

Company & Commercial - Sweden

Committee Reconsiders Nordic Reservation to Part II of CISG

June 22 2009

The UN Convention on Contracts for the International Sales of Goods (CISG) was adopted in Vienna in 1980. The convention offers a uniform international sales law. It is applied by more than 75 countries, accounting for more than 75% of all international trade in goods.

The convention provides rules on the formation of contracts, buyer's and seller's respective obligations, remedies for breaches of contract and other aspects of sale of goods contracts.

Sweden, together with its Nordic neighbours Denmark, Finland and Norway, was an early adopter of the convention. However, these countries all made a reservation in order to not be bound by Part II of the convention, which deals with the formation of contracts. Iceland, the last Nordic country to accede to the convention, did so at a later stage and did not make such a reservation. Furthermore, no state outside the Nordic countries has made a reservation in this respect.

The Swedish Contract Act is a result of a pan-Nordic effort in the beginning of the Twentieth Century and, therefore, all the Nordic Contract Acts are similar to each other. The Nordic reservation to Part II of the convention has been mainly attributed to the differing treatment of revocations of an offer in Nordic contract law compared to that in the convention. Under the Nordic Contracts Acts, an offer cannot be revoked, and a party is bound by its promise to enter into a contract. The convention, on the other hand, is based on the so-called 'contract theory', whereby a party is bound not by its promise, but rather by the contract. Consequently, under the convention an offeror may revoke its offer as long as the offeree has not dispatched an acceptance.

At the time the Nordic countries adopted the convention, the shift in emphasis from safeguarding the offeree's rights to allowing the offeror exclusive control over the offer was regarded as too much of a change in respect of Nordic contract law traditions. However, the impact of the contract theory in the convention is limited to situations where the offer does not indicate that it is irrevocable. In all such situations, the convention rule is, in practice, identical to the Nordic rule.

The result of the Nordic reservation is that the convention is applied differently, depending on whether the offer is given by a seller or buyer and on whether the seller or buyer is based in a Nordic country or other contracting state.

The Nordic reservation has been a subject of debate in the Nordic countries since the convention entered into force. Following the global acceptance of the convention, the notion has grown stronger that the Nordic countries' stance with regard to the reservation could, for example, imply a reluctance on the part of Nordic judges and arbitrators to apply the convention. Consequently, the reservation has come to be viewed by many as an unnecessary barrier to the world market.

Therefore, acting through the International Chamber of Commerce, Nordic businesses petitioned the Nordic governments to revoke the reservation. In response, the Nordic Committee of Senior Officials for Legislative Affairs assigned the Swedish Professor Jan Kleineman to evaluate the question of whether the Nordic countries had reason to reconsider the reservation to Part II of the convention.

Kleineman presented his findings in December 2008. He concluded that although the Nordic reservation had no clear shortcomings, the relative advantages of a revocation outweighed the disadvantages. According to Kleineman, the validity of the reservation was doubtful from the outset and a revocation would have symbolic value, indicating that the Nordic countries embrace the convention's overall objectives.

Even though Kleineman's report is not a formal legislative proposal, it seems likely that it will form the basis of one. The Nordic countries will have to change their individual

Author

Bo Thomaeus



national laws – which, due to technical legislative reasons, is more easily achieved in some jurisdictions (eg, Sweden) than in others (eg, Norway). This means that it is hard to predict when the revocation will be made. From a Swedish and Nordic perspective, one can only hope that it will be sooner rather than later.

*For further information on this topic please contact [Bo Thomaeus](#) at *Gärde Wesslau Advokatbyrå* by telephone (+46 8 587 240 00) or by fax (+46 8 587 240 01) or by email (bo.thomaeus@garde.se).*

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.



Official Online Media Partner to the International Bar Association
An International Online Media Partner to the Association of Corporate Counsel
European Online Media Partner to the European Company Lawyers Association

© Copyright 1997-2009 Globe Business Publishing Ltd