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Harmonizing the Standard of “Fundamental Breach” under Article 25 CISG

A Comparative Analysis of Selected EU Case Law and the Role of UPICC

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Abbreviations

BGH	Bundesgerichtshof (German Federal Court of Justice)
CISG	United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)
CLOUT	Case Law on UNCITRAL Texts
DCFR	Draft Common Frame of Reference
EU	European Union
ICC	International Chamber of Commerce
OLG	Oberlandesgericht (German Higher Regional Court)
PECL	Principles of European Contract Law
ULIS	Uniform Law on the International Sale of Goods (Hague Convention, 1964)
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNIDROIT	International Institute for the Unification of Private Law
UNTS	United Nations Treaty Series
UPICC	UNIDROIT Principles of International Commercial Contracts (2016)
VIAC	Vienna International Arbitral Centre
WHO	World Health Organisation
WTO	World Trade Organisation

Abstract

This thesis examines the interpretation of fundamental breach under Article 25 of the United Nations Convention on Contracts for the International Sale of Goods, focusing on judicial divergences between Germany and France in the context of supply-chain disruptions occurring between 2019 and 2025. Article 25 establishes substantial deprivation of contractual expectations as the gateway to avoidance, the Convention's most commercially disruptive remedy, yet its deliberately open-textured language has generated persistent interpretive inconsistency across jurisdictions. German courts apply a strict favour contractus threshold, treating avoidance as an ultima ratio, while French courts show greater readiness to permit avoidance where the creditor's specific expectations have been defeated. The COVID-19 pandemic, the container shipping crisis, the war in Ukraine, and the Red Sea shipping disruptions have amplified these pre-existing tensions, producing divergent outcomes in materially similar commercial disputes. This thesis assesses whether the UNIDROIT Principles of International Commercial Contracts can serve as a supplementary interpretive tool under Article 7 CISG to narrow this divergence, identifying the intentionality, loss of reliance, and proportionality factors of UPICC Article 7.3.1 as having the greatest harmonising potential. The analysis concludes that UPICC integration is doctrinally legitimate but conditional, and proposes dedicated CISG Advisory Council guidance as the most credible institutional response.

Keywords: fundamental breach; Article 25 CISG; substantial deprivation; UNIDROIT Principles; supply-chain disruption

1. INTRODUCTION

1.1 Background and Context

Predictability is the key to the international sale of goods. When a buyer in Hamburg enters into a contract with the seller in Lyon to ship a consignment of industrial components, both parties need to be sure that the legal effects of a breach will be evaluated against a uniform and predictable norm, no matter which national court ends up resolving the conflict. This confidence is precisely what the United Nations Convention on Contracts for the International Sale of Goods (CISG) was designed to deliver.[1] But the centre of the remedial architecture of the Convention is found in this: in a clause whose construction has proven resistant to homogeneous interpretation over forty years, Article 25, which establishes the concept of fundamental breach as the access point to the most commercially radical of all remedies available under contract, avoidance of contract.[2]

Article 25 CISG states that breach is fundamental whereby the breach causes such prejudice to the other party as the substantial deprivation of what he is entitled to expect under the contract, unless the breaching party did not anticipate such an outcome and a reasonable man in such a situation would not anticipate such an outcome.[3] The authors of the Convention were all too conscious that no definite list of circumstances could serve to foresee the endless diversity of commercial reality. They thus adopted consciously free-ranging language, not a rule but a norm, and tolerate interpretative variation as the cost of an effective international structure.[4] They

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[1] United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980) 1489 UNTS 3 (CISG), Preamble.
[2] CISG, art 25; see also Franco Ferrari, 'Fundamental Breach of Contract under the UN Sales Convention: 25 Years of Article 25 CISG' in *Liber Memorialis Petar Sarcevic* (Sellier European Law Publishers 2006) 439.
[3] CISG, art 25.
[4] Commentary on the Draft Convention on Contracts for the International Sale of Goods, prepared by the Secretariat (UN Doc A/CONF.97/5) in *United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980, Official Records* (United Nations 1991); see also Larry DiMatteo, 'Formal and Operative Rules of the

could not have imagined that such divergence would be further intensified when national courts developed their unique judicial cultures on the provision.

This fragmentation has been revealed and exaggerated by the constellation of global supply-chain crises that characterized the years 2019 to 2025. The COVID-19 pandemic, the 2021–2022 container shipping crisis, Russia's invasion of Ukraine and the subsequent commodity shocks, and the Houthis' attacks on Red Sea commercial shipping in 2023–2024 all created a wave of contractual disputes that the drafters of the CISG had never hoped to see.[5] Courts in Europe were faced with new questions: in what instances does a delivery delay due to the pandemic qualify as a substantial deprivation? At what point do recurring nonconformities in goods, each of which is tolerable individually, exceed the Article 25 threshold? The responses provided by the German and French courts have not continually come into agreement.[6]

This thesis straddles three analytically distinct issues: the internal consistency of the remedial framework of the CISG; the practical division of judicial interpretation across selected EU jurisdictions; and the normative possibilities of the UNIDROIT Principles of International Commercial Contracts (UPICC) as a harmonising instrument which can provide the analytical framework that Article 25 deliberately leaves blank.[7]

CISG: Case of Article 25' (2025) 43 *Journal of Law and Commerce* <https://doi.org/10.5195/jlc.2025.309>.

[5] André Janssen and Cathrine Wahnschaffe, 'COVID-19 and International Sale Contracts: Unprecedented Grounds for Exemption or Business as Usual?' (2020) 25 *Uniform Law Review* 466; UNIDROIT, 'Note on the UNIDROIT Principles of International Commercial Contracts and the COVID-19 Health Crisis' (July 2020) <https://www.unidroit.org/english/news/2020/200721-principles-covid19-note/note-e.pdf >accessed 14 April 2026.

[6] Larry DiMatteo and others, 'Once More Unto the Breach: A Comparative Study of Fundamental Breach in International Sales Law' (2022) 31 *Texas Law Commercial Practices* 33 <https://cisg-online.org/files/commentFiles/DiMatteo_Infantino_Wang_Monaco_31_TLCP_2022_33.pdf> accessed 1 April 2026.

[7] UNIDROIT Principles of International Commercial Contracts 2016 (UNIDROIT 2016), Preamble <https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf> accessed 30 March 2026.

1.2 Purpose and Research Questions

The purpose of this thesis is to assess whether the UPICC can serve as a supplementary interpretive tool to reconcile divergent judicial interpretations of Article 25 CISG in selected EU jurisdictions, thereby promoting greater uniformity and predictability in the application of the fundamental breach standard.[8]

Two research questions organise the inquiry.

> **RQ1:** How have courts in selected EU jurisdictions interpreted the 'substantial deprivation' threshold under Article 25 CISG in the context of supply-chain disruptions, and what are the primary divergences in their judicial reasoning?
>
> **RQ2:** Under the interpretive framework of Article 7 CISG, to what extent and in what specific ways can the UPICC serve as a supplementary tool, not a primary source of authority, to reconcile these divergent interpretations and promote a more predictable standard for fundamental breach?

1.3 Delimitations

There are four delimitations to the scope of this thesis, and none is arbitrary.

Jurisdictional scope. Comparative analysis is only limited to Germany and France. Both are civil-law jurisdictions in the EU and contracting States to the CISG.[9] More importantly, they have meaningfully different judicial respective: German courts are marked by robust culture of favour contracts, preference of contract preservation over contract termination. But in contrast to the French courts where there has been a higher willingness of the court to permit the avoidance, a trend which has been strengthened in France by the 2016 amendment of the French

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[8] CISG, art 7; Stefan Vogenauer (ed), *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)* (2nd edn, Oxford University Press 2015).
[9] Ingeborg Schwenzer and Ulrich G Schroeter (eds), *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, Oxford University Press 2022).

Civil Code, codifying the right of unilateral termination in Articles 1224-1230.[10] This tension makes their comparison analytically productive.

Thematic scope. The dissertation dwells on the substantial deprivation subdivision of Article 25. The foreseeability limb is tackled where it directly combines with substantial deprivation, where tough supply-chain cases are concerned, but is not considered independently.

Temporal scope. The focus of the case law analysis is on 2019-2025. Earlier cases on the same topic, such as the legendary Cobalt Sulphate decision of 1996 of the German Bundesgerichtshof, are cited where appropriate to trace the history of doctrine. Still, the centre of gravity in terms of evidence is the supply-chain-shock period.[11]

Supplementary instrument. The only additional tool studied is the UPICC. It excludes the Principles of European Contract Law (PECL) and the Draft Common Frame of Reference (DCFR): the UPICC has a wider international pedigree and a stronger direct relationship to the drafting philosophy of the CISG, reflected in the direct invitation in the UPICC Preamble to apply the Principles to interpret or supplement international uniform law instruments.[12] On the whole, the UPICC is never regarded as a source of legal authority or a source of law in its own right under Article 7 CISG.

A further delimitation concerns linguistic access to primary sources. The author lacks proficiency in German and French. Official/academically recognised translations in English are preferred, if available, in the CISG-Online and CLOUT databases. Independent translations of the texts have been prepared when there is no official translation and have been checked for

[10] DiMatteo and others (n 6) 33; see also French Civil Code, arts 1224–1230 (as reformed 2016).
[11] *Cobalt sulphate case* (Bundesgerichtshof, Germany, 3 April 1996) Case No VIII ZR 51/95 <https://cisg-online.org/files/cases/6113/translationFile/135_13548459.pdf> accessed 3 April 2026.
[12] UPICC 2016 (n 7), Preamble; see also Tomas Masny and Markus Petsche, 'The UNIDROIT Principles on International Commercial Contracts as a Tool to Interpret and Supplement the UN Convention on Contracts for the International Sale of Goods' (CEU 2017) <https://www.etd.ceu.edu/2017/masny_tomas.pdf>.

accuracy with regard to the content of the judicial reasoning against the English-language secondary literature, mainly DiMatteo and others and Janssen and Wahnschaffe. In doing so, the case analysis does not try to make sense of the original language, but rather looks to the function of the court's reasoning in terms of commercial certainty and contractual stability. This linguistic delimitation is directly connected to the functional comparative method described in section 1.4.

1.4 Materials and Legal Methodology

Two complementary approaches have been used in this thesis. The main one is legal dogmatics: the systematic identification, analysis and interpretation of applicable legal sources, the CISG text, its travaux préparatoires, CISG Advisory Council Opinions, national case law and academic doctrine, to derive the content of the law as it is set (de lege lata).[13] Where German and French primary sources, including court decisions and legislative texts, have been consulted, reference has been made to official English translations where available, and to self-translated versions where not, given the author's lack of proficiency in German and French. The second approach is functional comparative law, following Zweigert and Kötz and Michaels.[14] The tertium comparationis is the role each court's reasoning plays in securing commercial certainty and contract stability: German favour contractus reasoning and French readiness to permit avoidance are compared not as formally superior or inferior doctrines, but as functionally distinct responses to the same underlying tension between contract preservation and the protection of legitimate commercial expectations. This method is appropriate here for two reasons: it accommodates the linguistic delimitation in section 1.3, since functional analysis does not depend on literal parsing of source-language text; and it aligns with the

[13] UNCITRAL, *Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* (2016 edn, United Nations 2016).
[14] Stefan Kröll, Loukas Mistelis and Pilar Perales Viscasillas, *UN Convention on Contracts for the International Sale of Goods (CISG): A Commentary* (Verlag C H Beck 2020).

autonomous, internationally oriented interpretive approach mandated by Article 7(1) CISG. In the part of the thesis covering the possibility of reform through integration of UPICC, this is specifically identified as normative (de lege ferenda) reasoning, as opposed to the descriptive analysis.

Primary sources contain the CISG text and official Secretariat Commentary; the UPICC 2016 text and official commentary of UNIDROIT; opinions of the CISG Advisory Council, an independent academic body whose opinions are persuasive but not binding; decisions of national courts drawn from the CISG-Online, CLOUT, and UNILEX databases. Among secondary materials, one will find the most prominent commentaries by Schlechtriem/Schwenzer and Kröll/Mistelis/Perales Viscasillas, as well as prominent journal articles by DiMatteo, Janssen and Wahnschaffe, Masny, and Kryla-Cudna, among others.[15] On questions of legal methodology and comparative law method, supplementary reference has been made to Zweigert and Kötz's *An Introduction to Comparative Law* and Michaels's chapter on functional method in the *Oxford Handbook of Comparative Law*, which inform the functional comparative approach applied in Chapter 3.[16]

1.5 Structure of the Thesis

Chapter 2 develops the normative framework of Article 25 and disaggregates it, placing it in the wider remedial context of the CISG. Chapter 3 examines how the German and French courts apply Article 25 to disruptions due to the supply chain, determining the most notable differences in their arguments. Chapter 4 assesses the possibility and way in which the UPICC

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[15] Katarzyna Kryla-Cudna, 'Internationality Overreach in the Interpretation of Uniform Private Law Conventions' (2025) 74 *International & Comparative Law Quarterly* 437; Jan Ramberg, 'CISG and UPICC as the Basis for an International Convention on International Commercial Contracts' (2013) 58 *Villanova Law Review* 681.

[16] Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (3rd edn, Oxford University Press 1998); Ralf Michaels, 'The Functional Method of Comparative Law' in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford University Press 2006) ch 10.

can be a value-adding instrument to fill in those divergences, both in terms of the plausibility of the incorporation of the new doctrines into judicial and arbitral practice, and its actual usage. Chapter 5 summarises conclusions and provides a direct response to the two research questions, with concluding reflections de lege ferenda on the future of harmonisation of Article 25.

2. THE NORMATIVE FRAMEWORK UNDER CISG

2.1 Chapter Overview

Chapter 2 establishes the normative foundation upon which the entire thesis rests. It situates Article 25 CISG within the Convention's graduated remedial architecture, explaining how avoidance functions as the remedy of last resort and how Article 25 serves as its threshold guardian. The chapter deconstructs the two elements of fundamental breach, substantial deprivation and foreseeability, analysing each in turn before examining their interaction. It traces the drafting history of Article 25 from The Hague Conventions to the Vienna text and identifies the commercial trends and judicial tendencies that have shaped the provision's practical application across jurisdictions.

2.2 The Role of Article 25 within the CISG Remedial Architecture

The CISG provides a system of remedy of breach of contract, which is well graded.[17] It rests on the principle that, once contractual relationships have been formed, they should be preserved whenever possible. This choice is called in comparative legal literature favor contractus and permeates the whole Convention and conditions of the appearance of every remedy.[18]

The remedial ladder runs from the least to the most disruptive. A seller who delivers non-conforming goods may first be permitted to cure the defect under Article 48.[19] Where the cure is not available or insufficient, the buyer may reduce the price under Article 50, or may recover damages under Articles 74 to 77.[20] At the highest level of the ladder stands avoidance of contract: the remedy that unwinds the transaction prospectively, discharging both parties from their outstanding obligations while triggering restitutionary duties under Article 81, and which

[17] CISG (n 1), arts 45–52 (buyer's remedies), arts 61–65 (seller's remedies).
[18] Schwenzer and Schroeter (n 9) commentary on art 25, para 1; Stefan Kröll, Loukas Mistelis and Pilar Perales Viscasillas, *UN Convention on Contracts for the International Sale of Goods (CISG): A Commentary* (Verlag C H Beck 2020) art 25, para 2.
[19] CISG (n 1), art 48.
[20] CISG (n 1), arts 50, 74–77.

is available only where a fundamental breach within the meaning of Article 25 has occurred, or, in anticipatory situations, where the strict conditions of Article 72, requiring that it be clear that one party will commit a fundamental breach, are satisfied.[21] It is only available in situations where there has been a fundamental breach, in the sense of Article 25, or, where there is likely to be non-performance, the conditions of Article 72 are fulfilled.[22]

This design is not by chance. The drafters of the Convention, in the Vienna Diplomatic Conference of 1980, knew all too well that avoidance has dramatic commercial consequences on both sides; it revokes deliveries already made, it causes obligations of the person of restitution, and it derailed current commercial relationships.[23] They accordingly put Article 25 as gatekeeper to avoidance, so that only wrongs of real and substantial gravity would entitle to such a disruptive remedy.[24]

Article 25 was drafted with this history showing a purposeful decision to use a flexible language instead of categories. The predecessor instrument that was called ULIS was The Hague Convention of 1964, which defined fundamental breach, using a list of certain circumstances.[25] The Vienna drafters did not accept this method. They chose rather a broad standard, "substantial deprivation of contractual expectations," due to the lack of a fixed list

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[21] Robert Koch, 'The Concept of Fundamental Breach of Contract under the United Nations Convention on Contracts for the International Sale of Goods (CISG)' in Pace (ed), *Review of the Convention on Contracts for the International Sale of Goods (CISG)* (Kluwer Law International 1999) 177, 180. Avoidance does not operate retroactively to extinguish obligations already performed; rather, it terminates future performance obligations and activates the restitution regime under Article 81 CISG. Article 72 permits a party to declare avoidance before the date of performance where it is clear that the other party will commit a fundamental breach, subject to the notice requirements of Article 72(2), thereby extending the Article 25 threshold into the anticipatory context.

[22] CISG (n 1), arts 49(1)(a), 72.

[23] Commentary on the Draft Convention (n 4), art 25, para 3.

[24] Ferrari (n 2) 441.

[25] Uniform Law on the International Sale of Goods (ULIS) 1964, art 10; see DiMatteo (n 4) 5.

that could reflect the range of international commercial practice.[26] Such a leeway came at a cost of interpretive uncertainty, which the drafters deliberately took.

Article 25 is thus related to Articles 49(1)(a), 51, 64, 72, and 73 CISG since each has fundamental breach as its avoidance condition in varying factual arrangements.[27] It is not just a provision among a lot of them. It is the constitutional swing of the whole system of remedy, and its construal ascertains the practical extent of the strongest remedy which the Convention can give.[28]

2.3 Article 25: The Two Elements

2.3.1 The Substantial Deprivation Criterion

The key issue to be considered in Article 25 is whether the breach has left the aggrieved party with a substantial deprivation of what the party was entitled to expect under the contract.[29] The formulation has two analytical elements that are to be analyzed individually, then evaluated as a unit.

The first aspect refers to the reference point: to what did the normally offended side have a right to expect? This expectation is stated most especially by the contract itself.[30] Courts need to look at the express and implied terms of the contract, any trade usages which are expressed in terms of Art. 9, as well as the particular circumstances under which a business contract was formed. A contractor that buys fresh pasta with a signed minimum shelf life of 21 days gets the right to receive delivery within this time frame, not just delivery in abstract terms.[31] The OLG Stuttgart affirmed this in November 2019, where a three-day delivery delay was found to

[26] Commentary on the Draft Convention (n 4), art 25, para 2.
[27] CISG (n 1), arts 49(1)(a), 51, 64, 72, 73.
[28] Lazar Graffi, 'Case Law on the Concept of "Fundamental Breach" in the Vienna Sales Convention' (2003) *International Business Law Journal* 338, 339.
[29] CISG (n 1), art 25.
[30] Kröll, Mistelis and Perales Viscasillas (n 18) art 25, para 15.
[31] Schwenzer and Schroeter (n 9) art 25, para 12.

amount to a fundamental breach specifically due to the fact that the parties had stipulated a minimum shelf life, and there was no commercial possibility of toleration of any slight delay.[32] The second element is that of substantiality: has the deprivation been so great that the remedy proposed to the case should be of the severest kind? In its Opinion No 5, the CISG Advisory Council made it clear that there has to be objectivity in deciding whether the substantiality is met. Courts require what a person in the shoes of the injured party would have understood as the substance of the contract as at the time the contract was entered into, rather than what the aggrieved party itself is subjectively claiming that they have lost.[33]

There are several factors that constantly turn up in the case law as pertinent to this evaluation. The type of good is important: those goods with high sensitivity to delay, or if they pose a time-sensitive commercial utility, should receive a reduced avoidance threshold:[34] perishable goods, seasonal merchandise, and goods with strong time-sensitive commercial utility. Whether it is curable also comes into play. In cases where the non-conformity is remediable without causing the buyer many inconveniences, the courts are less inclined to infer a substantial deprivation.[35] The BGH demonstrated this point in the case of Hungarian Injection Moulding Tools of 2014, where the seller had repaired the defected items on its own and still utilized them in business, the court found no substantial deprivation of contract value had taken place.[36]

The goods were purchased with what end in mind is yet another aspect. In cases where a buyer buys goods to resell them in a given market, a defect that makes them unrealistic in the particular market, though they still have some commercial value in other markets, can

[32] OLG Stuttgart, 27 November 2019, Case No 3 U 239/18 (CISG-online 5410).
[33] CISG Advisory Council, 'Opinion No 5: The Buyer's Right to Avoid the Contract in Case of Non-Conforming Goods or Documents' (Rapporteur: Ingeborg Schwenzer, 7 May 2005) para 4.3 <https://cisg-online.org/files/ac_op/CISG_Advisory_Council_Opinion_No_5.pdf> accessed 8 April 2026.
[34] Graffi (n 28) 341.
[35] CISG Advisory Council Opinion No 5 (n 33) para 4.5.
[36] *Hungarian Injection Moulding Tools case* (Bundesgerichtshof, Germany, 24 September 2014) Case No VIII ZR 394/12 (CISG-online 2545).

constitute serious deprivation.[37] On the other hand, in any other case where the goods have alternative commercial uses, the courts, especially the German courts, have always rejected the fundamental breach.[38]

2.3.2 The Foreseeability Limb

In Article 25, there is actually a second element which has received much less regard in the case law: the foreseeability escape of the party breached.[39] Where a substantial deprivation is proven, it will not constitute a fundamental breach in those circumstances where the breaching party simply did not anticipate the outcome and a reasonable person of a similar kind in the same situation did not anticipate such an outcome.[40]

The criterion used is objective: the subjective mental condition of the breaching party comes into play only as a commencement point.[41] The key point is what a sane person under the same commercial category, acting in the same market circumstances, would have anticipated at the time of entering into the contract. This objective standard implies that the foreseeability escape is not frequently effectively employed; commercial sellers and buyers are largely expected to appreciate the usual results of their own violations.[42]

Disruption on supply chains, though, has resulted in an, indeed, argued and contested array of foreseeability arguments. There is no better example than the COVID-19 pandemic. Contracts concluded before around March 2020, when the WHO declared a global pandemic, may present valid claims that a seller could not have anticipated the breakdown of delivery caused by the pandemic at the time they contracted.[43] Contracts concluded by then take a different form: a

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[37] Koch (n 19) 195.
[38] *New Zealand Mussels case* (Bundesgerichtshof, Germany, 8 March 1995) Case No VIII ZR 159/94 (CISG-online 144).
[39] DiMatteo (n 4) 9.
[40] CISG (n 1), art 25.
[41] Schwenzer and Schroeter (n 9) art 25, para 22.
[42] Graffi (n 28) 345.
[43] Janssen and Wahnschaffe (n 5) 470.

reasonable business party entering into a contract in mid-2020 would have predicted further disruption.[44] This temporal difference has been examined in detail by Janssen and Wahnschaffe, as the German courts have a demanding standard, and that foreseeability-based escapes of a contract entered into post-pandemic will only be accepted by the court in exceptional circumstances where specific events are not genuinely unforeseeable.[45]

Here, a few words of attention should be paid to the interaction of the foreseeability limb of Article 25 with the force majeure exemption of Article 79 CISG. Article 79 will relieve a party of damages liability in non-performance cases where non-performance is caused by an impediment outside its control that the party cannot reasonably have contemplated at the contracting time.[46] More importantly, under Article 79, no exemption can deny the aggrieved party the right to avoidance; the two provisions work in different legal axes.[47] A seller can have damages waived on account of a delay occasioned by a pandemic when the buyer, at the same time, retained the right to avoid in case the delay was the fundamental breach under Article 25.

2.3.3 Interaction of the Two Elements

The doctrinal interdependency between substantial deprivation and foreseeability has brought forth a long-standing scholarly debate.[48] There have been two prominent positions in the literature.

The former approaches foreseeability as a factual cumulative condition: substantial deprivation and foreseeability (by the side of the aggrieved) have to be established before fundamental breach is proved, and lack of foreseeability by the breaching side will defeat the claim of

[44] ibid 472.
[45] ibid 475.
[46] CISG (n 1), art 79(1).
[47] Schwenzer and Schroeter (n 9) art 79, para 3; CISG-Online, COVID-19 and the CISG Resource Page <https://cisg-online.org/cisg-article-by-article/part-3/art.-79-cisg/covid-19-pandemic-and-the-cisg> accessed 15 April 2026.
[48] DiMatteo and others (n 6) 40.

avoidance even where the deprivation is substantial.[49] Based on this reading, Article 25 has two autonomous requirements that can each lead to the result.

The latter approach, which is more common in judicial practice, sees the foreseeability element as an escape valve in practice, and not a practical doctrinal test.[50] Under the objective standard that is applied, it is the belief that the foreseeability limb virtually never plays a crucial role in the business litigation involving sophisticated parties and that the substantial deprivation test does the analytical heavy lifting. It has been pointed out by Schlechtriem and Schwenzer that the element of foreseeability contributes little in a great majority of cases. However, in some instances, it can be decisive where there are really extraordinary events.[51]

The practical value of this discussion is most acute in situations of supply-chain disruption. An argument that the seller made that the effects of a Red Sea shipping rerouting in 2024 were not foreseeable at the time of the conclusion of the contract in 2023 puts a heavy burden against either reading. By mid-2023, the trade press and in ICC and WTO advisories, the disruption was well-documented, leading to the objective foreseeability argument being hard to maintain about any contract that was concluded thereafter.[52]

2.4 Article 25 in Commercial Practice

Article 25, read in isolation as a formal legal text, tells only half the story. The practical application of the provision has been influenced both by the commercial context within which it is applied, and there are a few identifiable trends in the reported case law and arbitral practice.[53]

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[49] Koch (n 19) 210.
[50] Schwenzer and Schroeter (n 9) art 25, para 25.
[51] ibid para 26.
[52] UNCTAD, *Review of Maritime Transport 2023* (United Nations 2023); ICC Force Majeure Clause 2020.
[53] UNCITRAL, *Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* (2016 edn, United Nations 2016) art 25. The Digest is cited here as the primary authoritative compilation of reported CISG case law and arbitral decisions across contracting states. Its treatment of Article 25 provides the empirical foundation for the

The initial and most stable pattern is that of the high-threshold courts and arbitration tribunals established on basic breach.[54] In the decisions reported throughout jurisdictions and industries, there is a structural favoring of contract maintenance, damages, price reduction and cure are frequently favored over avoidance, and the hurdle required to satisfy the substantial deprivation test has been consistently high.[55] This trend is supported by the UNCITRAL Digest of Case Law, which explains that non-conformity, or delay in itself, would hardly be enough to satisfy the criteria.[56]

The second trend relates to the impact of the conventional commercial terms on the Article 25 analysis.[57] Parties who have incorporated Incoterms specifying particular delivery obligations, or express force majeure and hardship clauses, have successfully allocated supply-chain risk in advance.[58] In the presence of such clauses, the courts use them as the main point of reference for what was anticipated of the aggrieved party under the Article 25 analysis.[59]

The third trend, which has developed very clearly in the aftermath of the pandemic, is a growing commercial awareness of the necessity to address supply-chain risk through contractual arrangements instead of recourse to CISG-based default provisions.[60] WTO and ICC statistics on the use of renegotiation provisions, split-delivery and market-disruption pricing mechanisms in commodity and manufacturing contracts show a major rise in the

trends identified in this section, documenting the consistently high threshold applied by courts and tribunals when assessing substantial deprivation, and confirming that neither delay nor non-conformity alone is ordinarily sufficient to satisfy the fundamental breach standard.

[54] Graffi (n 28) 350.

[55] DiMatteo and others (n 6).

[56] UNCITRAL Digest (n 53) art 25.

[57] Janssen and Wahnschaffe (n 5) 468.

[58] ibid 469.

[59] Schwenzer and Schroeter (n 9) art 25.

[60] Nick Hodge, 'Covid-19: Supply Chain Disruption Rips Up Contractual Rulebook' (IBA, 28 October 2021) <https://www.ibanet.org/Covid-19-supply-chain-disruption-rips-up-contractual-rulebook> accessed 12 April 2026.

implementation of these instruments from 2020 onwards.[61] These contractual innovations have a direct effect on defining the expectations in comparison with which deprivation under Article 25 is measured, and these innovations on contract are a market-level reaction to the interpretive ambiguity which this thesis examines.

The 2021–2022 semiconductor shortages created a unique business trend in the automotive industry, as buyers declined to take partially-completed vehicles, relying on Article 25 by arguing that incomplete delivery nullified their contracts with dealerships.[62] In agricultural commodity contracts, the disruption of Ukrainian grain exports in 2022 gave rise to fundamental breach claims brought by buyers who had ordered specific grades and origins of grain by claiming they could not obtain the specific grades and origins they had bargained for due to substitute deliveries of different origins.[63] These sector cases demonstrate that Article 25 standard, despite being textually homogeneous, has significantly different practical implications, depending on the commercial situation in which it is applied, an effect which is only enhanced when tribunals of various countries apply their own interpretive traditions to the same text.[64]

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[61] World Trade Organization, Global Trade Statistics and Reports <https://www.wto.org/english/res_e/statis_e/statis_e.htm> accessed 10 April 2026.
[62] DiMatteo (n 4).
[63] Janssen and Wahnschaffe (n 5) 480.
[64] DiMatteo and others (n 6).

3. DIVERGENCES IN SELECTED EU CASE LAW

3.1 Chapter Overview

Chapter 3 compares the interpretations of Article 25 CISG by the German and French courts in relation to the supply-chain disruptions that took place in 2019-2025. It begins by a typology of such disruptions, including the COVID-19 pandemic, container shipping crisis, the war in Ukraine and the Red Sea attacks. The chapter goes on to analyse the German culture of favour contractus in its judicial system and the French culture of being more open to all forms of avoidance finding its structural differences between the two jurisdictions and evaluating the implications of these structural differences on commercial predictability in cross border trade.

3.2 Supply-Chain Disruptions (2019–2025)

Before exploring the ways in which the German and French courts have interpreted Article 25 of the CISG, it is necessary to marvel at the magnitude and nature of supply-chain catastrophes that characterised the period to be analysed. In this thesis, a supply-chain disruption is any occasion which disrupts the usual flow of goods, materials, or services in a manner that imposes a barrier or significant barrier to contractual performance in international trade.[65] The results from 2019 to 2025 yielded four different types of such disruption, each spawning a wave of disputes that pushed the Article 25 interpretive framework into novel and challenging directions.

The COVID-19 pandemic, which was declared a global health emergency by the World Health Organisation in March 2020, led to the closure of manufacturing plants, the termination of cross-border transport, and overall congestion at ports across major trading areas.[66] Sellers issued force majeure notices in bulk, and lawsuits over late delivery and faulty goods, such as

[65] UNCTAD, *Review of Maritime Transport 2023* (United Nations 2023) 1; ICC Force Majeure Clause 2020 (International Chamber of Commerce 2020), preamble.

[66] André Janssen and Cathrine Wahnschaffe, 'COVID-19 and International Sale Contracts: Unprecedented Grounds for Exemption or Business as Usual?' (2020) 25 Uniform Law Review 466, 467.

low-quality personal protective equipment, were filed in large numbers.[67] The pandemic also spawned the underlying foreseeability issue that permeates this chapter: any agreements finalised before March 2020 might contain plausible arguments to the effect that the disruption was unforeseeable, whereas any agreements finalised since then need not do so.[68]

A second type of disruption occurred in the container shipping crisis of 2021 to 2022. Endemic delivery delays in manufacturing industries were triggered by global container shortages and extreme port congestion, especially in Rotterdam and Hamburg.[69] German automotive manufacturers announced multi-month delivery delays, attributed to both the container shortage and a simultaneous semiconductor shortage, leaving vehicles undelivered on the delivery rack.[70] The invasion of Ukraine in February 2022 created a third type of disruption by disrupting or seriously limiting grain, steel, fertiliser, and energy supplies in Eastern Europe, and causing price increases of more than 100 per cent in some markets and direct impacts on European supply contracts.[71] Lastly, Houthi Red Sea commercial shipping attacks in 2023 to 2024 displaced large-scale cargo routing through the Cape of Good Hope, taking between two and three weeks off delivery times and generating cataclysmic freight expenses on the trip between Asia and Europe.[72]

All these interferences encountered placed the parties to the contract in the quandary of enquiring whether stringent or flawed performance had surpassed the Article 25 threshold. The

[67] UNIDROIT, 'Note on the UNIDROIT Principles of International Commercial Contracts and the COVID-19 Health Crisis' (July 2020) https://www.unidroit.org/english/news/2020/200721-principles-covid19-note/note-e.pdf accessed 14 April 2026; CISG-Online, COVID-19 and the CISG Resource Page https://cisg-online.org/cisg-article-by-article/part-3/art.-79-cisg/covid-19-pandemic-and-the-cisg accessed 15 April 2026.
[68] Janssen and Wahnschaffe (n 65) 470.
[69] UNCTAD (n 65) 45.
[70] Larry DiMatteo, 'Formal and Operative Rules of the CISG: Case of Article 25' (2025) 43 Journal of Law and Commerce https://doi.org/10.5195/jlc.2025.309.
[71] World Trade Organization, Global Trade Statistics and Reports https://www.wto.org/english/res_e/statis_e/statis_e.htm accessed 10 April 2026.
[72] UNCTAD (n 65) 60.

differing responses of German and French courts to that question are the nucleus of the comparative analysis they will undergo.

3.3 The German Judicial Approach

German courts have always looked at Article 25 CISG in terms of the principle of favour contractus, and the avoidance of a contract is seen as a final resort, requiring the substantial deprivation test to be satisfied by a high margin before it is allowed.[73] The highest civil court in Germany is the Bundesgerichtshof (BGH), which has established interpretive authority, and the Oberlandesgericht (OLG) courts have adhered to that authority with a high degree of regularity over the period in question.

Much of the German approach is based on the BGH decision of 1996 in Cobalt Sulphate, according to which the court did not find fundamental breach in a case where the defectiveness of the goods was severe, but they still had some commercial use.[74] The dispute arose from the sale of cobalt sulphate by a Swiss seller to a German buyer, where the goods delivered were found to contain impurities that rendered them non-compliant with the contractual specifications, though they retained some residual commercial utility for alternative industrial purposes. The BGH supported this argument in its 2014 case of the Hungarian Injection Moulding Tools, through which non-conformity instruments, which the buyer itself repaired and still used in a commercial activity, were found not to have resulted in substantial deprivation, as the buyer could still gain value out of the subject matter of the contract.[75] The trend emerging from these cases is that German courts consider the effect of a breach not on

[73] Lazar Graffi, 'Case Law on the Concept of "Fundamental Breach" in the Vienna Sales Convention' (2003) International Business Law Journal 338, 350; Ingeborg Schwenzer and Ulrich G Schroeter (eds), *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, Oxford University Press 2022) art 25, para 1.

[74] Cobalt sulphate case (Bundesgerichtshof, Germany, 3 April 1996) Case No VIII ZR 51/95 (CISG-online 135).

[75] Hungarian Injection Moulding Tools case (Bundesgerichtshof, Germany, 24 September 2014) Case No VIII ZR 394/12 (CISG-online 2545).

the buyer's subjective disappointment but on whether the contract's objective commercial use has been destroyed.[76]

This strict criterion has been followed especially in cases of late delivery. The overall principle established in BGH and OLG cases is that delay in itself is only a fundamental breach of the contract, on the one hand, when time is clearly of the essence in the agreement, or when the character of the goods' timely delivery was of the essence by its very nature.[77] The OLG Stuttgart decision on Fresh Pasta from 2019 offers the best point illustration of this rule post-2019. The dispute involved the sale of fresh pasta by an Italian seller to a German buyer, where the parties had expressly agreed a minimum shelf life of twenty-one days for the goods; a delivery delay of three days was sufficient to reduce the remaining shelf life below the contractually stipulated threshold, rendering the goods commercially unusable for the buyer's resale purposes. The court viewed that a delivery delay of three days was a fundamental breach since the parties had clearly agreed a minimum shelf life of twenty-one days for the goods, and a slight delay therefore completely undermined the contractual intention.[78] It is significant to note that this case is now instructive in the sense that it goes to show that German courts are willing to consider fundamental breach where the contract itself has laid down what timely performance does, and where failure to comply with that standard in particular condemns the commercial usefulness of the delivery.[79]

German courts have applied this framework with vigour in the context of supply chain disruptions. The interpretation of Janssen and Wahnschaffe supports the view that the German

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[76] CISG Advisory Council, 'Opinion No 5: The Buyer's Right to Avoid the Contract in Case of Non-Conforming Goods or Documents' (Rapporteur: Ingeborg Schwenzer, 7 May 2005) para 4.3 https://cisg-online.org/files/ac_op/CISG_Advisory_Council_Opinion_No_5.pdf accessed 8 April 2026.

[77] UNCITRAL, *Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* (2016 edn, United Nations 2016) art 25.

[78] OLG Stuttgart, 27 November 2019, Case No 3 U 239/18 (CISG-online 5410).

[79] Schwenzer and Schroeter (n 73) art 25, para 12.

courts have imposed a high burden on COVID-19-related delivery failures, and temporary obstacles arising from pandemic circumstances are unlikely to constitute a fundamental breach unless it is stipulated that delivery time was a material requirement of the contract.[80] Article 79 CISG and Article 25 have been approached cautiously: it has been accepted by the German courts that an exemption of damages in an Article 79 in favour of a finding of fundamental breach in an Article 25 case, although rarely said in the pandemic-era cases with no obvious contractual basis of that finding.[81]

The most significant trend in German judicial reasoning, over the entire spectrum of cases considered, is a discursive bias in favour of price reduction, damages and cure instead of avoidance, an attempt to find alternative solutions to a problem before fixing on the conclusion that the commercial purpose of a contract has been sufficiently impaired to warrant its dissolution.[82] This decision is symptomatic of the BGH's longstanding position that Article 25 should be narrowly understood in contexts where the general policy of the CISG to maintain the contract should be adhered to.[83]

3.4 The French Judicial Approach

The French courts have tackled Article 25 of the CISG with a variant rooted in different cultural and doctrinal points of departure. Although the French judges are not indifferent to the value of preserving the contract, the French tradition of jurisdiction has shown greater approval of

[80] Janssen and Wahnschaffe (n 66) 472.
[81] United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980) 1489 UNTS 3 (CISG), art 79; Schwenzer and Schroeter (n 72) art 79, para 3.
[82] Stefan Kröll, Loukas Mistelis and Pilar Perales Viscasillas, *UN Convention on Contracts for the International Sale of Goods (CISG): A Commentary* (Verlag C H Beck 2020) art 25, para 2.
[83] Robert Koch, 'The Concept of Fundamental Breach of Contract under the United Nations Convention on Contracts for the International Sale of Goods (CISG)' in Pace (ed), *Review of the Convention on Contracts for the International Sale of Goods (CISG)* (Kluwer Law International 1999) 177, 195.

the authorisation of avoidance where the breach removes the creditor's legitimate expectations or where the breaching party has acted in a manner inconsistent with good faith.[84]

The same trend can be observed in the decision of the Cour de cassation of 2003, according to which the refusal of a contract to supply wine on the ground that the seller had not delivered goods that would be safe for human consumption was upheld by the court as a fundamental (and core) breach of the core contractual expectation of the buyer.[85] The case arose from a contract for the supply of wine in which the seller delivered goods that were found to be unfit for human consumption; the buyer refused acceptance and sought avoidance, arguing that the delivery of unsafe wine went to the very core of what had been contracted for. The court's rationale concerned the creditor's entitlement to appropriate the reward assured by the contract, rather than whether alternative remedies were still available.[86] The 2016 case of the Cour d'appel de Bordeaux upheld this developed trend in the reverse fashion: the refusal to accept and pay goods by a buyer was to be found unjustified, and the court again concentrated on the relational aspect of the breach and the negligence of the seller in his lost expectation of performance.[87] The dispute concerned a buyer's refusal to accept and pay for delivered goods, with the court examining whether that refusal was commercially justified or whether it amounted to an unjustified rejection; the court focused on the relational conduct of the parties and the seller's defeated expectation of counter-performance.

According to a survey of French CISG case law by DiMatteo and others, a number of additional decisions in which French courts have found a fundamental breach based on functional non-performance are also identified. Grinding machines were delivered in a non-functional state.

[84] Larry DiMatteo and others, 'Once More Unto the Breach: A Comparative Study of Fundamental Breach in International Sales Law' (2022) 31 Texas Law Commercial Practices 33, 40.
[85] Cour de cassation (1re civ), 20 May 2003 (Bull civ I No 237).
[86] DiMatteo and others (n 84) 42.
[87] Cour d'appel de Bordeaux, 25 February 2016 (No 14/06947).

The seller attempted repairs on multiple occasions, but all attempts failed. The court held that the buyer had been substantially deprived of the contract's value under Article 25 CISG.[88] in a contract for the sale of manufactured goods, the seller delivered a consignment of 14,100 units of which 13,800, approximately 98 per cent, were found to be defective and unfit for resale. The French court held that a defect ratio of this magnitude went beyond mere partial non-conformity and constituted a fundamental breach under Article 25 CISG, as the delivery was so overwhelmingly defective that it effectively deprived the buyer of the entire commercial value of the contract.[89] In a third case, a seller denied having placed or confirmed orders despite documentary evidence to the contrary, combining deliberate non-performance with fraudulent misrepresentation.[90] The French court found that this conduct, taken together, crossed the Article 25 CISG threshold, reasoning that the seller's bad faith and active deception had irreparably destroyed the commercial trust between the parties, independently reinforcing the finding of fundamental breach beyond the question of whether the goods or performance itself met the substantiality test.

The French and German concepts of judicial reasoning differ in two aspects. On the one hand, French courts seem to be more responsive to the subjective aspect of the expectation of the creditor, in which the stress is particularly placed on what it is precisely that the aggrieved party contracted to obtain, that a non-conformity with that particular expectation is capable of causing substantial deprivation, even where there is some commercial alternative.[91] Second, French courts seem to be more ready to refer to the intentional or bad-faith nature of a breach as a factor that puts the breach on the fundamental threshold, which is not directly stated in the text of Article 25 but corresponds to the good faith principle of Article 7(1) CISG.[92]

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[88] DiMatteo and others (n 84) 44.
[89] ibid 45.
[90] ibid 46.
[91] Graffi (n 73) 345.
[92] CISG (n 81), art 7(1); DiMatteo and others (n 84) 47.

A further contextual factor is the 2016 revision of the French Civil Code, codifying the right of unilateral termination in Articles 1224-1230. Although the CISG remains an independent instrument not to be interpreted in light of national law, it is widely recognised among scholars that the national legal culture in which judges are educated tends to influence their interpretive dispositions towards international conventions.[93] A clear adoption in the French reform regarding the use of unilateral termination as a commercial means of responding to a serious non-performer could have solidified a pre-existing tendency in French CISG practice to view avoidance as a more easily accessible remedy than is permissible under German law.[94]

3.5 The Resulting Interpretive Gap

The attribute of German and French judicial reasoning, when compared, is an inclination to create divergence, but not by chance. The divergence is not between alternative inferences drawn from the same analysis, but between alternative systems of analysis applied to materially similar factual situations.[95]

The German courts consider the purpose of the contract to be the outcome of commercial dealings and that its termination must be thorough. They apply a high threshold, or they systematically favour contract preservation over contract avoidance. The presence of substitute solutions is usually a strong indication that the underlying breach criterion was not met.[96] The defeat of a certain and valid contractual anticipation by the creditor is put into focus in French courts. In the French system, the nature of the breach, the breaching party's intention, and the loss of commercial trust due to deliberate or habitual non-performance are more heavily emphasised.[97]

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[93] Kryla-Cudna (n 15) 440; DiMatteo and others (n 84) 33; Schwenzer and Schroeter (n 73) art 25, para 1; Graffi (n 73) 338.
[94] French Civil Code, arts 1224–1230 (as reformed 2016); DiMatteo and others (n 84) 33.
[95] Graffi (n 73) 350.
[96] Koch (n 83) 210.
[97] DiMatteo and others (n 84) 48.

The split between the two frameworks is not just an academic one. It yields statistically independent legal results for business organisations that transact in both jurisdictions. Where a buyer experiences recurring partial execution failures in a long-lasting contract of the trade of commodities, he/she is permitted to seek avoidance in one of the French courts because their special economic expectation has fallen. The identical buyer, who has been forced to present the same facts in a German court, might be entitled to damages, or even a price reduction, since the goods still had some commercial use and the breach did not fully operate to extinguish the contract's commercial use. Such asymmetry has not only commercial implications but also legal problems.

The first practical consequences of this disjunction would be the immediate effects on the commercial actors involved in cross-border trade within the European Union. A seller whose arguments about delayed delivery are put before a German court can anticipate that the court might find alternatives to avoidance and demand that the time of the essence is established before it makes its decision.[98] The identical seller in court in France must wrestle with a larger risk that the court will declare the delay to have frustrated the particular commercial expectancy of the buyer, at least in such cases where the delay could be ascribed to the deliberate act by the seller of commercial choice and not any actual circumstances of force majeure.[99]

This forum sensitivity is exactly the issue that the CISG was meant to eliminate. The Preamble to the Convention states that facilitating uniformity in international trade law was also a key goal. When materially identical cases yield different results solely because they are tried in Hamburg or Paris, that aim will clearly be defeated. The legal positions of commercial parties and their legal counsel are not well understood during contracting, which increases transaction risk and imposes additional costs on trade with a single market.

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[98] Janssen and Wahnschaffe (n 66) 475.
[99] DiMatteo and others (n 84) 49.

The supply-chain disruptions that have taken place between 2019 and 2025 have been a catalyst rather than a cause of this divergence. Where pandemic conditions, a shipping crisis, or even commodity shocks have made it hard to predict or correct the Article 25 threshold, the alternative analytical approaches of the German and French courts have yielded different results.[100] Such an interpretive gap makes the so-called purpose of the CISG to offer consistency in the international sales legal framework pointless. It undermines the level of certainty on which businesspeople and their advisors may rely to assert a business's legal status in contracting.[101]

The supply-chain disruption period has become a source of stress and has demonstrated the full extent of the underlying interpretive divergence. Delivery failures due to the pandemic, rerouting of shipping due to the Red Sea crisis, and price shocks in commodities created factual situations squarely placed within the grey zone of Article 25, where either solution would fail to provide a predictable answer. The large number of disputes generated during this time has made the interpretive gap apparent in how the same process has been skirted in lower-volume commercial litigation.

The divergence between Sections 3.3 and 3.4 is the very problem that Chapter 4 of this thesis seeks to resolve by explaining the potential of the UPICC as a supplementary harmonising tool under Article 7 of the CISG. This kind of assessment cannot be made without first properly interpreting the nature of the interpretive gap. The gap is not within the domain of Article 25 but within the interpretive framework of the same. A common additional system of principles, thus restricted in its co-operation and rightly described as secondary to the Convention itself,

[100] UNCITRAL Digest (n 77) art 25.
[101] CISG (n 81), Preamble; CISG, art 7(1).

could fill that gap without the independence of the respective judicial traditions of either sovereign.[102]

[102] Tomas Masny and Markus Petsche, 'The UNIDROIT Principles on International Commercial Contracts as a Tool to Interpret and Supplement the UN Convention on Contracts for the International Sale of Goods' (CEU 2017) https://www.etd.ceu.edu/2017/masny_tomas.pdf.

4. THE SUPPLEMENTARY ROLE OF UPICC

4.1 Chapter Overview

Chapter 4 evaluates whether and how the UPICC can serve as a supplementary interpretive tool to bridge the divergences identified in Chapter 3. It establishes the legal basis for UPICC gap-filling under Article 7 CISG, carefully distinguishing between the UPICC as a supplementary aid and as a primary source of authority. The chapter then conducts a structural comparison between CISG Article 25 and UPICC Article 7.3.1, identifying the intentionality, loss of reliance, and proportionality factors as having the greatest harmonising potential. It assesses the viability, limits, and institutional prospects of UPICC integration in both judicial and arbitral practice.

4.2 The Legal Basis under Article 7 CISG

UPICC is not a source of authority which can be applied individually with the CISG.[103] Its operation is purely supportive and auxiliary and falls only within the interpretive space formed by Article 7 of the CISG.[104] This is a basic difference that governs all other arguments presented in this chapter.

Article 7(1) CISG states that the Convention should be read in light of its international nature and the need to achieve uniformity in its interpretation.[105] The same interpretive imperative helps explain why internationally recognised instruments, such as the UPICC, should be referred to, as they share an international commercial law tradition.[106] Article 7(2) CISG goes

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[103] Tomas Masny and Markus Petsche, 'The UNIDROIT Principles on International Commercial Contracts as a Tool to Interpret and Supplement the UN Convention on Contracts for the International Sale of Goods' (CEU 2017) https://www.etd.ceu.edu/2017/masny_tomas.pdf.
[104] Ingeborg Schwenzer, 'Interpretation and Gap-Filling under the CISG' in Schwenzer I (ed), Towards Uniformity: The 2nd Annual MAA Schlechtriem CISG Conference (Eleven International Publishing 2013) 211.
[105] United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980) 1489 UNTS 3 (CISG), art 7(1).
[106] Jan Ramberg, 'CISG and UPICC as the Basis for an International Convention on International Commercial Contracts' (2013) 58 Villanova Law Review 681, 685.

a step further to add that those things which are ruled by the Convention and not expressly determined by it should be settled by the general principles on which it is founded.[107] The UPICC Preamble makes it clear that the Principles may be interpreted or supplemented to apply to international instruments of uniform law, such as the CISG.[108] This direct invitation reassures of the doctrinal validity of the use of the UPICC in the interpretive exercise, which Chapter 3 has demonstrated as warranted.

The best judicial precedent supporting this method is the Belgian court ruling in the Dutch-French Steel Tubes case.[109] The case involved a cross-border contract for the supply of steel tubes between Dutch and French commercial parties, where a dispute arose over changed circumstances affecting contractual performance; the Belgian court, applying Article 7(2) CISG, turned to the UPICC hardship provisions to determine whether a right to renegotiation existed in the absence of an express contractual term addressing the situation. The court used a gap in the framework of Article 7(2) of the CISG to employ the principles of hardship in the UK language as regards the application of the general principles applicable to international commercial law, as enshrined in the UNIDROIT Principles, determining that a right to renegotiation was present.[110] The precedent establishes that national courts have already moved beyond mere theory and begun applying the UPICC alongside the CISG.[111]

Article 79 exemption CISG Advisory Council Opinion No 7 that recognises the gap-filling technique in Article 7(2) and relates the UPICC to a source of general principles of international

[107] CISG (n 105), art 7(2).
[108] UNIDROIT Principles of International Commercial Contracts 2016 (UNIDROIT 2016), Preamble https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf accessed 30 March 2026.
[109] Scafom International BV v Lorraine Tubes S.A.S. (Hof van Cassatie van België/Cour de cassation de Belgique, 19 June 2009) Case No C.07.0289.N (CISG-online 1963).
[110] ibid.
[111] Masny and Petsche (n 103) 20.

commercial law.[112] The academic power is also homogeneous. All four authors: Bonell, Schwenzer, Masny, and Ramberg, refer to using the UPICC as an additional interpretation tool that should be utilised in accordance with Article 7, yet note its limitations.[113] Kryla-Cudna promotes the critical counter-argument that international expansion is threatened and that the danger of introducing soft-law choices into the CISG exists in the absence of real doctrinal backing.[114] Section 4.4 directly addresses this criticism.

The proper characterisation of the UPICC's role should therefore be made clear. The UPICC can shed light on general principles not explicitly reflected in Article 25 and may assist in closing real interpretive gaps as defined by Article 7(2) as settled but governed.[115] It cannot impose its own text on the CISG text or introduce required text, or replace its own standards where the Convention specifically selected.[116] Having this framework in place, the analysis can be undertaken.

4.3 UPICC Article 7.3.1 and CISG Article 25

Article 25 of the CISG provides a two-pronged test for a fundamental breach. The injured party should demonstrate that the breaching party had significantly deprived its contractual expectations, and its deprivation should have been foreseeable by the breaching party.[117] The text does not go into more detail. The analysis covered in Article 7.3.1(2) of UPICC, which entails a systematic multi-factor evaluation, identifies specific considerations for determining

[112] CISG Advisory Council, 'Opinion No 7: Exemption of Liability for Damages under Article 79 of the CISG' (Rapporteur: Alejandro Garro, 12 October 2007).
[113] Ramberg (n 106) 690; Schwenzer (n 104) 215; Masny and Petsche (n 103) 25.
[114] Katarzyna Kryla-Cudna, 'Internationality Overreach in the Interpretation of Uniform Private Law Conventions' (2025) 74 International & Comparative Law Quarterly 437, 445.
[115] CISG (n 105), art 7(2); UPICC 2016 (n 108), Preamble.
[116] Schwenzer (n 104) 212.
[117] CISG (n 105), art 25.

whether a non-performance is fundamental.[118] These are not extra requirements but analytical implements that provide content to the open-textured CISG standard.[119]

The former is the same as the gist of the CISG requirement, which is to consider whether the non-performance causes a substantial deprivation of what the aggrieved party was reasonably entitled to expect.[120] This congruence supports the belief that the UPICC does not deviate from the CISG's core focus but rather articulates it more specifically.[121] The second regulation, under Article 7.3.1(2)(b), asks whether compliance with the obligation not performed under the contract is of the essence.[122] This is comparable to the German courts' view that time or quality must be expressly agreed to before avoidance is permitted, as shown in the Fresh Pasta case of the OLG Stuttgart.[123]

The third contributor is the greatest contribution that the UPICC adds. Article 7.3.1(2)(c) inquires about the intentional or reckless non-performance.[124] The aspect is not clearly mentioned in Article 25 of the CISG, but it concerns a common characteristic of supply-chain disruption incidents. The intentional non-performance of a seller who deliberately fails to deliver, for a completely peaceful motive, to take advantage of a market price explosion, occurs in the case of a commodity shock.[125] This intentionality does not have any articulated weight under Article 25 alone. It is a specific element that can move a borderline case above the fundamental breach threshold under the UPICC.[126] The intentionality aspect has not been

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[118] UPICC 2016 (n 108), art 7.3.1(2).
[119] Stefan Vogenauer (ed), Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC) (2nd edn, Oxford University Press 2015) art 7.3.1, para 3.
[120] UPICC 2016 (n 108), art 7.3.1(2)(a).
[121] Ramberg (n 106) 692.
[122] UPICC 2016 (n 108), art 7.3.1(2)(b).
[123] OLG Stuttgart, 27 November 2019, Case No 3 U 239/18 (CISG-online 5410).
[124] UPICC 2016 (n 108), art 7.3.1(2)(c).
[125] Larry DiMatteo and others, 'Once More Unto the Breach: A Comparative Study of Fundamental Breach in International Sales Law' (2022) 31 Texas Law Commercial Practices 33, 50.
[126] Vogenauer (n 119) art 7.3.1, para 8.

actively addressed by German courts, which are more likely to favour contractus reasoning. In contrast, French courts have been more aware of the good-faith dimension of breach, making this a potential area of convergence.[127]

The fourth one, pursuant to Article 7.3.1(2)(d), enquires about whether the non-performance leaves the aggrieved party with reasons to suspect that he cannot trust the performance of the other party.[128] This aspect resolves a situation of cascading supply-chain failures, in which a sequence of subsequent non-fundamental violations combines to doom client trust in delivery.[129] The cumulative effect is not mentioned explicitly in Article 25 of the CISG, and it poses a real interpretive gap that Article 7(2) seeks to fill.[130] The UPICC factor offers a principled doctrinal underpinning for establishing a fundamental breach in such cases, which makes no reference to any one incident of failure of delivery meeting the substantiality test on its own.[131]

Article 7.3.1(2)(e) inquires of the performing party whether the non-performing party will incur a disproportionate loss due to the termination.[132] This moderating factor plays a different role from the rest. It does not recognise situations that favour avoidance; instead, it recognises situations that must moderate it.[133] Termination can be considered in a case involving the supplier in the supply chain when the seller's costs have exceeded the buyer's in the event of commodity shocks or freight cost increases.[134] In cases of economic asymmetry, this factor could be used by French courts, which have been more willing to permit avoidance.[135]

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[127] DiMatteo and others (n 125) 51.
[128] UPICC 2016 (n 108), art 7.3.1(2)(d).
[129] André Janssen and Cathrine Wahnschaffe, 'COVID-19 and International Sale Contracts: Unprecedented Grounds for Exemption or Business as Usual?' (2020) 25 Uniform Law Review 466, 480.
[130] Masny and Petsche (n 103) 30.
[131] Vogenauer (n 119) art 7.3.1, para 10.
[132] UPICC 2016 (n 108), art 7.3.1(2)(e).
[133] Vogenauer (n 119) art 7.3.1, para 12.
[134] UNCTAD, Review of Maritime Transport 2023 (United Nations 2023) 62.
[135] DiMatteo and others (n 125) 52.

The overlap between Article 25 of the CISG and UPICC Article 7.3.1 is considerable. The fundamental criterion in both instruments is a substantial deprivation of contractual expectations.[136] The two are sympathetic to maintaining contracts when possible.[137] They both use a common set of standards, evaluated from the viewpoint of a sensible individual on behalf of the wronged party.[138] The difference is not in principle but in the structure of analysis. The multi-factor framework of the UPICC furnishes the structured direction that the deliberately open-textured standard under Art. 25 expressly does not offer.[139]

4.4 Applying UPICC Criteria

4.4.1 The German-French Divergence

The philosophical justification for including UPICC conditions in the analysis of Article 25 rests on the similarity of the two tools' philosophical underpinnings.[140] Both the CISG and the UPICC share the same tradition of international commercial law, including the principle of favour contractus, the objective method of the reasonable person, and an orientation toward the expectations of the two parties.[141] This shared point justifies the application of the UPICC to clarify, instead of misinterpret, the content of Article 25.[142]

Every supply-chain scenario examined in Chapter 3 that is of most commercial importance is the intentionality factor under Article 7.3.1(2)(c). Where a seller intentionally fails to deliver when the price of a commodity is soaring, to get a better market price, there is no one general

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136 CISG (n 105), art 25; UPICC 2016 (n 108), art 7.3.1(2)(a).
137 Ingeborg Schwenzer and Ulrich G Schroeter (eds), Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG) (5th edn, Oxford University Press 2022) art 25, para 1.
138 CISG Advisory Council, 'Opinion No 5: The Buyer's Right to Avoid the Contract in Case of Non-Conforming Goods or Documents' (Rapporteur: Ingeborg Schwenzer, 7 May 2005) para 4.3.
139 Larry DiMatteo, 'Formal and Operative Rules of the CISG: Case of Article 25' (2025) 43 Journal of Law and Commerce https://doi.org/10.5195/jlc.2025.309.
140 Ramberg (n 106) 683.
141 Masny and Petsche (n 103) 12.
142 Schwenzer (n 104) 214.

prohibition in Article 25 that explicitly denounces such opportunism.[143] The German court would have a doctrinally supported rationale to move off the high avoidance test, in a case where it is clear that the favour contractus principle does not apply, without the need to discard the favour contractus principle in the truly force majeure cases.[144] The 2-factor is deliberate market exploitation versus real impossibility, and this very aspect is facilitated by the intentionality factor to be applied in courts.[145]

Article 7.3.1(2)(d) The loss of reliance factor responds to the cascading failure situation that typified much of the pandemic era and shipping-crisis disputes.[146] In the case of recurrent errors of small size of partial delivery, all of which deviate somewhat in quality within the specifications of the contract, there is no individual delivery that, by itself, would corroborate the Article 25 threshold of German or French doctrine presently.[147] However, the overall result is fatal to the buyer's reasonable reliance on future performance, a commercially recognisable injury that ought to be the subject of legal redress.[148] Already conscious of the relational aspect of the breach, French courts could use this to articulate a principled doctrinal foundation for their approach, rather than relying on unarticulated intuitions regarding good faith.[149]

Proportionality factor of Article 7.3.1(2)(e) may be applied in the opposite direction.[150] This is a doctrinal reason why avoidance should be opposed where a termination, rather than permitting the seller to bear a loss, would, in commercial inconvenience terms, cost the buyer a loss significantly in excess of the loss the seller may incur.[151] This does not alter the Article

[143] DiMatteo and others (n 125) 53.
[144] Janssen and Wahnschaffe (n 129) 477.
[145] Vogenauer (n 119) art 7.3.1, para 9.
[146] Janssen and Wahnschaffe (n 129) 481.
[147] Stefan Kröll, Loukas Mistelis and Pilar Perales Viscasillas, UN Convention on Contracts for the International Sale of Goods (CISG): A Commentary (Verlag C H Beck 2020) art 25, para 18.
[148] DiMatteo (n 139).
[149] DiMatteo and others (n 125) 47.
[150] Vogenauer (n 119) art 7.3.1, para 13.
[151] UNCTAD (n 134) 65.

25 standard itself but gives courts a principled framework for exercising the residual discretion that the open-textured standard leaves available.[152]

The convergence effect of applying all three factors together is the normative core of this thesis.[153] Factors (c) and (d) might help German courts determine instances where their high favour contractus test ought to give way to the justice of avoidance. Factor (e) could enable French courts to mitigate avoidance in cases where termination has a disproportionately harmful economic effect.[154] A common UPICC-informed analytical lexicon would not completely remove the jurisdictional difference but would instead reduce it to a greater extent and make it more predictable.[155]

4.4.2 Judicial and Arbitral Practice

A systematic search of the CISG-Online database, modified by Germany and France, and of Article 25 between 2019 and 2025, yields a small sample of bilateral cases directly addressing scenarios of supply-chain disruption.[156] The case of Belgian Steel Tubes remains the best existing precedent for explicit gap-filling under the UPICC with respect to Article 7(2) of the CISG.[157] The lack of direct German or French decisions with explicit application of Article 25 and use of UPICC criteria is not merely a limitation of the present research. It suggests that national courts have not yet generally adopted the UPICC as an interpretive reference point in everyday litigation, a tendency that the literature indicates is attributable to the continuing dominance of domestic interpretive traditions over international soft-law instruments in national court practice.[158]

[152] Masny and Petsche (n 103) 35.
[153] DiMatteo and others (n 125) 55.
[154] Ramberg (n 106) 696.
[155] Schwenzer (n 104) 220.
[156] CISG-Online, Article 25 Dedicated Page https://cisg-online.org/cisg-article-by-article/part-3/art.-25-cisg accessed 18 April 2026.
[157] Scafom International BV v Lorraine Tubes S.A.S. (n 109); Masny and Petsche (n 103) 22.
[158] Kryla-Cudna (n 114) 450. This observation is corroborated by broader scholarship on the reception of the UPICC in national courts: see Masny and Petsche (n 102) 38–42, noting that

The practice of arbitration narrates a different story. ICC, VIAC, and DIS arbitral tribunals are reported to have operated by applying the principles of UPICC to national civil proceedings, uninhibited by national procedural approaches and more open to commercial-law devices of international characterisation.[159] In turn, this difference between arbitral and national court practice has analytical importance. It shows that the tools of doctrine are available, and have been applied successfully, but that their introduction into practice by national courts must be facilitated by institutional means.[160]

4.5 Viability, Limits, and Prospects

The multi-factor analysis of the UPICC solves real ambiguities in Article 25 that cannot be settled by the open-textured standard alone.[161] It has a robust doctrinal presence, due to its international pedigree of consensus based on wide-ranging comparative research in dozens of legal systems, and thus has a high level of credibility in providing general principles under Article 7(2).[162] The supplementary similarity it holds to the CISG, in that it is also based on a very similar philosophy, guarantees that its use brings clarity rather than confusion to the meaning of the Convention.[163]

The constraints should be declared sincerely. The application of the UPICC is not a legal requirement in any court, and its application under Article 7(2) is also discretionary.[164] There is a possibility of over-formalisation. A generalised interpretation of Article 25 based on a strict

explicit judicial engagement with the UPICC outside arbitral settings remains limited; Ramberg (n 106) 690, observing that national courts rarely invoke the UPICC as an interpretive aid even where Article 7(2) CISG would permit it; and Schwenzer (n 104) 215, acknowledging that gap-filling by reference to international principles remains more common in arbitral than in judicial practice.

159 Ramberg (n 106) 698.

160 Masny and Petsche (n 103) 40.

161 DiMatteo (n 139).

162 UPICC 2016 (n 108), Preamble.

163 Ramberg (n 106) 700.

164 CISG (n 105), art 7(2); Schwenzer (n 103) 218.

set of five factors might also introduce another source of interpretive rigidity.[165] The Kryla-Cudna criticism of internationality uberreach is a very stern academic protest which cannot be discounted.[166] This difference between arbitral and national court practice indicates that the institutional reasons for utilising the UPICC in day-to-day litigation remain weak.[167]

The possibilities of the incremental progress are, however, credible. The CISG Advisory Council is by far the most plausible institutional tool to give a specific opinion on Article 25 and Article 7.3.1 of the UPICC.[168] References to the Belgian Steel Tubes precedent by other courts on a transnational basis may slowly create a more coherent cross-jurisdictional practice.[169] By signing long-term supply agreements with commercial parties, a gap in interpretation in favour of UPICC-informed interpretation can be contractually addressed, avoiding the gap-filling debate altogether.[170]

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[165] Kryla-Cudna (n 114) 452.
[166] ibid 455.
[167] Masny and Petsche (n 103) 42.
[168] CISG Advisory Council Opinion No 5 (n 138), para 1.
[169] Scafom International BV v Lorraine Tubes S.A.S. (n 109).
[170] UPICC 2016 (n 108), Preamble.

5. CONCLUSION

5.1 Chapter Overview

Chapter 5 synthesises the findings of the preceding chapters and provides direct answers to both research questions. It recapitulates the structural divergence between German and French judicial approaches to Article 25, confirms the legitimacy but conditional nature of UPICC integration under Article 7(2) CISG, and draws practical implications for commercial contract drafting and dispute resolution. The chapter concludes with two specific proposals directed at the CISG Advisory Council and commercial practitioners respectively, and reflects on the enduring resilience of the CISG as an adaptable framework for international sales law across more than four decades.

5.2 EU Case Law Divergences

The comparative analysis above (Chapter 3) indicates that the application of Article 25 CISG by German and French courts is based on divergent analytical frameworks, rather than on applying the same reasoning to reach different results.[171] This split is institutional and has been concurrent throughout the case law reviewed, since early decisions in the 1990s to the supply-chain disruption cases in 2019 to 2025.[172]

The German courts consider fundamental breach in light of the favour contractus as the ultima ratio, where avoidance must be demonstrated to have been carried out, and the commercial utility of the contract has to be destroyed to meet the threshold.[173] The decisions in BGH Cobalt Sulphate and Hungarian Injection Moulding Tools provide an illustration of the same in various

[171] Lazar Graffi, 'Case Law on the Concept of "Fundamental Breach" in the Vienna Sales Convention' (2003) International Business Law Journal 338, 350.
[172] DiMatteo and others (n 125) 33.
[173] Robert Koch, 'The Concept of Fundamental Breach of Contract under the United Nations Convention on Contracts for the International Sale of Goods (CISG)' in Pace (ed), Review of the Convention on Contracts for the International Sale of Goods (CISG) (Kluwer Law International 1999) 177, 195.

factual contexts.[174] The rule is even confirmed by the case of OLG Stuttgart Fresh Pasta, which identified a fundamental breach due to a three-day delay, but shows that the circumstances have to be exceptional.[175] German courts have consistently applied this high standard in the context of COVID-19 and supply chain disruptions, establishing clear contractual evidence that time or quality was of the essence to allow them to avoid the contract.[176]

French courts have focused on the creditor's failure to establish a specific legitimate expectation. They are more sensitive to the bad-faith or intentional aspect of such breach, and more permissive in authorising avoidance when commercial trust has been destroyed between the parties.[177] The 2003 case involving wine and the decisions of the Cour de cassation, as well as the 2016 case involving defeated grinders and damaged merchandise by the Cour d'appel de Bordeaux, exemplify this trend, as do the cases of grinding machines and defective goods surveyed by DiMatteo and others.[178] The codification of unilateral termination as a commercial remedy in Articles 1224-1230 of the 2016 French Civil Code has strengthened the domestic legal culture in which French judges view avoidance as a valid and available solution to commercial problems.[179]

The direct response to Research Question 1 is thus as follows. German courts established a high threshold for substantial deprivation under Article 25 and favoured preserving the contract and finding an alternative to avoidance. At the same time, French courts impose a lower effective standard that is more sensitive to the creditor's expectations, as well as the character

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[174] Cobalt sulphate case (Bundesgerichtshof, Germany, 3 April 1996) Case No VIII ZR 51/95 (CISG-online 136); Hungarian Injection Moulding Tools case (Bundesgerichtshof, Germany, 24 September 2014) Case No VIII ZR 394/12 (CISG-online 2545).
[175] OLG Stuttgart, 27 November 2019, Case No 3 U 239/18 (CISG-online 5410).
[176] Janssen and Wahnschaffe (n 129) 472.
[177] DiMatteo and others (n 125) 48.
[178] Cour de cassation (1re civ), 20 May 2003 (Bull civ I No 237); Cour d'appel de Bordeaux, 25 February 2016 (No 14/06947); DiMatteo and others (n 126) 44.
[179] French Civil Code, arts 1224 to 1230 (as reformed 2016).

of the breach. The problems between 2019 and 2025 have raised these already existing tensions without introducing them.[180]

5.3 UPICC as a Harmonising Tool

The immediate response to Research Question 2 is that the UPICC can act as a lawfully supplementary interpretative instrument under Article 7(2) CISG, yet solely within narrowly expressed boundaries.[181] It can serve to clarify broad principles already implicit in Article 25 and to bridge actual interpretative gaps in which the open-textured standard fails to do so.[182] It is not necessarily a primary or ultimate source of authority, nor does it have the power to override the text of the CISG or to replace structured factors with the flexible standard that the drafters of Vienna intentionally adopted.[183]

The three UPICC factors discussed in Chapter 4 that seem to hold the greatest harmonising potential are intentionality under Article 7.3.1(2)(c), loss of reliance to future performance under Article 7.3.1(2)(d) and proportionality of termination losses under Article 7.3.1(2)(e).[184] These considerations address real failings in the analytical system of Article 25 and may offer a common doctrinal language that helps reduce the perceived German-French schism on either side.[185] Factors (c) and (d) could allow German courts to determine in which circumstances their high threshold has to give way. Some examples in which the French courts could apply factor (e) to moderate avoidance include cases in which termination is economically disproportionate.[186]

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[180] UNCITRAL, Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods (2016 edn, United Nations 2016) art 25.
[181] Masny and Petsche (n 103) 8.
[182] CISG (n 105), art 7(2); UPICC 2016 (n 106), Preamble.
[183] Schwenzer (n 104) 212.
[184] UPICC 2016 (n 108), arts 7.3.1(2)(c), 7.3.1(2)(d), 7.3.1(2)(e).
[185] DiMatteo and others (n 125) 55.
[186] Ramberg (n 106) 696.

This integration is, however, conditional on viability. Where Article 25 has a real interpretive ambiguity, as there is none, merely a policy difference between jurisdictions,[187] it is most valid. It only demands that the UPICC factor capture a true reflection of a general principle of international commercial law, and not reflect a bias of the drafting committee.[188] And it assumes that there already exists a court or tribunal's inclination towards international legal reasoning, which is more readily achieved in arbitral tribunals than in normal national court litigation.[189] The harmonisation under the UPICC relies on judicial goodwill and professional consensus in the absence of a supranational enforcement mechanism or institutional direction.[190]

5.4 Final Remarks

The conclusions of this thesis have concrete practical implications for the commercial participants involved in cross-border trade within the European Union.[191] The parties that sign long-term supply contracts are expected to incorporate express time-of-the-essence terms, supply-chain interruption terms, and specific provisions stating how the contract applies to the UPICC, should they appear before the Article 25 default standard, to yield predictable results.[192] Arbitral forums used in dispute resolution clauses must be well aware of UPICC practice; the tools of doctrine in Chapter 4 are already in use.[193]

The analysis leads to two particular proposals. To begin with, the CISG Advisory Council must be requested to issue a special opinion on the interplay between Article 25 of the CISG and Article 7.3.1 of the UPICC regarding the case of supply-chain disruption.[194] There is no opinion

[187] Kryla-Cudna (n 114) 445.
[188] Masny and Petsche (n 103) 35.
[189] Ramberg (n 106) 698.
[190] Schwenzer (n 104) 220.
[191] DiMatteo (n 139).
[192] Janssen and Wahnschaffe (n 129) 482.
[193] Ramberg (n 106) 701.
[194] CISG Advisory Council Opinion No 5 (n 138).

of this kind at the moment, and at the point where the interpretive problem is most important, there is an institutional gap that deprives the courts of authority.[195] Second, commercial parties signing long-term supply contracts should be advised to include a clause in their contracts defining the meaning of the contracts, expressly stating that disputes under Article 25 will be interpreted using the UPICC Model Clauses, as the Model Clauses allow.[196]

The CISG remains a robust and workable body of international sale law.[197] The interpretive openness with which it has chosen to live is the same quality which has brought it the divergences over which this thesis has analysed it, as well as that which has permitted it to adjust itself in the space of more than forty years and well-nigh one hundred contracting states without the need even of formal amendment.[198] The difficulty here does not lie in correcting the CISG, but rather in providing courts and practitioners with more analytical tools to apply it consistently.[199] One such tool is the UPICC, when understood correctly and applied judiciously.[200]

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[195] Masny and Petsche (n 103) 45.
[196] UPICC 2016 (n 108), Preamble.
[197] CISG (n 105), Preamble.
[198] DiMatteo and others (n 125) 33.
[199] Schwenzer (n 104) 221.
[200] Masny and Petsche (n 103) 46.

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