



# General Assembly

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## United Nations Commission on International Trade Law

### CASE LAW ON UNCITRAL TEXTS (CLOUT)

#### United Nations Convention on Contracts for the International Sale of Goods (CISG)

##### Case 2184: CISG 25; 26; 84(1)

Switzerland: Handelsgericht des Kantons St. Gallen (Commercial Court of the  
Canton of St. Gallen)

Case No. HG.2020.148-HGK, HG.2021.30 HGK

3 November 2023

Original in German

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The buyer is a German company offering “e-sharing” services, including rentals of e-scooters. After the German government had announced a change of traffic regulations that would allow e-scooters to be used on public streets from June 2019 onwards, the buyer negotiated with a Swiss seller the purchase of 4,000 e-scooters with replacement batteries. In complex negotiations, the parties agreed that the e-scooters needed to be approved for circulation in Germany, be suitable for use in a sharing model and be delivered no later than June 2019. The buyer made a downpayment of 50 per cent of the contract price to the seller.

In May 2019, the seller delivered a prototype of the e-scooter which proved technically deficient. The buyer thereupon demanded that three prototype e-scooters approved for circulation in Germany would be delivered by 18 July 2019, and that it otherwise would avoid the contract. The seller promised to deliver by 18 July. When the three e-scooters delivered on that day were not approved for circulation in Germany, the buyer declared the contract avoided.

In its decision, the Commercial Court of the Canton of St. Gallen granted the buyer’s claim for repayment of the partially paid contract price, because the buyer had rightfully avoided the contract in accordance with the CISG. In doing so, the court interpreted a number of CISG provisions relating to the avoidance of contracts by buyers.

The court held that the seller had committed a fundamental breach of contract (article 25 CISG) because it had been a fundamentally important part of the parties’ contract that the goods would be delivered to the buyer approved for circulation in Germany by 18 July 2019. As the goods were not approved for circulation in Germany at that point in time, the seller had fundamentally breached the contract allowing the buyer to avoid the contract under article 49(1)(a) CISG.



Article 26 CISG provides that a declaration of avoidance of the contract is effective only if made by notice to the other party. The court held that that article did not require the word “contract avoidance” to be used in this context, and that a buyer’s notice demanding repayment of the contract price from the seller was a sufficiently clear declaration of avoidance.

According to article 84(1) CISG, a seller who has to refund the contract price after the contract has been avoided (article 81(2) CISG) must also pay interest on it, from the date on which the price was paid. The court clarified that the date on which the price “was paid” in the sense of article 84(1) CISG was the date on which the price was received by the seller.

The court’s decision was subsequently affirmed by the Supreme Court,<sup>1</sup> although the Supreme Court did not elaborate on the CISG’s application by the Commercial Court in its decision, because it had (“rightfully”) not been challenged in the appeal.

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#### **Note for the reader**

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<sup>1</sup> Swiss Federal Supreme Court, decision of 16 May 2024 - 4A\_56/2024. Available at the CISG-online database ([www.cisg-online.org](http://www.cisg-online.org)) No. 7022.