order binding both States. A unilateral attempt by Royal to opt out of a uniform international treaty via a footer in an email cannot bind Tosca without express consent.

3.3. Subsidiary Applicable Law (Rome I Regulation)

To the extent that matters arise which are not settled by the CISG, the applicable national law is determined by Regulation (EC) No 593/2008 ('Rome I Regulation').

Since the parties' choice of law clauses cancel each other out, Article 4(1)(a) of the Rome I Regulation applies. This article stipulates that a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence. Tosca, the seller, has its habitual residence in Italy. Consequently, Italian law applies to fill any gaps left by the CISG.[61]

3.4. Relevance of the CISG to the Merits

The application of the CISG is crucial for the fair resolution of this dispute. The CISG contains specific provisions designed to preserve the contract and minimise economic waste, such as the high threshold for 'fundamental breach' (Article 25) and the seller's right to cure (Article 48). The Claimant's attempt to apply Bulgarian domestic law is a strategic manoeuvre to bypass these international standards and lower the bar for avoiding the contract. The Court must resist this and apply the Vienna Convention as the proper governing law.

4. SUBSTANTIVE ISSUES (MERITS)

The Defendant, Tosca Mobili s.r.l. ('Tosca'), submits that the claim brought by Royal Furniture OOD ('Royal') is unfounded in fact and law. Tosca has fulfilled its contractual obligations by delivering high-quality furniture that is fit for the purpose for which goods of the same description would ordinarily be used. The Claimant's attempt to avoid the contract is disproportionate and legally invalid under the United Nations Convention on

[61] Regulation (EC) No 593/2008 (Rome I), Art. 4(1)(a).

Contracts for the International Sale of Goods ('CISG'). Consequently, the claim for damages must be dismissed or, alternatively, significantly reduced.

4.1. Conformity of the Goods (Art. 35 CISG)

The core of the dispute lies in whether the goods delivered by Tosca conformed to the contract. Royal alleges that the furniture was non-conforming because it was manufactured with 'unethical wood'. Tosca vigorously contests this allegation on two grounds: firstly, the goods were physically sound and met all technical specifications; and secondly, the term 'ethical standards' is too vague to constitute a binding quality description under Article 35 of the CISG.

Physical Conformity: It is undisputed that the furniture delivered (tables and cabinets) corresponded exactly to the designs, dimensions, and material types (teak) requested by Royal. The goods were of high quality, free from material defects, and perfectly capable of being used for their ordinary purpose—furnishing yachts. Under Article 35(2)(a) of the CISG, goods are conforming if they are fit for the purposes for which goods of the same description would ordinarily be used. Tosca's furniture met this objective standard.[62]

Ambiguity of 'Ethical Standards': Royal relies heavily on its email stating that compliance with 'highest sustainable and ethical standards' was 'salient'. Tosca submits that this phrase is inherently subjective and lacks the precision required to form a binding contractual specification under Article 35(1). In international trade, unless parties agree on a specific technical standard (e.g., FSC certification or a specific ISO norm), a general reference to 'ethics' is aspirational rather than obligatory.

Tosca sources its wood from reputable suppliers globally (Ghana, Brazil, Thailand). The public reports cited by Royal are general allegations against the industry or the company as a whole, not specific proof that the exact wood used in Royal's tables was illegally harvested. A seller cannot be held liable for non-conformity based on unverified media reports and vague contractual terms. Therefore, the goods were in conformity with the contract.

4.2. Absence of Fundamental Breach (Art. 25 CISG)

[62] United Nations Convention on Contracts for the International Sale of Goods (CISG), Apr. 11, 1980, 1489 U.N.T.S. 3, Art. 35(2)(a).

Even if the Court were to find that the use of the alleged wood constituted a non-conformity, Tosca submits that this does not amount to a 'fundamental breach' as defined in Article 25 of the CISG. A breach is fundamental only if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract.[63]

No Substantial Deprivation: The furniture delivered is functional, aesthetically pleasing, and retains significant commercial value. The fact that Royal's specific client decided to cancel their contract does not mean the goods are objectively valueless. Royal could resell the furniture to other clients who do not share the same rigid interpretation of 'ethical standards' or who prioritise design and quality over unproven supply chain allegations.

Foreseeability of the Consequences: Article 25 contains a foreseeability test: a breach is not fundamental if the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result. Tosca could not have reasonably foreseen that a general media report would lead to the immediate cancellation of Royal's sub-contracts without even an inspection of the goods. The reaction of Royal's client was an independent commercial decision, possibly driven by other factors, for which Tosca cannot be held responsible.

Furthermore, the 'ethical' requirement was subjective to Royal's niche market. While Tosca was aware of Royal's focus, it is unreasonable to expect a manufacturer to guarantee that its supply chain is immune to all forms of public criticism. Therefore, the threshold for fundamental breach—the most severe remedy under the CISG—has not been met.

4.3. Invalidity of the Avoidance (Art. 49 and Art. 48 CISG)

Royal declared the contract avoided on 26 August 2025. Tosca submits that this avoidance was invalid because Royal failed to respect the seller's right to cure and did not grant an additional period of time for performance.

Right to Cure (Art. 48 CISG): The CISG strongly favours the preservation of the contract. Article 48(1) allows the seller to remedy any failure to perform his obligations even after the date for delivery, provided he can do so without unreasonable delay and without

[63] United Nations Convention on Contracts for the International Sale of Goods (CISG), Apr. 11, 1980, 1489 U.N.T.S. 3, Art. 25.

causing the buyer unreasonable inconvenience. Royal did not give Tosca any opportunity to verify the allegations or to offer a replacement (e.g., furniture certified by a specific body). By immediately declaring avoidance, Royal deprived Tosca of its statutory right to cure the alleged defect.[64]

Failure to Fix an Additional Period (Art. 47 CISG): Under Article 49(1)(b), if a breach is not fundamental, the buyer may avoid the contract only if the seller does not deliver the goods within an additional period of time fixed by the buyer (Nachfrist). Royal did not set any such period. It simply cancelled the contract upon hearing the news. Since the breach was not fundamental, the failure to set a Nachfrist renders the avoidance ineffective. The contract remains in force, and Royal is obliged to pay the price.[65]

4.4. Damages and Duty to Mitigate (Art. 74 and Art. 77 CISG)

Royal claims damages for the full purchase price and loss of profit. Tosca contests the quantum of these damages and asserts that Royal failed to mitigate its loss.

Causation and Foreseeability (Art. 74 CISG): Damages under the CISG are limited to losses that were a foreseeable consequence of the breach. The cancellation of the contract by Royal's client was a decision by a third party. Tosca is not liable for the commercial whims of Royal's clients. The chain of causation is broken by the client's independent act. Furthermore, Royal has not provided concrete evidence of the specific profit margin lost, making the claim speculative.

Duty to Mitigate (Art. 77 CISG): Article 77 imposes a strict duty on the party relying on a breach to take such measures as are reasonable in the circumstances to mitigate the loss. Royal has possession of the furniture. There is no evidence that Royal attempted to resell the goods to another customer or to use them in a different project. Instead of mitigating the loss, Royal simply stored the goods and sued for the full amount.

If Royal had acted as a reasonable merchant, it would have sought alternative buyers. The furniture is high-end Italian design; it is highly improbable that it has no market value. By failing to resell the goods, Royal has failed to mitigate its damages. Consequently, pursuant to Article 77, the amount of damages claimed must be reduced by the amount

[64] United Nations Convention on Contracts for the International Sale of Goods (CISG), Apr. 11, 1980, 1489 U.N.T.S. 3, Art. 48(1).
[65] United Nations Convention on Contracts for the International Sale of Goods (CISG), Apr. 11, 1980, 1489 U.N.T.S. 3, Art. 47(1) & 49(1)(b).

by which the loss should have been mitigated (which could be the entire value of the goods).[66]

In conclusion, Tosca asserts that there is no fundamental breach. The goods are fit for purpose. Royal's avoidance of the contract was precipitate and invalid. Even if some liability exists, Royal's failure to mitigate its loss precludes the recovery of the damages claimed.

5. PRAYER FOR RELIEF

In light of the submissions made above, the First Defendant, Tosca Mobili s.r.l., respectfully requests the Court to:

1. Decline international jurisdiction over the claim brought by the Claimant, in favour of the courts of Italy.
2. Alternatively, stay the present proceedings pending the resolution of the related jurisdictional dispute before the Court of Rotterdam.
3. Declare that the United Nations Convention on Contracts for the International Sale of Goods (CISG) governs the contractual relationship between the parties.
4. Declare that the goods delivered were in conformity with the contract and that no fundamental breach occurred.
5. Declare that the Claimant's avoidance of the contract is invalid and legally ineffective.
6. Dismiss the Claimant's request for damages and restitution in its entirety, as the losses were unforeseeable and the Claimant failed to mitigate its damages.

[66] United Nations Convention on Contracts for the International Sale of Goods (CISG), Apr. 11, 1980, 1489 U.N.T.S. 3, Art. 77.

PART II: DEFENDANT'S MEMORANDUM (SWIFT)

1. STATEMENT OF FACTS (DEFENCE PERSPECTIVE)

The Defendant Swift ('Swift' or 'The Second Defendant') is a professional haulage company with its registered seat in Gdansk (Poland), operating internationally across the European Union.[67]

The Contract of Carriage On 10 July 2025, Royal Furniture OOD ('Royal') engaged Swift to transport a consignment of furniture consisting of 14 chairs and 6 sofas. The agreed route was from the warehouse of Tosca Mobili s.r.l. in Rotterdam (The Netherlands) to Royal's premises in Sofia (Bulgaria). The contract was concluded in writing and signed by both parties.[68]

Performance of the Carriage Swift commenced the performance of its duties diligently. On 14 July 2025, the driver arrived at the designated collection point in Rotterdam and took over the goods. The goods were loaded onto a standard curtain-sided trailer (tilt trailer), a common vehicle type in international road transport, and the journey towards Bulgaria began immediately.[69]

The Incident On 15 July 2025, whilst transiting through Austria, the driver found it necessary to stop for a meal, in compliance with basic human needs and road safety principles regarding driver fatigue. He parked the vehicle at a parking area near Graz. Although the location was not a secured compound, it was a public parking place commonly used by heavy goods vehicles. The driver locked the cabin and went to a restaurant approximately 500 metres away.[70]

During this brief interval, unknown perpetrators slashed the tarpaulin of the trailer and stole a portion of the cargo (4 chairs and 2 sofas). During the theft, 4 other chairs sustained damage. Upon his return, the driver discovered the incident and immediately reported it.

Procedural History Swift, acting proactively to resolve the liability issue, initiated proceedings before the Court of Rotterdam on 21 July 2025. In this action, Swift sought a negative declaratory judgment to establish that its liability was limited to the amounts

[67] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 15.
[68] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 15.
[69] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 16.
[70] Pax Moot. (2026). *Pax Moot 2026 Case*. Para. 16.

specified in the CMR Convention. This court was seized more than one month before Royal initiated its claim in Sofia on 26 August 2025.[71]

2. JURISDICTION

The Second Defendant, Swift, respectfully submits that the Court of Sofia lacks jurisdiction to hear the claim brought by Royal. Alternatively, the Court must stay its proceedings pursuant to the rules on lis pendens, as the Court of Rotterdam was the court first seized.

2.1. Jurisdiction of the Court of Rotterdam (Art. 31 CMR)

The dispute arises from a contract for the international carriage of goods by road. Consequently, jurisdiction is governed by Article 31 of the Convention on the Contract for the International Carriage of Goods by Road ('CMR'). Article 31(1) of the CMR provides that the plaintiff may bring an action in any court or tribunal of a contracting country designated by agreement between the parties or in the courts of the country where the goods were taken over by the carrier or where the place designated for delivery is situated.

Swift exercised its right as a plaintiff in the negative declaratory action to bring proceedings in Rotterdam, the place where the goods were taken over.[72] This choice of forum is expressly authorised by the CMR. The Court of Rotterdam is, therefore, a competent court.

2.2. Lis Pendens and Priority of the First Seized Court (Art. 29 Brussels I bis)

Swift initiated proceedings in Rotterdam on 21 July 2025. Royal did not file its claim in Sofia until 26 August 2025. Under Article 29(1) of Regulation (EU) No 1215/2012 ('Brussels I bis Regulation'), where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.

The 'cause of action' in both proceedings is identical: the determination of Swift's liability for the incident on 15 July. The jurisprudence of the Court of Justice of the European

[71] Pax Moot. (2026). *Pax Moot 2026 Case*. Paras. 18-19.
[72] Convention on the Contract for the International Carriage of Goods by Road (CMR), May 19, 1956, 399 U.N.T.S. 189, Art. 31(1)(b)

Union confirms that a first negative declaratory action (seeking a ruling of non-liability) and a subsequent coercive action (seeking damages) relate to the same cause of action.

Consequently, the Court of Sofia, as the court second seized, is under a mandatory obligation to stay its proceedings. To do otherwise would create the risk of irreconcilable judgments within the EU legal order.

2.3. Inapplicability of Article 31(2) of Brussels I bis

Royal relies on Article 31(2) of the Brussels I bis Regulation to argue that the Court of Sofia has priority due to the exclusive jurisdiction clause. Swift contends that this exception does not apply in the context of the CMR.

Article 71 of the Brussels I bis Regulation states that the Regulation shall not affect any conventions to which the Member States are parties and which, in relation to particular matters, govern jurisdiction. As extensively analysed in the doctrinal commentaries edited by Magnus and Mankowski, this provision ensures that specialised transport conventions, such as the CMR, take absolute precedence over the general European jurisdictional regime.[73] Because Article 31 of the CMR provides a self-contained jurisdictional mechanism that prohibits exclusive choice of court agreements—as they would illegally derogate from the claimant's rights under Article 41 of the CMR—the exclusive jurisdiction exception found in Article 31(2) of the Brussels I bis Regulation cannot be triggered. Consequently, the traditional lis pendens rule of priority for the court first seized must prevail, and the proceedings in Sofia must be stayed.

3. APPLICABLE LAW

Swift submits that the liability of the carrier is governed exclusively by the Convention on the Contract for the International Carriage of Goods by Road (‘CMR’), to which both the Netherlands (place of departure) and Bulgaria (place of delivery) are Contracting Parties.

3.1. Mandatory Application of the CMR (Art. 1)

Pursuant to Article 1(1), the CMR applies to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place

[73] Magnus, U., & Mankowski, P. (Eds.). (2012). Brussels I Regulation (2nd ed.). Sellier European Law Publishers, pp. 950-953.

designated for delivery are situated in two different countries. These conditions are fully met.

The CMR provides a comprehensive and mandatory regime for carrier liability. As stated in Article 41, parties cannot derogate from its provisions by contract. Therefore, any attempt by Royal to invoke Bulgarian national law to expand Swift's liability beyond the limits set by the CMR is legally invalid.[74]

3.2. Exclusion of National Law for Liability Limits

The Claimant's reference to Bulgarian law is relevant only for matters not covered by the Convention (e.g., interest rates or procedural limitation periods). However, the core issues of the basis of liability (Article 17) and the limits of compensation (Article 23) are exhaustively regulated by the CMR. The Court must apply the Convention's uniform rules to ensure the predictability of international transport risks.

4. SUBSTANTIVE ISSUES (MERITS)

The Second Defendant, Swift, acknowledges that a loss occurred whilst the goods were in its custody. However, Swift submits that the claim for EUR 84,000 brought by Royal is legally unfounded. Pursuant to the mandatory provisions of the CMR Convention, Swift's liability is strictly limited by weight. The Claimant's attempt to break these limits by invoking Article 29 of the CMR is unsupported by the facts and the applicable legal standards regarding wilful misconduct.

4.1. The Principle of Limited Liability (Art. 23 CMR)

The fundamental compromise of the CMR Convention is that the carrier accepts strict liability for the goods in exchange for a limitation on the amount of compensation payable. This ensures insurability and predictability in international trade.

Under Article 23(3) of the CMR, compensation for loss or damage shall not exceed 8.33 units of account (Special Drawing Rights or SDR) per kilogram of gross weight short. This limit applies automatically unless the sender has made a special declaration of value in the consignment note and paid a surcharge (Article 24), which Royal failed to do.

4.2. Absence of Wilful Misconduct (Defence against Art. 29 CMR)

[74] Convention on the Contract for the International Carriage of Goods by Road (CMR), May 19, 1956, 399 U.N.T.S. 189, Art. 41(1).

Royal argues that Swift is disentitled from relying on the liability limits because the damage resulted from ‘wilful misconduct’ or a default equivalent thereto. Swift vigorously rejects this allegation. The burden of proof lies with the Claimant to demonstrate that the carrier acted with such egregious recklessness that it equates to intent. The facts of this case do not meet this high threshold.

The Nature of the Driver’s Conduct: The driver’s decision to stop near Graz was not an act of abandonment but a necessary compliance with EU regulations on driving times and rest periods. Driver fatigue is a major safety risk, and stopping for a meal is a mandatory requirement for professional drivers.

The vehicle was parked in a public parking area frequented by other trucks, not in a deserted or notoriously dangerous location. The driver locked the cabin and went to a nearby restaurant, maintaining a reasonable proximity to the vehicle. While the parking area was not a secure compound, the use of standard highway parking facilities is a common and necessary practice in international haulage. To classify this standard operational necessity as ‘wilful misconduct’ would impose an impossible burden on carriers.

No Conscious Acceptance of Risk: For conduct to be considered equivalent to wilful misconduct (dolus eventualis), the actor must not only be aware of the risk but must consciously accept that the damage will probably occur. According to the leading doctrinal analysis by Clarke on the CMR, breaking the strict liability limits established by the Convention requires an exceptional degree of subjective recklessness.[75] It is academically and practically unsustainable to equate a driver's temporary absence for a mandatory rest period with a deliberate acceptance of probable theft. Furthermore, as Haak observes in his authoritative treatise, the burden of proving this extreme subjective state rests entirely on the Claimant, a burden that is not discharged merely by demonstrating that the vehicle was parked in a public, unsecured area.[76] At most, the driver's action might constitute simple negligence (culpa levis), but certainly not the gross recklessness required to trigger Article 29.

[75] Clarke, M. A. (2014). International carriage of goods by road: CMR (6th ed.). Informa Law from Routledge, pp. 342-345.
[76] Haak, K. F. (1986). The liability of the carrier under the CMR. Europa Instituut, pp. 210-213.

The Instructions: Royal relies on the instruction ‘not to leave the consignment unattended’. Swift submits that this instruction must be interpreted reasonably. It cannot mean that the driver must remain in the cabin for the entire duration of a trans-European journey without breaks for food or hygiene. A temporary absence for essential needs does not constitute a ‘deliberate’ breach of contract intended to cause loss. The theft was the result of the criminal acts of third parties, which the driver could not have physically prevented even if present, given the violent nature of such gangs.

4.3. Calculation of Damages

Since Article 29 does not apply, Swift’s liability must be calculated in accordance with Article 23(3).

Weight of the Goods: The claim involves the loss/damage of:

- 8 Chairs (approx. 9 kg each) = 72 kg
- 2 Sofas (approx. 150 kg each) = 300 kg Total gross weight affected: 372 kg.[77]

Applicable Limit: 372 kg x 8.33 SDR = 3,098.76 SDR.

Conversion: At the current exchange rate, 1 SDR is approximately equal to 1.16 EUR. 3,098.76 SDR x 1.16 = EUR 3,594.56.

Therefore, Swift’s maximum liability is limited to approximately EUR 3,600. The claim for EUR 84,000 is grossly inflated and legally unsustainable. Royal, as a professional commercial entity, had the option to declare a higher value or purchase cargo insurance to cover the full value of the goods but chose not to do so. It cannot now shift the burden of that commercial decision onto the carrier.

4.4. Conclusion on Merits

Swift requests the Court to declare that its liability is limited in accordance with Article 23(3) of the CMR and to dismiss the Claimant’s request for full compensation based on the unfounded allegation of wilful misconduct.

[77] Convention on the Contract for the International Carriage of Goods by Road (CMR), May 19, 1956, 399 U.N.T.S. 189, Art. 23(3)

5. PRAYER FOR RELIEF

In light of the submissions made above, the Second Defendant, Swift, respectfully requests the Court to:

1. Decline jurisdiction over the claim brought against Swift, or alternatively, stay the proceedings in accordance with the rules of lis pendens, granting priority to the Court of Rotterdam.
2. Declare that the liability of the carrier is governed mandatorily and exclusively by the CMR Convention.
3. Declare that the carrier and its driver did not act with wilful misconduct or any default equivalent to wilful misconduct under Article 29 of the CMR.
4. Declare that the liability of the carrier is strictly limited in accordance with Article 23(3) of the CMR to a maximum of 8.33 Special Drawing Rights per kilogram of gross weight short.
5. Dismiss the Claimant’s request for compensation of EUR 84,000, limiting any potential award to the statutory maximum of approximately EUR 3,600.

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