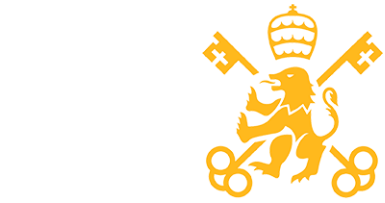

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PAX MOOT COURT 2026

Case study in analysis in Private International Law

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5º E-5

Private International Law

Madrid

April 2026

ABSTRACT:

The thesis provides an extensive analysis of a Private International Law case from both perspectives, namely that of the Applicant and that of the Respondents. It addresses the three main issues that typically arise in this field; which court has international jurisdiction, which law is applicable to the dispute, and whether any prior judgment must be recognized and considered in the present assessment. Through this dual analysis, the thesis aims to examine the legal arguments available to each side and to assess how the relevant rules of Private International Law operate in a cross-border commercial dispute.

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CHAPTER I. APPLICANT´S MEMORANDUM. ROYAL FURNITURE OOD

1. STATEMENT OF FACTS

The present dispute arises from two related commercial transactions between Royal Furniture OOD and Tosca Mobili s.r.l., and from subsequent transport contract concluded with the carrier Swift.

The facts are presented in three parts. First, the general relationship between Royal and Tosca is described. Second, the contract concerning the custom-made tables and cabinets is explained. Third, the facts relating to the transport of the chairs and sofas and the subsequent incident during carriage are set out.

1.1. Relationship between the parties

Royal Furniture OOD is a Bulgarian company that designs sustainable furniture for luxury yachts. Tosca Mobili s.r.l., based in Milan, manufactures high-end furniture and also produces customized pieces based on client designs.

After meeting at the International Sustainable Furniture Fair in Milan in May 2025, Ivan Medvedov (Royal) contacted Maria Claro (Tosca) by email on 20 May to request a quotation for 6 custom-made tables and 6 cabinets using Royal´s own design, and also for 14 chairs and 6 sofas shown at the fair. Royal included a link to its general terms and conditions, which provide for Bulgarian law and Sofia Jurisdiction.

Ivan included a hyperlink to Royal’s general terms and conditions. Although the hyperlink did not directly lead to the full text, the terms were accessible through the website and could be download.

Tosca responded on 23 May 2025 with a detailed offer and shared its own terms, referring to the Italian law. Royal accepted Tosca’s offer on 26 May 2025, explicitly stating that it accepted the price, delivery and payment terms under Royal’s general conditions, reiterating that Bulgarian law and Sofia jurisdiction apply. Royal also paid for the chairs and sofas and arranged the Letter of Credit for the bespoke items.

On 26 May 2025 Royal accepted Tosca´s offer regarding price, delivery and payment terms while referring to its own general terms and conditions.

1.2 The Tables and Cabinets (Tosca)

On 25 July 2025, Tosca informed Royal that the six tables and six cabinets would be delivered on 30 July, with arrival the next day. Shortly after, however, Royal's client modified its instructions, requesting that half of the furniture (3 tables and 3 cabinets) had to be delivered to Rijeka, Croatia, rather than Sofia. Ivan urgently contacted Tosca on 30 July and Tosca confirmed that the adjusted delivery was possible. Delivery took place as follows on 31 July 2025:

- 3 tables and 3 cabinets to Rijeka,
- 3 tables and 3 cabinets to Sofia.

Around ten days after delivery, Royal learned from Bulgarian media reports that Tosca had allegedly used unethical and non-sustainable wood in its production processes. Sustainability requirements were of particular importance for Royal, as its clients demanded furniture produced in accordance with high ethical and environmental standards. Following these reports, Royal´s Bulgarian yacht-builder client avoided its contract with Royal and claimed damages. Royal subsequently notified Tosca that it intended to avoid the contract as well. Tosca, which had received similar claims from other buyers, refused to reimburse Royal. Royal therefore initiated proceedings before the Court of Sofia seeking avoidance of the contract and compensation for damages, including loss of profit.

1.3 The Chairs and Sofas (Swift)

Royal paid EUR 192,000 for the 14 chairs and 6 sofas and instructed Tosca to release them for collection at the warehouse in Rotterdam. On 10 July 2025, Royal concluded a carriage contract with the Polish carrier Swift to transport the goods to Sofia. The transport contract, signed by both parties, contained an exclusive jurisdiction clause in favor of the court of Sofia and required the driver not to leave the truck unattended in unsecured areas.

During the journey, on 15 July 2025, near Graz (Austria), Swift's driver parked at an unsecured location and left the truck without supervision. When he returned, part of the consignment had been stolen and another part damaged. After delivery on 16 July 2025, Royal confirmed the loss of 4 chairs and 2 sofas and the total destruction of four further chairs, amounting to EUR 120,000 in losses (372 kg of goods).

Given Swift's clear breach of the instruction not to leave the truck unattended, Royal held Swift liable for the losses. However, on 21 July 2025, Swift initiated negative declaratory proceedings before the Court of Rotterdam, seeking a ruling of non-liability or liability limited under Article 23(3) CMR Convention. Royal contested the Rotterdam court's jurisdiction based on the Sofia jurisdiction clause.

On 26 August 2025, Royal brought its own action before the Court of Sofia against both Tosca and Swift. Royal requested the Rotterdam court to stay its proceedings until the Sofia court decided on jurisdiction, while Swift requested the Sofia court to stay the proceedings because the Rotterdam court had been first seized.

2. JURISDICTION

Given that the present proceedings involve two different respondents, each linked to a distinct legal relationships and separate bases of liability, jurisdiction must be assessed separately for each claim. The first part concerns the contractual relationship between Royal Furniture OOD and Tosca Mobili s.r.l. regarding the manufacture and delivery of custom-made tables and cabinets. The second claim concerns the liability of the carrier Swift arising from the international transports of chairs and sofas from Rotterdam to Sofia.

Such a distinction is not merely practical, but legally necessary. Under Regulation (EU) No 1215/2012(Brussels I bis Regulation), jurisdiction must be determined by reference to the specific legal relationship giving rise to the claim and to the relevant head of jurisdiction applicable to that relationship. In the present case, the claim against Tosca falls to be examined under the special jurisdiction rule for contracts for the sale of goods, whereas the claim against Swift must be assessed primarily in light of the exclusive jurisdiction agreement concluded between the parties in the transport contract. This separate treatment ensures coherence with the structure of the Brussels I bis Regulation

and allows the Court to address each dispute under the legal framework most closely connected to it. More generally, the Brussels I bis Regulation is built around the principles of legal certainty, foreseeability and proximity, as expressly reflected in Recitals 11 and 12.

This method of analysis is fully consistent with the overall logic of the Brussels I bis Regulation. The Regulation does not permit a claimant to aggregate different disputes before a single forum merely for reasons of procedural convenience. Rather, each claim must be tested against the autonomous jurisdictional framework laid down by the Regulation, with particular attention to the legal nature of the claim and to the specific connecting factor capable of justifying departure from the defendant's domicile. In that respect, the present case requires the Court to examine, separately and precisely, whether the contractual relationship with Tosca and the Transport relationship with Swift generate sufficient jurisdictional links with Bulgaria.

2.1 Jurisdiction of the Sofia City Court over Tosca Mobili s.r.l.

2.1.1. Classification of the contract and the relevance of Article 7(1)(b)

The dispute between Royal and Tosca concerns alleged non-conformity of goods supplied under a contract for the manufacture and delivery of furniture. Jurisdiction must therefore be determined under Article 7(1)(b) of Regulation (EU) No 1215/2012 (Brussels I bis), which provides that, in matters relating to a contract for the sale of goods, a person domiciled in a Member State may be sued in the courts for the place where, under the contract, the goods were delivered or should have been delivered. That special head of jurisdiction is intended to designate the court with the closest connection to the dispute and thereby promote the sound administration of justice, legal certainty and predictability for the parties. Those objectives are expressly stated in Recitals 11 and 12 of the Regulation.

The contract at issue qualifies as a contract for the sale of goods within the meaning of Article 7(1)(b). In Car Trim GmbH v KeySafety Systems Srl (C-381/08)[1], the Court of

[1]Judgment of the Court of Justice of the European Union of 25 February 2010, *Car Trim GmbH v KeySafety Systems Srl,* Case C-381/08, ECLI:EU:C:2010:90, electronic version, Eur-Lex database. Last accessed: 2 March 2026, paras 32–49.

Justice made clear that a contract for the manufacture of goods according to specifications supplied by the buyer is still to be classified as a contract for the sale of goods where the buyer has not supplied a substantial part of the materials necessary for manufacture and the seller remains responsible for the quality and conformity of the final product. This reading is also reinforced by the Opinion of Advocate General Mazák in Car Trim, who likewise approached the classification of the contract by reference to its characteristic obligation, the origin of the materials, and the seller's responsibility for the conformity of the final product[2].

That is precisely the position here. Royal provided the designs for the six tables and six cabinets, but Tosca sourced the materials and undertook the entire manufacturing process. The fact that the goods were tailor-made does not alter the legal classification of the contract. It remains, for the purpose of Article 7(1)(b), a contract for the sale of goods.

That classification is important because it determines the relevant special head of jurisdiction under the Regulation. However, it does not in itself answer the jurisdictional question. Even where a contract is properly characterized as a sale of goods, Article 7(1)(b) only operates if the place of delivery can be identified with sufficient certainty as the place most closely connected to the contractual performance. The Court must therefore move beyond the abstract classification of the contract and examine the concrete structure of performance agreed by the parties.

2.1.2. Sofia as the contractually designated place of delivery

Once that classification is established, the relevant connecting factor is the place where the goods were delivered or should have been delivered under the contract. According to Tosca's offer of 23 May 2025, the agreed delivery term for the tables and cabinets was DAP Sofia, Bulgaria. Sofia was therefore the contractually designated destination of the goods and the place where Royal was to receive them. In Car Trim GmbH v. KeySafety Systems Srl, the Court of Justice stressed that the place of delivery must, in the first place, be determined on the basis of the contract itself, since that connecting factor identifies the

[2]Opinion of Advocate General Mazákdelivered on 24 September 2009 in *Car Trim GmbH v KeySafety Systems Srl,* Case C-381/08, ECLI:EU:C:2009:588, electronic version, Eur-Lex database. Last accessed: 3 March 2026, paras 34–48.

place where the purchaser obtained, or should have obtained, actual power of disposal over the goods at the final destination of the sales transaction. In the present case, the contract itself points directly to Sofia[3].

This reading is fully consistent with the doctrinal understanding of Article 7(1)(b), according to which the notion of a contract for the sale of goods must be understood autonomously in EU law and the characteristic obligation of the contract remains decisive for its clarification[4]. Likewise, the commentary by Manrique de Lara Salvador on the impact of the Brussels I Recast emphasizes the central role of foreseeability and contractual certainty in applying the special heads of jurisdiction under the Regulation. These works support the view that the agreed place of delivery must remain the decisive factor unless the contract itself indicates otherwise[5].

The agreed use of the DAP Incoterm further confirms that Sofia was not merely a logistical destination, but the contractually designated place of delivery and performance. Under that arrangement, Tosca assumed responsibility for bringing the goods to the agreed destination, where delivery took place and risk passed once the goods were placed at Royal's disposal ready for unloading. This reinforces the close connection between the contract and Bulgaria[6].This is not merely a technical detail of commercial drafting. Incoterms perform an important interpretative function in identifying the place where the seller's delivery obligation is contractually fulfilled. In the present case, the use of DAP Sofia confirms that the parties themselves structured performance around Bulgaria as the contractual endpoint of the transaction. The contractual allocation of obligations strongly

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[3] Judgment of the Court of Justice of the European Union of 25 February 2010, *Car Trim GmbH v KeySafety Systems Srl,* Case C-381/08, ECLI:EU:C:2010:90, electronic version, Eur-Lex database. Last accessed: 2 March 2026, paras 57–62.

[4] Mankowski, P., "Article 7", en Magnus, U. y Mankowski, P. (eds.), *Brussels I bis Regulation – Commentary*, Otto Schmidt, Cologne, 2016, pp. 189–191.

[5] Manrique de Lara Salvador, Á., "Impact of the New Brussels 1 Recast", Cremades & Calvo-Sotelo, available at https://www.cremadescalvosotelo.com/media/580906/impact_of_the_new_brussels_1_recast.pdf; date of last access: 3 March 2026, p. 5.

[6] International Chamber of Commerce, Incoterms® 2020 Checklist and Flowcharts, ICC, 2024 update (disponible en https://library.iccwbo.org/content/clp/Others/incoterms_2020_checklist_2024-update.pdf); última consulta 3/03/2026).

supports treating Sofia as the place most closely linked to the dispute for the purposes of Article 7(1)(b).

2.1.3. The irrelevance of the later redirection to Rijeka

The late redirection of three tables and three cabinets to Rijeka does not alter that conclusion. The original contractual place of delivery remained Sofia. The redirection was not part of the agreement initially concluded between Royal and Tosca, but a later logistical adjustment requested by Royal after receiving new instructions from its own client. Such a practical modification during performance cannot retroactively alter the jurisdictional connecting factor already fixed by the contract. If later logistical changes could shift jurisdiction after the contract had already been concluded, the requirement of predictability underlying Article 7(1)(b) would be seriously undermined. The relevant forum must be foreseeable to the defendant at the time of contracting, not subject to unilateral fluctuations resulting from later transport arrangements. That is exactly why the Brussels I bis regime gives priority to contractual certainty and foreseeability.

This reading is supported by the approach adopted by the *Court of Justice in Color Drack GmbH v Lexx International Vertriebs GmbH* (C-386/05), where the Court accepted that, in cases involving multiple places of delivery, jurisdiction may be concentrated at the principal place of delivery identified by reference to economic and contractual criteria. Although Color Drack concerned deliveries within a single Member State, the underlying rationale that one principal delivery point should anchor jurisdiction applies with equal force here. Sofia was the original and principal place of delivery agreed between the parties, and the later partial redirection to Rijeka does not displace that primary connecting factor. The Opinion of Advocate General Bot in Color Drack further supports the view that jurisdiction should be concentrated at the place with the closest link to the contractual performance as a whole.[78]

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[7] Opinion of Advocate General Bot delivered on 15 February 2007 in Color Drack GmbH v Lexx International Vertriebs GmbH, Case C-386/05, ECLI:EU:C:2007:90, electronic version, Eur-Lex database. Last accessed: 24 March 2026.

[8] Judgment of the Court of Justice of the European Union of 3 May 2007, Color Drack GmbH v Lexx International Vertriebs GmbH, Case C-386/05, ECLI:EU:C:2007:262, electronic version, Eur-Lex database. Last accessed: 24 March 2026, paras 37-42.

To accept the contrary would mean that the jurisdictional framework could be altered retrospectively by subsequent commercial adjustments made during performance. Such an approach would be difficult to reconcile with the structure of Brussels I bis. The Regulation seeks to ensure that the competent forum is identifiable on the basis of objective and foreseeable criteria, not based on later factual developments that may depend on unilateral commercial instructions or the internal needs of one party's downstream relationships.

Furthermore, jurisdiction in Sofia was entirely foreseeable for Tosca. Delivery was expressly agreed to take place in Sofia, Royal is domiciled in Bulgaria, and part of the furniture was in fact delivered in Sofia on 31 July 2025. The dispute is therefore closely connected to Bulgaria both contractually and economically. The Regulation does not require that Sofa be the only place with some connection to the dispute, but only that it constitute the legally relevant connecting factor under the applicable head of jurisdiction. Here, that condition is plainly satisfied.

Royal's general terms and conditions further reinforce that conclusion. Those terms, repeatedly referenced in Royal's communications and accessible through Royal's website, designated Bulgarian law and the courts of Sofia. It is true that the formal incorporation of those terms into the contract may be debated. However, even if the Court were not to treat them as independently dispositive for jurisdiction, their repeated appearance in the contractual exchanges strengthens the conclusion that litigation in Sofia was objectively foreseeable from Tosca's perspective. At the very least, those references confirm that Sofia was not an unexpected or artificial forum, but one consistently linked to Royal's side of the transaction from the outset.

The position adopted by Royal is therefore supported by three mutually reinforcing considerations: first, the contractual classification of the agreement as a sale of goods; second, the identification of Sofia as the original and legally relevant place of delivery under the contract; and third, the broader requirements of foreseeability and legal certainty that govern the application of Article 7(1)(b). Taken together, these elements confirm that Bulgaria is the Member State with the closest contractual connection to the present dispute.

For all these reasons, the Sofia City Court has international jurisdiction over the claim against Tosca under Article 7(1)(b) of the Brussels I bis Regulation.

2.2 Jurisdiction of the Sofia City Court over Swift

2.2.1. Jurisdictional bases: Article 25 Brussels I bis and Article 31 (1) CMR

Royal's claim against Swift concerns liability alleged arising from the international road transport of the chairs and sofas. Jurisdiction over this part of the dispute must be determined primarily under Article 25 of Brussels I bis Regulation, which gives binding effect to jurisdiction agreements freely concluded between commercial parties. Party autonomy occupies a central place in the system of the Regulation, and Article 25 is specifically designed to ensure that professional parties may designate in advance the forum competent to resolve disputes arising out of their contractual relationship. That role of the party autonomy is also consistently recognized in private international law doctrine. As noted by Carruthers in her review of Adrian Brigg´s *Agreements on Jurisdiction and Choice of Law*, Brigg´s analysis links jurisdiction agreements to broader themes of legal certainty, predictability and the role of consent and agreement in private international law[9].In commercial disputes of an international nature, that function is particularly important, since it allows parties to reduce jurisdictional uncertainty and to allocate litigation risk in advance.

The transport contract concluded on 10 July 2025 contains an explicit and exclusive jurisdiction clause designating the courts of Sofia for "all disputes arising out of or in connection with this contract". This clause was contained in a contract signed by both Royal and Swift. There can therefore be no serious doubt that the formal requirement of a written agreement under Article 25(1) is satisfied in the present case. Indeed, this is an even stronger case than those in which the Court of Justice has accepted electronically concluded jurisdiction clauses. In *El Majdoub v. Cars On TheWeb* (C-322/14)[10], the Court confirmed that a jurisdiction clause agreed by electronic means satisfies the writing

[9]Carruthers, J. M. (2009). *Review of Agreements on Jurisdiction and Choice of Law, by A. Briggs. Edinburgh Law Review*, 13, 348–349

[10]Judgment of the Court of Justice of the European Union of 21 May 2015, *Jaouad El Majdoub v Cars On The Web.Deutschland GmbH,* Case C-322/14, ECLI:EU:C:2015:334, electronic version, Eur-Lex database. Last accessed: 3 March 2026, paras 28–31.

requirement where the relevant terms are accessible, printable and capable of being stored. If a click-wrap clause may be valid under Article 25, then a clause expressly contained in a signed written contract between two professional parties certainly satisfies the Regulation. The present case therefore involves the strongest possible form of consent contemplated by Article 25: a written and signed agreement expressly identifying the chosen forum.

The clause also clearly covers the present dispute. Royal seeks compensation for theft and damage that occurred during the performance of the carriage contract. The wording of the clause is broad, referring to "all disputes arising out of or in connection with this contract", and there is no plausible basis for excluding a claim based on loss and damage during transport from its scope. On the contrary, the alleged misconduct of Swift, namely leaving the truck unattended in an unsecured location despite explicit instructions to the contrary, arises directly from its contractual performance as carrier. The clause therefore applies to this dispute in the most straightforward way. Jurisdiction clauses drafted in such broad terms are specifically intended to avoid fragmentation of related disputes and to ensure that all controversies connected with contractual performance are heard before the same court.

The case law of the Court of Justice supports a broad yet consent-based understanding of jurisdiction clauses. In *Coreck Maritime* (C-387/98)[11], the Court emphasized that jurisdiction agreements are an expression of party autonomy and that the formal requirements governing them are intended to ensure genuine consent. In *Refcomp* (C-543/10)[12], the Court again stressed the consensual basis of such clauses and the importance of determining where the parties to the clause agreed to it. In the present case, unlike *Refcomp*, there is no issue of extension to third parties or sub-buyers. The parties to the dispute are precisely the parties who signed the contract containing the clause. That

[11] Judgment of the Court of Justice of the European Union of 9 November 2000, *CoreckMaritime GmbH v Handelsveem BV and Others*, Case C-387/98, ECLI:EU:C:2000:606, electronic version, Eur-Lex database. Last accessed: 28 February 2026, paras 13–15.

[12] Judgment of the Court of Justice of the European Union of 7 February 2013, *Refcomp SpA v Axa Corporate Solutions Assurance SA, Axa France IARD, Emerson Network Power and Climaveneta SpA*, Case C-543/10 [electronic version – Eur-Lex database. ECLI:EU:C:2013:62]. Date of last access: 3 March 2026., paras 25-33.

makes the present case particularly strong from Royal's perspective. The present dispute thus falls within the core scenario for which Article 25 was designed: a direct dispute between the very parties who expressly agreed on the forum in writing.

It should further be noted that the jurisdiction of the Sofia court is also supported by the Convention on the Contract for the International Carriage of Goods by Road (CMR), whose application in matters of jurisdiction is preserved by Article 71 of the Brussels I bis Regulation. Article 31(1) CMR provides that actions arising from carriage governed by the Convention may be brought before the courts of the country within whose territory the place designated for delivery is situated[13]. In the present case, Sofia was the contractual destination of the transport, which satisfies that connecting factor. The Court of Justice confirmed in *TNT Express Nederland BV v AXA Versicherung AG* (C-533/08) that the specialized convention prevails where it ensures conditions of legal certainty, foreseeability and free circulation of judgments at least as favorable as those guaranteed by the Brussels regime. The CMR jurisdictional framework meets that standard. The jurisdiction clause agreed between the parties is equally consistent with CMR Article 31(1), which permits prorogation. Accordingly, whether jurisdiction is assessed under Article 25 of Brussels I bis or under Article 31(1) CMR, the conclusion remains the same: the Sofia City Court has jurisdiction over the claim against Swift.[14]

2.2.2. Article 31(2) Brussels I bis and the priority of the chosen court

Swift cannot escape the jurisdiction of the Sofia court by relying on the negative declaratory proceedings if initiated earlier in Rotterdam. Article 31(2) of the Brussels Ibis Regulation was introduced precisely to prevent tactical litigation aimed at undermining valid exclusive jurisdiction agreements. Where a court of a member state on which an exclusive jurisdiction clause confers jurisdiction is seized, any court of another Member State must stay proceedings until the chosen court declares that it has no jurisdiction. The recast regime reverses the old *lis pendens*[15] logic in cases involving exclusive jurisdiction

[13] Convention on the Contract for the International Carriage of Goods by Road (CMR), Geneva, 19 May 1956, United Nations Treaty Series, vol. 399, p. 189.

[14] Judgment of the Court of Justice of the European Union of 4 May 2010, TNT Express Nederland BV v AXA Versicherung AG, Case C-533/08, ECLI:EU:C:2010:243, electronic version, Eur-Lex database. Last accessed: 24 March 2026, paras 45-49.

[15] Lis pendens denotes parallel proceedings involving the same parties and the same cause of action before courts of different States, and is intended to avoid conflict in judgments by prioritizing the court first seized.

clauses and protects the effectiveness of party autonomy against procedural maneuvers. The rationale behind Article 31(2) is clear. Without such a rule, the effectiveness of exclusive jurisdiction agreements could easily be undermined by a party rushing to a non-chosen court and forcing the chosen court to wait. The recast Regulation deliberately reversed that risk by giving procedural priority to the chosen court, thereby strengthening party autonomy and improving the practical value of exclusive jurisdiction clauses in cross-border litigation.

That was one of the principal innovations of the recast Brussels I regime, and doctrinal commentary consistently explains Article 31(2) as a response to so-called "torpedo actions", by which one party seeks to pre-empt or delay litigation in the chosen forum by first seeing another court. Brigg´s discussion of jurisdiction and judgments reflects this broader understanding of the function of anti-torpedo rules in preserving the utility of jurisdiction agreements in international commerce. The same general logic is also reflected in leading commentary on the recast Regulation, which identifies the *lis pendens* reform as one of the central changes introduced to protect exclusive choice-of-court agreements.

2.2.3. Consequences for the present proceedings

In the present case, the logic of article 31(2) applies directly. Sofia is the court designated by the parties. Once Royal seized that court, the Rotterdam court, which is not the chosen court, was required to stay its proceedings until the Sophia court determines whether the jurisdiction clause is valid and applicable. If the Sofia court confirms its jurisdiction, Article 31(3) requires the Rotterdam court to decline jurisdiction. Swift therefore cannot rely on the fact that Rotterdam was first seized to defeat the partier's express agreement. To hold otherwise would deprive Article 25 of much of its practical effect and would be rewarded exactly with the kind of procedural tactic that Article 31(2) was enacted to prevent. It would also undermine the predictability of the jurisdictional framework agreed by the parties at the time of contracting, contrary to the logic of Recitals 11 and 12 of the Regulation.

This conclusion is also supported, in a subsidiary manner, by the transport case law discussed in the Opinion of Advocate General Tanchev in *Zurich Insurance*, drawing on Rehder, where the place of dispatch and the place of delivery were treated as the two

places where transport services are provided, while intermediate stops lacking a sufficient link to the essential nature of the service were excluded. Even apart from the jurisdiction clause, that reasoning confirms that Sofia, as the contractual destination of the transport, was not an incidental location but one of the places most closely connected with the performance of the carriage[16].

Accordingly, the Sofia City Court has international jurisdiction over the claim against Swift under Article 25 of the Brussels I bis Regulation. The jurisdiction clause was validly agreed between the parties, it clearly covers the person dispute, and the proceedings brought by Swift in Rotterdam cannot displace the forum chosen by the parties.

3. STAY OF PROCEEDINGS

3.1 Existence of a valid exclusive jurisdiction clause

Royal submits that the proceedings pending before the District Court of Rotterdam must be stayed, whereas the Sofia City Court should continue to hear the dispute against Swift. Although Swift seized the Rotterdam court first on 21 July 2025 by bringing negative declaratory proceedings, that fact does not give the Dutch court priority under Regulation (EU) No 1215/2012 in the circumstances of the present case. The decisive element is that the transport contract concluded between Royal and Swift on 10 July constrains an express and exclusive jurisdiction clause in favor connection of the courts of Sofia, Bulgaria, for "all disputes arising out of or in connection with this contract". Under Article 25 of the Brussels I bis Regulation, such jurisdiction agreements must in principle be respected where they have been validly concluded between the parties.

That requirement is plainly satisfied here. The jurisdiction clause was included in a transport contract signed by both Royal and Swift, two professional commercial parties. There is therefore no genuine doubt as to the existence of consent. In *Coreck Maritime*[17],

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[16] Opinion of Advocate General Tanchev delivered on 10 April 2018 in *Zurich Insurance plc and Metso Minerals Oy v Abnormal Load Services (International)* Ltd, Case C-88/17 [electronic version – Eur-Lex database. ECLI:EU:C:2018:224]. Date of last access: 25 March 2026, paras 50–53.

[17]Judgment of the Court of Justice of the European Union of 9 November 2000, *CoreckMaritime GmbH v Handelsveem BV and Others,* Case C-387/98, ECLI:EU:C:2000:606, electronic version, Eur-Lex database. Last accessed: 28 February 2026, paras 13–15.

the Court of Justice confirmed that the function of the formal requirements governing jurisdiction clauses is to ensure that the parties have actually consented to the chosen forum. Once such consent is established, the clause must be given effect as an expression of party autonomy in international commercial relations. In the present case, the parties´ express and written agreement in favor of the courts of Sofia falls squarely within that logic.

3.2 Article 31(2) Brussels I bis and the priority of the chosen court

The consequence of that valid exclusive jurisdiction clause is that the present case is not governed by the ordinary *lis pendens* mechanism of Article 29 in the usual way. Rather, it falls within the special rule laid down in Article 31(2) of the Brussels I bis Regulation. That provision was introduced in the recast regime to protect the effectiveness of exclusive choice-of-court agreements. Where proceedings are brought before a court designated in such an agreement, any court of another Member State must stay until the chosen court declares that it has no jurisdiction under the agreement.

The structure of the Regulation therefore gives priority to the chosen court over the court first seized in cases involving an exclusive jurisdiction clause. This is a deliberate departure from the earlier position under the Brussels I regime. Under the former system, the strict operation of the first-seized rule could neutralize an otherwise valid choice-of-court agreement by allowing one party to commence proceedings first in a non-chosen forum. The recast Regulation corrected that imbalance. By introducing Article 31(2), the legislature made clear that, in the presence of a valid exclusive jurisdiction clause, procedural priority must be accorded to the chosen court rather than to the first seized court. The purpose of that reform was not merely technical, but substantive: to restore practical value to exclusive jurisdiction agreements in cross-border litigation.

3.3 The rationale of the recast: preventing torpedo actions

The interpretation is fully consistent with the objectives of the Regulation. Recitals 11 and 12 emphasize legal certainty, foreseeability, and the sound administration of justice as core principles of the Brussels I bis system. Those principles would be seriously undermined if a party could naturalize an agreed forum simply by rushing to another court and filing a negative declaration first. That is precisely the type of procedural tactic that

Article 31(2) was designed to prevent. The reform of the Brussels I regime was intended to strengthen the practical effectiveness of party autonomy and to avoid abusive litigation strategies capable of frustrating valid jurisdiction agreements.

The doctrinal commentary supports the same reading. Kenny and Hennigan explain that the recast Regulation sought to neutralize the tactical use of the first-seized rule against exclusive choice-of-court agreements, while Nielsen likewise treats Article 31(2) as a significant corrective to the earlier Brussels I regime[18]. Those works support the view that Article 31(2) establishes a deliberate exception to the first-seized rule to preserve the utility of exclusive jurisdiction clauses in cross-border commerce.

A similar view has also been expressed in Spanish legal commentary. Mantino explains that Regulation (EU) No 1215/2012 was intended to put an end to the abusive use of *lis pendens* through so-called "torpedo actions"[19], that is, procedural tactics by which one party sought to frustrate an agreed jurisdiction clause by bringing proceedings first before a non-chosen court, often in a slower forum. That analysis supports the conclusion that Article 31(2) must be interpreted as a deliberate corrective to the earlier system and as a mechanism designed to preserve the practical effectiveness of exclusive choice-of-court agreements.

That doctrinal position is especially persuasive in a case such as the present one, where the proceedings first brought in Rotterdam take the form of a negative declaratory action. Such actions are particularly capable of being used as instruments of procedural pre-emption. If they were allowed to override a previously agreed exclusive jurisdiction clause merely because they were filed earlier, the chosen forum would become vulnerable to precisely the type of tactical litigation that the recast sought to suppress. Article 31(2) must therefore be applied in a manner that prevents the contractual forum from being deprived of its practical effect.

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[18]Kenny, D. y Hennigan, R., "Choice-of-CourtAgreements, the Italian Torpedo, and the Recast of the Brussels I Regulation", *International and ComparativeLawQuarterly*, vol. 64, 2015, p. 198; Nielsen, P. A., "The State of Play of the Recast of the Brussels I Regulation", *Nordic Journal of International Law*, vol. 81, 2012, p. 593.

[19]Mantino, D. L., "La litispendencia y las 'Torpedo Actions' en la UE", LegalToday, 9 de marzo de 2018 (Available at https://www.legaltoday.com; Date of last access 3/03/2026).

This reading is further reinforced by contrast with the earlier position of the Court of Justice in Gasser v MISAT (C-116/02), where the Court gave strict priority to the first seized court even in the presence of a jurisdiction clause. That decision was widely criticized for enabling torpedo actions, and the introduction of Article 31(2) in the recast Regulation was a direct legislative response intended to reverse that outcome. The present case illustrates precisely the scenario that Article 31(2) was designed to address: a party subject to an exclusive jurisdiction clause bringing preemptive proceedings in a non-chosen forum to frustrate the agreed allocation of jurisdiction.[20]

3.4 Consequences for the present proceedings

Accordingly, Swift cannot rely on the fact that the Rotterdam court was seized first in order to displace the forum chosen by the parties. The negative declaratory action brought in Rotterdam does not deprive the Sofia court of its priority under Articles 25 and 31(2). On the contrary, once Royal brought proceedings before the Sofia Court, the Dutch court was required to stay its proceedings until the Bulgarian court determines whether the jurisdiction clause is valid and applicable. If the Sofia court confirms its jurisdiction, Article 31(3) requires the Rotterdam court to decline jurisdiction altogether.

The practical sequence required by the Regulation is therefore clear. First, the chosen court, namely the Sofia City Court, must determine whether the clause conferring jurisdiction is valid and applicable to the present dispute. Secondly, while that assessment is pending, the non-chosen court must refrain from proceeding further. Thirdly, if the chosen court upholds its jurisdiction, the non-chosen court must decline jurisdiction. This sequence reflects the hierarchy intentionally built into Articles 25 and 31 and leaves no room for the Dutch court to proceed on the merits before the Sofia court has ruled on the clause.

Permitting the Rotterdam proceedings to continue despite the exclusive jurisdiction clause would frustrate the legitimate expectations of the parties, undermine procedural efficiency, and create a real risk of conflicting judgments. By contrast, staying the Rotterdam proceedings preserves coherence, respects the parties´ express allocation of

[20] Judgment of the Court of Justice of the European Union of 9 December 2003, *Erich Gasser GmbH v MISAT Srl,* Case C-116/02, ECLI:EU:C:2003:657, electronic version, Eur-Lex database. Last accessed: 24 March 2026, paras 47-54.

jurisdiction, and gives full effect to the structure and purpose of the Brussels I bis Regulation. The Sofia City Court should therefore continue to hear Royal's claim against Swift, while the District Court of Rotterdam must stay its proceedings.

4. APPLICABLE LAW

Royal submits that Bulgarian law governs the contractual obligations arising from the contract concerning the six tailor-made tables and six cabinets. The conclusion follows, first, from the parties´ choice of law within the meaning of Article 3 of Regulation (EC) No 593/2008 (Rome I) on the law applicable to contractual obligations. In the alternative and only if the Court were to find that no valid choice of law was made, Royal submits that the contract is manifestly more closely connected with Bulgaria within the meaning of Article 4(3) Rome I. In either case, the Applicant maintains that Bulgarian law governs the dispute and that the CISG does not apply, since it was expressly excluded in Royal's terms and conditions.

This approach is also consistent with the broader doctrinal view that, although a court exercising special jurisdiction under the Brussels I bis framework is not necessarily bound to apply the law corresponding to that forum under Rome I, the connection between jurisdiction and applicable law is now considerably closer than it used to be.[21]

4.1 Choice of law under Article 3 Rome I

Under Article 3 Rome I, a contract shall be governed by the law chosen by the parties. That choice must be clearly made by the terms of the contract or the circumstances of the case. In the present dispute, Royal's general terms and conditions, referred to in the email communications of 20 May and 26 May 2025, expressly provided that Bulgarian law applied exclusively and that the CISG was excluded. The terms were available though a hyperlink on Royal's website and were accessible to Tosca during the contractual exchange. The case file expressly states that Maria opened the hyperlink, checked Royal's

[21]Echebarría Fernández, J., *"Jurisdiction and applicable law to contracts for the sale of goods and the provision of services including the carriage of goods by sea and other means of transport in the European Union",* Cuadernos de Derecho Transnacional, vol. 11, no. 2, 2019, p. 60.

website and could access and download the terms and conditions containing the Bulgarian choice-of-law clause.

Although *El Majdoub* (C-322/14)[22] concerned an online jurisdiction clause under the Brussels regime rather than a Rome I choice-of-law clause, the judgment remains relevant by analogy in one important respect: the Court of Justice accepted that terms made available electronically may satisfy the requirement of consent where the other party is able to access, store and reproduce them. In a B2B setting, that reasoning supports the view that electronically accessible standard terms may validly from part of the contractual framework where the other party had a genuine opportunity to consult them. Here, Tosca was not only given access to Royal's website, but Maria in fact opened the link and checked the website. The Bulgarian choice-of-law clause was therefore neither hidden nor inaccessible.

Moreover, the circumstances of the contractual exchange support the conclusion that Bulgarian law was the governing law intended by Royal and reasonably apparent to Tosca. Royal referred to its own terms and conditions in its communications, and those terms expressly designated Bulgarian law while excluding the CISG. On 26 May 2025, Royal accepted Tosca's offer "under our terms and conditions". On the applicant's case, that wording confirms that Royal's acceptance was made on the basis of its own standard terms, including the Bulgarian choice-of-law clause. At the very least, the parties´ exchange demonstrates that Bulgarian law was consistently invoked by Royal as the governing law of the transaction. In a commercial relationship between two professional parties, such repeated references are highly relevant to the assessment of whether a choice of law was clearly demonstrated under Article 3 Rome I.

Royal further submits that the express exclusion of the CISG contained in its terms and conditions must also be given effect. The CISG itself allows the parties to exclude its application or derogate from its provisions. That follows from Article 6 CISG, which is an expression of party autonomy within the Convention. Accordingly, if the Court finds

[22] Judgment of the Court of Justice of the European Union of 21 May 2015, *Jaouad El Majdoub v CarsOnTheWeb.Deutschland GmbH*, Case C-322/14, ECLI:EU:C:2015:334, electronic version, Eur-Lex database. Last accessed: 3 March 2026, paras 28–31.

that Bulgarian law was validly chosen though Royal's terms, that same choice also operates to exclude the CISG, exactly as Royal's terms expressly provide. The result is therefore not merely the application of Bulgarian domestic law in the abstract, but the application of Bulgarian law with the exclusion of the CISG, as chosen by the Applicant. In any event, even if the Court were to take a different view on the incorporation of Royal's terms, the parties' conduct independently supports the same conclusion. Under Article 8(2) CISG, statements and conduct are to be interpreted according to the understanding that a reasonable person of the same kind would have had in the same circumstances. Royal consistently and repeatedly referred to Bulgarian national law throughout the contractual exchanges, and Tosca had access to Royal's terms containing the express exclusion. That pattern of conduct, taken as a whole, supports the inference that the parties did not intend the CISG to govern their relationship.

4.2 Article 4(3) Rome I and the closest connection with Bulgaria

If, however, the Court were to conclude that Royal's terms and conditions were not validly incorporated and that no effective choice of law was made, Royal submits in the alternative that Bulgarian law should still apply pursuant to Article 4(3) Rome I. It is true that Article 4(1)(a) provides that a contract for the sale of goods is, as a rule, governed by the law of the country where the seller has its habitual residence, which in this case would point to Italy, since Tosca is domiciled in Milan. Nevertheless, Article 4(3) contains an escape clause permitting departure from that default rule where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country.

The doctrinal commentary also stresses that the Rome I framework should be interpreted consistently with the Brussels I bis regime where the same contractual relationship requires characterization under both instruments. In particular, Echebarría Fernandez emphasizes the need for a coherent classification of the concepts of 'sale of goods' and 'provision of services' in this context, which is especially relevant where the legal classification of the contract affects both jurisdiction and applicable law[23].

[23] Echebarría Fernández, J., "Jurisdiction and applicable law to contracts for the sale of goods and the provision of services including the carriage of goods by sea and other means of transport in the European Union", *Cuadernos de Derecho Transnacional*, vol. 11, no. 2, 2019, pp. 58–84.

Royal does not ignore that Article 4(1)(a) Rome I would, at first sight, point to Italian law as the law of the seller's habitual residence. However, that starting point is not decisive where the overall circumstances of the case reveal a manifestly closer connection with another country. For that reason, the Applicant does not seek to stretch the ordinary rule beyond its natural meaning but rather applies primarily by virtue of Article 3 Rome I and, failing that, by operation of Article 4(3). This approach better reflects the logic of the Regulation, which gives priority to party autonomy while still allowing the Court to identify the legal system most closely connected with the contractual relationship.

Royal submits that this is such a case. The goods were ordered for Royal's Bulgarian business and for onward integration into yacht projects connected to Royal's operations in Bulgaria. The agreed place of delivery was Sofia, Bulgaria. The commercial purpose of the contract was to satisfy the needs of Royal's Bulgarian client relationships. The reputational and economic consequences of the alleged non-conformity also materialized in Bulgaria, where Royal's downstream contractual relationship broke down and where the loss of profit allegedly arose. These cumulative factors connect the contract far more closely with Bulgaria than with Italy viewed merely as the place of the seller's residence. In substance, Bulgaria was the country in which the contractual expectations were to be realized and in which the effects of the alleged breach were felt most directly.

The contractual choice of DAP Sofia is also significant from the perspective of applicable law, since it confirms that the place of contractual performance, delivery and commercial realization of the transaction was Bulgaria. Under DAP, the seller undertakes to bring the goods to the named destination and delivery occurs there, before unloading, once the goods are placed at the buyer´s disposal. That contractual structure strengthens the conclusion that Bulgaria was the real centre of gravity of the transaction[24].

This approach is consistent with the logic underlying the Court´s reasoning in *Intercontainer Interfrigo*[25]. Although that judgment concerned the Rome Convention

[24]Xianwei, P., "Understanding the Place of Delivery and Risk Transfer in International TradeContracts", *ICC Academy,* 31 July 2025 (available at https://academy.iccwbo.org/incoterms/article/place-of-delivery-risk-transfer-global-trade-contracts/]; last accessed: 24 March 2026).

[25]Judgment of the Court of Justice of the European Union of 6 October 2009, *Intercontainer Interfrigo SC (ICF) v BalkenendeOosthuizen BV and MIC Operations BV*, Case C-133/08, ECLI:EU:C:2009:617, electronic version, Eur-Lex database. Last accessed: 1 March 2026, paras 51–63.

rather than Rome I, it is still treated as relevant to the interpretation of the "closest connection" methodology carried forward into the Rome I framework. The Court stressed the need to identify the law most closely connected to the contract in light of its real center of gravity rather than by relying mechanically on a purely formal link. Royal therefore submits that, even if Article 4(1)(a) initially points to Italy, the totality of the connecting factors in the present case makes Bulgaria the country manifestly more closely connected with the contract under Article 4(3). That conclusion is consistent with the purpose of the escape clause as explained in the Giuliano-Lagarde Report on the Rome Convention, which clarified that Article 4(3) operates where the default presumption produces an artificial result that does not correspond to the real center of gravity of the transaction[26]. The cumulative weight of the delivery destination, the commercial purpose of the goods, and the place where the consequences of the alleged breach materialized confirm that Bulgaria, and not Italy, constitutes that center of gravity.

4.3 The inapplicability of the CISG

As to Tosca´s argument that the CISG applies, Royal submits that his argument should be rejected for two reasons. First, and most importantly, the CISG was expressly excluded in Royal´s terms and conditions. If the Court upholds Royal´s choice-of-law clause under Article 3 Rome I, that exclusion is effective by virtue of Article 6 CISG. Second, even if the Court were to move beyond the issue of exclusion, the real question would not be whether the contract falls outside the scope of the CISG because it involved custom-made goods. On the contrary, Article 3(1) CISG expressly provides that contract for the supply of goods to be manufactured are to be considered sales unless the buyer undertakes to supply a substantial part of the materials necessary for manufacture. That did not happen here, since Tosca sourced the materials itself. Royal therefore places its case primarily on the express exclusion of the CISG, not on an artificial recharacterization of the contract as something other than a sale of goods.

Accordingly, Royal submits that Bulgarian law governs the contractual obligations between Royal and Tosca. Primarily, that is because the parties validly chose Bulgarian law under Article 3 Rome I and expressly excluded the CISG. In the alternative, if the

[26] Giuliano, M. and Lagarde, P., Report on the Convention on the law applicable to contractual obligations, Official Journal of the European Communities, C 282, 31 October 1980.

Court funds that no valid choice was made, Bulgarian law should still govern pursuant to Article 4(3) Rome I because the contract is manifestly more closely connected with Bulgaria than with Italy. For those reasons, Tosca´s contention that the CISG governs the dispute should be rejected.

5. PETITUM

For the foregoing reasons, the Applicant, Royal Furniture OOD, respectfully request the Court to:

1) Declare that the Sofia City Court has international jurisdiction to hear the claims brought by Royal against both Respondents, namely Tosca Mobili s.r.l. and Swift;
2) Declare, with respect to the proceedings initiated by Swift before the District Court of Rotterdam, that the Rotterdam court must stay its proceedings pursuant Article 31(2) of Regulation (EU) No 1215/2012, and that the Sofia City Court should continue to hear the claim against Swift as the court validly chosen by the parties.
3) Hold that the contractual obligations arising out of the contract between Royal and Tosca concerning the six tailor-made tables and six cabinets are governed by Bulgarian law, and that CISG does not apply;
4) Grant such further relief as the Court may deem appropriate in the circumstances of the case.

CHAPTER II. RESPONDENT´S MEMORANDUM. TOSCA MOBILI & SWIFT

1. STATEMENT OF FACTS

For the Respondents, it is necessary to present the facts in a structured way that distinguishes the separate commercial relationships involved in this dispute. Royal's claims arise from two different transactions and involve two different Respondents, each with distinct roles and responsibilities.

The first section outlines the general background of the parties' interactions and the nature of the communications exchanged. The second focuses on the tables and cabinets, which relate solely to Tosca Mobili and concern whether a binding contract was ever formed and whether non-conformity was properly alleged. The third section concerns the chairs

and sofas, a consignment involving both Tosca (as seller) and Swift (as carrier), and which gave rise to the separate transport incident during the international carriage.

The division clarifies the Respondent´s position that the claim against Tosca and Swift arise from different factual contexts, different contractual frameworks and different legal obligations, all of which must be addressed separately.

1.1. Relationship between the Parties

Tosca Mobili s.r.l., based in Milan, is a well-established Italian manufacturer of high-end, custom and standard furniture. Royal Furniture OOD, a Bulgarian yacht-furniture designer, first approached Tosca on 20 May 2025, following an informal conversation at the Milan Sustainable Furniture Fair.

From the Respondents' perspective, Royal's initial email was not a contractual acceptance, but merely a request for information and price indications regarding two separate matters:

i. the possible manufacture of six tables and six cabinets based on Royal's designs, and
ii. the potential purchase of 14 chairs and 6 sofas previously shown at the fair.

Tosca responded on 23 May 2025 with two separate offers, each containing different delivery terms, prices, and payment mechanisms. Tosca viewed these as non-binding quotations, expressly subject to its own general terms and conditions accessible through its hyperlink, and entirely independent from any Bulgarian law clause inserted unilaterally in Royal's email footer.

Royal later sent a message on 26 May 2025 purporting to "accept" the terms while simultaneously reaffirming its own Bulgarian choice-of-law and forum clause. From the Respondents' perspective, this was not a valid acceptance, as it did not agree to Tosca's terms and introduced material modifications, meaning no perfect contract had been formed.

1.2. Tables and Cabinets (Tosca)

Tosca proceeded with production preparations in good faith once Royal arranged for a Letter of Credit on 24 May 2025. The tables and cabinets were completed within the

timeframe indicated in Tosca's quotation, and Royal was notified on 25 July 2025 that delivery would occur on 30-31 July.

On the eve of delivery, Royal unexpectedly requested a significant modification: half of the goods were to be delivered not in Sofia, but in Rijeka, Croatia, due to Royal's own contractual changes with a yacht builder. Although this change was outside the initial arrangement and no binding contract existed, Tosca accommodated the request as a gesture of commercial cooperation, not as recognition of any contractual obligation.

The deliveries were successfully completed:

- 3 tables + 3 cabinets delivered in Rijeka on 31 July,
- 3 tables + 3 cabinets delivered in Sofia the same day.

More than a week later, Royal informed Tosca that a yacht-builder client had cancelled its contract after news reports alleged that Tosca used "unethical wood".

Tosca firmly rejects these allegations:

- Its materials complied with all sourcing requirements,
- No competent authority had issued any investigation or sanction,
- No evidence linked the news reports to the specific goods delivered to Royal.

From Tosca's perspective, Royal's claim of non-conformity is unsubstantiated, and the unilateral attempt to avoid the contract is unjustified.

1.3. Chairs and Sofas (Tosca & Swift)

The chairs and sofas were not made by Tosca but sourced from Asian suppliers and stored in Tosca's Rotterdam warehouse. Royal paid the full purchase price of EUR192,000 and independently contracted Swift, a Polish carrier, on 10 July 2025, to transport the goods to Sofia. Royal expressly instructed Swift not to leave the consignment unattended at an unsecured parking place, and the transport contract contained an exclusive jurisdiction clause in favor of Sofia for disputes between Royal and Swift.

On 15 July 2025, during carriage, Swift's driver parked the truck at an unsecured area near Graz, Austria, and left the vehicle unattended. Upon his return, he discovered that:

- 4 chairs and 2 sofas were stolen,
- 4 additional chairs were severely damaged, later assessed as a total loss.

Total losses determined by the surveyor:

- Chairs: 8 units, 8 kg each (72 kg total), EUR 48,000
- Sofas: 2 units, 150 kg each (300 kg total), EUR 36,000

Swift maintains that the theft occurred despite taking reasonable precautions and that its liability, if any, is strictly limited by Article 23 (3) CMR (8.33 SDR/kg).

Because Royal refused these limits, Swift initiated negative declaratory proceedings before the Rotterdam District Court on 21 July 2025, contesting liability and seeking judicial clarification.

Shortly thereafter, on 26 August 2025, Royal filed separate proceedings before the Sofia City Court, suing both Tosca (for the tables/cabinets) and Swift (for the chairs/sofas). From the Respondents' perspective, this created parallel proceedings, as Rotterdam was the court first seized regarding the transport dispute.

Tosca disputes Sofia's jurisdiction: Swift insists the Dutch court should proceed first.

2. JURISDICTION

The Sofia City Court does not have international jurisdiction to hear the claims brought against either Respondent. Although Royal seeks to consolidate both disputes before the Bulgarian courts, the claim arises out of two distinct legal relationships and must therefore be examined separately under Regulation (EU) No 1215/2012 (Brussels I bis). Once that distinction is resorted, it becomes clear that Sofia lacks jurisdiction over both Tosca and Swift.

This follows from the structure of the Regulation itself. The Brussels I bis system is based, first and foremost, on the general rule that a defendant must be sued in the courts of the Member State in which it is domiciled. Special heads of jurisdiction, such as those contained in Article 7 or Article 25, constitute exceptions to that general rule and must therefore be interpreted strictly and applied only where their connecting factors are clearly satisfied. That logic is expressly reflected in Recitals 11 and 12 of the Regulation, which

emphasize legal certainty, predictability, and the need for a close link between the dispute and the court seized.

The preliminary point is particularly important in the present case because Royal´s position seeks, in substance, to displace the ordinary jurisdictional structure of the Regulation on the basis of connecting factors that are either disputed or insufficiently stable. The Respondents submit that the Court should resist that approach. The mere commercial convenience of hearing both disputes in Sofia cannot justify extending special jurisdiction beyond its proper limits. What matters is not whether Bulgaria is commercially relevant to Royal, but whether the relevant provisions of the Regulation truly designate the Sofia court as the competent forum in respect of each separate legal relationship.

2.1. Jurisdiction over Tosca Mobili

2.1.1. Article 7(1)(b) and the limits of special jurisdiction

Sofia City Court does not have international jurisdiction over the claim brought against Tosca. Royal submits that jurisdiction lies in Sofia under Article 7(1)(b) Brussels I bis, on the basis that Sofia was the agreed place of delivery of the tables and cabinets. That argument is unconvincing both in law and in fact.

To begin with, Article 7(1)(b) provides special jurisdiction in matters relating to a contract for the sale of goods before the courts of the place where, under the contract, the goods were delivered or should have been delivered. Even assuming, for the sake of argument that the agreement between Royal and Tosca qualifies as a contract for the sale of goods, that provision may only operate if the contractual place of delivery can be identified with sufficient precision and if it genuinely constitutes the principal connecting factor of the dispute. That point deserves emphasis because Royal's argument tends to treat Article 7(1)(b) as if it automatically favored the buyer's home forum whenever delivery was to take place there. That is not the function of the provision. Article 7(1)(b) does not exist to privilege one party's commercial base, but to identify the place most closely connected to the seller's obligation of delivery under the contract. The Court must therefore determine whether Sofia remained that place in legal and factual terms once the agreed performance was altered.

The Court of Justice clarified in *Car Trim GmbH v KeySafety Systems Srl* (C-381/08)[27] that a contract for the manufacture of goods according to specifications supplied by the buyer may still constitute a sale of goods where the buyer has not supplied a substantial part of the materials and the seller remains responsible for the quality and conformity of the final product. From the Respondent's perspective, that classification does not resolve the present issue.

The crucial question is not whether the contract can be treated as a sale of goods, but whether Sofia can properly be treated as the single relevant place of delivery for jurisdictional purposes.In other words, Royal is right only up to a point. The classification of the agreement as a sale of goods may open the door to article 7(1)(b), but it does not automatically lead to Sofia. The provision still requires the Court to identify one legally relevant place of delivery. Where the fact revealed a divided the structure of performance, the claimant cannot simply rely on the original destination stated in the other and disregard the way in which delivery was actually carried out.

This understanding is also consistent with the Opinion of Advocate General Ruiz-Jarabo Colomer in GIE Groupe Concorde, who emphasized that, for the purposes of the forum contractus, the court must identify the place of performance by reference to the obligation which characterizes the legal relationship in question[28].

2.1.2. The fragmentation of delivery between Sofia and Rijeka

Here, the factual record does not support that conclusion. Tosca´s original offer indeed referred to delivery DAP Sofia. However, before delivery took place, Royal itself requested that half of the goods, namely three tables and three cabinets, be delivered to Rijeka in Croatia instead of Sofia. Tosca accepted that modification, and the contract was

[27]Judgment of the Court of Justice of the European Union of 25 February 2010, *Car Trim GmbH v KeySafety Systems Srl,* Case C-381/08, ECLI:EU:C:2010:90, electronic version, Eur-Lex database. Last accessed: 2 March 2026, paras 34–49.

[28] Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 16 March 1999 in *GIE Groupe Concorde and Others v The Master of the vessel "Suhadiwarno Panjan" and Others,* Case C-440/97 [electronic version – Eur-Lex database. ECLI:EU:C:1999:146]. Date of last access: 25 March 2026, para. 103.

ultimately performed in two different places: part of the consignment was therefore divided between two States, not concentrated exclusive in Bulgaria.

That fragmentation is legally significant. In *Color Drack GmbH v Lexx International Vertriebs GmbH* (C-386/05), the Court of Justice accepted that, in cases involving several places of delivery, jurisdiction may be concentrated only if one principal place of delivery may be identified as the place with the closest connecting factor to the contractual performance[29]. That reasoning applies with even greater force where, as here, deliveries are split across two different Member States rather than within a single one. The Opinion of Advocate General Bot in Color Drack further supports this approach, stressing that jurisdiction should be concentrated at the place with the closest functional link to the contractual performance[30]. In the present case, however, no such principal place can be identified with the required degree of certainty. The deliveries were split equally between Rijeka and Sofia, and that division resulted from Royal's own later instructions. It would therefore be artificial to isolate Sofia as the sole jurisdictional anchor under Article 7(1)(b). The Applicant's position attempts to minimize that alteration by presenting it as a mere logistical detail. The Respondents respectfully submit that this understates its legal relevance. Delivery is not a secondary or accidental feature of the contract under Article 7(1)(b); it is the decisive connecting factor for special jurisdiction. Once delivery ceased to be concentrated in Sofia alone, the legal basis for treating Sofia as a unique forum of performance became substantially weaker.

2.1.3. Absence of a valid jurisdiction agreement and return to Article 4(1)

Nor is Royal assisted by the fact that Sofia appeared in Tosca´s original offer. Jurisdiction must remain foreseeable from the contractual structure as it ultimately stood when performance took place. If a claimant could alter the practical configuration of delivery and still insist that only its preferred forum remains relevant, the principles of predictability and legal certainty underlying Brussels I bis would be seriously weakened.

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[29]Judgment of the Court of Justice of the European Union of 3 May 2007, *Color Drack GmbH v Lexx International Vertriebs GmbH,* Case C-386/05, ECLI:EU:C:2007:262, electronic version, Eur-Lexdatabase. Lastaccessed: 3 March 2026, paras 37–40.

[30] Opinion of Advocate General Bot delivered on 15 February 2007 in *Color Drack GmbH v Lexx International Vertriebs GmbH,* Case C-386/05, ECLI:EU:C:2007:90, electronic version, Eur-Lex database. Last accessed: 24 March 2026.

Jurisdiction must be applied in a way that preserves the defendant's ability to foresee, at the time of performance, the courts in which it may be sued. That requirement is not satisfied where the place of delivery is later fragmented across more than one State.

Royal also attempts to reinforce Bulgarian jurisdiction by invoking its own standard terms and conditions. That argument cannot succeed. The contractual exchanges reveal that each party referred to its own terms. Royal relied on Bulgarian law and Sofia jurisdiction through its website terms. Tosca, by contrast, referred to Italian law and to the courts at the place of performance or in Milan. This is a classic battle of forms. There was no clear and unequivocal agreement on jurisdiction within the meaning of Article 25 Brussels I bis. Under settled case law, derogations from the general rule of defendant's domicile must rest on genuine consent and may not be inferred from unilateral references or mere silence[31].

This conclusion is reinforced by the rules governing contract formation under the CISG, which the Respondent submits is the applicable substantive law. Article 19(1) CISG provides that a reply to an offer which purports to be an acceptance but contains material additions or modifications constitutes a counteroffer rather than an acceptance. Article 19(3) expressly identifies clauses relating to the settlement of disputes as material. Since each party referred to its own standard terms containing different choice-of-law and jurisdiction clauses, neither set of terms was accepted by the other party. Under the so-called 'knock-out' approach, which is supported by a significant body of CISG scholarship and was addressed by the CISG Advisory Council in Opinion No. 13, conflicting standard terms cancel each other out and the contract is governed by the default rules of the Convention. The result is that no valid jurisdiction agreement exists under Article 25 Brussels I bis.[32]

That position is further reinforced by jurisprudence and doctrine. Magnus and Mankowski emphasize that Article 7(1)(b) is intended to identify the court most closely connected with contractual performance, rather than to allow one party to manufacture jurisdiction

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[31]Judgment of the Court of Justice of the European Union of 9 November 2000, *CoreckMaritime GmbH v Handelsveem BV and Others*, Case C-387/98, ECLI:EU:C:2000:606, electronic version, Eur-Lex database. Last accessed: 28 February 2026, paras 13–15.

[32] CISG Advisory Council, Opinion No. 13: Inclusion of Standard Terms under the CISG, adopted by the CISG Advisory Council following its 17th meeting in Villanova, Pennsylvania, USA, 2013.

through its own unilateral contractual documentation[33].In the present case, the lack of agents on standard terms and the fragmentation of actual delivery mean that Sofia cannot properly be treated as the exclusive place of delivery for the purposes of Article 7(1)(b).

Accordingly, the special jurisdiction relied upon by Royal is unavailable. In the absence of a valid jurisdiction agreement and given that delivery was divided between Bulgaria and Croatia, the case must revert to the general rule laid down in Article 4(1) Brussels I bis. Tosca is domiciled in Milan, Italy. The Italian courts are therefore the proper forum for the claim against Tosca.

2.2 Jurisdiction over Swift

2.2.1. The connecting factors under Article 7(2) do not point to Bulgaria

The Sofia City Court also lacks international jurisdiction over the claim brought against Swift. Royal seeks to anchor jurisdiction in Sofia primarily through the jurisdiction clause contained in the carriage contract and alternatively thought to fact that the goods were to be delivered in Bulgaria. Neither basis is sufficient. The dispute must therefore be examined with particular care as to its true jurisdictional basis. What is a issue is not simply the existence of a transport contract, but liability for a theft and damage event that occurred during the actual course of carriage. That distinction matters because it affects both the relevant connecting factor under the Regulation and the extent to which the Sofia jurisdiction clause may properly govern the person dispute.

The dispute differs fundamentally from the one against Tosca. It does not concern the conformity of goods under a sales contract, but liability arising from theft and damage during international road carriage. The operative facts giving rise to the alleged loss did not occur in Bulgaria. The truck was loaded in Rotterdam, the theft and physical damage took place near Graz in Austria, and Sofia became relevant only as the place where the damage was discovered at the end of the journey.

[33] Mankowski, P., "Article 7", in Magnus, U. and Mankowski, P. (eds.), Brussels Ibis Regulation – Commentary, Otto Schmidt, Cologne, 2016, pp. 189–191.

If jurisdiction is assessed under Article 7(2) Brussels I bis, the relevant connecting factors are the place where the harmful event occurred and the place where the direct damage materialized. Since *Bier v Mines de Potasse d´Alsace* (21/76), the Court of Justice has accepted that those two places may ground jurisdiction, but only where each presents a sufficiently direct and substantial connection with the dispute[34]. In the present case, the harmful event itself occurred in Austria, because that is where the goods were stolen and damaged. Sofia was not the place where the damage was caused, but only the place where its consequences became apparent upon delivery. The fact that Sofia was the contractual destination of the goods does not alter that analysis. For the purposes of Article 7(2), the relevant question is not where the transport was supposed to end, but where the harmful event occurred and where the direct damage took place. In the present case, those elements point away from Bulgaria and toward Austria, which is the place with the immediate factual connection to the alleged loss.

That is not enough. In *Universal Music International Holding BV v Schilling* (C-12/15), the Court held that purely economic loss suffered at the claimant's place of business cannot, by itself, establish jurisdiction when the original harmful event occurred elsewhere [35] .The same logic applies here. Royal may have suffered financial consequences in Bulgaria, but the direct physical damage to the goods occurred in Austria, and that remains the legally relevant connecting factor under Article 7(2).

This conclusion is also reinforced by the Opinion of Advocate General Szpunar in *Universal Music,* which likewise rejected the idea that the place from which payment was made, or the claimant's financial sphere as such, could by itself supply a sufficient jurisdictional connection where the original harmful event occurred elsewhere[36].

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[34]Judgment of the Court of Justice of the European Communities of 30 November 1976, *Handelskwekerij G.J. Bier BV v Mines de Potasse d'Alsace SA,* Case 21/76, ECLI:EU:C:1976:166, electronic version, Eur-Lex database. Last accessed: 25 February 2026.

[35]Judgment of the Court of Justice of the European Union of 16 June 2016, *Universal Music International Holding BV v Michael TétreaultSchilling and Others,* Case C-12/15, ECLI:EU:C:2016:449, electronic version, Eur-Lex database. Last accessed: 2 March 2026, paras 30–39.

[36]Opinion of Advocate General Szpunardelivered on 10 March 2016 in *Universal Music International Holding BV v Michael TétreaultSchilling and Others,* Case C-12/15, ECLI:EU:C:2016:161, electronic version, Eur-Lex database. Last accessed: 25 March 2026.

2.2.2. The Sofia clause does not automatically govern the present claim

Royal nevertheless argues that Sofia has jurisdiction because the transport contract contains an exclusive jurisdiction clause in favor of the Bulgarian courts. Swift contests the applicability of that clause to the present claim. The mere existence of a contract between the parties does not mean that every dispute arising in the factual context of that contract is necessarily contractual for jurisdictional purposes. That distinction was drawn clearly by the Court of Justice in *Brogsitter v Fabrication de Montres Normandes* (C-548/12), where the Court held that a claim falls within contractual matters only where the court must interpret the contract in order to determine whether the conduct complained of amounts to a breach of obligations freely assumed under it[37].

That is not the present situation. Royal's complaint against Swift is based on theft and physical damage to gods during carriage. The conduct alleged, namely leaving the truck unattended in an unsecured place, may be assessed under the general rules governing road carriage and carrier liability, including the CMR Convention, without the need for detailed interpretation of any specific contractual class beyond the existence of the transport relationship itself. The contract provides the factual background of the transport relationship itself. The contract provides the factual background, but it does not automatically transform the dispute into one that be heard in the contractually designated forum.

The doctrinal commentary on *Brogsitter* supports that reading. Ana Moreno Sánchez-Moraleda observes that the Court's approach requires a genuine examination of whether the claims is truly based on the breach of obligations arising from the contract, rather than merely occurring in the context of a prior contractual relationship. In her view, the decisive point is that the mere existence of a contract does not suffice to transform every subsequent dispute between the parties into a matter relating to a contract for the purposes of Brussels I bis. Where that is not the case, jurisdiction must be determined under the rules applicable to non-contractual liability, not by automatic extension of the contractual

[37]Judgment of the Court of Justice of the European Union of 13 March 2014, *Marc Brogsitter v Fabrication de MontresNormandes EURL and KarstenFräßdorf,* Case C-548/12, ECLI:EU:C:2014:148, electronic version, Eur-Lex database. Last accessed: 4 March 2026, paras 24–27.

framework. This interpretation also reinforces the autonomous meaning of contractual and non-contractual matters under EU private international law and prevents jurisdiction from being expanded simply because the harmful event arose against a contracted background[38]. In any event, regardless of the characterization of the claim, Article 31(1) CMR, preserved by Article 71 of Brussels I bis, provides Rotterdam with an independent jurisdictional basis as the place where the goods were taken over by the carrier.[39]

2.2.3. The dispute is more closely connected to Austria and the Netherlands

Moreover, Swift has no operational presence in Bulgaria. It is a Polish carrier. The transport began in the Netherlands. The harmful event occurred in Austria. From the Respondent's perspective, Bulgaria is therefore only incidentally connected to the dispute thought the final destination of the goods.

That conclusion is further supported by the applicable specialized convention. The analysis must also consider the Convention on the Contract for the International Carriage of Goods by Road (CMR), whose application is preserved by Article 71 of the Brussels I bis Regulation. Article 31(1) CMR provides that actions arising out of carriage subject to the Convention may be brought before the courts of the country where the goods were taken over by the carrier, the country designated for delivery, or the country where the defendant has its habitual residence[40]. In the present case, the goods were taken over in Rotterdam, which constitutes an autonomous jurisdictional basis under the CMR. The Court of Justice recognized in *TNT Express Nederland BV v AXA Versicherung AG* (C-533/08) that specialized conventions such as the CMR prevail over the Brussels regime provided they meet equivalent standards of legal certainty and foreseeability. Rotterdam, as the place of taking over, is therefore a legitimate forum under CMR Article 31(1), and

[38]Moreno Sánchez-Moraleda, A., "Interpretación autónoma de la naturaleza contractual o no de una acción. Comentario a la STJUE de 13 marzo 2014, as. C-548/12, Marc Brogsitter v. Fabrication de MontresNormandes", *Revista Electrónica de Direito,* no. 1, febrero 2016, pp. 14–18.

[39] Convention on the Contract for the International Carriage of Goods by Road (CMR), Geneva, 19 May 1956, Articles 17-29 (carrier liability regime).

[40] Convention on the Contract for the International Carriage of Goods by Road (CMR), Geneva, 19 May 1956, United Nations Treaty Series, vol. 399, p. 189, Article 31(1).

the proceedings initiated by Swift before the Rotterdam court are grounded in a valid jurisdictional basis that is not displaced by the Sofia clause.[41]

Accordingly, Sofia cannot properly assume international jurisdiction over Swift. The claims are not sufficiently connected to Bulgaria under Article 7(2), and the contractual clause cannot automatically govern a dispute whose legal nature is, for jurisdictional purposes, non-contractual. The dispute is far more closely connected to Austria as the place of the harmful event[42], and to the Netherlands as the place from which the transport began and where proceedings were first initiated. That result is also consistent with the broader logic of Brussels I bis. To extend jurisdiction to Bulgaria in these circumstances would stretch the special heads of jurisdiction beyond their proper function and would subject a foreign carrier to proceedings in a forum whose connection with the harmful event is only indirect. Such an approach would sit uneasily with the principle of proximity, foreseeability, and balanced allocation of jurisdiction that underlies the Regulation.

In conclusion, the Sofia City Court has no international jurisdiction over the claims against either Respondent. As regards Tosca, the proper forum is Milan, since delivery was divided between Bulgaria and Croatia and no valid prorogation of jurisdiction in favor of Sofia was concluded. As regards Swift, Bulgaria is neither the place where the harmful event occurred nor the forum within the closest jurisdictional link, and the contractual clause cannot automatically extend to the present liability claim.

Royal's attempt to consolidate both disputes before the Bulgarian courts is therefore incompatible with the structure of Brussels I bis and with its fundamental principles of legal certainty, proximity and foreseeability.

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[41] Judgment of the Court of Justice of the European Union of 4 May 2010, TNT Express Nederland BV v AXA Versicherung AG, Case C-533/08, ECLI:EU:C:2010:243, electronic version, Eur-Lex database. Last accessed: 24 March 2026, paras 45-49.

[42] Judgment of the Court of Justice of the European Communities of 30 November 1976, *Handelskwekerij G.J. Bier BV v Mines de Potasse d'Alsace SA*, Case 21/76, ECLI:EU:C:1976:166, electronic version, Eur-Lex database. Last accessed: 25 February 2026.

3. STAY OF PROCEEDINGS

From Swift's perspective, the Sofia City Court must stay its proceedings in accordance with Article 29 of the Brussels I bis Regulation, due to the existence of parallel litigation already pending before the Rotterdam District Court. Article 29 establishes a strict *lis pendens* rule to prevent the risk of irreconcilable judgments between courts of different Member States and to safeguard the orderly administration of justice within the European Union. The mechanism is designed to ensure that, when two courts are asked to decide on the same dispute, priority is given to the court first seized until its jurisdiction is clarified.

3.1. The chronology of the proceedings and the first-seized court

The chronology of the present dispute is straightforward and decisive. On 21 July 2025, Swift initiated negative declaratory proceedings before the court in Rotterdam, requesting a determination that it was either not liable for the theft and damage that occurred during carriage or, in the alternative, that any liability would be limited under Article 23(3) of the CMR Convention. More than a month later, on 26 August 2025, Royal commenced proceedings before the Sofia City Court against both Swift and Tosca as defendants. It is therefore indisputable that the Rotterdam proceedings were the first to be seized and that Sofia proceedings were brought only afterwards.

That chronological order matters because the Brussels I bis Regulation, as a general rule, attaches procedural priority to the court first seized where the same dispute is pending before courts of different Member States. The starting point of the analysis is therefore not the convenience of one forum over another, but the existence of parallel proceedings and the need to preserve procedural coordination between Member State courts.

The same point has been made in doctrinal commentary, which describes the traditional lis pendens rule as attaching procedural priority to the first-seized court in order to avoid parallel proceedings and irreconcilable judgments, while recognizing that the recast later introduced a specific correction for exclusive jurisdiction clauses.[43]

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[43] Nielsen, P. A., "The State of Play of the Recast of the Brussels I Regulation", *Nordic Journal of International Law*, vol. 81, 2012, p. 593.

3.2. The operation of Article 29 Brussels I bis

Under Article 29(1), when proceedings involving the same cause of action and between the same parties are brought before courts of different Member States, the court second seized shall stay its proceedings until the jurisdiction of the court first seized is established. This obligation is mandatory, not discretionary. The Court of Justice confirmed in *Overseas Union Insurance* (C-351/89) that the second court seized has no freedom to continue examining the merits while the first court has not yet ruled on its own jurisdiction. The operation of Article 29 is therefore automatic once its conditions are satisfied[44].

This strict understanding of the first-seized rule is also reflected in the literature. Kenny and Hennigan explain that, under the pre-recast regime, the lis pendens mechanism could operate even in the presence of a choice-of-court agreement, which is precisely what made the so-called Italian torpedo procedurally effective.[45]

Those conditions are met in the present case. The parties are the same, namely Royal and Swift. The dispute also concerns the same transport operation, the same incident during carriage, and the same alleged loss. Swift seeks in Rotterdam a declaration concerning the absence or limitation of its liability in respect of the theft and damage. Royal, from its part, seeks compensation in Sofia in reduce of exactly that same incident. Although the procedural posture is different, the underlying legal issue is identical: whether Swift is liable, and if so, to what extent, for the loss suffered during the road transport from Rotterdam to Sofia. There is therefore a substantial identity of cause of action and a clear risk of conflicting outcomes if both courts are permitted to continue.

The logic of Article 29 is especially compelling here because the Rotterdam proceedings were not artificially disconnected from the substance of the dispute. Swift's declaratory action was brought in direct response to the same incident of theft and damage that later

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[44] Judgment of the Court of Justice of the European Communities of 27 June 1991, Overseas Union Insurance Ltd and Others v New Hampshire Insurance Company, Case C-351/89, ECLI:EU:C:1991:279, electronic version, Eur-Lex database. Last accessed: 20 March 2026, paras 23-26.

[45] Kenny, D. y Hennigan, R., "Choice-of-Court Agreements, the Italian Torpedo, and the Recast of the Brussels I Regulation", *International and Comparative Law Quarterly*, vol. 64, 2015, pp. 197–209, esp. p. 198.

gave rise to Royal's compensation claim in Sofia. It concerns the same factual background, the same transport documents, the same alleged breach and the same legal question of liability and limitation. This is not a case of merely related actions within the meaning of the Regulation, but of truly parallel proceedings concerning the same dispute.

3.3. The relevance of Gasser and the contested role of Article 31(2)

The Court of Justice further clarified in Gasser v MISAT (C-116/02) that the obligation to stay proceedings applies even where the court second seized is the court designated in a jurisdiction clause. In that case, the Court gave priority to the first-seized court to maintain certainty, avoid procedural fragmentation, and ensure that jurisdictional disputes are not decided simultaneously by competing courts. Swift submits that the same logic applies here. Even if Royal invokes the clause in favor of the Sofia courts, that does not by itself displace the operation of Article 29 where the Dutch court was seized first and the scope and applicability of the alleged jurisdiction agreement remain disputed.

It is true that Royal may rely on Article 31(2) Brussels I bis, arguing that the carriage contract contains an exclusive jurisdiction clause in favor of the courts of Sofia. Swift submits, however, that this provision does not automatically resolve the present case. Article 31(2) protects the chosen court only where there is a valid and applicable exclusive jurisdiction agreement covering the dispute before it. That is precisely what Swift contests.

The same point has been made in the literature. Kenny and Hennigan explain that the recast Regulation was designed to correct the practical difficulties created by Gasser, but not to eliminate the need to determine, as a prior matter, whether the clause invoked is in fact valid and applicable to the dispute before the chosen court.[46]

In Swift's view, the present proceedings do not concern a purely contractual dispute over the interpretation or performance of the transport agreement as such, but rather liability arising from theft and physical damage during carriage, a matter governed primarily by the liability framework of the CMR Convention. This is also consistent with the Opinion

[46]Kenny, D. y Hennigan, R., "Choice-of-Court Agreements, the Italian Torpedo, and the Recast of the Brussels I Regulation", *International and Comparative Law Quarterly*, vol. 64, no. 1, 2015, pp. 197–209.

of Advocate General Tanchev in *Zurich Insurance*, who stressed that it is for the national courts to determine whether the dispute falls within the scope of the CMR. That is directly relevant here, because Swift contests precisely whether the present claim is governed by the transport-law framework and whether Royal can simply assume, for jurisdictional purposes, that the Sofia clause governs the dispute without prior examination of that issue[47].

The Respondent's position is not that exclusive jurisdiction agreements are irrelevant, but that Article 31(2) cannot be used by one party to short-circuit the *lis pendens* rule merely by asserting that the clause applies. If that were accepted, the simple allegation that a jurisdiction clause covers the dispute would always suffice to displace Article 29, even where the applicability of that clause is itself the very issue in dispute. That would create uncertainty rather than reduce it. In any event, the particular features of this case, including the applicability of the CMR framework and the non-contractual nature of the liability claim, raise genuine questions about whether the clause can be treated as exclusive within the meaning of Articles 25 and 31(2)

3.4. The need to avoid conflicting judgments

If the Sofia court were allowed to continue while the Rotterdam court was already examining the same liability issue, the result could be two inconsistent decisions on the same matter. One court could declare Swift not liable or liable only within the CMR limitation, while the other might reach a different conclusion on the same transport incident. Such a result would be directly contrary to the object of Article 29 and to the broader aim of mutual trust between Member State courts. This is also consistent with Nielsen's explanation that the lis pendens mechanism in the Brussels regime is intended to avoid parallel proceedings and inconsistent judgments, thereby protecting the orderly administration of justice within the Union[48].

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[47] Opinion of Advocate General Tanchev delivered on 10 April 2018 in *Zurich Insurance plc and Metso Minerals Oy v Abnormal Load Services (International) Ltd,* Case C-88/17 [electronic version – Eur-Lex database. ECLI:EU:C:2018:224]. Date of last access: 20 March 2026, para. 25.

[48] Nielsen, P. A., "The State of Play of the Recast of the Brussels I Regulation", *Nordic Journal of International Law*, vol. 81, no. 4, 2012, pp. 585–603.

Moreover, staying the Sofia proceedings at this stage does not deprive Royal of access to justice. It merely reflects the procedural order established by the Regulation. If the Rotterdam court ultimately concludes that it lacks jurisdiction, or if it otherwise declines to proceed, the Sofia court may then reconsider the continuation of its own proceedings. But until that happens, the scheme of Brussels I bis requires the second court seized to step back.

Therefore, the Sofia City Court is obliged to stay its case until the Rotterdam District Court, as the court first seized, determines whether it will accept jurisdiction. Only once that determination has been made may the court in Sofia reassess whether the proceedings before it can continue.

In conclusion, the proceedings in Sofia must be stayed. The Rotterdam District Court was seized first and is already examining the same core dispute between Royal and Swift. In line with Article 29 Brussels I bis and established CJEU case law, particularly *Overseas Union Insurance and Gasser*, the Sofia City Court is required to suspend its proceedings until the Dutch court rules on its jurisdiction.

4. APPLICABLE LAW

Tosca submits that the United Nations Convention on Contracts for the International Sale of Goods (CISG) governs the alleged contract between Royal Furniture OOD and Tosca Mobili for the six tables and six cabinets.

4.1. Automatic application of the CISG under Article 1(1)(a)

The CISG applies automatically under Article 1(1)(a) because both parties have their places of business in Contracting States, namely Bulgaria and Italy. There is therefore no need for any further choice-of-law analysis in order for the Convention to apply. As long as the contract falls within the substantive scope of the CISG, the Convention governs by default as part of the law of both States. This is also the approach reflected in the UNCITRAL Digest, which treats Article 1(1)(a) as triggering the Convention's

application whenever both parties have their places of business in Contracting States, subject only to a valid exclusion under Article 6.[49]

In that respect, the Respondent´s position is conceptually straightforward. The starting point is not the domestic law of one State or the other, but the automatic operation of a uniform substantive regime incorporated into the legal orders of both Contracting States. The question is therefore not whether Bulgarian or Italian domestic sales law applies in the first instance, but whether the requirements for that application of the CISG are met and, if so, whether the Convention was validly excluded by the parties.

4.2. No valid exclusion of the CISG

Royal argues that Bulgarian national law was chosen through the inclusion of its General Terms and Conditions. However, this argument does not displace the Convention. The CISG forms part of Bulgarian law by default, and a general reference to Bulgarian law does not, in itself, amount to a valid exclusion of the CISG. Under Article 6 CISG, the parties may exclude the application of the Convention, but such exclusion must be explicit or at least implied. Ambiguity is not sufficient. This is also the position reflected in CISG commentary and soft-law guidance, which explain that the Convention is not displaced merely because the parties refer in general terms to the law of a Contracting State.[50] In particular, the widely recognized Oberlandesgericht Linz decision confirmed that a generic reference to national law does not, without more, amount to exclusion of the Convention[51].

It is also relevant to consider how the contract was formed under the CISG framework. Given that neither party accepted the other's standard terms, the contract was not concluded through a classic offer-acceptance exchange under Articles 14 and 18(1) CISG, but rather through the conduct of the parties under Article 18(3) CISG, which provides that an offeree may indicate assent by performing an act such as dispatching the goods or paying the price. Royal's payment and issuance of the Letter of Credit, together with

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[49]United Nations Commission on International Trade Law, UNCITRAL*, Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods*, 2016 ed., Art. 1 chapter, available at UNCITRAL website. Last accessed: 20 March 2026.

[50]CISG Advisory Council, Opinion No. 16: Exclusion of the CISG under Article 6, 2014.

[51]Oberlandesgericht Linz, judgment of 23 January 2006, 6 R 160/05z (CISG-online 1377)

Tosca's commencement of production, demonstrate that both parties treated the transaction as binding regardless of whose standard terms applied. This supports the conclusion that the conflicting choice-of-law and jurisdiction clauses cancelled each other out, leaving the CISG as the default governing law.

Royal relies on a hyperlink to its terms to establish a choice of law excluding the CISG. Tosca challenges both the incorporation and the alleged exclusion. First, Royal never ensured that the terms were effectively communicated or accepted as part of the contractual agreement. Unlike the situation in *El Majdoub* (C-322/14)[52], where the Court of Justice accepted electronically referenced clauses in a B2B context because the terms were clearly accessible and the method of acceptance provided sufficient certainty, the present case is less straightforward. The hyperlink in Royal´s communication did not lead directly to the relevant terms, and there is no clear evidence that Tosca accepted those terms as governing the contract. Under Article 8 CISG, contract interpretation depends on the understanding of a reasonable person placed in the same circumstances. On that basis, there is no sufficient indication that Tosca consented to be bound by Royal´s foreign standard terms, let alone by a clause excluding the CISG.

Even if incorporation were accepted *arguendo*, the wording relied upon by Royal would still not clearly exclude the Convention. The clause merely states that "Bulgarian national law applies exclusively." Such wording does not satisfy the high threshold required to displace a uniform substantive law instrument like the CISG.

That conclusion reflects a broader and well-established interpretative approach in CISG scholarship and case law. Because the Convention forms part of the domestic law of Contracting States, a general reference to the law of such a State normally includes the CISG rather than excluding it. For that reason, the burden lies on the party asserting exclusion to demonstrate that the parties intended to opt out of the Convention in clear terms. No such clear intention has been established on the present facts.

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[52] Judgment of the Court of Justice of the European Union of 21 May 2015, *Jaouad El Majdoub v CarsOnTheWeb.Deutschland GmbH*, Case C-322/14, ECLI:EU:C:2015:334, electronic version, Eur-Lex database. Last accessed: 3 March 2026, paras 28–31.

4.3. Applicability of the CISG to custom-made goods

Royal additionally claims that the CISG is inapplicable because the furniture was tailor-made. This argument is legally incorrect. Under Article 3(1) CISG, the fact that goods are to be manufactured according to the buyer's specifications does not remove the contract from the scope of the Convention unless the buyer supplies a substantial part of the materials necessary for such manufacture. That did not happen here. Royal provided designs, but Tosca supplied the materials and carriers out the production. The agreement therefore remains a contract for the sale of goods within the meaning of the CISG.

The tailor-made nature of the tables and cabinets does not alter that result. On the contrary, Article 3(1) was specifically drafted to ensure that contracts involving the manufacture of goods remain subject to the Convention unless the buyer's contribution goes beyond design or specifications and extends to the supply of substantial materials. Since that threshold is not met in the present case, the contract falls squarely within the material scope of the CISG.

The policy objectives of the CISG also support its application in the present dispute. The Convention seeks to facilitate international trade through uniform substantive rules, thereby enhancing predictability, neutrality and fairness between comical parties established in different States. Resorting instead to domestic Bulgarian law, as Royal urges, would undermine the harmonization that both Bulgaria and Italy accepted by becoming Contracting States to the Convention.

Accordingly, Tosca submits that the alleged contract between Royal and Tosca is governed by the CISG. The Convention applies automatically under Article 1(1)(a), it was not validly excluded under Article 6, and the tailor-made nature of the goods does not remove the agreement from its scope under Article 3(1).

5. PETITUM

For the foregoing reasons, the Respondents, Tosca Mobili s.r.l. and Swift, respectfully request the Court to:

1) Declare that the Sofia City Court does not have international jurisdiction to hear the claims brought against either Tosca Mobili s.r.l. or Swift;

2) Declare, in respect of the claim against Tosca Mobili s.r.l., that the competent forum is the court of the defendant's domicile in Milan, Italy;
3) Declare, in respect of the claim against Swift, that the proceedings before the Sofia City Court must be stayed until the District Court of Rotterdam, as the court first seized, has ruled on its jurisdiction;
4) Hold that the contractual obligations arising out of the contract between Royal Furniture OOD and Tosca Mobili s.r.l. concerning the six tailor-made tables and six cabinets are governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG);
5) Dismiss the Applicant's arguments seeking the application of Bulgarian domestic law and the exclusion of the CISG;
6) Grant such further relief as the Court may deem appropriate in the circumstances of the case.

CHAPTER III. FINAL CONCLUSIONS

1. APPLICANT´S MEMORANDUM

For the reasons set out above, the Applicant respectfully asks the Court to: (1) reject any challenge to the jurisdiction of the Sofia City Court and confirm that it has international jurisdiction over the claims brought against both Respondents, Tosca Mobili s.r.l. and Swift, (2) declare that the proceedings commenced before the Court should proceed with the claim brought against Swift, (3) find that Bulgarian law governs the contractual obligations arising out of the contract concluded between Royal and Tosca, (4) reject the argument that the CISG applies to the present dispute, and (5) grant any further relief the Court considers appropriate in light of the circumstances of the case.

2. RESPONDENT´S MEMORANDUM

For the reasons set out above, the Respondents respectfully ask the Court to: (1) uphold the objection to the jurisdiction of the Sofia City Court and declare that it does not have international jurisdiction over the claims brought against either Tosca Mobili s.r.l. or Swift, (2) declare, in respect of the claim against Tosca, that the competent forum is the court of the defendant's domicile in Milan, Italy, (3) order that the proceedings brought before the Sofia City Court against Swift be stayed until the District Court of Rotterdam,

as the court first seized, has ruled on its jurisdiction, (4) find that the contractual obligations arising out of the contract between Royal and Tosca are governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG), (5) reject the Applicant's contention that Bulgarian domestic law applies and that the CISG was validly excluded, and (6) grant any further relief the Court considers appropriate in light of the circumstances of the case.

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