RĪGAS JURIDISKĀ AUGSTSKOLA

# THE EFFECT OF COVID-19 ON FORCE MAJEURE CLAUSE IN INTERNATIONAL COMMERCIAL CONTRACTS: ITS IMPACT ON PUBLIC PROCUREMENT IN LATVIA

MASTER THESIS


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DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed) .....

Riga, 2024

## ABSTRACT

The sudden appearance of the COVID-19 pandemic has caused remarkable disorganization to the global commercial world, dramatically influencing contractual arrangements throughout different sectors internationally. The pandemic has led to widespread neglect or disregard of contractual obligations amidst global shifts. Following the COVID-19 outbreak, other major events such as the Suez Canal incident and the War in Ukraine further disrupted the application of *force majeure* clauses in international commercial law. These changes stemmed from the pandemic and prompted individuals and organizations to invoke *force majeure* clauses due to unforeseen events occurring before contract completion, contingent on current circumstances. Public institutions engaging in contracts were compelled to adapt, leading to incomplete obligations. The concept of *force majeure*, typically governed by national laws, is a crucial aspect of contract analysis. One significant challenge posed by the pandemic is the evolving legal landscape surrounding *force majeure* cases, altering its historical interpretation.

**Key words:** *Force majeure*, pandemics, Covid-19, commercial contracts, public procurements.

## SUMMARY

This Master thesis is a research and analysis of the effect of COVID-19 on *force majeure* clause in International Commercial Contracts and its impact on public procurement in Latvia, especially based on the different laws and jurisdictions. Moreover, the concept of *force majeure* will be discussed within the paper to understand the classic definition of this term, how it will be applicable and implemented by the society.

In this regard, the author has developed the following research question: has COVID-19 disease affected the interpretation and application of the *force majeure* clause within commercial contractual obligations in Latvia.

The global COVID-19 outbreak disrupted global commerce, prompting a reassessment of international trade laws, including *force majeure* clauses in contracts. The thesis examines how the pandemic affected the interpretation and use of *force majeure* in commercial agreements, focusing on challenges in public procurement, particularly in Latvia. This study underscores how respiratory infections have reshaped perceptions of unforeseeable circumstances. The global COVID-19 spread altered how *force majeure* is applied, affecting legal agreements worldwide. This clause historically covers unforeseen events beyond human control, relieving contractual obligations. The pandemic raised new legal challenges, especially in public procurement, highlighting the urgent need for updated laws to secure essential services. Latvia, among others, faced legal and operational hurdles demanding careful analysis.

It has been intended to investigate COVID-19 comprehensively, examining its connection to unforeseen events and its impact on the historical concept of force majeure. Despite similar interpretations of unforeseen circumstances across legal systems globally, the practical application of *force majeure* during the pandemic varies significantly. To provide an answer to the above-offered research question, the paper is structured into three main chapters.

The first chapter is going to provide an analysis of the legal background of the concept of force majeure. To be precise, a descriptive and comparative analysis of different legal systems will be addressed. To determine the applicable law, the subject matter is going to be discussed from the standpoint of common law, civil law, in Latvian legal system, and finally UNIDROIT Principles will be used based on principle that in these legal systems, there are significant similarities, but also different aspects that need to be analyzed to study the main problem of the thesis, the pandemic impact on the interpretation and implementation of the *force majeure* clause in international commercial contracts and how it challenges the Public Procurements in Latvia.

The second chapter focuses on the analysis of COVID-19 events in regard to international commercial contracts, as well as reveals how it affects the contempt of *force majeure*.

The final chapter of the thesis structured to make an analysis of the case of the Republic of Latvia concerning the pandemic impact on the interpretation and implementation of the *force majeure* clause in commercial contracts. Hence, the analysis of case law will be done precisely relying on the legal perspectives and applicable law.

In conclusion, the author will provide an answer to the research question based on the findings within the case law and further results.

# Contents

## LIST OF ABBREVIATIONS

**UCC**- Uniform Commercial Code

**CISG**- United Nations Convention on Contracts for the International Sale of Goods

**PICC** - Unidroit Principles of International Commercial Contracts

**UNIDROIT** – International Institute for Unification of Private law

**LTRK** - Latvijas Tirdzniecības un rūpniecības kamera (Latvian Chamber of Commerce and Industry)

**ICC** - International Chamber of Commerce

**WHO** - World Health Organization

**US** - United States

**UK**- The United Kingdom

## INTRODUCTION

In December 2019, international community was confronted by the emergence of COVID-19, also identified as the coronavirus *SARS-CoV-2 (2019-nCoV)*[1], precipitating a worldwide crisis characterized by substantial loss and transformative societal shifts. This crisis predominantly impacted two fundamental sectors crucial for human welfare: healthcare and commerce. The legal concept of *force majeure* clause, commonly integrated within contractual frameworks, serves as a mechanism for parties to regulate their obligations and uphold contractual principles in the face of unforeseen impediments to performance. Unforeseen circumstances encompass abrupt or unforeseeable events beyond the reasonable control of any involved party. Particularly within commercial contexts, such events directly affect the obligations of the parties involved. The author posits that the invocation of *force majeure* events not only serves to justify non-performance, but also absolves the invoking party of responsibility. This assertion merits further scrutiny, particularly within the legal discourse presented in this thesis.

Having those events analyzed, international community began to refer to the term absolutely in any case, when the implementation of commercial or business agreements becomes infeasible or changes for various reasons, which in one way or another depend on at least a fraction of what happens on the world scene.

## Background and actuality of the research

The topic at hand has been chosen by the author based on personal experiences within the realm of the public sector, specifically within a state institution focused on contract management and procurement. Given this background, the author delves into examination of *force majeure*, a term increasingly invoked since the onset of the COVID-19 pandemic to justify deviations from contractual obligations within public procurement practices. It's worth noting how there's a clear focus on distinguishing between the public and private sectors and opts to explore the State Defense Sector as a separate entity, analyzing contractual agreements signed between 2021 and 2023 against the backdrop of global events shaping interpretations of unforeseen circumstances. Numerous deals within the defense sector have faced delays attributed to *force majeure* events, necessitating a thorough analysis to discern the nature of these delays and their correlation with unforeseen events. Public services and legal entities often seek guidance from state bodies to investigate breaches of contractual obligations, shedding light on how the public sector responds to such instances. Despite parties' awareness and agreement to contractual terms, the pandemic has spurred a reassessment of established concepts like *force majeure* and its practical application. The thesis motivation lies in comprehensively addressing these shifts and evaluating COVID-19's impact on the interpretation and implementation of *force majeure* clauses within public procurement contracts.

The pandemic wrought significant disruption to global trade, prompting a reevaluation of established laws and principles governing international commerce, particularly those concerning

[1] Nat Microbiol. The species severe acute respiratory syndrome-related coronavirus: classifying 2019-nCoV and naming it SARS-CoV-2. Coronaviridae Study Group of the International Committee on Taxonomy of Viruses. 2020 Apr;5(4):536-544. Epub 2020 Mar. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7095448/ Accessed on 18 January. 2024.

*force majeure* clauses. The objective of this thesis is to analyze the effects of COVID-19 on the interpretation and implementation of *force majeure* clauses in international commercial contracts, with a specific emphasis on its repercussions for public procurement procedures, notably within Latvia.

Traditionally, *force majeure* clauses have been included in contracts to account for unforeseen events beyond human control, absolving parties from liability for breach of contract. However, the pandemic has necessitated a closer examination of these clauses and their legal implications, highlighting the need for updated legal provisions to ensure the efficacy of public procurement processes during crises. The pandemic catalyzed a cascade of events, including the Suez Canal obstruction and the war in Ukraine, each compounding the challenges associated with *force majeure* cases. Public institutions found themselves grappling with unforeseen circumstances, leading to disruptions in contractual obligations. While *force majeure* clauses are typically governed by national jurisdiction, the evolving nature of the pandemic has posed new legal challenges and complexities.

In conclusion, it will intend to conduct comprehensive research on COVID-19, exploring its connection to unforeseen events and its impact on the historical understanding of *force majeure* clauses. Despite similar interpretations across legal systems, the practical application of *force majeure* clauses in the context of a pandemic varies significantly, necessitating a nuanced analysis of its implications.

## Composition and the methods

The researcher has opted for a qualitative research method along with qualitative analysis, incorporating diverse case studies, notably evaluating public procurements within a national sector spanning from 2020 to the present. Addressing the research question involves utilizing and scrutinizing various documents for comparison, encompassing official records and excerpts provided by concerned parties citing unforeseen circumstances leading to contractual non-performance or delays, which national authorities are tasked to assess. Additionally, the plan includes comparing legal frameworks from distinct legal systems concerning the application of *force majeure* clauses in practice. This comparative analysis will span the pre-pandemic period, the pandemic peak, and the subsequent decline, observing how the evolving legal landscape intersects with the pandemic's impact.

The chosen legal systems for scrutiny include common law, civil law, the Latvian legal system, and UNIDROIT Principles as a statutory instrument. The author justifies this selection due to the significant similarities and divergences within these legal systems, crucial for dissecting the pandemic's influence on interpreting and implementing *force majeure* clauses in international commercial contracts, alongside its implications for public procurements in Latvia.

Following an exhaustive examination and analysis of the legal framework, the author intends to address the research question of the master thesis: *Has COVID-19 disease affected the interpretation and application of the force majeure clause within commercial contractual obligations in Latvia?*

Analysis of the concept and comparative legal system analysis will involve primary sources such as legislation, regulations, and secondary sources like historical documents and pertinent

literature. For dissecting COVID-19's impact on international commercial contracts and its ramifications on *force majeure* clauses, primary sources will be exclusively relied upon due to their comprehensive coverage. The analysis of the thesis's final segment will draw from real-world cases managed by the author, particularly in overseeing contracts related to public procurement within Latvia's defense system. Moreover, official sources including the Latvian Chamber of Commerce and Industry will be consulted, alongside submitted documents from organizations and legal entities regarding unforeseen circumstances.

The research findings will be consolidated and presented comprehensively concluding chapter.

## 1. THE ORIGIN OF CLASSICAL DEFINITION OF THE FORCE MAJEURE CONCEPT AND LEGAL BACKGROUND OF APPLYING THIS CLAUSE IN THE MATTER OF INTERNATIONAL LEGAL SYSTEMS

*Force majeure* does exist as a generally recognized term. The concept takes its historical roots and meaning from French classical civil law, also known as the *1804 Napoleonic Code*[2]. The classical definition of *force majeure* from the French language means a superior force and, in turn, is of the nature of extraordinary and unforeseen events[3]. Article 1218 of the amended French Civil Code has a clear and comprehensive definition of force majeure:

> ["In contractual matters, there is force majeure where an event beyond the control of the debtor, which could not reasonably have been foreseen at the time of the conclusion of the contract and whose effects could not be avoided by appropriate measures, prevents performance of his obligation by the debtor."][4]

Even though the concept of *force majeure* takes its origin from the above-mentioned legal instrument, the notion of *force majeure* or exceptional measure is also enshrined in the Common and Civil legal systems, and different countries in their legal systems use this concept in various situations, including in concluding collective contracts and agreements. Moreover, the concept and procedure of this exceptional measure are also used in the conclusion of international commercial contracts and are included in international treaties such as the United Nations Convention on

[2] Document: -A/CN.4/315, "Force majeure" and "Fortuitous event" as circumstances precluding wrongfulness: Survey of State practice, international judicial decisions and doctrine - study prepared by the Secretariat, International Law Commission, 1978, vol. II(1), p. 68, Available at PDF: https://legal.un.org/ilc/documentation/english/a_cn4_315.pdf Accessed on 18 January. 2024.

[3] *Supra* note 2.

[4] John Cartwright, Bénédicte Fauvarque-Cosson, Simon Whittaker, THE LAW OF CONTRACT, THE GENERAL REGIME OF OBLIGATIONS AND PROOF OF OBLIGATION, The new provisions of the Code civil by Ordonnance n° 2016-131 of 10 February 2016 translated into English,, p. 23, Available at: http://www.textes.justice.gouv.fr/art_pix/THE-LAW-OF-CONTRACT-2-5-16.pdf .Accessed on 20 January. 2024.

Contracts for the International Sale of Goods (Article 79)[5], where the meaning of the notion of exceptional measure is similar[6].

Historically, the principle of *force majeure* clause legally excuses parties from certain terms in contracts if they couldn't predict unexpected events, however, they must prove it. It's important to establish what events qualify as unforeseen circumstances. For instance, unforeseen circumstances could include wars, terrorist attacks, natural disasters, epidemics, and diseases like COVID-19. However, addressing to the force majeure circumstances does not free parties from their contract obligations entirely; it just helps avoid severe penalties by providing a sufficient documentary evidence revealing the reasons behind not fulfilling their contractual obligations to a necessary extent. In order to apply *force majeure* clauses, an event must be beyond the party's control. If one party is negligent or fails to foresee risks when entering the contract, *force majeure* clauses doesn't apply. Sometimes, events occur regularly or can be anticipated, so claiming *force majeure* in these cases is considered wrongful. Parties might address such situations using the legal term *"hardship"* instead[7]. Different countries have varying interpretations of *force majeure* clauses, but their essence remains consistent. COVID-19 is a central topic, and studying how different jurisdictions treat unforeseen events like this helps understand how *force majeure* clause is applied. It's crucial to consider diverse legal systems and their views on these terms.

### 1.2. Applying the force majeure clause in the common law

This part of the thesis undertakes an examination of two legal frameworks: the Unfair Contract Terms Act 1977 (UK Public General Acts 1977 c. 50 Whole Act) and the Uniform Commercial Code (UCC). The author chose English and American legislation due to its importance and prevalence in common law. The selection is supported by four primary points: Firstly, the law's significance and worldwide influence. The Unfair Contract Terms Act 1977 in the UK and the Uniform Commercial Code in the United States play a pivotal role in regulating commercial

[5] UNITED NATIONS, United Nations Convention on Contracts for the International Sale of Goods, UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, UNITED NATIONS New York, 2010, pp.24-25, Available at PDF: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf . Accessed on 20 January. 2024.

[6] Ibid, [A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it, or its consequences.; If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if: (a) he is exempt under the preceding paragraph; and (b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him; The exemption provided by this article has effect for the period during which the impediment exists; The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt; Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention]. Accessed on 21 January. 2024.

[7] Mr. Joseph Gold, [A provision concerning hardship can be characterized as a contractual term enabling a reevaluation of the agreement if there is a significant shift in circumstances that fundamentally alters the initial balance of obligations between the parties. In such instances, while fulfilling the contract may not be impossible, it becomes unduly burdensome for one of the parties involved], Legal Effects of Fluctuating Exchange Rates, 15 Mar 1990, International Monetary Fund, Available at: https://www.elibrary.imf.org/display/book/9781475506921/C11.xml#:~:text=1-,A%20hardship%20clause%20can%20be%20described%20as%20a%20term%20of,unusually%20onerous%20for%20one%20party. . Accessed on 21 January. 2024.

relationships in their respective countries. They establish fundamental principles of *legality* and *fairness* in contractual relations, making them particularly significant for analyzing *force majeure* circumstances. Secondly, international adoption. English and American law are widely used in international commercial contracts and have an impact on global trade. Since many international contracts fall under the jurisdiction of these countries or involve English-speaking parties, understanding their legislation aids in understanding and analyzing international agreements. Thirdly, availability of different data. There is extensive information and case studies related to the application of these laws in the context of commercial contracts and *force majeure* events. This facilitates research and analysis as access to relevant court decisions and precedents is more readily available. Moving on to the descriptive part of the thesis, a closer look reveals an in-depth analysis of selected legal regulations, approached through a comparative lens.

Based on prevailing views, the Unfair Contract Terms Act 1977 stands as a cornerstone of UK contract law, offering a comprehensive framework for overseeing contractual terms and notices. Its significance stems from its applicability in governing contractual *fairness* and *reasonableness*, particularly pertinent in the context of *force majeure* clauses and their interpretation amidst unforeseen events like the COVID-19 pandemic. The Act's provisions offer insights into how contractual obligations might be impacted by events beyond the parties' control, thus serving as a valuable reference point in analyzing the legal implications of *force majeure* clauses within international commercial contracts. Moving on to the legal application of these clauses, The Unfair Contract Terms Act 1977, a statutory legislation applicable across the United Kingdom including England, Wales, and Northern Ireland[8], establishes a regulatory framework governing contractual relationships. It delineates provisions pertinent to instances of contractual breaches by one or more parties, offering both restrictive measures and exceptions. Notably, the Act does not explicitly define or address the concept of *force majeure*, relegating its usage solely to contractual agreements without affording it legal recognition or protection. According to Section 3, paragraph 2 of this Act, which relates to Liability arising in a contract, a party may refer to this instrument only in certain cases:

> [(a)when himself in breach of contract, exclude or restrict any liability of his in respect of the breach; or (b)claim to be entitled— (i)to render a contractual performance substantially different from that which was reasonably expected of him, or (ii)in respect of the whole or any part of his contractual obligation, to render no performance at all, except in so far as (in any of the cases mentioned above in this subsection) the contract term satisfies the requirement of reasonableness][9].

While the Unfair Contract Terms Act 1977 permits consideration of *force majeure* clauses under specific circumstances, notably when contracts are executed under customary conditions and the invoking party is in breach, its efficacy remains contingent upon meeting stringent criteria, as stipulated in Section 3(2)(b)(II)[10]. This provision mandates that any claim of *force majeure* must be substantiated and deemed reasonable by the adjudicating authority. Consequently, the absence of a statutory definition for *force majeure* clause within English law underscores the inherent ambiguity and limitations associated with its invocation under the Act. For instance, the case of

[8]Unfair Contract Terms Act 1977, 1977 CHAPTER 50, 26th October 1977, Available at: https://www.legislation.gov.uk/ukpga/1977/50 . Accessed on 23 January. 2024.
[9] *Ibid.*
[10] *Supra* note 8.

*Tennants (Lancashire) Ltd v G.S. Wilson & Co. Ltd [1917] AC 495*[11] examines a situation during the First World War in 1914 when, due to events beyond their control, a company that had entered into contractual obligations with another company was unable to fulfill those obligations because of severe shortages of essential materials caused by the war. Shortages of materials and labor led to many contracts being suspended, which did not constitute a breach of the law. Given the circumstances, one party proposed increasing the price of raw materials while decreasing demand so that the performing party could fulfill all conditions. However, it became evident in this situation, as in the case itself, that the performing party claimed losses it could incur despite the contract being fulfilled. The main question in this case was whether to suspend all transactions during the war in 1914 and revisit the issue upon its conclusion when all supplies would be restored and there would be no obstacles. In this case, the court ruled that an event like war justified the suspension of the contract, and all its actions could be suspended until the unforeseen circumstances, beyond the control of the parties, were resolved. Additionally, the court found that reducing the price or quantity of delivery would not be fair actions for the parties, as both sides experienced significant losses to their businesses in this situation.

Moving on to the Uniform Commercial Code (UCC), it holds substantial relevance due to its widespread adoption across the United States. As a codification of commercial law principles, the UCC offers a structured approach to understanding contractual obligations, including those affected by *force majeure* events. Its provisions concerning contract formation, performance, and remedies provide valuable insights into how American jurisdictions approach *force majeure* clauses and their application within international commercial contexts. Given the global nature of commercial transactions involving U.S. entities and the prevalence of the UCC in governing such transactions, its inclusion in the dissertation allows for a comprehensive comparative analysis of *force majeure* issues across different legal regimes. By incorporating both the Unfair Contract Terms Act 1977 and the Uniform Commercial Code into research, the author aims to provide a nuanced examination of the impact of COVID-19 on *force majeure* clause in international commercial contracts, considering the diverse legal perspectives offered by these common law frameworks. Their resonance within common law jurisdictions underscores their significance in shaping contractual rights and obligations, particularly in the face of unprecedented challenges posed by the pandemic.

In contrast, the Uniform Commercial Code stands as a pivotal legal instrument within the United States, offering comprehensive regulations governing commercial transactions. Unlike its UK counterpart, the UCC explicitly addresses *force majeure* clauses within the context of commercial agreements, providing a defined framework for its invocation and application. After briefly examining the role of *force majeure* clauses in English law, it has been deciding to delve into its application within the Uniform Commercial Code (UCC), a component of common law system. The UCC, governing various commercial transactions in the United States, offers a uniform legal framework across the nation, ensuring *consistency* and *predictability* in contractual relationships. Notably, Article 2 of the UCC addresses business disruptions and contractual failures[12]. Article 2 stipulates that the supplier, whether a natural person or legal entity, may be

[11] Tennants (Lancashire) Ltd v G.S. Wilson & Co. Ltd [1917] AC 495, Available at PDF: https://lexlaw.co.uk/wp-content/uploads/2020/03/Tennants-v-GS-WIlson.pdf . Accessed on 23 January. 2024.

[12]UNIFORM COMMERCIAL CODE, PUBLIC LAW 88-243-DEC. 30, 1963, Available at: https://www.govinfo.gov/content/pkg/STATUTE-77/pdf/STATUTE-77-Pg630.pdf . Accessed on 29 January. 2024.

excused from contractual obligations due to delivery delays. This provision safeguards against penalties or termination of contracts arising from unforeseen circumstances hindering performance. Ideally, contracts should include *force majeure* clauses, leveraging Article 2 as a defense mechanism for non-performance[13]. Furthermore, Article 2 Section 615 absolves sellers from liability in instances of delivery delays caused by unforeseen events beyond their control, such as government regulations or natural disasters. Sellers must promptly notify buyers of delays and allocate resources fairly among customers[14]. While Article 2 Section 615 does not specify exhaustive events, it encompasses situations where external factors disrupt contractual fulfillment, such as the Russian invasion of Ukraine in 2022, which caused widespread material shortages and operational challenges. To invoke Article 2 Section 615, sellers must demonstrate the unforeseeable nature of the event at the contract's inception. Compliance with this provision justifies delays and non-performance, safeguarding parties from contractual breaches[15].

In summary, the UCC's provisions, particularly Article 2 Section 615, offer a legal basis for addressing force majeure events in commercial transactions, ensuring *fairness* and *accountability* in contractual relationships. In comparison, the UCC offers a more structured approach to the application of *force majeure* clauses, providing clear delineation of rights and obligations in scenarios of unforeseen events impeding contractual performance. This stark contrast highlights the varying degrees of legal clarity and enforcement mechanisms between common law jurisdictions. Moreover, while both the Unfair Contract Terms Act 1977 and the UCC deal with contract complexities, they approach *force majeure* clauses differently. The UCC offers clear guidance and protection, while UK legislation provides a more nuanced but less explicit route for handling *force majeure* situations in contracts. This comparison highlights differences in legal clarity and procedural rigor across common law jurisdictions.

## 1.3. Applying the force majeure clause in the civil law

It has been chosen to incorporate French and German legislation from the civil legal system into the study because it has been supposed that the French and German law have considerable influence in civil law and are widely used in the context of international commercial transactions. These legal systems are often regarded as authoritative sources of law in various international jurisdictions, thus making them relevant in the confines of analysis concerning international contracts. Second reason based on the writer’s presumptions is the fact that French and German law are unique legal systems with their own characteristics and approaches to contract management. The inclusion of these legal systems allows to explore differences in the treatment of *force majeure* circumstances and their impact on international contracts. Lastly, French and German law are often regarded as models for other civil legal systems. Their analysis may offer valuable lessons and perspectives for other countries and jurisdictions, especially in the light of the changes brought about by the COVID-19 pandemic. In general, the inclusion of French and German law is based on their influence and status in the civil legal system, their unique approaches to law and their significant international influence.

[13] *Ibid*, pp.637-671.
[14] Legal Information Institute, Cornell Law School, Uniform Commercial Code, § 2-615. Excuse by Failure of Presupposed Conditions, Available at: https://www.law.cornell.edu/ucc/2/2-615 . Accessed on 1 February. 2024.
[15] *Ibid.*

The French Civil Code is one of the main legislative bodies for France and the countries under its control. Despite its centuries-long history, this legal instrument gave rise to the legal notion of *force majeure*, but this concept within the French statutory law was not formalized until the second decade of the 21st century. More precisely, it was done only in 2016[16]. Despite this unusual fact, the courts of the French Republic have been applying and referring to this concept for more than 200 years, and this has been the case since the concept of *force majeure* emerged and has been institutionalized in the legislative system. The term *force majeure* was enshrined with greater legal protection after the French Consumer Law began to evolve and the concept required stronger legal protection[17].

Currently, *force majeure* is defined under Article 1218 of the French Civil Code and implies actions that are beyond the performer's will, as well as those that could not have been foreseen, and most importantly, at the time of entering into a contractual relationship[18]. Previously, this article had been already invoked, so it was further intended to refer to the continuation of the article to demonstrate the two options of party's liability, which invoked this obstacle:

> ["...If the impediment is temporary, the performance of the obligation is suspended unless the resulting delay would justify termination of the contract. If the impediment is permanent, the contract is automatically terminated, and the parties are free from their obligations pursuant to the conditions laid down in articles 1351 and 1351-1."][19]

The French legal system allows the parties to govern themselves and be guided by *force majeure*, but all actions must be *transparent* and carried out in *good faith*[20]. Moreover, references to the amendment must be legally secured and approved by both parties to the contract at the time of negotiation and signature. These actions will allow the party-facing events that may fall into the scope of contingencies to avoid legal liability[21]. In turn, it would also be useful to the second party, as some rights, such as consumer rights, would be protected and the party might also benefit in various ways.

The fact should be taken into account that the use and legitimacy of *force majeure* depends entirely on the terms set out in the contract and the concept cannot exist separately from the terms of the contract[22]. But, in each contract and legal system, some exceptions can be applied absolutely to each party of the contract. In the case of *force majeure*, if the terms of the contract in any way affect its conditions of application and the actions in question are already outside the legal framework prescribed in French domestic law, namely the Code, in such cases, the provision would

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[16] Shearman & Sterling, FORCE MAJEURE AND IMPRÉVISION UNDER FRENCH LAW, March 26, 2020, Available at: https://www.aoshearman.com/en/insights/force-majeure-and-imprevision-under-french-law . Accessed on 1 February. 2024.

[17] Anne-Laure Villedieu, Aliénor Fevre, Law and regulation of force majeure in France, 15 January 2021, Available at: https://cms.law/en/int/expert-guides/cms-expert-guide-to-force-majeure/france . Accessed on 1 February. 2024.

[18] *Supra* note 16.

[19] *Supra* note 17.

[20] *Supra* note 17.

[21] Anne-Laure Villedieu, Aliénor Fevre, FRANCE: FORCE MAJEURE - HARDSHIP IN RELATION TO CONFLICT AND SANCTIONS, 29 March 2022, Available at: https://cms.law/en/int/expert-guides/force-majeure-hardship-in-relation-to-conflict-and-sanctions/france . Accessed on 3 February. 2024.

[22] Jonathan Morgan, Contract Law Minimalism, A Formalist Restatement of Commercial Contract Law, November 7, 2013, Cambridge University Press. Accessed on 3 February. 2024.

not apply to any of the parties to the contract[23]. The Code in this case will allow the parties to whom the concept of "unforeseen circumstances" is applied to get rid of the liability that has been written down[24].

Legal systems are like a mathematical function - if something is decreasing, other is increasing, namely, issues that are directly related to equal rights of signatories and parties to the contract. This is significant because all changes will lead to a basic result: non-compliance leads to the situation when the party acts in the same way as the injured party. The question is what was the meaning of the Code and the legal basis of the term *force majeure* if liability for non-performance was reduced to the maximum or excluded altogether, in accordance with the French law.

In brief, in business systems based on the principle of business to business (B2B), as theory shows, the parties who entered into contractual obligations have opportunities and abilities to regulate clauses of the contract independently within the framework of French Commercial Law, but a change or derogation from it could lead to legal inequality, which could then lead to the ineffectiveness of *force majeure*[25]. The author further decided to move on to German Civil Code to make a comprehensive analysis of two legal systems.

The German Civil Code, which in German is called *Bürgerliches Gesetzbuch (BGB)*, is the main legislative instrument in Germany[26]. This instrument deals with civil law issues[27], and in most cases, the concept of *force majeure*, is considered in civil liability issues. This legal instrument is responsible for compliance with all rules that relate directly to property, contracts, liability, etc.[28], but the above paragraphs are the main ones for consideration of "unforeseen force". It should be taken into account that *force majeure* is not regulated directly by German legislation[29], but the above-mentioned document has references to the circumstances in which the problem arose in the certification of the contract or other issues, and it is precisely stipulated by law. About the articles of the law that apply to circumstances of unforeseen circumstances that have directly affected the discharge of obligations, sections 275 and 313 of the German Civil Code refer to. These are the main articles of the Code, which relate specifically to issues related to events that do not correspond in any way to the basis of the transaction and apply immediately at the moment of the problem. Article 275 states that:

> [ A claim for performance is excluded to the extent that performance is impossible for the obligor or for any other person; The obligor may refuse performance to the extent that

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[23] Norton Rose Fulbright law firm, France: Construction force majeure and alternative relief : Force majeure and alternative relief under standard form construction contracts and local law, France, May 2020, Available at: https://www.nortonrosefulbright.com/en-fr/knowledge/publications/02e4f9bd/france-relief-provisions-in-construction-contract-suites . Accessed on 3 February. 2024.

[24] All Answers ltd, 'The Function of Force Majeure in France', Available at: https://www.lawteacher.net/free-law-essays/contract-law/the-function-of-force-majeure-in-france-contract-law-essay.php#citethis . Accessed on 5 February. 2024.

[25] *Supra* note 17.

[26] European Justice, National legislation: Germany, Available at: https://e-justice.europa.eu/6/EN/national_legislation?GERMANY&member=1 . Accessed on 5 February 2024.

[27] *Ibid*.

[28] Penn Law Legal Scholarship Repository, THE GERMAN CIVIL CODE, (Part II.): FORM, SUBSTANCE, APPLICATION, pp. 16- 29, Available at: https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=6373&context=penn_law_review . Accessed on 5 February 2024.

[29] Dirk Loycke, LAW AND REGULATION OF FORCE MAJEURE IN GERMANY, 15 January 2021, Available at: https://cms.law/en/int/expert-guides/cms-expert-guide-to-force-majeure/germany . Accessed on 7 February 2024.

> performance requires expense and effort which, taking into account the subject matter of the obligation and the requirements of good faith, is grossly disproportionate to the interest in performance of the obligee. When it is determined what efforts may reasonably be required of the obligor, it must also be taken into account whether he is responsible for the obstacle to performance; In addition, the obligor may refuse performance if he is to render the performance in person and, when the obstacle to the performance of the obligor is weighed against the interest of the obligee in performance, performance cannot be reasonably required of the obligor; The rights of the obligee are governed by sections 280, 283 to 285, 311a and 326][30].

Based on this article, both parties have the right to waive obligations if there are substantial reasons, which are mentioned in the Code. Article 313 is not the same as any previously considered article, as it provides for the possibility for the parties to modify or withdraw from contractual relations in cases where it became apparent after the conclusion of the contract that the obliging parties were unable to fulfill their obligations and when it became known after the conclusion or the terms of the contract had changed in the course of performance and now, they significantly affect its performance. The article is referenced below:

> [If circumstances which became the basis of a contract have significantly changed since the contract was entered into and if the parties would not have entered into the contract or would have entered into it with different contents if they had foreseen this change, adaptation of the contract may be demanded to the extent that, taking account of all the circumstances of the specific case, in particular the contractual or statutory distribution of risk, one of the parties cannot reasonably be expected to uphold the contract without alteration; It is equivalent to a change of circumstances if material conceptions that have become the basis of the contract are found to be incorrect; If adaptation of the contract is not possible or one party cannot reasonably be expected to accept it, the disadvantaged party may revoke the contract. In the case of continuing obligations, the right to terminate takes the place of the right to revoke][31].

Analyzing these articles, it will be concluded that in the event of withdrawal from the agreement, the offending party still has to cover the non-performance, namely to compensate or return the funds that were contributed to the transaction. It allows parties to leave the relationship at any time if there are risks, but they must be financially covered. But this applies to the circumstances when the performing party controls all actions of the contract and depends on its performance. In the case of *force majeure*, where those circumstances occurred outside the control of one of the parties, the injured party would no longer be able to claim compensation[32]. Moreover, if a party invokes circumstances of "unanticipated force", then, in this case, it is obliged to provide all the evidence that indicates a lack of control over the events, that these events are indeed *force majeure* events and that the party has taken all necessary actions to prevent these or to quickly get out of the problem as possibly beneficial for both parties to the contract[33].

In conclusion, the parties have the right and own will to regulate the terms of the contract and the conditions of how it should be fulfilled. However, all terms and the contract must be respected *transparently* and *fairly*.

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[30] German Civil Code (BGB), Section 275: Exclusion of the duty of performance, Available at: https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html . Accessed on 7 February 2024.
[31] *Ibid*, Section 313 Interference with the basis of the transaction.
[32] *Supra* note 30.
[33] *Supra* note 30.

## 1.4 Applying the force majeure clause in the Latvian legal system

Latvian legislation also refers to the civil legal system and, therefore the author hypothesizes that the term *force majeure* and its application in the Latvian legal system have a similar meaning to France and Germany[34]. Considering the basic legislative instrument of the Republic of Latvia - the Civil Code, it is worth noting that this instrument does not contain a definition of *force majeure*[35]. In contrast, various legal sources define the concept of *force majeure* differently and most often describe it as follows:

> [The mentioned circumstance, which cannot be evaded efforts to do so, carries with it surmount repercussions. This circumstance, unforeseeable by a rational individual at the time of contract formation, has not been brought by the party or any entity under its control. Moreover, it not only complicates the fulfillment of obligations but also renders it utterly unachievable][36].

Despite this, the definition of the term is made up of numerous articles and norms, which are included in the Civil Code. The concept and application of the concept can be seen in the following paragraphs of the code: Civil Code Article 1543 - events, which were not known to the parties at the time of contract conclusion[37]; Civil Code Articles 1543 and 2147 - events, which objectively renders the performance of the contract impossible for either party and which have not arisen due to the fault of the debtor[38]; Civil Code Article 2148, paragraph 1 and Article 2234 - events, which cannot be avoided or prevented, notwithstanding all efforts of the debtor[39],[40].

It is also necessary to understand that this reference is not limited because it depends on the situation. The concept is interpreted and used differently and this has significantly influenced the development of the legal systems. Analyzing the nature of *force majeure* circumstances, it is first of all necessary to understand whether these events are an obstacle to the performance of the contract. In the Latvian legal system, there are two conditions when *force majeure* can be applied by the party who invokes this principle: This is a situation where the performance of an obligation, although technically possible, is disproportionate to the cost and is unfair[41]. In other words, this would involve significant resources on the part of the debtor. In this case, the risk of default exists, but it is also possible to complete them under all conditions. In considering this situation, the party will try to meet all the conditions but have agreed with the other party on the conditions of

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[34] Kalvis Torgans, Latvian Contract Law and the EU, JURIDICA INTERNATIONAL VI/2001, pp.38, Available at PDF: https://www.juridicainternational.eu/public/pdf/ji_2001_VI_38.pdf . Accessed on 7 February 2024.

[35] Lauris Liepa, Gatis Flinters, Andrejs Lielkalns, COVID-19 in Latvia: General issues, Cobalt Law firm, 20 March 2022, Available at: https://www.cobalt.legal/news-cases/covid-19-in-latvia-general-issues/ . Accessed on 7 February 2024.

[36] Andris Lazdiņš, Anete Dimitrovska, COVID-19 and Force Majeure,Ellex Klavins Law Firm, Available at: https://ellex.legal/wp-content/uploads/2021/04/covid19-and-force-majeure.pdf . Accessed on 7 February 2024.

[37]The Civil Law of Latvia, Article 1543, Entry into force 01.09.1992, Available at: https://likumi.lv/ta/en/en/id/225418-civil-law . Accessed on 9 February 2024.

[38] *Ibid*, Article 2147.

[39] *Supra* note 37, Article 2148.

[40] *Supra* note 37, Article 2234.

[41]Viktorija Jakina, Krista Niklase, Nepārvarama vara kā pamats līguma izbeigšanai un nepieciešamie Civillikuma grozījumi (Force majeure as a basis for terminating the contract and the necessary amendments to the Civil Law), Jurista Vārds, 30. JŪNIJS 2020 /NR.26 (1136), Available at: https://m.juristavards.lv/doc/276840-neparvarama-vara-ka-pamats-liguma-izbeigsanai-un-nepieciesamie-civillikuma-grozijumi/ . Accessed on 9 February 2024.

performance, which will stipulate new ways to perform[42]. It is also necessary to distinguish the case of *force majeure* when the fulfillment of an obligation is impossible because of objective obstacles. In this case, the fulfillment of the terms becomes completely impossible and the parties must withdraw from the contractual relations to complete all previously established agreements[43]. For *force majeure* to be declared and in the future, it would be possible to refer to it, additional conditions must be taken into account and observed: All events that occurred and were declared as *force majeure*, must be those that were difficult to avoid, they were difficult to foresee at the time of contract conclusion, they are under the direct control of the contractor and this event completely renders performance of contractual obligations impossible[44]. If no condition is met, the concept of *force majeure* cannot be applied.

The stance is that each case should be evaluated independently, recognizing its individuality and differences from others. For this reason, the interpretation of the concept and the conditions of its application may vary and differ too. In this case, the parties have the possibility to decide how to act or to turn to the Civil Code to solve the problem at the legislative level. The Civil Code of the Republic of Latvia authorizes the parties to terminate the contract in the following cases: According to Article 1657 of the Civil Code, a debtor may be relieved from the consequences of delay if performance was prevented by *force majeure*[45]. According to Article 1773 of the Civil Code, a contract may be terminated or concluded if the loss is accidental and caused by force majeure circumstances[46]. According to Article 2347 part 2 of the Civil Code, if damage occurs due to *force majeure*, a person whose activities pose increased danger to others is not obligated to compensate for the harm caused by the source of increased danger[47].

The Latvian Civil Code limited the terms of termination of contractual obligations when the cause was *force majeure*. If *force majeure* terms were previously entered and negotiated in the contract, this allows parties to exit the contract based on legislation. In other cases, the law does not allow you to leave the contract[48].

In conclusion, the notion of *force majeure* and its occurrence under the Civil Law is not a reason to withdraw from the contractual relationship or not to comply with it[49].

[42] *Ibid*.
[43] *Supra* note 41.
[44] Sergei Petrov, NJORD Latvia: COVID-19 – is it force majeure? Njord Law Firm, 20.03.2020, Available at: https://www.njordlaw.com/njord-latvia-covid-19-it-force-majeure . Accessed on 10 February 2024.
[45] *Supra* note 37, Article 1657.
[46] *Supra* note 37, Article 1773.
[47] *Supra* note 37, Article 2347 part 2.
[48] *Supra* note 41.
[49] *Supra* note 41.

## 1.5 UNIDROIT Principles

In this part of the paper, it has been decided to analyze UNIDROIT Principles, which are international standards and a sort of different guidelines applied to commercial transactions, and contracts[50]. These standards are a blueprint for all countries that are signatories and ratifiers of many international legal instruments, sets of principles, and a guide to all this. It should also be borne in mind that these principles are applied internationally, including countries mentioned before[51].

The UNIDROIT Principles over the United Nations Convention on Contracts for the International Sale of Goods (CISG) or the International Chamber of Commerce (ICC) rules has been chosen for several reasons. Firstly, the UNIDROIT Principles are designed to apply to various types of commercial contracts, whereas CISG only applies to contracts for the international sale of goods, and ICC rules are focused on procedural aspects of dispute resolution[52]. This means that the UNIDROIT Principles may be more applicable to situations involving *force majeure* issues, where broad tolerance and adaptation to changing circumstances are crucial. Secondly, the UNIDROIT Principles are known for their flexibility and ability to adapt to different contract conditions[53]. This makes them more suitable for analyzing situations involving *force majeure*, as they can provide a broader set of principles and standards than CISG or ICC rules. Lastly, the UNIDROIT Principles have gained wide international recognition and respect in business and legal circles. Their application in international practice makes them more relevant for analyzing issues related to international commercial contracts and *force majeure* circumstances. Therefore, the choice of the UNIDROIT Principles is justified by their general nature, flexibility, and international recognition, making them more suitable for studying the impact of COVID-19 on international commercial contracts compared to CISG or ICC rules.

By the way, UNIDROIT Principles are not independent legal rules, but only an option, which can choose the parties to enter into a contractual relationship[54]. Moving on to the term *force majeure*, this concept is attached to paragraph 7 of the UNIDROIT Principle, which deals with issues of non-performance. From Article 7.1.1. to Article 7.1.7 are the main paragraphs of the standards, which are directly related to the performance, or rather the non-performance of contractual obligations, and the last paragraph relates directly to *force majeure* clauses[55]. The

[50] UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2016, PREAMBLE : (Purpose of the Principles), Available at: https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf . Accessed on 20 February 2024.

[51] Unidroit, International Institute for the Unification of Private Law: Overview, Available at: https://www.unidroit.org/about-unidroit/overview/ . Accessed on 20 February 2024.

[52] Michael J. Dennis, Modernizing and harmonizing international contract law: the CISG and the Unidroit Principles continue to provide the best way forward, Uniform Law Review, Volume 19, Issue 1, March 2014, pp. 114–151, Available at: https://academic.oup.com/ulr/article/19/1/114/1661968 Accessed on 21 February 2024.

[53] *Ibid.*

[54] *Ibid.*

[55] Unidroit, International Institute for the Unification of Private Law: CHAPTER 7 - SECTION 1 CHAPTER 7: NON-PERFORMANCE - SECTION 1: NON-PERFORMANCE IN GENERAL, Available at: https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2010/chapter-7-section-1/#1623699423674-aca9ca91-b496 . Accessed on 23 February 2024.

Article 7.1.7. has been chosen for the analysis as this paragraph could be directly related to the Master's thesis and should be considered. Article 7.1.7. defines the following:

> [Non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences[56]; When the impediment is only temporary, the excuse shall have effect for such period as is reasonable having regard to the effect of the impediment on the performance of the contract[57]; The party who fails to perform must give notice to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt[58]; Nothing in this article prevents a party from exercising a right to terminate the contract or to withhold performance or request interest on money due][59].

Article 7.1.7 is a working tool for common law and civil law legislative systems, where a situation is dealt with unforeseen circumstances, where the parties may also refer to various other instruments, for example, directives or doctrines, but the definition of *force majeure* in UNIDROIT Principles will not be identical to the definitions in other documents[60]. A party may use these principles to justify the impossibility of fulfilling contractual obligations due to events that have occurred unanticipated, but it must also consider its legal system, because, as mentioned earlier, the definition of *force majeure* is similar, but each system and its tools are presented differently and thus have a direct bearing on the consideration of the situation[61].

The notion of *force majeure* is a commonly used term in various legal systems directly or indirectly through various instruments, and in this case, UNIDROIT Principles is a guide for its international application, through the use of various instruments, which are generally recognized at the legislative level[62]. Moreover, UNIDROIT Principles allow parties to include the definition of *force majeure* and how this should be regulated within the framework of the contract and allow the term to become the international standard used in the non-performance of commercial transactions and contracts[63]. It had been noted that Article 7.1.7. gives the parties the freedom to regulate the performance of the contract. Thus, it is possible to withdraw from the concluded relationship when the obliging party is unable to meet the obligations or there is a substantial reason for it[64]. But this is only possible in exceptional cases and works well for the party that has made a kind of derogation and non-compliance with the terms of the agreement. The author also concluded that the article initially focused on solving the problem in any way that would be beneficial to both the performing party and the party that was to receive the service or goods. In cases where the

[56] *Ibid*, Article 7.1.7: Force majeure.
[57] *Supra* note 55.
[58] *Supra* note 55.
[59] *Supra* note 55.
[60] Garcia Sanjur. A. Unidroit Principles and the COVID-19 Economy. Uniform Law Review. 2022 Jan 5, Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9213838/ . Accessed on 29 February 2024.
[61] *Ibid*.
[62] *Supra* note 60.
[63] *Supra* note 60.
[64] *Supra* note 60.

situation of *force majeure* cannot be resolved, then the only way out is to terminate the contract and the transaction will be canceled. The time frame within which a party can influence what is happening and try to complete the obligations is very limited if the contractual relationship continues. A party may not request too much time to fulfill its obligations, as the transaction may thus become uneconomical for both parties, in which case the contract will have to be terminated in some way[65]. Thus, the notion of *force majeure* clause under UNIDROIT Principles is a reflection of the definitions set out in other legal systems and instruments, but despite this it has exceptional qualities, making this legal instrument different from the others.

### 1.6 Summary

Applying the *force majeure* clause across different legal systems involves understanding how each jurisdiction addresses unforeseen events impacting contractual obligations.

Starting with the Unfair Contract Terms Act 1977 in the UK, it focuses on ensuring *fairness* in contractual terms, including force majeure clauses, by assessing their reasonableness and impact on obligations. In the United States, the Uniform Commercial Code governs commercial transactions and offers flexibility in tailoring *force majeure* clauses to specific needs, promoting predictability in commercial dealings. Moving to European legal systems, both the French Civil Code and the German Civil Code recognize *force majeure* as events that are unforeseeable and irresistible, which may excuse performance but do not necessarily terminate contracts. In Latvia, *force majeure* is acknowledged under the Civil Code, where its occurrence may result in the suspension or termination of contractual obligations, with parties expected to act in *good faith*. Internationally, the UNIDROIT Principles provide guidance for international commercial contracts, acknowledging *force majeure* and offering flexibility in clause drafting while ensuring *fairness*.

While each legal system may differ in its approach and terminology, the overarching goal is to balance the protection of parties from unforeseen events with upholding contractual integrity. The specifics of applying *force majeure* clauses depend on the laws and circumstances of each jurisdiction, emphasizing the importance of careful consideration and interpretation in contractual matters.

## 2. THE ANALYSIS OF COVID-19 EVENTS IN REGARD OF INTERNATIONAL COMMERCIAL CONTRACTS, HOW IT AFFECTS THE CONCEPT OF FORCE MAJEURE

*"COVID-19 will reshape our world. We don't yet know when the crisis will end. But we can be sure that by the time it does, our world will look very different. How different will depend on the choices we make today."- Josep Borrell*[66]

[65] *Supra* note 60.

[66] European Union External Action, The Diplomatic Service of the European Union, The Coronavirus pandemic and the new world it is creating, 23.03.2020, Available at: https://www.eeas.europa.eu/eeas/coronavirus-pandemic-and-new-world-it-creating_en . Accessed on 7 March 2024.

The COVID-19 pandemic, as discussed earlier, has wrought significant and predominantly adverse effects across various sectors crucial for individual well-being, with commerce being arguably the most impacted, according to the author. Movement restrictions and border closures led to disrupted logistics and dwindling commercial activities, plunging operations to critical levels[67]. Financial uncertainties and shifting consumer habits compounded the crisis, but the foremost issue emerged from supply chain disruptions[68]. The pandemic precipitated a global supply chain breakdown: production halts, transportation snags, and consequent delivery delays, resulting in substantial breaches of contractual obligations. International commercial contracts were often breached, with *force majeure* clauses invoked due to the pandemic's unprecedented nature[69]. However, the author questions whether these references were always justified. The case *JN Contemporary Art LLC v. Phillips Auctioneers LLC* exemplifies how parties cited *force majeure* amidst pandemic-related nonessential business restrictions, leading to contract termination requests and ensuing legal battles[70]. Despite arguments against recognition of breaches, courts typically deemed the pandemic beyond parties' control, upholding *force majeure* clauses[71].

Nevertheless, the uniform application of such legal interpretations remains debatable. It forms the core inquiry of the author's thesis. *Force majeure*, defined as unforeseen events beyond contractual parties' control, prompts discussion on whether COVID-19 qualifies, especially concerning logistical impossibilities stemming from epicenter lockdowns. The author emphasizes the necessity of scrutinizing *force majeure* clauses and applicable laws within specific jurisdictions. Some nations amended legislation to explicitly include COVID-19 as a *force majeure* event, while proposals for contract term adjustments surfaced to align with global commercial shifts[72]. Each contract's uniqueness necessitates individual consideration, factoring in jurisdictional laws and *force majeure* provisions. The pandemic underscores the need for refined *force majeure* definitions in international contracts, ensuring clarity, inclusivity, and adaptability amid uncertainty[73]. The

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[67] McKinsey& Company, COVID-19: Implications for business, April 13, 2022, Available at: https://www.mckinsey.com/capabilities/risk-and-resilience/our-insights/covid-19-implications-for-business. Accessed on 7 March 2024.

[68]European Central Bank, Maria Grazia Attinasi, Mirco Balatti, Michele Mancini and Luca Metelli, Supply chain disruptions and the effects on the global economy, 2021, Available at: https://www.ecb.europa.eu/press/economic-bulletin/focus/2022/html/ecb.ebbox202108_01~e8ceebe51f.en.html. Accessed on 9 March 2024.

[69] Deji Olatoye, "Law in a Time of Corona: Global Pandemic, Supply Chain Disruption and Portents for "Operationally- Linked (but) Legally Separate" Contracts, UNIVERSITY OF BOLOGNA LAW REVIEW (2021), pp.174-189, Available at PDF: https://www.researchgate.net/publication/348200882_Law_in_a_Time_of_Corona_Covid-19_Supply_Chain_Disruption_and_Portents_for_'Operationally-Linked_but_Legally_Separate'_Contracts_Manuscript . Accessed on 9 March 2024.

[70] JN Contemporary Art LLC v. Phillips Auctioneers LLC, No. 21-32 (2d Cir. 2022), Available at: https://law.justia.com/cases/federal/appellate-courts/ca2/21-32/21-32-2022-03-23.html Accessed 11 March 2024.

[71] Shuqi Li, Peng Nai, Guang Yang, Tao Yu, Force majeure and changed circumstances during the COVID-19 pandemic: the case of sports service contracts and judicial responses in China. SpringerLink (2022), Volume 22, pp. 259–270, Available at PDF: https://link.springer.com/article/10.1007/s40318-021-00206-x . Accessed on 11 March 2024.

[72] *Supra* note 36.

[73] Natarajan Priyasundari, MAY THE FORCE MAJEURE BE WITH YOU: THE IMPACT OF COVID-19 ON THE FORCE MAJEURE CLAUSE IN INTERNATIONALCOVID-19 ON THE FORCE MAJEURE CLAUSE IN INTERNATIONAL COMMERCIAL CONTRACTSCOMMERCIAL CONTRACTS, Santa Clara Journal of International Law Santa Clara Journal of International Law (2022), Volume 21, Issue 1 Article 1,pp. 1-11, Available

author advocates for principles guiding parties to safeguard contractual interests amidst evolving circumstances.

## 2.1 Examining the Application of Good Faith and Transparency Principles in Contractual Relationships for Protection of Parties' Interests

In the modern business world, entering into contracts is an integral part of interaction between parties. However, the successful execution of a contract requires not only signing a document but also strict adherence to principles aimed at protecting the interests of all involved parties. This section examines the fundamental principles that should be applied by liable parties to protect the contract and its interests in signing the contract. Understanding and applying these principles are key aspects of ensuring the successful fulfillment of contractual obligations and minimizing risks for all parties involved.

It has been suggested that *transparency* and good *faith* are the most important principles when entering into contractual relations, and the author suggested that fulfilling and complying with them could be achieved by properly fulfilling contractual obligations. *Transparency*, in the author's opinion, also serves as a foundation, with which the contract should essentially begin. This principle is responsible for ensuring that all paragraphs of the agreement are drafted in such a way that the parties to the contract have no doubts or concerns about the nature of the contract and do not threaten the contract[74]. The *transparency* of the contract also helps parties to be aware of what opportunities, rights, and obligations they have and what terms are set out in this document. Concerning *good faith*, it has been considered that this principle is used in contracts to ensure that the parties enter into a fair and just contract, which in turn will be respected not only in the initial stages but throughout its implementation[75]. The contract must be designed and executed in such a way that neither party uses fraud, and provides all information in full, and the performance must be beneficial to both parties from the time the contract is concluded to the time it is entered into[76]. In addition, the author contends that the principle of *good faith* is the principle that is responsible for the obligations of the parties, namely how they will comply and how they must comply with the terms of the contract, and it also includes the additional opportunity to introduce additional terms into the contract that will facilitate the fulfillment of all necessary obligations[77]. In discussing *good faith* in the context of the COVID-19 pandemic, it has been pointed out that this principle

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at PDF: https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1252&context=scujil . Accessed on 13 March 2024.

[74] CONTRACTS CONFIDENTIAL: ENDING SECRET DEALS IN THE EXTRACTIVE INDUSTRIES, CHAPTER ONE: Why Contract Transparency? Pp.15-19, Available at PDF: https://resourcegovernance.org/sites/default/files/RWI_Contracts_Confidential_Chapter_1.pdf . Accessed on 13 March 2024.

[75] Abdullah, N., & Ghadas, Z. A. A. (2023). The application of good faith in contracts during a force majeure event and beyond with special reference to the Covid-19 ACT 2020. UUM Journal of Legal Studies, 14(1), pp. 141- 144, Available at PDF: https://repo.uum.edu.my/id/eprint/29375/1/UUMJLS%2014%2001%202023%20141-160.pdf Accessed on 15 March 2024.

[76] Eylem APAYDIN, THE PRINCIPLE OF GOOD FAITH IN CONTRACTS UNDER THE INTERNATIONAL UNIFORM LAWS CISG, UNIDROIT PRINCIPLES AND PRINCIPLES OF EUROPEAN CONTRACT LAW, pp. 1-10, Available at PDF: https://www.researchgate.net/publication/330564045_THE_PRINCIPLE_OF_GOOD_FAITH_IN_CONTRACTS Accessed on 15 March 2024.

[77] *Ibid*.

should be strictly observed by the parties, as *force majeure* events, to which COVID-19 is increasingly attributed, significantly affect the performance of the contract and its misuse. Unfortunately, it can lead to impossibility of execution. It has been considered that the principle of *good faith* and its application in *good faith* serve as mitigating measures against events that are classified as force first of all, the author considers it necessary to provide a legal basis for the principle of *good faith* and that this is stated in various laws from the common and civil law systems, and only then it is possible to proceed to cases with COVID-19 within the framework of these principles[78].

In terms of the classical principles of contract law, the *good faith* of the contract depends solely on the parties to the contract, and in principle, in the author's view, the legitimate responsibility for fulfilling the terms also rests with those parties at the time of entering into such a relationship[79]. In this case, the law no longer can regulate the actions of the parties, but the parties are obliged to follow the legislative instruments[80]. In turn, the suggestion put forward implies that the law should interfere with the regulation of the contract from the outset, as there are many cases where the parties are unevenly distributed between the obligations of the agreement, and in such cases, there are risks of that one of the parties will be limited in the use of additional terms of the contract that may be required by any changes to the agreement[81]. In such a case, the claim made suggests that the freedom of contract would be violated and that there would be no *fairness* involved. Since the main purpose of any contract is its execution, many laws strictly control the possibility of introducing various additional clauses to preserve equity, and for that, the contract be completed sooner or later under any additional conditions[82]. This principle has been enshrined in contract law for centuries, and the original idea of the principle was that it should apply absolutely to every contract without exception, regardless of events that may in any way affect its performance. In the case of *Bhasin v Hrynew (2014) SCC 71 (S.C.),* which is part of the common law system of integrity is characterized as a principle that protects the contract from violations if the contract contains terms, that oblige the parties to comply with the agreement regardless of any events or changes, that is, in the opinion of the author always[83].

Considering the principle of *good faith*, it should be explained that this principle has many meanings in the structure of the contract depending on the jurisdiction, but all these definitions, of course, lead to the contract being fair, rational for all participants, respectful of the interests of all parties and focused on favorable cooperation that will bring benefits to both participants[84]. However, it is important to take into account the important fact that *good faith* entails conflicts of interest since the parties do not always want to apply this principle, as it is not always beneficial for them. The author believes that different perceptions and understandings of the concept of *good faith* led to cases, where the parties are forced to conflict because each party has its vision of the fulfillment of its obligations. In the famous case of the last century *Kirke La Shelle Co. v. Paul Armstrong Co.* there is the following statement:

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[78] *Supra* 73, pp. 6.,21.
[79] *Supra* note 75, p.145.
[80] *Supra* note 75, pp.145-153.
[81] *Supra* note 75.
[82] *Supra* note 75, pp.146-157.
[83] Bhasin v. Hrynew, 2014 SCC 71 (CanLII), [2014] 3 SCR 494, retrieved on 2024-04-28, Available at: https://www.canlii.org/en/ca/scc/doc/2014/2014scc71/2014scc71.html . Accessed on 16 March 2024.
[84] *Supra* note 74.

> ["There is an implicit clause in each contract that neither party shall take actions that will prove (effective) in destroying or damaging the other party's right to receive the fruits of the contract, which means, that in every contract there is an implicit obligation of fair and just treatment"][85].

Referring to the allegations mentioned earlier, this principle is an important element of many systems of law and is often considered in the context of contract dispute resolution. It obliges the parties to respect not only the letter of the contract but also the general principles of *fairness* and fairness in its execution.

Concerning the application of *good faith* in contracts during COVID-19, with the development of the pandemic, the principle of *good faith* became subject to risks, and authorities in cooperation with parties entering into contracts became necessary to control the legitimate protection of this principle. It has been suggested that in times when diseases such as COVID-19, which by its nature fall into the category of *force majeure* events, the parties should reconsider previously established conditions to preserve the performance of the contract and not jeopardize it[86]. Because of many limitations, in raw materials, resources, in logistics, the interests of the parties are not respected and not preserved, and most often the contract ends its existence. But, according to the perspective presented, the reasonable solution in this situation is a new negotiation procedure, in which the parties will adjust the terms of the contract, which will relate to *force majeure* and allow the contract to be fulfilled, but it will be completed[87]. Also, from the viewpoint expressed, this would be precisely and precisely the observance and preservation of the principle of *good faith*.

Finally, when faced with problems such as a pandemic, the parties to a contract must comply with the basic condition - under all circumstances, to comply with the principle of *good faith*, and as the author believes without it, no contract can lead to advantages of the parties[88]. In addition, in the presented perspective there's a strong argument that the principle of *good faith* should be strictly regulated by the legislature during and after the development of the COVID-19 pandemic, which would also allow for proper interpretation and adaptation of the treaty, conditions, and the fulfillment of which were affected by *force majeure*.

## 2.2 Force majeure clause after the COVID-19 pandemic in relation of international commercial contracts

The emergence and development of COVID-19, as mentioned earlier in this thesis, dealt a blow to many spheres of human activity and to humanity itself. Concerning commerce and contracts, the pandemic and its development have contributed to the idea and need to adjust the contracts, namely the provisions on force majeure, as there was a need to address contingencies, which make performance impossible[89].

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[85] Kirke La Shelle Co. v. Paul Armstrong Co., 263 N.Y. 79, 188 N.E. 163 (N.Y. 1933), Available at: https://casetext.com/case/kirke-la-shelle-co-v-armstrong-co-1 . Accessed on 16 March 2024.
[86] *Supra* note 75, pp.141-157.
[87] *Supra* note 75, p.155.
[88] *Supra* note 76, pp.2, 32.
[89] Esra Kiraz, Esra Yıldız Üstün, COVID-19 and force majeure clauses: an examination of arbitral tribunal's awards, Uniform Law Review (2020). Published online 2020 Dec 29, Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7798591/ . Accessed on 20 March 2024.

In turn, after the spread of the pandemic, most businesses began to refer precisely to the fact that the mentioned event is a *force majeure*, and for this reason, they find themselves unable to fulfill their contractual duties. Since then, the COVID-19 pandemic has become associated with *force majeure* at the international level and worldwide parties to contracts have adopted the excuse of not fulfilling their contractual obligations precisely because of this disease, not because of their foresight, for example[90].

In this part of the thesis, a parallel between *force majeure*, pandemic, and modern rules of law could be drawn that regulate these conditions. The author will also try to illustrate how the *force majeure* clause was amended and reinterpreted in international commercial contracts by the example of several jurisdictions from different jurisdictions. It is worth noting that the pandemic has structurally made life difficult for many businesses and governments, as there has been much debate about how *force majeure* is linked to the spread of COVID-19 and how the pandemic has influenced the long-standing notion of the concept. The reason for the debate was that the pandemic made it difficult to apply *force majeure* terms in cases where contractual parties invoked the concept to justify non-compliance, claiming that the pandemic was an unforeseen event.

Despite all this, traditionally the *force majeure* clauses were clearly defined and there was a clear and understandable condition for application in various legal systems, but the pandemic has led to the need to re-evaluate its structure and application. Additionally, it has been decided to review several jurisdictions from different jurisdictions and demonstrate how the pandemic had affected the terms of the *force majeure* in the contract. The first jurisdiction will be the previously mentioned US legislation from the common system of law.

### 2.2.1. The United States legal system

In analyzing the conditions of *force majeure* clauses within the jurisdiction of the United States, there's reference to the UCC, a document that was already mentioned in the first part of the thesis. In UCC, parties who enter into contractual relations during the award procedure discuss which *force majeure* provisions will be contained in the contract and how they will be used[91]. In discussing *force majeure* terms precisely at the time of the development of the Covid-19 pandemic, the author concluded that the parties to the contract and the courts, who faced legal proceedings, were considering the classic model of *force majeure* definition to analyze the extent to which default depends on an outbreak that was unforeseen by the parties[92]. In most cases, COVID-19 was classified as a disease or epidemic, according to the classical definition of *force majeure*. Moreover, the World Health Organization (WHO) has concluded that a pandemic is a *force majeure* event and should be regarded as such in addressing disputes and conflicts of non-compliance or non-performance[93]. Therefore, to draw a parallel, the legislation had considered any restrictions that had arisen during the pandemic that had led to *force majeure*. The courts, led by the United States

[90] United Nations publication issued by the United Nations Conference on Trade and Development, TRANSPORT AND TRADE FACILITATION Series No 20, COVID-19 and International Sale of Goods: Contractual Devices for Commercial Risk Allocation and Loss Prevention, pp. 5-8, Available at PDF: https://unctad.org/system/files/official-document/dtltlb2023d1_en.pdf . Accessed on 20 March 2024.
[91] *Supra* note 73, pp. 11-12.,19.,22.
[92] Zeina Obeid, Hassan Khalifeh, Covid-19, contractual obligations and force majeure, International Bar Association, Available at: https://www.ibanet.org/article/D814F145-A77B-4BBA-B93A-65678A94E83C#_ftn16 . Accessed on 21 March 2024.
[93] *Supra* note 89.

Government, have provided legislative assistance of all kinds, which has been a mechanism for the parties to fulfill their treaty obligations by any means[94]. For example, the case of *Umnv 205-207 Newbury, LLC v. Caffé Nero Americas Inc.,* which considered the situation where a contract was concluded for physical trading, but due to territorial restrictions and restrictions to provide services in the premises business became impossible and the tenants of the cafe stopped paying rent according to the terms of the contract[95]. A lawsuit was filed in court for breach of obligations and also an application for pecuniary damages for the period specified in the contract. In this case, the court ruled that the tenants of the coffee shop had in no way breached the terms of the contract and that the inability to meet the lease obligations was due to the Government's imposition of restrictions on the business structure[96]. Moreover, the main condition of the lease was that restaurants were not closed by the Government, and in this case, the Government prohibited the provision of services directly on the premises of the restaurant, which indirectly affected the failure to comply with the contract[97]. In such cases, the *force majeure* clauses in the contracts have been expanded and modified so that neither party has been deprived of its rights and opportunities. Also, it has been noted that the jurisdiction of the US does not have enough cases that describe commercial transactions during the pandemic crisis and how the parties interpreted the provisions of *force majeure* clauses in contracts, but in turn, the author concluded that the United States decided that the parties should review all the terms of the contract and make amendments that would regulate such issues.

Finally, the conclusion has been made that at the legislative level, it was decided to interpret the *force majeure* provision according to the situation, but that the main source would be the classical use of the concept.

### 2.2.2. The German Jurisdiction

Concerning German jurisdiction, the intention is to recall that German law concerning *force majeure* provisions is structured in such a way that the parties are individually responsible for which terms and conditions will be specified in the contract and are themselves responsible for negotiating the introduction of special provisions governing unforeseen situations arising during the performance of obligations[98]. Before the pandemic, German law implied that an analysis would be made of the specific case where an assessment would be made as to whether the breach of contract was justified. In the absence of a specific legal basis, in the case of a dispute, the courts were obliged to consider and assess the events taking place and draw a parallel with *force majeure*, namely, whether this was the cause of the derogation from obligations[99]. Only then could one of the parties be justified. However, while studying German law, it was concluded that there was no

[94] *Supra* note 73, pp. 11-13.
[95] Umnv 205-207 Newbury, LLC v. Caffé Nero Americas Inc., Dates: 2084CV01493-BLS2 (Mass. Super. Feb. 8, 2021), Available at: https://casetext.com/case/umnv-205-207-newbury-llc-v-caffe-nero-americas-inc . Accessed on 21 March 2024.
[96] *Ibid.*
[97] *Supra* note 95.
[98] Force Majeure - under German, French and US law, Friedrich Graf von Westphalen & Partner mbB, Available at: https://www.fgvw.de/en/news/archive-2020/force-majeure-under-german-french-and-us-law . Accessed on 23 March 2024.
[99] Lars Kyrberg, Philipp Egler, Matthias Spilker, Florian Hoffmann, Miriam Richter, Carolin Saupe, Germany: COVID-19 Contracts Q&A, Published April 30, 2020, Bird&Bird, Available at: https://www.twobirds.com/en/insights/2020/germany/covid-19-contracts-faq. Accessed on 23 March 2024.

express *force majeure* clause in the contract[100]. In turn, the parties themselves have the responsibility to introduce or exclude such provisions, given their concerns about non-compliance in cases such as the development of a pandemic, which was difficult to foresee[101]. It has been recalled that the German Civil Code does not clearly spell out the provisions of force majeure and they are often used based on Section 275 of the Code, which states that if *«the contract is objectively impossible to fulfill, the contractual obligation is terminated»* and allows the right to refuse performance[102]. In such cases, the parties shall also consider the concepts of impossibility and change of circumstances in the performance of the contract[103].

As for the COVID-19 pandemic, Courts have officially recognized all the limitations and impossibility of the pandemic in direct breach of contractual arrangements and concluded that a pandemic is a direct event from *force majeure* and all further actions should be carried out based on legislation, which relates to these provisions[104]. The nature of the impossibility of performing contractual obligations depends entirely on the *force majeure* provisions of the contract[105]. Germany was forced to create and implement the "Act on Mitigation of the Consequences of the COVID-19 Pandemic in Civil, Insolvency and Criminal Proceedings" ("Act") as part of the "Corona Package."[106] The Act was the first to be created to prevent the termination of commercial leases, as many commercial organizations had difficulty meeting their obligations because of the pandemic[107]. Moreover, this law was founded to guide businesses because of Covid 19, they are unable to continue to fulfill their obligations to the other party and who would like to free themselves from them and withdraw from the contract, but the narrow assessment of the events must be made, namely, whether they fall into the category of *force majeure* events for the legal instrument to be properly applied[108].

Finally, as there were unclear provisions on *force majeure* in German law, the courts adopted the approach of examining each case individually and analyzing whether it was a *force majeure* and justified or whether the breach of contract would be deemed a breach[109].

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[100] *Supra* note 29.
[101] *Supra* note 29.
[102] Brad L. Peterson,Marco Wilhelm,Emilie Vasseur,Ian K. Lewis, Isabelle van Sambeck, Mauro Pedroso Gonçalves, Miles Robinson, Reginald R. Goeke, Gustavo Fernandes de Andrade, COVID-19 Contractual performance – Force Majeure clauses and other options: a global perspective, 20 March 2020, Available at: https://www.mayerbrown.com/en/insights/publications/2020/03/covid19-contractual-performance-force-majeure-clauses-and-other-options-a-global-perspective . Accessed on 25 March 2024.
[103] *Ibid*.
[104] Debevoise&Plimton, COVID-19 and Its Impact on German Law Contracts, 1 April 2020, pp.1-5, Available at PDF: https://www.debevoise.com/-/media/files/insights/publications/2020/04/20200401-covid19-and-its-impact-on-german-law.pdf?rev=8d0ba001adaa491582602f317236f647&hash=7BFE38826E86126BF770AEA52F3AD393 . Accessed on 25 March 2024.
[105] *Ibid*.
[106] Michael Thomas Melber, COVID-19: German Act to Mitigate the Consequences of the Pandemic, K&L Gates LLP, March 31, 2020, Available at: https://www.jdsupra.com/legalnews/covid-19-german-act-to-mitigate-the-59113/ Accessed on 26 March 2024.
[107] *Ibid*.
[108] *Supra* note 106.
[109] *Supra* note 76, pp. 19-21.

### 2.2.3. International standards and soft law instruments

In this part of the thesis, it is suggested that it would be possible to consider, analyze, and evaluate how the COVID-19 pandemic affected the Convention on Contracts for the International Sales of Goods, the Unidroit Principles of International Commercial Contracts, and the International Chamber of Commerce's.[110] Also, it's worth noting from the beginning that this part of the thesis will deal with the arbitral tribunal decision since the author has concluded that this body is responsible for the issues, that are related to these legal instruments and their main task during the pandemic was to answer whether COVID-19 the excuse for not fulfilling contractual agreements and their task is also to consider the pandemic as a *force majeure* circumstance, basing and evaluating the basic requirements of this definition. The author also wishes to draw the attention of the reader to the fact that *force majeure* conditions are discussed not only at the national level, using national jurisdiction, but also these rules are considered globally, at a more extended level, which from the author's point of view helps to assess how this principle is applied from different perspectives. In considering international law, it has been singled out the previously mentioned instruments on the principle that these instruments contain provisions for exoneration on account of changed circumstances at the time of performance of the contract, including in cases of *force majeure* events, as well as these instruments contain provisions of *force majeure*, when the parties see clear conditions when they can justify the impossibility to fulfill contractual terms. Briefly mentioned is the fact that the above-mentioned instruments have listed *force majeure* conditions that were enshrined in instruments before the development of the pandemic.

Article 79 of the CISG states that:

> [[a] party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences][111].

Article 7.1.7(1) of the PICC states that:

> [Non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.][112]

After the outbreak of the COVID-19 pandemic, the International Chamber of Commerce responded by making adjustments to *force majeure* provisions as circumstances that impeded the implementation of the contract and the provision, which have been implemented and used since 2003 have been supplemented[113]. The 2020 amendments are allowing businesses to justify the

[110] *Supra* note 89.
[111] UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods 2016 Edition, UNITED NATIONS, New York, 2016, p. 374, Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/cisg_digest_2016.pdf . Accessed on 27 March 2024.
[112] *Supra* note 89.
[113] *Supra* note 89.

obstacles that prevented them from following the contract. Moreover, the amendments differ from the original version of the document, but the idea is the same[114].

In the amended version of ICC 2020 FMC, the *force majeure* position states that *force majeure* refers to an event that stops or makes it difficult for a party to fulfill its contract obligations. To qualify as *force majeure,* the affected party must prove that the event was beyond their control, unforeseeable at the contract's start, and its effects couldn't be reasonably avoided or overcome[115]. The ICC 2020 has a list of events by which it is possible to determine whether an event is a *force majeure* and whether it is a defensible measure[116]. Also, analyzing the 2020 amendments, it was concluded that the instrument indicates that by referring to *force majeure* circumstances the parties should take into account that the mentioned event should be 'an impediment beyond control', 'foreseeability of the impediment at the time of the conclusion of the contract', and 'impossibility of avoidance and overcoming it and its consequences'[117]. The ICC's 2020 Force Majeure Clause outlines a roster of events presumed to be *force majeure*.

According to the amendments, it is clear that the COVID-19 pandemic is an obstacle and belongs to *force majeure* circumstances. It also had been pointed out that the 2003 Regulations also have wording that shows that COVID-19 is also a *force majeure* event. Having examined the provisions of CISG and PICC, it has been suggested that in cases where the contracts do not contain *force majeure* clauses, which also demonstrate events that fall under this category, the alleged *force majeure* may be considered as unforeseen actions. In the case of a pandemic, the event may be regarded as an act that falls under the *Act of God* and could in no way be foreseen by one of the parties in fulfilling their obligations. Thus, COVID-19 is regarded as a force majeure event that is a consequence of *God's* act.

## 2.3. Summary

To sum up, it was once again points out that the COVID-19 pandemic has led to problems and disputes in various fields of human activity, which nowadays are complicated by the fact that the jurisdictions of many countries, including international instruments that do not have precise *force majeure* conditions and how they should be addressed. Currently, there is a debate about whether the pandemic is *force majeure*, but as legal documents show, the answer to this question in almost any case is dependent on the language of the contracts, in which there are conditions and provisions of *force majeure* clauses. Following the Convention on Contracts for the International Sales of Goods, the Unidroit Principles of International Commercial Contracts, and the International Chamber of Commerce and the 2020 amendments to the COVID-19 pandemic refers to the *Act of God* and failure to perform a contract due to a pandemic is legitimate and does not violate any of the terms of the contract. However, it also was noted that each case should be considered individually, as already mentioned in the discussion of German and US jurisdictions, as there are many disputes.

[114] *Supra* note 89.
[115] *Supra* note 89.
[116] *Ibid*.
[117] *Supra* note 89.

## 3. THE CASE OF REPUBLIC OF LATVIA CONCERNING THE PANDEMIC IMPACT ON THE INTERPRETATION AND IMPLEMENTATION OF THE FORCE MAJEURE CLAUSE IN COMMERCIAL CONTRACTS

Finally, it has been decided to analyze the pandemic impact on the interpretation and implementation of the *force majeure* clause in commercial contracts in the case of the Republic of Latvia. It was suggested that in Latvia, *force majeure* provisions are part of the contract concluded between the parties. Furthermore, there's the notion put forth that contracts in Latvia also contain in the *force majeure* provisions a list of events that are an obstacle and an excuse for non-performance of contractual obligations, which include events such as natural disasters, wars and, in some cases, pandemics. But this statement will be considered in practice, namely to consider the real situations that were recorded in the implementation of commercial contracts in the field of public procurement, which in Latvia are regulated not only by the national legislations: the Civil Code or Constitution, but also regulated by the Law on Public Procurement, which could be further considered when analyzing real cases.

In Latvia, as in the rest of the world, the COVID-19 pandemic spread too rapidly and it has left an indelible mark on the development of the local economy[118]. Moreover, it is asserted that after the distribution of COVID-19, local businesses faced various restrictions, including delays in delivery, a lack of resources and subsequently had to seek excuses for non-performance of the contract and in most cases, they invoked *force majeure*[119]. The analysis of cases will also be presented in the final part of the thesis.

The main task for the final part of the thesis will be to consider how the Latvian legislation regulates the provisions on *force majeure* and how in practice many enterprises interpret this provision in the contracts. Moreover, real-life cases will be presented, where the author will try to demonstrate how the parties who entered into a contractual relationship evaluate the wording of their contracts. Also, it has been considered that each case individually and will also assess the reasonableness of the reference to *force majeure* circumstances and the author will try to argue why in a particular situation she does not agree that the excuse is *force majeure* circumstances.

Additionally, there is the assertion that spread of the COVID-19 pandemic had a significant impact on the use of *force majeure* among Latvian entrepreneurs, namely they began to refer to this definition in absolutely all cases, when they have encountered obstacles in fulfilling contractual obligations. The contention is that the notion of *force majeure* has become erroneously used, as there are situations where it cannot be said that the default is directly due to unforeseen circumstances, because there were different prerequisites for these events, namely, for example, the enterprises were aware of the problems that had arisen at the time of signing the contract, but signed in the hope that everything would be fulfilled. In these cases, the assertation has been made that it is also necessary to refer to the legislation and analyze what it says about such non-standard situations. In the concluding section of the thesis, attention will be given to similar situations and analysis based on the legislation of Latvia and the actions of the parties in resolving the situation.

[118] MINISTRY OF ECONOMICS, ECONOMIC DEVELOPMENT OF OF LATVIA, 2022, pp. 3-5; 10-165, Available at: https://www.em.gov.lv/lv/media/16614/download?attachment . Accessed on 6 April 2024.
[119] *Ibid*.

Moving on to the main issue of this part of the thesis, it was concluded that it is also necessary to consider legislative changes or the introduction of new laws in the jurisdiction of Latvia specifically concerning the impact of the pandemic on treaty obligations. But it is also necessary to understand whether any changes in legislation have been made or not, and this can be done only after detailed analysis. For example, some States have been forced to take measures to mitigate the effects of COVID-19 on enterprises, such as suspending certain contractual obligations or exempting them from penalties for non-compliance. Hence, an analysis of the measures implemented in Latvia will also be conducted, aiming to address the primary questions posed in the master's thesis.

## 3.1 Experience of Republic of Latvia and practice of with COVID-19 and force majeure clause in relation of commercial contracts

Throughout the paper, it is emphasized that the COVID-19 pandemic has impacted numerous countries, and Latvia is no different. After the spread of the virus, the Latvian Government introduced various preventive measures to control the spreading virus, and afterward, it also had a splendid impact on commerce and trade in general, as these measures have left a deep imprint on enterprises, the production and marketing chains of any product, and most importantly, the trace was left mainly on the contract and the obligation of the parties to comply with its terms[120], [121].

Concerning the formulation of *force majeure* terms in contracts, the Latvian system is designed in such a way that these provisions are usually used in many types of contracts, but before the spread of the pandemic, there were no recorded cases, when Latvian enterprises used this part of the contract in practice because until 2020 there were also no recorded events in Latvia that were similar to events such as a pandemic, which were extremely quick to emerge, they were by no means foreseeable and could be classified as *force majeure*. After examining the information available to the public, it was concluded that the rapid spread of the virus had prompted the Latvian Government to take action because there was a risk of breach of contract in general[122]. On 12 March 2020, the Cabinet of Ministers issued a document officially declaring an emergency, which contained some amendments and additions to already existing legislation in various areas and the main cause of the emergency was *force majeure* in the person of the COVID-19 pandemic[123]. This instrument caused a lot of controversy, and whether COVID-19 is a *force majeure* circumstance.

The attention of the reader is drawn to the fact that many contracts contain *force majeure* clauses that are used by the parties with great reluctance, but it is these provisions that can help the parties to be exempt from punishment for non-compliance with their contractual obligations, where the events are not directly related to them. It will be claimed that as stated earlier each contract is

[120] Non-governmental institution "Latvian Chamber of commerce and industry", LTRK: VIRUS AFFECTS ALL SECTORS, WHICH IS WHY IT IS FUTILE TO DETERMINE SECTORS REQUIRING SUPPORT, 20.03.2020, Available at: https://www.ltrk.lv/en/content/news/4201 . Accessed on 7 April 2024.
[121] Ministry of Economics Republic of Latvia, Government approves the Strategy for Latvia for Mitigation of the Consequences of the Crisis Caused by Covid-19, Published: 26.05.2020, Available at: https://www.em.gov.lv/en/article/government-approves-strategy-latvia-mitigation-consequences-crisis-caused-covid-19?utm_source=https%3A%2F%2Fwww.google.com%2F . Accessed on 7 April 2024.
[122] *Supra* note 36.
[123] *Ibid*.

based on a particular model, with a particular contract language, which in turn determines whether COVID-19 is suitable for force majeure events that absolve you of inability to perform the contract.

Having examined several examples of contracts, it has been suggested that after the emergence of a pandemic in the framework of Latvian jurisdiction, the application of *force majeure* provisions became directly controlled by legislation, but it was also suggested that it depended on the contract drawn up and not all parties used the provisions. When examining the contracts, it was decided to demonstrate an example of a contract that was concluded between a local energy service provider *Latvenergo AS*, and the famous Italian engineer *ELC Electroconsult SA*. The contract was concluded on 1 December 2021 amid a pandemic and, according to the author, is a good example of what a contract should look like during such global events as a pandemic[124]. Firstly, this commercial contract has a clause that states that all conditions must be met according to all restrictions caused by COVID-19 (*paragraph 6.2*) (*see Illustration 1*)[125].

| | |
|---|---|
| 6.2. Pasūtītāja Projekta vadītājs iepazīstina Konsultantu ar Pasūtītāja uzņēmumā spēkā esošajiem, Līguma 2.punktā noteiktos Darbus reglamentējošiem normatīviem un instrukcijām,un ar Pasūtītāja uzņēmumā noteiktajiem ierobežojumiem saistībā ar COVID-19. | 6.2. The Employer's Project Manager shall introduce the Owner's Engineer to the standards and instructions regulating the Works referred to in Clause 2 of the Contract that are valid in the Employer's company, and with the COVID – 19 restrictions set out in the Employer's company. |

Illustration 1. Contract clause 6.2 - Employer's obligations and rights

The contract also contains a risk transfer clause, which states that the parties must comply with all conditions regarding the COVID-19 restrictive measures, which, from the perspective presented, suggests that they are unable to comply or acts that involve movement and border crossing where prohibited (*see Illustration 2*)[126].

| | |
|---|---|
| 9.5. Puses ir atbildīgas un apņemas ievērot visus Latvijas Republikā un Pasūtītāja objektos noteiktos pasākumus saistībā ar COVID-19 ierobežošanu, t.sk., katra no Pusēm ir atbildīga par to, lai darbu izpildes vietai netiktu pielaists personāls vai trešās personas ar jau apstiprinātu COVID-19 infekciju, kā arī personas, kurām nav sadarbspējīga vakcinācijas vai pārslimošanas sertifikāta, kā arī personas, kuras nav izpildījušas Latvijas Republikas normatīvajos aktos un Pasūtītāja uzņēmumā noteiktos ierobežojumus vai saskārušās ar COVID-19 inficētām personām, vai ir ar slimībai COVID-19 raksturīgām inficēšanās pazīmēm.<br><br>Katra Puse sedz izdevumus, kas tai radušies saistībā ar noteiktajiem COVID-19 ierobežojošajiem pasākumiem un to ievērošanu. | 9.5. The Parties shall be responsible for and undertake to comply with all measures established in the Republic of Latvia and the Employer's sites in connection with the restriction of the spread of COVID-19, including the responsibility of each Party to ensure that the personnel or third parties with already confirmed COVID-19 infection, as well as persons without interoperable COVID 19 certificate of vaccination or recovery, as well as persons who have failed to meet the restrictions set out in the normative acts of the Republic of Latvia and in the Employer' s company or have come into contact with persons infected with COVID-19, or have signs of infection characteristic of COVID-19, are not allowed on the site of the performance of the works.<br>Each Party shall bear its own costs incurred due to the restrictive measures set out in order to prevent the spread of COVID-19 and due to the observance of restrictive measures. |

Illustration 2. Contract clause - Transfer of Risk

[124] CONTRACT: Latvenergo AS and ELC Electroconsult SA, Riga, 1st December, 2021, p.1, Available at: https://latvenergo.lv/storage/app/uploads/public/61b/30b/faa/61b30bfaaa9d4707737052.pdf . Accessed on 8 April 2024.
[125] *Ibid*.
[126] *Supra* note 124, pp. 9-10.

Thus, it is considered that based on this condition there are risks of control and non-performance of contract conditions, for example, which may include a logistics chain when, due to restrictions, a product cannot be transported across the border and delivered on time. In this instance, it is considered that the breach of contract is justified since all obstacles are beyond the direct contractor's control, and the contractor is bound by Latvian law.

Moreover, attention is directed to the fact that the contract under review has a very important clause of the contract, namely the clause on the termination of the contract[127]. A provision has been added to the term clause stating that the parties are not responsible for delays in the execution of the contract or total non-performance of the contract, due to the distribution of COVID-19 (*see Illustration 3*)[128]. Moreover, this paragraph has a condition - the contract must be concluded or the proposal of the parties must be submitted immediately before the period when the virus spread and a state of emergency was introduced in Latvia[129]. Only then can it be argued in such a contract that COVID-19 is a *force majeure* and an excuse for non-performance[130]. It has been noted that the following paragraph, which stated that the parties were not responsible for the delay and non-performance of the contract at all, but that this paragraph could only be applied if COVID-19 happened after entering into the transaction[131]. In the same paragraph of the contract, there is a provision that the parties must provide formal evidence of the fact that COVID-19, rather than the negligence of the performing parties, was responsible for the failure to perform[132].

[127] *Supra* note 124, pp.15-19.
[128] *Supra* note 124, p. 19
[129] *Supra* note 124, p.19.
[130] *Supra* note 124, p.19.
[131] *Supra* note 124, p.19.
[132] *Supra* note 124, p.19.

16.8. Puses nenes atbildību viena pret otru par saistību izpildes nokavējumu vai saistību neizpildi vispār, ja Puse ir rīkojusies ar atbilstošu profesionālo rūpību un tādēļ nav vainojama par saistību izpildes nokavējumu vai saistību neizpildi vispār COVID-19 izplatības vai ar tā ierobežošanu saistīto pasākumu dēļ, kuri ir stājušies spēkā pēc Konsultanta piedāvājuma iesniegšanas vai šī Līguma noslēgšanas dienas, tajā skaitā, Puse nepiemēro otrai Pusei kavējuma procentus, līgumsodus un neprasa minēto iemeslu dēļ radīto zaudējumu vai citu izmaksu atlīdzināšanu.
COVID-19 ietekmētajai Pusei ir pienākums nekavējoties informēt otru Pusi par saistību izpildes nokavējuma termiņiem un plānotajiem Darbu izpildes termiņiem un/vai saistību neizpildes apstākļiem.
COVID-19 ietekmētajai Pusei ir pienākums pēc otras Puses pieprasījuma pierādīt paziņojumā norādītos apstākļus, tajā skaitā to, ka cēlonis saistību izpildes nokavējumam vai saistību neizpildei vispār ir COVID-19 un ka tā ir rīkojusies ar atbilstošu profesionālo rūpību, lai novērstu saistību izpildes nokavējumu vai saistību neizpildi.
Gadījumā, ja COVID-19 izplatības vai ar tā ierobežošanu saistīto pasākumu dēļ Pusēm nav iespējams turpināt saistību izpildi, Pusēm vienojieties ir tiesības izbeigt Līgumu.
Pusei ir tiesības Līgumu izbeigt arī vienpusēji gadījumā, ja COVID-19 izplatības vai ar tā ierobežošanu saistīto pasākumu dēļ otrai Pusei nav iespējams turpināt Līguma saistību izpildi ilgāk kā 90 (deviņdesmit) dienas.

16.8 No Party shall be liable towards the other Party for delay or non-performance of its obligations at all if the Party has acted with the appropriate professional diligence and therefore cannot be blamed for delay or non-performance of its obligations at all due to COVID-19 outbreak or due to restrictive measures related to these activities, which have enetered into force after the submission of the Owner's Engineer Tender Offer or after the day of the conclusion of the Contract, including that any delay interests, contractual penalties shall not be imposed by the Party to the other Party and reimbursement of any damages, losses or other costs shall not be demanded due to aforementioned reasons.
The Party affected by COVID-19 is obliged to notify the other Party immediately about the period of delay and the planned time of performance of the Works and/or circumstances of non-performance of its obligations.
Upon request of the other Party, the Party affected by COVID-19 shall bear the burden of proof regarding the circumstances given in the notice, including that the delay or non-performance of obligations at all is caused by COVID-19, and that the Party has acted with the appropriate professional diligence to prevent the delay or non-performance of its obligations.
If due to the COVID-19 outbreak or due to restrictive measures related to these activities the performance of its obligations is not possible the Parties may, upon mutual agreement, terminate the Contract.
The Party is also entitled to terminate the Contract unilaterally if due to the COVID-19 outbreak or due to restrictive measures related to these activities it is not possible for the other Party to continue the performance of contractual obligations more than 90 (ninety) days.

Illustration 3. Contract clause - Termination of the Contract

In cases where, because of a pandemic or its limitations, parties are unable to fulfill their direct contractual obligations, the parties should be able to agree on the termination of the contract. It has been proposed that such clauses should certainly have been included in the contracts that were executed during the COVID-19 pandemic so that the principles of *transparency* and *fairness* were also observed. Thus, the parties will not be harmed and the contract will not be breached, unlike when the parties are simply incapable of fulfilling the obligations, which in consequence bears consequences and losses.

Returning to the provisions of *force majeure*, this contract very clearly demonstrates how the contract should be regulated in this case and how the parties should operate[133]. Due to the spread of COVID-19 parties do not fall under penalties or penalties when the virus causes non-compliance[134]. But the clause clearly states that COVID-19 is not an excuse for cases that arose after the spread of the virus and the parties only after that could not fulfill the terms of the contract

[133] *Supra* note 124, pp.19-20.
[134] *Supra* note 124, p.20.

(*see Illustration 4*)[135]. According to the author, this is a very well-worded contract where the parties can see clearly in which cases they can use the COVID-19 pandemic as an excuse. Among other things, it has been highlighted that another point that makes the analyzed contract an ideal example of how a contract should be drafted after the outbreak of the COVID-19 pandemic: paragraph 17.2 (*see Illustration 4.1*)[136] which has a list of events, which can be considered *force majeure* and where it is clear that under this contract the COVID-19 pandemic is a *force majeure* and the non-performance of the contract may be justified and is not under the influence of the parties[137].

**17. Force Majeure (Nepārvarama vara)**

17.1. Puses nav pakļautas zaudējumu atlīdzībai, nokavējuma procentu vai Līgumsoda samaksai, ja Līguma izpilde ir nokavēta vai Līgums nav ticis

**17. Force Majeure**

17.1. The Parties shall not be subject to payment of damages, delay interest or Contractual Penalty if performance of the Contract is delayed or if the

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pienācīgi izpildīts *Force Majeure* gadījumā. Šī punkta noteikumi nav attiecināmi uz gadījumiem, kad *Force Majeure* ir radusies jau pēc tam, kad attiecīgā Puse ir nokavējusi saistību izpildi.

Contract has not been duly performed due to the *Force Majeure*. The provisions of this Clause are not applicable to situations when the *Force Majeure* has emerged after the relevant Party has already delayed performance of obligations.

Illustration 4. Contract clause - Force majeure

17.2. Šajā punktā *Force Majeure* nozīmē nekontrolējamu notikumu, kas nevarēja tikt paredzēts un kuru attiecīgā Puse nevar iespaidot, un kas nav saistīts ar tās kvalifikāciju, vainu vai nolaidību. Par šādiem notikumiem tiek uzskatīti tādi, kas ietekmē Pušu iespēju veikt Līguma izpildi, tādi kā, bet ne tikai: kari, revolūcijas, ugunsgrēki, epidēmijas un pandēmijas, plūdi, likumdevēja, izpildinstitūciju un tiesu darbības un to pieņemtie akti.

17.2. For the purpose of this Clause, *Force Majeure* means an uncontrollable event which could not have been predicted and which the relevant Party could not influence and which is not related to its qualifications, fault or negligence. The above events include the ones which impact the Parties' ability to perform the Contract, including but not limited to: wars, revolutions, fires, epidemic and pandemic, floods, actions by the legislator, executive institutions and courts and regulations adopted by them.

Illustration 4.1. Contract clause - Force majeure cont.

From the viewpoint presented, once an unforeseen situation has arisen, the party that is unable to fulfill its obligations must, as soon as possible, disclose the reason for its inactivity and,

[135] *Supra* note 124, p.20.
[136] *Supra* note 124, p.20.
[137] *Supra* note 124, p.20.

in the future, the parties must decide how the contractual terms will be fulfilled. From the discussed points of view, paragraph 17.4 is a very good example of the situation (*see Illustration 4.2*)[138].

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| 17.4. Ja izceļas *Force Majeure* situācija, Puse, kura nevar veikt Līguma izpildi, nekavējoties, bet ne vēlāk kā 7 (septiņu) dienu laikā, rakstiski paziņo otrai Pusei par šādiem apstākļiem, to cēloņiem un paredzamo ilgumu. Ja Puses nav vienojušās savādāk, tad abas Puses turpina pildīt savas saistības saskaņā ar Līgumu tādā apmērā, kādā to nav ierobežojusi *Force Majeure*. Attiecībā uz pārējām Līguma saistībām to izpildes laiks tiek pagarināts par laika periodu, kas nepārsniedz termiņu, kādā darbojas *Force Majeure* apstākļi. | 17.4. If there is a *Force Majeure* situation, the Party which is unable to perform the Contract shall notify the other Party of such circumstances, their causes and expected length in writing immediately, but no later than within 7 (seven) days. If the Parties have not agreed otherwise, both Parties shall continue the performance of their obligations in compliance with the Contract to the extent not restricted by the *Force Majeure*. With regard to the other Contract obligations, their completion deadline shall be extended by the time period which does not exceed the period during which the *Force Majeure* conditions exist. |

Illustration 4.2. Contract clause - Force majeure cont. (paragraph 17.4)

Ultimately, attention was drawn to the final clause of the contract under review, which states that if *force majeure* lasts more than 4 months (the wording and term may vary depending on the language of the contract) and the contract cannot be performed, the parties have the unilateral right to withdraw from the contract (*see Illustration 4.3*)[139].

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| 17.5. Gadījumā, ja *Force Majeure* apstākļu ietekme turpinās ilgāk par 4 (četriem) mēnešiem un Puses neredz iespēju turpināt šī Līguma izpildi, jebkurai no Pusēm ir tiesības vienpusēji izbeigt Līgumu. | 17.5. If the impact by Force Majeure conditions lasts more than four (4) months and the Parties do not see a possibility to continue the performance of this Contract, either of the Parties is entitled to terminate the Contract unilaterally. |

Illustration 4.3. Contract clause - Force majeure cont. (paragraph 17.5)

From the standpoint laid out, this is also a very important point that should be included in the contract to prevent the parties from suffering a great loss. It has been advocated that if the parties use this particular contract model at times like the COVID-19 pandemic, the principle of *fairness* can be used by the parties and thus the value of the contract will also be preserved. It is also posited that the wording of the *force majeure* clause was taken into account in the creation of such a contract model, including also that of *force majeure*, the actions to be taken by the parties, and the efforts of the parties to resolve the consequences of COVID-19.

Concerning Latvian legislation, it was assumed that the legal system is constructed in such a way that contracts must imply where circumstances of *force majeure* are involved, and where events are difficult to perform a contract, but it's possible, just with delays and consequences. It is also believed, based on the above-mentioned fact that Latvian legislation does not qualify events of *force majeure* in cases where the circumstances that have occurred hurt performance, but it is possible. This can only be stated in practice since there are no specific points of settlement in

[138] *Supra* note 124, p. 20.
[139] *Supra* note 124, p.20.

Latvian legislation, but any contract must follow the principle of *good faith*. The principle of *good faith* requires the parties to assess the full responsibility of the parties and to consider a strategy for the possible elimination of risks and losses from the COVID-19 pandemic. According to the author, if the parties, as evidenced by the agreement analyzed in this part of the dissertation, still want to justify the non-performance of the contract due to *force majeure*, these parties are obliged to provide evidence of their innocence, to prove that *force majeure* events were inevitable for the parties and only if everything is confirmed and consensus is found, then it will be possible to assert that it was an insurmountable force that influenced the failure and it can be justified.

Finally, an interim conclusion was made that the emergence of the pandemic did not affect the change of the legislative norms of the Latvian legislative system, but this affected the wording and language of the contract. It has become more logical and sensible for the parties to use *force majeure* clauses in the contract, so that in the future the contract may be concluded with a little clarity as to whether it can be justified in case of unforeseen circumstances. To further analyze the provisions of *force majeure*, the author proceeds to discuss the main topic of the work: the public procurement of Latvia already the discussion of this topic will prove or make assumptions about how the pandemic has affected the *force majeure* circumstances in this field and on contracts in Latvia in general.

### 3.1.1. Implementation of force majeure clause in relation of public procurements in Latvia pre- COVID-19 times

Moving on to the *force majeure* clause about public procurements in Latvia pre- COVID-19 times, the suggestion is made promptly that in making public purchases it is necessary to rely on the provisions of *force majeure* and such provisions should necessarily constitute the regulatory framework in the law in the context of the resolution of contingencies which, by their nature, are likely to impede the performance of contractual obligations. It is suggested that Latvia emphasizes the significance of such clauses within contracts, enabling parties to utilize these provisions to manage *force majeure* events, which should be directly influenced by the contracting parties.

In its analysis of the period before the COVID-19 pandemic, Latvia relied entirely on the Law on Public Procurement[140] and in the case of public procurement in the area of public defense, the Law on Procurement in the Fields of Defence and Security[141]. At this stage, the main task is to provide the reader with how, in the pre-pandemic period, these legal instruments used *force majeure* circumstances and whether they were even included in the above-mentioned regulations. Based on an analysis of the relevant legal provisions, case law and practice, it has been intended to demonstrate the mechanisms used to regulate *force majeure* in the context of public procurement contracts in Latvia. Such a study is important for understanding the legal landscape and contractual dynamics that shaped the relationship to unforeseen events in public procurement transactions in Latvia before the extraordinary events caused by COVID-19.

[140] Public Procurement Law, Adoption: 15.12.2016, Entry into force: 01.03.2017, Saeima, Available at: https://likumi.lv/ta/en/en/id/287760-public-procurement-law . Accessed on 15 April 2024.
[141] Law on Procurements in the Field of Defence and Security, Adoption: 13.10.2011, Entry into force: 16.11.2011, Saeima, Available at: https://likumi.lv/ta/en/en/id/238803-law-on-procurements-in-the-field-of-defence-and-security . Accessed on 15 April 2024.

Analyzing the Public Procurement Law, it was concluded that not one of the articles of the law does not imply the use or mention of *force majeure* provisions in the performance of the procurement, which, in the author's view, is illogical. Unforeseen events are mentioned in the legislation only in those paragraphs where the work of the commissions, which are responsible for the initial procurement procedure. From the perspective presented, this reference has no bearing on the performance of the contract, as it relates to events that occur before the signing and negotiation of the contract. Hence, it was clarified that Public Procurement Law did not address *force majeure* in any manner, and had no provision regarding these events concerning contract performance. In contrast, it was suggested that an example of contracts concluded before the pandemic should be considered, and the terms and conditions of contracts awarded for public procurement should be discussed. The first contract to be considered in this part was concluded in 2017 when the world had not yet faced the global challenge of the COVID-19 pandemic. This contract was concluded between Latvian State Company E and Polish Company Y for the purchase of equipment for the national armed forces of Latvia. The contract was entered into using *force majeure* clauses, but since in 2017 people did not yet know that such a serious pandemic could occur, these provisions do not have any mention of such an event, which the author considers logical. In the contract submitted, the reader can see the language of the contract chosen by the parties and what terms were agreed upon during the negotiation and signing process. The most important part of the paragraph regulates the *force majeure* clauses, the author highlights paragraph 9.2, which describes events that may be considered *force majeure*, but in the author's view, the list is not complete because it does not contain an extended list of events. (*see Illustration 5*).

| **9. NEPĀRVARAMA VARA** | **9. FORCE MAJEURE** |
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| 9.1. Neviens Līdzējs nav atbildīgs par Vienošanās neizpildi, ja izpilde nav bijusi iespējama nepārvaramas varas apstākļu dēļ, kas radušies pēc Vienošanās spēkā stāšanās, ja Līdzējs par šādu apstākļu iestāšanos ir informējis visus Līdzējus 7 (septiņu) kalendāro dienu laikā no šādu apstākļu rašanās dienas. Šajā gadījumā Vienošanās noteiktais izpildes un samaksas termiņš tiek pagarināts attiecīgi par tādu laika periodu, par kādu šie nepārvaramas varas apstākļi ir aizkavējuši Līguma izpildi, bet ne ilgāk par 30 (trīsdesmit) kalendārajām dienām. | 9.1. Parties are not responsible for failure to realize Contract in cases of circumstances of *force majeure* that have occurred after conclusion of the Agreement, if Party has informed the other Party on such circumstances within seven (7) calendar days from the moment the circumstances have occurred. In such a case the deadlines for delivery and payment are extended for a period that corresponds to the period of the *force majeure* circumstances that delayed the realization of the Contract, but no longer than thirty (30) calendar days. |
| 9.2. Ar nepārvaramas varas apstākļiem jāsaprot dabas stihijas (ugunsgrēki, plūdi, zemestrīce, vētras postījumi) un citi, no Līdzējiem pilnīgi neatkarīgi radušies ārkārtēja rakstura gadījumi, ko Līdzēji nevarēja ne paredzēt, ne novērst. | 9.2. *Force majeure* circumstances include nature disasters (fire, flood, earthquakes, storms) and other accidents of extreme nature that the Parties could not foresee, nor prevent. |
| 9.3. Līdzējam, kurš atsaucas uz nepārvaramas varas apstākļiem, ir jāpierāda, ka par spīti pienācīgajai rūpībai tam nebija iespēju paredzēt vai novērst apstākļus, kuru dēļ Vienošanās izpilde nav bijusi iespējama. | 9.3. Party who relies to *force majeure* circumstances must prove that in spite of due diligence there were no possibilities to foresee or prevent circumstances due to which the performance of the Agreement has not been possible. |
| 9.4. Ja nepārvaramas varas apstākļu dēļ Preces piegāde aizkavējas vairāk par 30 (trīsdesmit) kalendārajām dienām, katrs Līdzējs ir tiesīgs vienpusēji atkāpties no Līguma vai Vienošanās par to rakstveidā brīdinot pārējos Līdzējus 7 (septiņas) kalendārās dienas iepriekš. Šajā gadījumā PIEGĀDĀTĀJS atmaksā PASŪTĪTĀJAM tā iepriekš samaksāto priekšapmaksu, atskaitot saražotās un piegādātās Preces izmaksas. | 9.4. If due to circumstances of *force majeure* delivery of Goods is delayed for more than thirty (30) calendar days, each of the Party have the right to unilaterally withdraw from the Contract or Agreement notifying the other Party in writing seven (7) calendar days in advance. In such a case SUPPLIER shall reimburse the advance payment to CUSTOMER, minus costs of produced and delivered Goods. |

Illustration 5. Contract clause - Force majeure

It has been pointed out that paragraph 9.1, which is very correct and necessary, states that the parties are not responsible for the events that prevented the performance of the contract and that occurred after the signing of the contract, and the parties could not have foreseen them (*see Illustration 5).* Moreover, this clause of the contract implies that the parties need to report the occurrence of a *force majeure* to extend or terminate (depending on events) the contract.

Finally, supposedly, the contract contains an ideal example of a *force majeure* clause as it provides for mutual termination of the contract if the *force majeure* lasts more than 30 days and this significantly affects the performance of the contract (*paragraph 9.4*.) (*see Illustration 5*) Thus, it has been concluded that before the pandemic, the contracts already contained provisions on unforeseen events, and their structure for subsequent years changed obscurely but at this moment became clear and applicable to events such as COVID-19.

Upon analyzing the Law on Procurement in the Fields of Defence and Security, it was concluded that this legislation contains only one reference to force majeure circumstances in Section 6[142]. Types and Application of Procurement Procedures: In the event of unforeseeable extraordinary circumstances (*force majeure*), such as natural disasters or accidents, resulting in a situation where the customer cannot reasonably adhere to prescribed procedures or contract notification requirements, the customer is authorized to take immediate action without the need for public notification[143]. Additionally, if all legal avenues to expedite application and proposal submission procedures have been exhausted by the customer to address the extraordinary situation, they may adjust deadlines as needed[144]. It's important to emphasize that the reasons justifying such actions during the extraordinary situation cannot be attributed to the customer's actions[145]. Thus, it was concluded that none of the instruments analyzed above for public procurement have a *force majeure* clause in the performance of the contract, which, in the author's view, demonstrates that the parties refer to the Civil Code, which is the legislative framework and the language of the contract, on which the application of force majeure provisions already depends.

### 3.1.2. Direct effect of Covid-19 on the implementation of force majeure clause in relation of public procurements in Latvia; Role of National organs and its control of interpretation and implementation force majeure clause

The global COVID-19 pandemic has had a significant impact on the realm of public procurement. Like many other countries, Latvia has faced challenges in adapting legislation and procurement practices to the new realities brought about by the pandemic. One key aspect affected by COVID-19 in the context of public procurement is the application of *force majeure* clauses by contractual parties. These clauses play a crucial role in managing unforeseen circumstances beyond the control of the contracting parties that affect the performance of contractual obligations. This research aims to examine the direct effect of the COVID-19 pandemic on the implementation of *force majeure* clauses concerning public procurements in Latvia. Through an analysis of cases, as well as procurement contracting and execution practices, the study seeks to identify the nuances of the Latvian public procurement systems and national legislation response to the challenges

[142] *Ibid*, Section 6. Types and Application of Procurement Procedures.
[143] *Supra* note 141.
[144] *Supra* note 141.
[145] *Supra* note 141.

presented by the pandemic. Understanding the immediate impact of COVID-19 on the application of *force majeure* clauses in the context of public procurement in Latvia is an essential step in determining effective risk management strategies and ensuring the resilience of the public sector amidst the uncertainty brought about by the pandemic.

In this section, real-life cases (where the names of companies are fictionalized in anonymized cases) will be analyzed, demonstrating how parties interpreted *force majeure* circumstances to justify non-compliance with their obligations. The first case to be examined occurred during the pandemic outbreak and serves as a prime example, according to the perspective presented, of how traders have sought to justify their failure to fulfill obligations.

**Case 1: Company A vs. Public Company X**

In 2018, Company A concluded an agreement with Public Company X (hereinafter – Company X) on the purchase of the Latvian National Forces, and as part of this agreement, on February 10, 2021, these two companies concluded a contract for the purchase of certain goods and the terms of the transaction were also fixed in the order letter. As the reader can already see, the main contract and letter were concluded and active already after the onset of COVID-19. According to 6.3 subsections of the Agreement and 2.1 subsections of the Agreement, the provisions of the sub-paragraph had to be carried out in full within 60 (sixty) calendar days from the moment of placing the Order (*See Annex 1, p.57*), i.e. until August 29, 2021. On August 11, 2021, Company X received a letter from Company A. With this letter, Company A, referring to the terms of the Agreement and the scope of the Order, provided information that due to the significantly larger quantity of ordered sets and the information provided by the product material manufacturer at that time about the delays in the supply of raw materials due to the global crisis caused by the consequences of the COVID-19 pandemic, transoceanic logistics routes, the delivery of the Product can be ensured by the components of the set (*See Annex 2, p.58*). Also, in the Letter, Company A asked to extend the Order execution time until February 18, 2022, or to find an opportunity to deliver the components of the set separately, within the deadlines mentioned in the Letter. On November 23, 2021, an additional agreement entered into force, by which the parties - Company X and Company A, agreed that the delivery of the Product could be made as a set or in the form of separate components. Other provisions of the Agreement were not amended by the Additional Agreement. Despite the above, it can be concluded that Company X *post factum*[146] by concluding the Additional Agreement has extended the deadline for the delivery of the Order until the moment of signing the agreement, taking into account the fact that Company A could not deliver the Product in the form of separate components until then. On December 12, 2021, Company X received Company A's second letter "On circumstances of *force majeure*" (*see Annex 3, p.59*). In the letter, Company A provided information that the Product Manufacturer cannot deliver the ordered goods on time due to *force majeure*, and also stated that one product can be delivered only in January 2022, while the second product can be delivered only in March 2022. To the second letter, Company A attached a copy of the letter from the manufacturer of the goods outlining the circumstances preventing the delivery of the goods (*see Annex 4, p.60*). Also, Company A submitted a statement of the Latvian Chamber of Commerce and Industry dated

[146] Post factum - occurring after the fact, Merriam – Webster Dictionary, Available at: https://www.merriam-webster.com/dictionary/post-factum . Accessed on 20 April 2024.

December 10, 2021, which evaluated the circumstances indicated by the company and recognized them as *force majeure* circumstances, asking not to apply punitive sanctions for the delay in the delivery of the product because the delay is due to *force majeure* circumstances, which is beyond its control.

Moving on to the statement of the Latvian Chamber of Commerce and Industry, it follows from clause 3.4 of the agreement that matters not stipulated in the concluded agreement are regulated by the general agreement concluded between the parties (*see Annex 5, p.61*). In Chapter 11 of the general agreement, the parties have included conditions for the regulation of mutual relations in the event of *force majeure*. Clause 11.1 of the general agreement stipulates that the parties are not responsible for the non-fulfillment of contractual obligations if the non-fulfillment of obligations occurred due to *force majeure*. On the other hand, clause 11.3 of the general agreement stipulates that the parties shall immediately inform each other of the occurrence of *force majeure* circumstances. Due to multiple outbreaks of COVID-19, a queue of cargo to be shipped has formed at the ports. All European ports have a similar problem, which is congested, and where there are delays in the delivery of containers and the delivery of goods to end users. The shortage of shipping containers caused by the spread of the Covid-19 virus and its consequences is an event that makes compliance not only difficult but also impossible. This event could not be influenced or controlled by the Company and/or any other participant in the transaction chain. Based on the above, Company A requests, based on evidence, to submit a statement on the occurrence of circumstances *of force majeure* regarding delays in the delivery of goods. (*see Annexes 6 and 7, pp.62-63*)

Legal theory acknowledges certain exceptional circumstances where deviation from the obligation to fulfill a contract is permitted, and civil liability for non-performance of contract terms does not arise. One rare exception is the concept of *force majeure*. However, specific conditions must be met for a party to invoke this doctrine and be exempt from the negative consequences of non-performance. Based on Latvian legal systems, as it was mentioned before the concept of *force majeure* is not expressly defined in the regulatory acts of the Republic of Latvia. Hence, it can include circumstances specified in Roman law, such as natural disasters (e.g., earthquakes, floods, fires) and societal events beyond human influence, like robbery, rebellion, and attacks. Additionally, it may encompass Principle 7.1.7 of the UNIDROIT Principles of International Commercial Contracts[147] and the language of Article 79, Clause 1 of the United Nations Convention of April 11, 1980 (Vienna)[148], to which Latvia is obligated to adhere. To actualize the issue, the concept of force majeure comprises four essential elements:

> [An event that is unavoidable and whose consequences cannot be mitigated; The event was unforeseeable at the time of contract formation by a reasonable person; The occurrence of the event was not caused by the actions of the party or someone under its control; The event renders the performance of obligations not just difficult, but impossible][149].

Additionally, an analysis based on the outlined four elements of the *force majeure* concept has been conducted. Upon evaluating Company A's rationale, the author concurs that the shortage of shipping containers resulting from the COVID-19 pandemic and its aftermath qualifies as an

[147] *Supra* note 50, ARTICLE 7.1.7 (Force majeure).
[148] *Supra* note 5.
[149] Tom Southerington. Impossibility of Perfomance and Other Excuses in International Trade. Accessed 21 April 2024.

event rendering obligation fulfillment not only difficult but also impossible. Company A had no influence or control over this occurrence. The COVID-19 pandemic has significantly disrupted market equilibrium, leading to disruptions in the current supply chain of goods and raw materials. The global transportation system is currently facing an unprecedented crisis. Container shortages at one stage of the chain cascade to others, significantly impacting international trade and logistics service costs while altering delivery terms. It was not foreseeable for the company to anticipate these factors, even relatively recently, when contracts were signed in the first or second quarter of 2021.

Simultaneously, the assessment considers whether the circumstances outlined in the application, in line with the contract participants' expressed intent, qualify as *force majeure* circumstances, and whether these circumstances objectively impede Agreement obligation fulfillment, rendering it impossible. On April 13, 2018, Company A and Company X entered into a general agreement. The agreed-upon *force majeure* provision is outlined in Chapter 11 of the General Agreement. Clause 11.1 stipulates that neither Party is liable for failing to fulfill Agreement obligations if such fulfillment became impossible due to post-Agreement *force majeure* circumstances, provided the Party informs the other Party within 7 working days of occurrence. Conversely, clause 11.2 defines *force majeure* as natural forces and extraordinary events beyond the Parties' control, unforeseeable or preventable. Crucially, there exists documentary evidence of timely order processing, yet execution delays resulted from the global situation.

Analyzing Latvian Chamber of Commerce and Industry's involvement in resolving this issue, particularly whether *force majeure* circumstances indeed existed, was proactive. Reviewing Company A's rationale, attached documentation, and case-specific circumstances, Latvian Chamber of Commerce and Industry concludes that a combination of all four elements of the *force majeure* concept recognized in legal theory is present in this situation. Within the General Agreement framework, these conditions are deemed unavoidable, with their consequences insurmountable by reasonable means. Moreover, it was impossible to foresee these circumstances at the General Agreement's conclusion, and they did not arise from the Party's actions or errors, rendering timely obligation fulfillment impossible.

The author will delve into the actions of State Company X, which also functions as a regulator in this scenario. According to Article 1587 of Latvian Civil Law[150], a validly executed contract binds the parties to fulfill their promises. The weightiness of the transaction or subsequent difficulties in fulfilling it do not grant one party the right to withdraw from the contract, even if the other party is compensated for its losses[151]. Although Company A has not announced withdrawal from the Agreement, Company X, as a responsible party to the agreement and a prudent owner in specific civil law relations, must objectively identify situations where the supplier's difficulties in fulfilling the agreement align with Article 1587 of Civil Law, posing a threat to obligation fulfillment due to being unbearable for the supplier.

Legal theory recognizes exceptions to contract performance under specific circumstances. However, certain conditions must be met for a party to invoke this doctrine and avoid fulfilling contractual obligations in the future. The concept of "*hardship*"[152], sometimes unclear, is

[150] *Supra* note 37, SUB-CHAPTER 5: Consequences of a Contract.
[151] *Ibid*.
[152] *Supra* note 7.

elucidated by Principle 6.2.2 of International Commercial Law[153]. The term defines *hardship* as a situation where events significantly alter the balance of parties' obligations and rights, increasing performance costs or decreasing performance value. Additionally, relevant events that occur after the contract conclusion, are unforeseeable, beyond the affected party's control, and not assumed by the party. In cases of *hardship*, the counterparty can propose contract revision or amendment but cannot suspend contract execution where possible. Considering the above, the delivery delay falls within the scope of this norm. Based on legal assessment, Company X justifies the delay and agrees to extend the Order execution deadline.

## Case 2: Company B vs. Public Company X

The further examination focuses on a case involving Company B and Public Company X (hereinafter- Company X), with a *force majeure* event being typhoon Doksuri in China in 2023. An agreement for military ammunition purchase was made on February 18, 2022, with a delivery deadline of September 20, 2023. Due to the typhoon, the Product component manufacturer faced delays, prompting Company X to receive a letter from the Supplier on August 4, 2023, informing about the delay, followed by another letter on September 13, 2023, reiterating the delay due to the typhoon's impact on the production company. Taking into account what was mentioned in the Supplier's Letter, Company X, in order to analyze the situation and in compliance with the principles of the Civil Law of Latvia, requested additional information in order to be able to objectively evaluate the circumstances of the delay in the delivery of the Product and decide on their possible justification (emergency, unforeseeable, operationally unavoidable circumstances, etc.), requested submit a request for an extension (justification) of the execution time of the Order, including its justification and attaching objectively verifiable documents for the evaluation of the circumstances of the delay, which clearly and unequivocally indicate that the delay has arisen due to reasons independent of the Supplier in the performance of the Agreement (for example, a statement issued by the Latvian Chamber of Commerce and Industry assessment of the contract performance situation and the presence or absence of *force majeure* conditions and their causal relationship with the delay in the delivery deadline of the Product), or the existence of other circumstances that may be evaluated as justifying the delay in the contract performance deadline. Later, following the principles of Civil Law of Latvia, Company B submitted an official document in which it informs that the Order will be executed by November 30, 2023, indicating that the delay has arisen as a result of circumstances beyond the control of the Supplier - *force majeure.* As in the previous case, the principles of legal theory are used to analyze the situation. (*see Annex 8, p.64*)

Legal doctrine recognizes that in certain cases it is possible to derogate from the obligation to perform a contract without incurring civil liability. One such exception is where a party is unable to meet its obligations because of *force majeure*. However, for a party to invoke that doctrine and be exempt from adverse effects, certain conditions must be met. The principle of contract execution was fundamental in jurisprudence, emphasizing the inviolability of agreements and the expectation that the parties would fulfill their treaty obligations. Nevertheless, the doctrine recognizes

[153] UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2016, SECTION 2: HARDSHIP, ARTICLE 6.2.2 (Definition of hardship), Available at: https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2010/chapter-6-section-2/ . Accessed on 25 April 2024.

that there may be certain circumstances that make compliance impossible or impossible, despite the good intentions of the parties. *Force majeure* circumstances, often referred to as natural disasters or unforeseen circumstances beyond the control of the individual, are examples of situations where external factors make productivity unattainable. For a party to rely successfully on the *force majeure* doctrine, it is usually necessary to meet several criteria. First, the event must be unforeseen or outside the control of the party claiming *force majeure*. Second, an event should have a direct impact on a party's ability to fulfill its contractual obligations, making performance practically impossible or commercially impossible. Third, the party had to take reasonable measures to mitigate the effects of *force majeure* and minimize any resulting damage. In addition, treaty agreements often include provisions defining the effects and application of *force majeure* provisions. These provisions may specify the notification requirements, the extent of assistance provided and any alternative measures to be taken to mitigate the effects of *force majeure*. It is important to note that the reference to *force majeure* does not automatically relieve a party of its contractual obligations; rather, it serves as a defense against claims of breach of contract. The burden of proof usually rests with the party seeking to rely on *force majeure*, requiring clear evidence of the impact of the event on productivity and the fulfillment of any contractual preconditions for the application of the doctrine.

Finally, while legal doctrine recognizes the possibility of derogation from contractual obligations in exceptional circumstances, such as *force majeure*, the parties must meet specific criteria to avail themselves of this protection. Understanding the conditions under which *force majeure* may arise and compliance with contractual requirements ensures clarity and fairness in contractual relations, reduces the risk of disputes, and contributes to the fair resolution of disputes in unforeseen circumstances.

As in the previous case, in the framework of Latvian legal acts, there is no such concept as *force majeure* and therefore the Latvian authorities most often refer to the circumstances described in Roman law: (natural elements, earthquakes, floods, fires, as well as social phenomena that man cannot overcome on his own - devastation of looting, riots, etc.). As mentioned earlier, UNIDROIT principle 7.1.7 also plays an important role in the analysis of events. It states that the notion of force majeure consists of four elements, which were presented to the reader earlier. Latvian Chamber of Commerce and Industry, evaluating the circumstances of the event, the facts, and the submitted documents in their context, confirms in the Statement that such circumstances of *force majeure* have been established following the expressed will of the Contract participants, which have made it impossible to fulfill the obligations of the Contract promptly, regardless of the will and capabilities of the Supplier. The general agreement includes a *force majeure* clause, absolving parties from obligations if such events occur after the agreement's signing, provided prompt notice is given. The execution and payment deadlines are extended by the delay caused by *force majeure*, up to 30 calendar days. *Force majeure* is defined as unavoidable circumstances unforeseen at the agreement's signing, making fulfillment impossible, not just difficult. The party invoking *force majeure* must demonstrate an inability to foresee or prevent the circumstances despite due diligence. If *force majeure* persists beyond 30 days, any party can terminate the agreement with a seven-day written notice.

Transitioning to the perspective of Company X, it has undertaken a comprehensive examination of the factors contributing to the delay in executing the Order, as articulated by the Supplier. Furthermore, Company X has meticulously reviewed the elucidations regarding the

circumstances precipitating the Order's delay as delineated in the Latvian Chamber of Commerce and Industry's Notice. Consequently, Company X deduces that the extant circumstances attendant upon the Order's delay squarely align with the paradigm of *force majeure*. This designation implies the existence of a discernible event, beyond the control of the Supplier, that was intrinsically insurmountable in its consequences. Concurrently, at the juncture of contract conclusion, the Supplier was bereft of the prescience requisite to anticipate an eventuality impeding the Order's execution. This assertion is buttressed by the corollary observation that the event forestalling the Order's execution was not precipitated by any action or inaction on the part of the Supplier. The concatenation of circumstances outlined heretofore engendered an ineluctable impediment to the Supplier's fulfillment of contractual obligations within the prescribed time frame.

In addition, based on available documents, Company B has not announced a withdrawal from the Agreement and the. Company X, as a responsible party to the Agreement in the specific Civil law relationship, must be able to objectively identify situations when the Supplier has encountered difficulties in fulfilling the Agreement. In legal theory, it is recognized that exceptions to the obligation to fulfill the contract are allowed in certain cases when circumstances have changed in particular, which significantly complicate or completely exclude the fulfillment of obligations. It should be emphasized that the Ministry of Justice in the explanation "On force majeure in civil legal relations" states that if force majeure has been the basis for the delay in fulfilling an obligation, the Civil Law provides for the possibility of releasing the debtor from the obligation to cover losses or the possibility that the debtor can also be released from other negative consequences of the delay. However, the Civil Law does not provide for the release of the debtor from the obligation.

In addition, the Ministry of Justice's explanation emphasizes that, according to Civil Law, no one has the right to unjustly make a fortune at the expense of another[154]. Taking into account the above-mentioned, evaluating the arguments indicated in the Letters of Company B received by Company X, as well as the submitted evidence, following the assessment of *force majeure* in the performance of the Agreement given in the Latvian Chamber of Commerce and Industry's Statement, as stated in the Ministry of Justice's explanation "On the circumstance of *force majeure* in civil relations", it is concluded that the Supplier's facts and circumstances confirm that in the given situation there are *force majeure* circumstances following the expressed will of the parties to the Agreement, which the Supplier was unable to foresee or influence when concluding the Agreement, thus there are legal and objective conditions to justify the possible non-fulfillment of the agreed obligations within the specified time and to extend the deadline for the execution of the Order determined by the notification deadline.

## 3.2. Summary

Having analyzed the Latvian system of public procurement, contracts, and the involvement of state institutions in regulating *force majeure* provisions, it was assumed that all state regulators and companies involved in procurement strive to uphold the principle of *transparency*.

[154] "On the circumstance of force majeure in civil relations" ("Par nepārvaramas varas apstākli civiltiesiskajās attiecībās"), Available at: https://www.tm.gov.lv/lv/skaidrojumi . Accessed on 28 April 2024.

Having analyzed Case 1 and Case 2 it has been concluded that to resolve the issues involved parties need to analyze and study the various risks for the performance of the contract and study it by collecting information that can prove that *force majeure* circumstances are happened, and it is the obstacle to fulfillment of conditions. Having analyzed the provided information, it is possible to conclude that even though the Latvian legislation does not have a clear definition for *force majeure* and its application, the use and reference to particular *force majeure* clauses in the contract before and after the pandemic that can further assist and prove the current inability to fulfill certain contractual obligations. The author is convinced that most Latvian contracts are designed in such a way that any bodies and institutions, such as Latvian Chamber of Commerce and Industry in provided cases, can control the contract from the moment of signing until its completion. Thus, not only is *transparency* respected, but these institutions are also able to provide their support and play the role of the regulator when it is necessary to find information and provide evidence that there are actual events impeding the performance of the contract.

The author used information that was strictly confidential and unavailable to the public. It leads to the conclusion that the principle of *transparency* is not fully observed, since institutions that assist in the resolution of *force majeure* need to request contracts and various documents from one of the parties, which in turn can significantly impede the process. Since the author was a State employee, the author claims that there is legislation on the structure of public administration and in compliance to this legal instrument, all information on public contracts must be publicly available and accessible from sources that are directly related to the parties to the contract. But, in practice, this has not been fully improved and respected.

Moving on to the experience of the Republic of Latvia and its practice of with COVID-19 and *force majeure* clause about commercial contracts, publicly available sources, and public procurement contracts concluded that the emergence of the COVID-19 pandemic has contributed to the fact that many companies has been analyzed, for example, such large as the local company *Latvenergo* began to introduce in their contract's provisions not only about *force majeure* but also to prescribe them in detail. A detailed list of events that can be considered *force majeure*, the possibility of transferring contractual obligations to definitions and the period agreed by the parties, and many other necessary provisions have been introduced into contracts to uphold the principle of *fairness* and make the execution of the contract at a time of global crises such as COVID-19 profitable for all parties to the contract.

Furthermore, it is firmly asserted that the COVID-19 pandemic had no effect on changes in the legislative acts of the Latvian legal system, as previously mentioned, the pandemic affected the contract language and the procedure of *force majeure* analysis. As seen in practice, many companies have long argued that this is a *force majeure* after the outbreak of COVID-19 and that the author considers it incorrect. As it has been convinced, a pandemic is only justified at the moment, when the contract was concluded before the outbreak of the pandemic or when the contract fell due after the appearance of COVID-19. If the contracting process and its implementation fall into the period of pandemic, the failure to perform due to the pandemic is unjustified. Thus, the pandemic also affected the perception of force majeure, and society began to interpret it in its own way.

Finally, after reviewing public procurement contracts, it has been concluded that most contracts and lead agreements had sufficiently detailed *force majeure* clauses, and in cases where

these provisions were not adequately regulated (within the Master thesis it is a public company) refer already to legislative acts and allow the parties to choose how the events of *force majeure* will be analyzed, and in the future, the conclusion will be made on which will depend on whether the non-compliance is justified or it was the fault of one of the parties. In the case where an excuse is established, parties have the option under existing contracts to suspend the contract until the end of circumstances are ended, to terminate the contract by agreeing with all parties to the contract, or to extend the contract for a period that is either listed in the *force majeure* provisions or agreed between the parties and documented to avoid further disagreement.

To conclude, the COVID-19 pandemic influenced the *force majeure* provisions that the parties had additional options to use and perceive the historically established definition was also interpreted to relevant events that face humanity.

## CONCLUSION

Within the conclusion, the main aspects of the Master's thesis will be discussed. The definition of the concept of *force majeure* has evolved to be interpreted differently by society, depending on the world events it has faced. Before the COVID-19 pandemic, it was the classic definition of *force majeure* circumstances that were used in contracts, making it difficult to analyze the situation where the justification for default was due to the virus. The lack of such phrases as a pandemic, virus, disease, etc. during the pandemic significantly complicated the process of investigating non-compliance, because it was difficult to generalize, and it was difficult for the parties to conclude whether the pandemic was a *force majeure* circumstance.

However, discussing *force majeure* clauses in contracts, before the pandemic they were specified in the contracts, but based on the classical definition of the concept was only formal, since until 2020, it was not properly used. The use of these provisions is not new, although the pandemic has completely changed the public's view of these provisions. Since the beginning of the pandemic, the use of *force majeure* has become common in all cases where a contract has not been executed because of an event that does not even fit the classic definition. Most often, the use of this concept is misused only for the sole purpose of justifying the party's fault and not bearing serious, in most cases material consequences when it comes to commerce.

Having analyzed the application of *force majeure* clauses in different legal systems, it has been concluding that each jurisdiction has its vision for unforeseen events and their impact on the contract. Although each jurisdiction has its vision, the main objective remains to balance the parties' ability to protect themselves from punishment and to ensure that the original nature of the contract is retained. Moreover, *force majeure* is entirely influenced and controlled by the legislative system of each jurisdiction, which in turn requires an individual approach.

Talking about the research aim of this Master's thesis, the paper was intended to answer the main research question, namely *Has COVID-19 disease affected the interpretation and application of the force majeure clause within commercial contractual obligations in Latvia?*

Firstly, attention is directed towards the modifications regarding the implementation and interpretation of *force majeure* clauses by Latvia. As mentioned earlier, Latvian legislation does not have any rules that regulate the implementation of *force majeure* provisions in contracts, but

the parties are obliged to respect the principle of freedom of contract, it is opportunity for the parties themselves to agree and introduce *force majeure* clauses into the contract, if it does not contain these clauses in its body. Moreover, the Latvian legislation does not contain a definition of *force majeure*, but this fact does not exempt the parties from fulfilling all the terms of the contract and does not exempt the parties from punishment for non-compliance due to ascended *force majeure* circumstances. Having analyzed mentioned research issue, it has been noted that after the development of the pandemic, most companies began to introduce *force majeure* clauses into contracts that contained not only references to the COVID-19 pandemic but also were interpreted in this way that, if such circumstances arose, the parties could unequivocally justify the failure to comply. Mentioning a detailed list of events is also an indication that contracts in Latvia have started to adjust to world events, and this is an opportunity to apply the principle of *fairness* and make the execution of the contract at a time of global crisis beneficial for all parties to the contract. Thus, it has been summarized up that Latvia was able to adapt to the global changes that have arisen due to the pandemic and Latvia, and rather individual actors have tried to think through this process when entering into contracts, it would be more convenient to conduct a performance evaluation procedure based on the terms of the contracts.

Secondly, the ability of national bodies adequately overseeing *force majeure* clause interpretation and implementation has been discussed. Having analyzed the problem, it has been concluding that the Latvian national authorities use in their work legislative norms that are already established by time and which are publicly available information, which make it possible to determine the nature of *force majeure* circumstances and to understand the actions to be taken by the parties, referring to the mentioned provisions, according to the principles of the Latvian Civil Code. The national bodies, by their actions, try to preserve the principles of *transparency*, *fairness*, and *good faith* by assessing *force majeure* and its use in practice. The bodies act on the principle that their task is to give instructions on the further actions of the parties, and how they should rely on the provisions of the contract, providing the opportunity to have advice and support on the application of *force majeure* provisions. Latvian governmental bodies align their oversight strategies with global standards and leading practices concerning *force majeure* clauses. This alignment ensures adherence to European Union regulations and international norms, which in turn cultivates a conducive environment for business. Additionally, Latvian governmental bodies exhibit adaptability in supervising *force majeure* clauses, particularly in response to dynamic circumstances such as global health crises, natural disasters, or geopolitical shifts. They may issue specific directives or regulations to address emerging challenges proactively. In conclusion, Latvian governmental bodies possess the necessary legal framework, institutional capabilities, and dedication to effectively oversee the interpretation and application of *force majeure* clauses. Their actions contribute to the fair resolution of contractual disputes and the maintenance of the rule of law in commercial transactions within Latvia.

Thirdly, the issue of how the pandemic shaped public procurements in Latvia has been discussed. Before COVID-19, Latvia relied on procurement laws, especially for public defense. The writer aims to illustrate how *force majeure* was managed in pre-pandemic procurement contracts in Latvia through legal analysis and case studies. Understanding this legal landscape is crucial for comprehending the handling of unforeseen events before COVID-19's disruptions. After examining the Public Procurement Law, the author finds it illogical that *force majeure* provisions aren't mentioned in any article related to procurement performance. The law only addresses

unforeseen events in the initial procurement process, which the author argues doesn't affect contract performance. Hence, it has been pointed out that the law doesn't regulate *force majeure's* impact on contract performance. After reviewing the Law on Procurement in Defence and Security, the author found only one mention of *force majeure* circumstances in Section 6. It allows for immediate action in cases of unforeseeable events like natural disasters. However, it has been noted that none of the analyzed procurement laws address *force majeure* in contract performance. Instead, parties rely on the Civil Code and contract language for such provisions. After examining public procurement contracts, it has concluded that most contracts had detailed *force majeure* clauses. When these were lacking, parties referred to legislative acts, allowing them to decide how to handle *force majeure* events. Parties can suspend, terminate, or extend contracts based on established excuses. The COVID-19 pandemic expanded options for force majeure use, aligning with historical interpretations of such events.

Finally, the aspect is the original concept of *force majeure* obsolete and subject to reinterpretation has been analyzed. The traditional definition of *force majeure* has its origins in French law, and historically these circumstances have been classified as events that are an obstacle to the performance of contractual obligations by the parties to the contract and were caused by events that could not have been foreseen or calculated. As previously mentioned, such events include natural disasters, wars, strikes, and other circumstances beyond the control of the parties. It has been noted that with the emergence of modern global crises, such as the COVID-19 pandemic, society has a debate about the use and interpretation of the classic concept of *force majeure*. However, the pandemic has encouraged society to revise regulations and definitions of *force majeure* circumstances, and overestimate their traditional meaning and use, as French legislation in the 19th century failed to take into account the complexities and risks that could happen in the future. It has been pointed out that over assessing the traditional meaning is necessary to adapt to modern realities and crises. Moreover, there was already a trend towards the globalization of different jurisdictions, which, despite established principles, opted for a case-by-case approach. This demonstrates that the original concept of *force majeure* is obsolete and is subject to reinterpretation.

In conclusion, after the development of the pandemic, the interaction of international laws regulating treaty provisions became more complicated, as it became difficult for society to adapt to global changes. Consequently, while the original concept of *force majeure* remains valid, its interpretation and application are constantly being examined and adapted to meet contemporary challenges and the changing global environment.

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priekšapmaksas rēķina saņemšanas dienas pie Pasūtītāja (Pasūtītāja atzīme par saņemšanu);

5.2.2. priekšapmaksa tiek dzēsta, ar pieņemto Preci, ko apliecina Līdzēju parakstīta Preces pavadzīme;

5.2.3. pēc priekšapmaksas dzēšanas un Preces piegādes pilnā apjomā saskaņā ar veikto Pasūtījumu, tiek veikts gala norēķins par piegādāto Preci pilnā apmērā 30 (trīsdesmit) kalendāro dienu laikā pēc Līdzēju parakstītas pavadzīmes saņemšanas pie Pasūtītāja (Pasūtītāja Kancelejas atzīme).

5.3. Ja Līdzēji nav vienojušies par priekšapmaksu, tad samaksu par Vienošanās noteikumiem atbilstošo Preci Pasūtītājs pārskaita Piegādātāja norādītajā norēķinu kontā 30 (trīsdesmit) kalendāro dienu laikā no Preces pavadzīmes parakstīšanas un saņemšanas dienas pie Pasūtītāja (Pasūtītāja kancelejas atzīme).

5.4. Piegādātājs, izrakstot Preces pavadzīmi, piemēro PVN saskaņā ar spēkā esošo Latvijas Republikas normatīvajos aktos noteikto kārtību un apmēru.

5.5. Par samaksas dienu tiek uzskatīta diena, kad Pasūtītājs veicis bankas pārskaitījumu uz pavadzīmē norādīto Piegādātāja kontu.

5.6. Pasūtītājam ir tiesības veikt grozījumus Vienošanās paredzētajā norēķinu kārtībā atkarībā no valsts budžeta atvēruma, par to rakstveidā iepriekš brīdinot Piegādātāju.

5.7. Pavadzīmē, papildus Latvijas Republikas normatīvajos aktos noteiktajiem rekvizītiem, Piegādātājam jānorāda Vienošanās un Līguma numurs un datums. Ja pavadzīme nav izrakstīta atbilstoši šī punkta prasībām, Pasūtītājam ir tiesības to neapmaksāt līdz dienai, kad saņemta atbilstoša pavadzīme.

## 6. PREČU PIEGĀDE UN PIEŅEMŠANAS KĀRTĪBA

6.1. Pasūtītājs pasūta Preces pēc nepieciešamības, atsevišķu partiju veidā.

6.2. Vienošanās 12.2.apakšpunktā minētā Pasūtītāja kontaktpersona veic pasūtījumu, nosūtot Piegādātājam pieprasījumu par Preces piegādi, norādot kādu Preci un cik daudz nepieciešams piegādāt, vēstulē un papildus informējot e – pastā Piegādātāja atbildīgo personu.

6.3. Piegādātājs piegādā Preces saskaņā ar savu piedāvājumu, bet ne ilgāk kā 60 (sešdesmit) kalendāro dienu laikā no pasūtījuma veikšanas dienas.

6.4. Piegādātājs ne vēlāk kā 5 (piecas) darba dienas pirms Preces piegādes, rakstiski pa e – pastu vai faksu un telefoniski vienojas ar Līguma 3.1.1.apakšpunktā norādīto Pasūtītāja kontaktpersonu par Preces piegādes laiku.

6.5. Piegādātājs ar saviem resursiem piegādā Preci uz Pasūtītāja noliktavu [redacted]

6.6. Piegādātājs Preces piegādei izmanto savu materiāltehnisko bāzi (tajā skaitā, darba tehniku, inventāru, materiālus u.c.) un personālu, kā arī nav tiesīgs nodot tam ar Vienošanos uzlikto pienākumu izpildi trešajām personām bez Pasūtītāja rakstiskas piekrišanas.

6.7. Pasūtītājs pieņem Preci noliktavā un nodrošina Preces glabāšanu atbilstoši Preces uzglabāšanas noteikumiem (Vienošanās 6.9.2. un 6.2.apakšpunkts).

6.8. Piegādātājs piegādā Preci ražotāja individuālajā un tirdzniecības iepakojumā, uz katra iepakojuma jābūt norādītam Preces nosaukumam, daudzumam, ražotājam, un garantijas termiņam.

6.9. Piegādājot Preci, Piegādātājam jāiesniedz šādi pavaddokumenti:

6.9.1. Pavadzīme, kurā, papildus Latvijas Republikas normatīvajos aktos noteiktajiem rekvizītiem, Piegādātājs norāda Vienošanās Nr. un datumu, Līguma Nr. un datumu, pasūtījuma vēstules Nr. un datums;

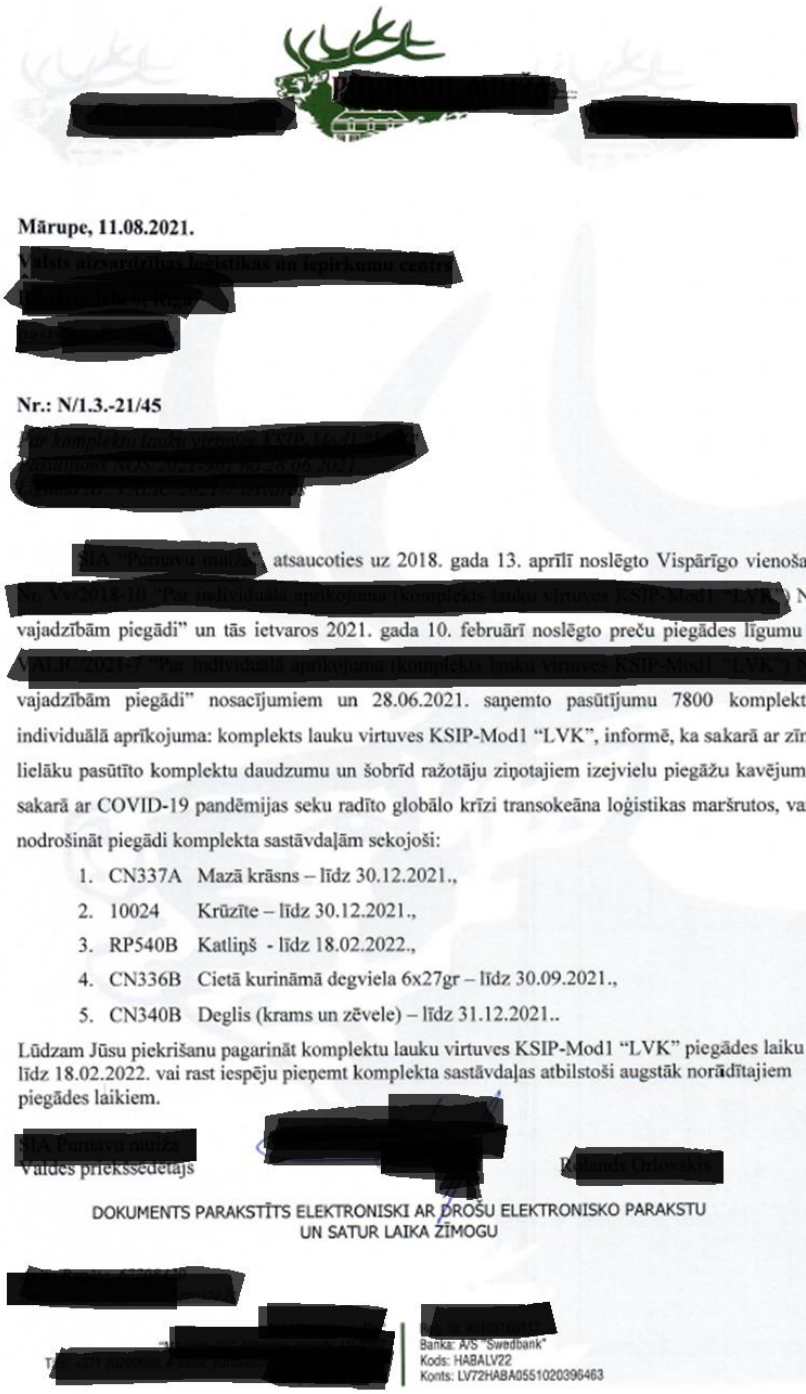
6.9.2. Preces lietošanas un uzglabāšanas instrukcija latviešu vai angļu valodā;

6.10. Piegādātājs nodrošina Preces iepakošanu un marķēšanu atbilstoši Latvijas Republikas normatīvo aktu prasībām.





*Annex 1*



**Mārupe, 11.08.2021.**

[redacted]

**Nr.: N/1.3.-21/45**

[redacted]

[redacted] atsaucoties uz 2018. gada 13. aprīlī noslēgto Vispārīgo vienošanos [redacted] NBS vajadzībām piegādi" un tās ietvaros 2021. gada 10. februārī noslēgto preču piegādes līgumu Nr. [redacted] vajadzībām piegādi" nosacījumiem un 28.06.2021. saņemto pasūtījumu 7800 komplektiem individuālā aprīkojuma: komplekts lauku virtuves KSIP-Mod1 "LVK", informē, ka sakarā ar zīmīgi lielāku pasūtīto komplektu daudzumu un šobrīd ražotāju ziņotajiem izejvielu piegāžu kavējumiem sakarā ar COVID-19 pandēmijas seku radīto globālo krīzi transokeāna loģistikas maršrutos, varam nodrošināt piegādi komplekta sastāvdaļām sekojoši:

1. CN337A Mazā krāsns – līdz 30.12.2021.,
2. 10024 Krūzīte – līdz 30.12.2021.,
3. RP540B Katliņš - līdz 18.02.2022.,
4. CN336B Cietā kurināmā degviela 6x27gr – līdz 30.09.2021.,
5. CN340B Deglis (krams un zēvele) – līdz 31.12.2021..

Lūdzam Jūsu piekrišanu pagarināt komplektu lauku virtuves KSIP-Mod1 "LVK" piegādes laiku līdz 18.02.2022. vai rast iespēju pieņemt komplekta sastāvdaļas atbilstoši augstāk norādītajiem piegādes laikiem.

[redacted]

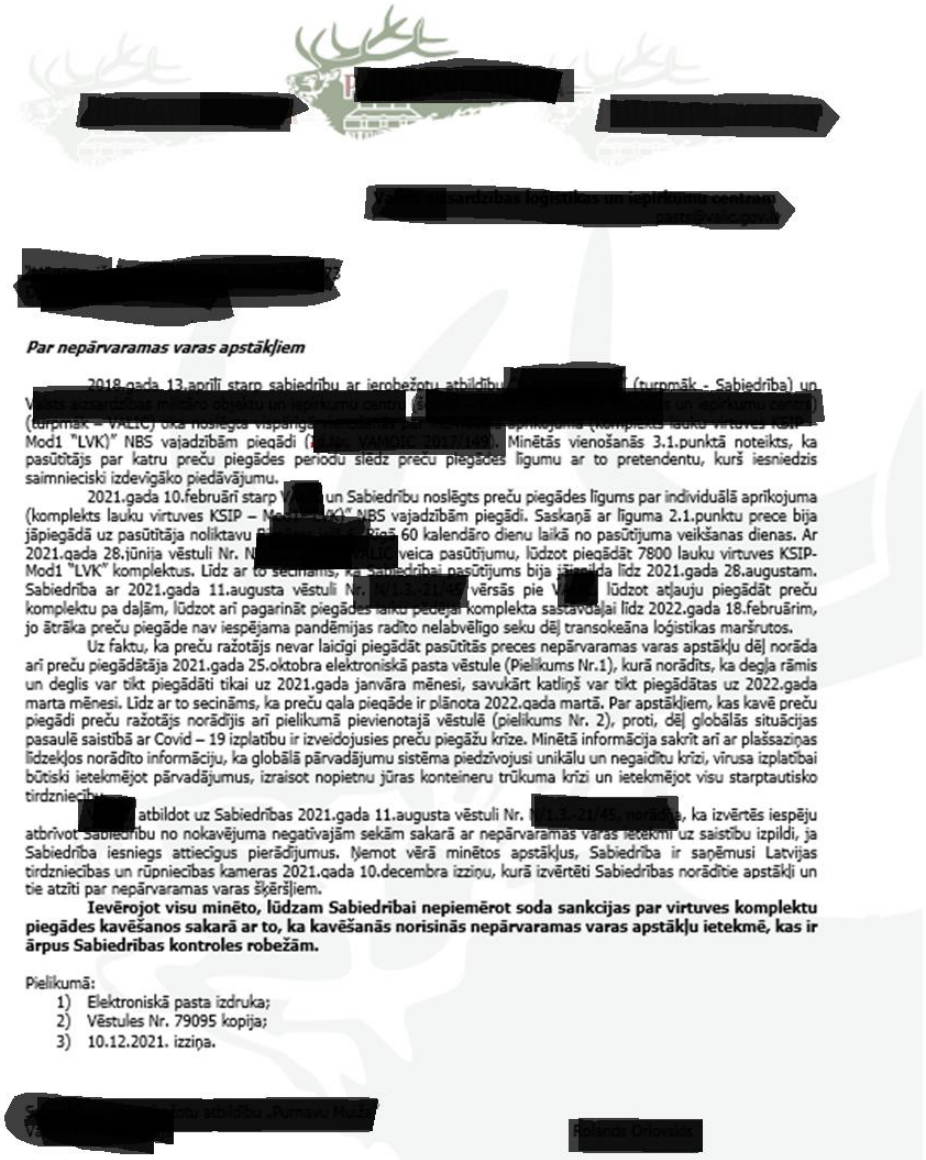
Valdes priekšsēdētājs [redacted]

DOKUMENTS PARAKSTĪTS ELEKTRONISKI AR DROŠU ELEKTRONISKO PARAKSTU UN SATUR LAIKA ZĪMOGU

[redacted]

Banka: AS "Swedbank"
Kods: HABALV22
Konts: LV72HABA0551020396463

*Annex 2*



***Par nepārvaramas varas apstākļiem***

2018.gada 13.aprīlī starp sabiedrību ar ierobežotu atbildību [redacted] (turpmāk - Sabiedrība) un [redacted] (turpmāk – VALTC) tika noslēgta vispārīgā [redacted] Mod1 "LVK)" NBS vajadzībām pieņādi ([redacted]. Minētās vienošanās 3.1.punktā noteikts, ka pasūtītājs par katru preču piegādes periodu sledz preču piegādes līgumu ar to pretendentu, kurš iesniedzis saimnieciski izdevīgāko piedāvājumu.

2021.gada 10.februārī starp [redacted] un Sabiedrību noslēgts preču piegādes līgums par individuālā aprīkojuma (komplekts lauku virtuves KSIP – [redacted] NBS vajadzībām piegādi. Saskaņā ar līguma 2.1.punktu prece bija jāpiegādā uz pasūtītāja noliktavu [redacted] 60 kalendāro dienu laikā no pasūtījuma veikšanas dienas. Ar 2021.gada 28.jūnija vēstuli Nr. [redacted] veica pasūtījumu, lūdzot piegādāt 7800 lauku virtuves KSIP-Mod1 "LVK" komplektus. Līdz ar to secināms, ka Sabiedrībai pasūtījums bija [redacted] līdz 2021.gada 28.augustam. Sabiedrība ar 2021.gada 11.augusta vēstuli Nr. [redacted] vērsās pie [redacted] lūdzot atļauju piegādāt preču komplektu pa daļām, lūdzot arī pagarināt piegādes laiku pēdējai komplekta sastāvdaļai līdz 2022.gada 18.februārim, jo ātrāka preču piegāde nav iespējama pandēmijas radīto nelabvēligo seku dēļ transokeāna loģistikas maršrutos.

Uz faktu, ka preču ražotājs nevar laicīgi piegādāt pasūtītās preces nepārvaramas varas apstākļu dēļ norāda arī preču piegādātāja 2021.gada 25.oktobra elektroniskā pasta vēstule (Pielikums Nr.1), kurā norādīts, ka degļa rāmis un deglis var tikt piegādāti tikai uz 2021.gada janvāra mēnesi, savukārt katliņš var tikt piegādātas uz 2022.gada marta mēnesi. Līdz ar to secināms, ka preču ģala pieģāde ir plānota 2022.gada martā. Par apstākļiem, kas kavē preču piegādi preču ražotājs norādījis arī pielikumā pievienotajā vēstulē (pielikums Nr. 2), proti, dēļ globālās situācijas pasaulē saistībā ar Covid – 19 izplatību ir izveidojusies preču piegāžu krīze. Minētā informācija sakrīt arī ar plašsaziņas līdzekļos norādīto informāciju, ka globālā pārvadājumu sistēma piedzīvojusi unikālu un negaidītu krīzi, vīrusa izplatībai būtiski ietekmējot pārvadājumus, izraisot nopietnu jūras konteineru trūkuma krīzi un ietekmējot visu starptautisko tirdzniecību.

[redacted] atbildot uz Sabiedrības 2021.gada 11.augusta vēstuli Nr. [redacted], ka izvērtēs iespēju atbrīvot Sabiedrību no nokavējuma negatīvajām sekām sakarā ar nepārvaramas varas ietekmi uz saistību izpildi, ja Sabiedrība iesniegs attiecīgus pierādījumus. Ņemot vērā minētos apstākļus, Sabiedrība ir saņēmusi Latvijas tirdzniecības un rūpniecības kameras 2021.gada 10.decembra izziņu, kurā izvērtēti Sabiedrības norādītie apstākļi un tie atzīti par nepārvaramas varas šķēršļiem.

**Ievērojot visu minēto, lūdzam Sabiedrībai nepiemērot soda sankcijas par virtuves komplektu piegādes kavēšanos sakarā ar to, ka kavēšanās norisinās nepārvaramas varas apstākļu ietekmē, kas ir ārpus Sabiedrības kontroles robežām.**

Pielikumā:
1) Elektroniskā pasta izdruka;
2) Vēstules Nr. 79095 kopija;
3) 10.12.2021. izziņa.

[redacted]

*Annex 3*

BCB International Ltd.
Howell House
Lamby Industrial Park
Cardiff
CF3 2EX

Tel: +44 (0)29 2043 3700
Fax: +44 (0)29 2043 3701
Email: info@bcbin.com

www.bcbin.com

[redacted]

**Ref: Order 79095**

[redacted]

We thank you for the order you placed with us for Firedragon, Flint and Striker, Cookers and cups. This letter is confirmation that your order was processed in a timely manner, however due to the global affected situation with delayed deliveries, we have a revised shipping schedule.

The Firedragon fuel tablets have been despatched to you.
The flint & striker, and Cookers will be ready to be dispatched to us December.
The Cup will be ready to be dispatched to us in January.

Although we can control when our factories can ship the orders, shipping is a lot more complex, and the situation is getting worse. Ports are severely congested with thousands of containers waiting to leave the country of origin. If a port has a covid outbreak like it has several times this year, then containers are re-routed to another port. This only adds extra pressure on the new port which is already severely strained.

Additionally, most European Ports are reporting similar issues at their ports. Most ports are working to a reduced capacity coupled with severe congestion which is causing delays unloading containers and delivering goods to end users.

To give you an idea of delays, we had a container which left 1st of May 2021, this container did not arrive till July the 17th. Pre pandemic, this container would have arrived beginning of June.

We'll keep you updated as soon as the container has departed origin and will advise of any delays.

Kind Regards

Adnan Haddadi
Procurement Manager

Company Registration No.0144 2485 VAT Reg No GB 108 2991 08





*Annex 4*

[redacted] *Pasūtītāja eksemplārs*

**VISPĀRĪGĀ VIENOŠANĀS**

*par individuālā aprīkojuma (komplekts lauka virtuves KSIP – Mod1 "LVK") NBS vajadzībām piegādi*

[redacted]

Rīgā 2018.gada 13. aprīlī

[redacted] vienotais reģistrācijas [redacted] kas darbojas saskaņā ar Ministru Kabineta 2009.gada 15.decembra noteikumiem Nr.1418 „[redacted] (turpmāk – Pasūtītājs), ko saskaņā ar Aizsardzības ministrijas 2014.gada 10.decembra rīkojumu Nr.1328-pn pārstāv [redacted] un

[redacted] reģistrācijas [redacted] (turpmāk – Piegādātājs Nr.1.), ko saskaņā ar Statūtiem pārstāv **valdes loceklis** [redacted]

**Sabiedrība ar ierobežotu atbildību "[redacted]** reģistrācijas [redacted] (turpmāk – Piegādātājs Nr.2), ko saskaņā ar Statūtiem pārstāv **valdes priekšsēdētājs** [redacted]

(turpmāk kopā saukti Piegādātāji, katrs atsevišķi – Piegādātājs),

Pasūtītājs un Piegādātājs katrs atsevišķi – Līdzējs un kopā turpmāk – Līdzēji,

pamatojoties uz atklāta konkursa „Individuālā aprīkojuma NBS vajadzībām iegāde", identifikācijas [redacted] (turpmāk – Atklāts konkurss) rezultātiem 2018.gada 16.janvāra protokolā [redacted] un Piegādātāja piedāvājumu Atklātā konkursā, noslēdz šādu vispārīgo vienošanos (turpmāk – Vienošanās):

## 1. VIENOŠANĀS PRIEKŠMETS

1.1. Pasūtītājs pasūta, samaksā un pieņem, Piegādātājs piegādā un izkrauj jaunus, nelietotus **komplektus lauka virtuves KSIP-Mod1 "LVK"** (turpmāk – Prece).

1.2. Preci piegādā atbilstoši Vienošanās, Vienošanās 1.pielikumam „Tehniskā specifikācija (turpmāk – Tehniskā specifikācija) un Piegādātāju tehniskajam piedāvājumam Atklātā konkursā (Vienošanās 2. un 3.pielikums) (turpmāk – Piedāvājums).

1.3. Pasūtītājs pasūta Preci pēc nepieciešamības.

## 2. VISPĀRĪGIE NOTEIKUMI

2.1. Noteikt un raksturot starp Pasūtītāju un Piegādātājiem slēdzamos līgumus par Preces piegādi un uzstādīšanu;

2.2. Paredzēt noteikumus un kārtību, pamatojoties uz kuru tiks slēgti atsevišķi Preču piegādes līgumi.

## 3. PREČU PIEGĀDES LĪGUMA SLĒGŠANAS TIESĪBU PIEŠĶIRŠANAS KĀRTĪBA

3.1. Pasūtītājs par katru Preču piegādes periodu slēdz Preču piegādes līgums (turpmāk – Līgums) (4.pielikums "Līgumprojekts") uz 24 (divdesmit četriem) mēnešiem ar Piegādātāju, kurš iesniedzis saimnieciski visizdevīgāko piedāvājumu ar viszemāko vienas vienības cenu.

3.2. Pirmā Līguma slēgšanas tiesības saskaņā ar atklāta konkursa nolikuma 49.1.punktu tiek piešķirtas - Piegādātājam Nr.1.

3.3. Pasūtītājs savlaicīgi nodrošina nākamā perioda Līguma slēgšanas tiesību piešķiršanas procedūras organizēšanu.

3.4. Kopējais Preču piegādes perioda Līgumu darbības termiņš nedrīkst pārsniegt Vienošanās 12.1.apakšpunktā noteikto Vienošanās darbības termiņu.



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*Annex 5*

9.9. Katrs Līdzējs ir atbildīgs par citam Līdzējam nodarītajiem materiālajiem zaudējumiem, kas radušies Vienošanās un Līguma pienācīgas neizpildes rezultātā, tai skaitā Piegādātājs ir atbildīgs par zaudējumiem, kas radušies Piegādātāja, tā darbinieku vai pilnvaroto personu tīšas vai neuzmanīgas rīcības gadījumā.

9.10. Līgumsoda samaksa neatbrīvo Līdzējus no saistību izpildes.

## 10. STRĪDU IZSKATĪŠANAS KĀRTĪBA UN VIENOŠANĀS IZBEIGŠANA

10.1. Strīdi, domstarpības un pretenzijas, kas Līdzējiem rodas Vienošanās izpildes gaitā, vispirms tiek risināti sarunu ceļā. Ja vienošanās netiek panākta, strīdus izskata Latvijas Republikas tiesā Latvijas Republikas normatīvajos aktos noteiktajā kārtībā.

10.2. Vienošanos var izbeigt pirms Vienošanās termiņa beigām, Līdzējiem par to rakstveidā savstarpēji vienojoties.

10.3. Pasūtītājam ir tiesības vienpusēji atkāpties no Vienošanās bez zaudējumu atlīdzināšanas Piegādātājam, rakstveidā brīdinot Piegādātāju vismaz 30 (trīsdesmit) kalendārās dienas iepriekš un samaksājot Piegādātājam par faktiski līdz Vienošanās izbeigšanās brīdim piegādāto kvalitatīvo, Vienošanās noteikumiem atbilstošo Preci.

10.4. Pasūtītājam ir tiesības vienpusēji atkāpties no Vienošanās bez Piegādātāja piekrišanas, ja Piegādātājs:

10.4.1. atkārtoti piegādājis Vienošanās noteikumiem neatbilstošu (nekvalitatīvu) Preci;

10.4.2. atkārtoti kavē Vienošanās 6.3.apakšpunktā noteikto Preces piegādes termiņu vairāk kā par 30 (trīsdesmit) kalendārajām dienām;

10.4.3. piemērotā līgumsoda apmērs sasniedzis 10% (desmit procenti) no Līguma summas.

10.5. Piegādātājam ir tiesības vienpusēji atkāpties no Vienošanās, ja Pasūtītājs neveic samaksu ilgāk kā 30 (trīsdesmit) kalendāro dienu laikā pēc Vienošanās noteiktā samaksas termiņa, rakstveidā brīdinot par to Pasūtītāju vismaz 7 (septiņas) darba dienas iepriekš. Šādā gadījumā Līgums uzskatāms par izbeigtu 7. (septītajā) kalendārajā dienā pēc Piegādātāja paziņojuma par atkāpšanos (ierakstīta vēstule) izsūtīšanas dienas.

10.6. Vienošanās 10.4.apakšpunktā noteiktajos gadījumos Vienošanās uzskatāma par izbeigtu 7. (septītajā) kalendārajā dienā pēc Pasūtītāja paziņojuma par atkāpšanos (ierakstīta vēstule) izsūtīšanas dienas.

10.7. Izbeidzot Vienošanos 10.4.apakšpunktā noteiktajos gadījumos, Piegādātājs 30 (trīsdesmit) kalendāro dienu laikā no Pasūtītāja iesniegtā rēķina izsūtīšanas dienas samaksā līgumsodu un/vai atlīdzina visus Pasūtītājam radušos zaudējumus saskaņā ar Vienošanos.

10.8. Izbeidzot Vienošanos 10.5.apakšpunktā noteiktajā gadījumā, Pasūtītājs 30 (trīsdesmit) kalendāro dienu laikā no Piegādātāja iesniegtā rēķina izsūtīšanas dienas samaksā līgumsodu.

10.9. Vienošanās grozījumi un papildinājumi ir spēkā tikai tad, ja tie noformēti rakstveidā un ir Līdzēju parakstīti un stājas spēkā ar visu eksemplāru parakstīšanu un reģistrēšanu pie Pasūtītāja. Tie pievienojami pie Vienošanās, un kļūst par tās neatņemamu sastāvdaļu.

## 11. NEPĀRVARAMA VARA

11.1. Neviens no Līdzējiem nav atbildīgs par Līguma saistību neizpildi, ja saistību izpilde nav bijusi iespējama nepārvaramas varas apstākļu dēļ, kas radušies pēc Līguma spēkā stāšanās, ja Līdzējs par šādu apstākļu iestāšanos ir informējis otru Līdzēju 7 (septiņu) darba dienu laikā no šādu apstākļu rašanās dienas. Šajā gadījumā Līgumā noteiktie termiņi tiek pagarināti attiecīgi par tādu laika periodu, par kādu šie nepārvaramas varas apstākļi ir aizkavējuši Līguma izpildi, bet ne ilgāk par 30 (trīsdesmit) kalendārajām dienām.

11.2. Ar nepārvaramas varas apstākļiem jāsaprot dabas stihijas (ugunsgrēki, plūdi, ilgstošs lietus, zemestrīces) un citi, no Līdzējiem pilnīgi neatkarīgi radušies ārkārtēja rakstura gadījumi, ko Līdzējiem nebija iespējas ne paredzēt, ne novērst.



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11.3. Līdzēji nekavējoties informē viens otru par šādu apstākļu iestāšanos un veic visus nepieciešamos pasākumus, lai novērstu zaudējumus, kas varētu rasties nepārvaramas varas apstākļu ietekmē. Nepārvaramas varas iestāšanos Līdzēji apstiprina ar attiecīgu, kompetentu iestāžu izziņu.

11.4. Gadījumā, ja nepārvaramas varas apstākļi turpinās ilgāk kā 30 (trīsdesmit) dienas, katrs no Līdzējiem ir tiesīgs vienpusēji atkāpties no Līguma, par to rakstveidā brīdinot otru Līdzēju 7 (septiņas) dienas iepriekš. Šajā gadījumā Piegādātājs atmaksā Pasūtītājam iepriekš samaksāto priekšapmaksu par pasūtīto, bet nepiegādāto Preci.

## 12. PAPILDU NOTEIKUMI

12.1. Vienošanās stājas spēkā ar dienu, kad to ir parakstījuši visi Līdzēji, un tā ir reģistrēta pie Pasūtītāja (Kancelejas atzīme) un ir spēkā 48 (četrdesmit astoņus) mēnešus no Vienošanās spēkā stāšanās dienas.

12.2. Līdzēji vienojas, ka ar Vienošanās izpildi saistītos jautājumus risinās šādas atbildīgās personas:

12.2.1. Pasūtītāja atbildīgā persona:;

12.2.2. SIA "[redacted] atbildīgā persona:

12.2.3. SIA "[redacted] atbildīgā persona:.

12.3. Līdzēji vienojas, ka Vienošanās 12.2.apakšpunktā minētās personas ir tiesīgas parakstīt visus Līgumā minētos aktus un pretenzijas.

12.4. Vienošanās izpildes gaitā, kā arī gadījumos, kas nav paredzēti Vienošanās, Līdzēji vadās pēc Latvijas Republikā spēkā esošajiem normatīvajiem aktiem.

12.5. Vienošanās noteikumi piemērojami, ciktāl tie nav pretrunā ar Latvijas Republikā spēkā esošajiem normatīvajiem aktiem. Gadījumā, ja viens vai vairāki Vienošanās noteikumi tiek atzīti par spēkā neesošiem, Vienošanās pārējo noteikumu juridiskais spēks nemainās. Spēkā neesošie noteikumi jāaizstāj ar citiem Vienošanās mērķim un saturam atbilstošiem noteikumiem.

12.6. Nevienam no Līdzējiem nav tiesību nodot savas tiesības un pienākumus trešajai personai.

12.7. Vienošanās ir saistoša Līdzēju likumīgajam saistību un tiesību pārņēmējam.

12.8. Līdzēji 5 (piecu) darba dienu laikā rakstveidā informē viens otru par sava juridiskā statusa, nosaukuma, adreses (faktiskās vai juridiskās), saziņas līdzekļu, Vienošanās 12.2.apakšpunktā norādīto atbildīgo personu vai maksājumu rekvizītu maiņu. Pēc paziņojuma saņemšanas (kancelejas atzīme) tas kļūst par Vienošanās neatņemamu sastāvdaļu.

12.9. Paziņojumi, kas attiecas uz Vienošanos vai Līgumu jānosūta ierakstītā vēstulē (izņemot Vienošanā atrunātos e-pastu/faksu sūtījumus) uz Līdzēju juridiskajām adresēm, vai jānodod tieši adresātam.

12.10. Parakstot Vienošanos, Līdzēji apliecina, ka ar vienošanās tekstu ir iepazinušies un tam piekrīt.

12.11. Vienošanās pamatteksts sagatavots uz 8 (astoņām) lapām 3 (trīs) eksemplāros, katram Līdzējam pa vienam. Visiem eksemplāriem ir vienāds juridiskais spēks.

12.12. Vienošanai ir pievienots:

12.12.1. Pasūtītāja eksemplāram 1.pielikums "Tehniskā specifikācija" uz 4 (četrām) lapām, 2.pielikums "Piegādātāja Nr.1 Tehniskais piedāvājums" uz 207 (divi simti septiņām) lapām 3.pielikums "Piegādātāja Nr.2 Tehniskais piedāvājums" uz 7 (septiņām) lapām, un 4.pielikums "Preču piegādes līgums (Projekts)" uz 2 (divām) lapām, kas ir neatņemamas Vienošanās sastāvdaļas;



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*Annex 7*

[redacted]

Datums norādīts laika zīmogā

***Par nepārvaramas varas apstākļiem un līguma izpildes termiņu***

2023.gada 19.jūnijā SIA [redacted] (turpmāk – Piegādātājs) 2022. gada 13. maijā noslēgtā līguma Nr. [redacted] "Par airsoft ieroču piegādi" (turpmāk – Līgums) ietvaros saņēma Valsts aizsardzības loģistikas un iepirkumu centra (turpmāk – Pasūtītājs) pasūtījumu Nr. [redacted] par 1000 (viens tūkstotis) airsoft ieroču komplektu piegādi Pasūtītājam.

2023. gada 3. augustā Piegādātājs nosūtīja Pasūtītājam vēstuli Nr. [redacted], norādot, ka piegādes laiks sakarā ar ražošanas uzņēmuma atrašanos taifūna skartajā zonā. Vienlaikus Piegādātājs norādīja, ka minēto apstākļu rezultātā tuvākajā laikā iesniegs [redacted] oficiālu lūgumu pagarināt Līgumā noteikto piegādes termiņu.

Piegādātājs ir saņēmis Pasūtītāja 2023.gada 18.septembra vēstuli Nr. [redacted] ar kuru Pasūtītājs lūdz Piegādātāju informēt par precīzu preču piegādes dienu, kā arī lūdz iesniegt pierādījumus par to, ka pasūtījuma izpilde nav iespējama no Piegādātāja neatkarīgu apstākļu rezultātā, piemēram, Latvijas Tirdzniecības un rūpniecības kameras izdotu uzziņu par Līguma izpildes situācijas novērtējumu un force majeure apstākļu esamību.

Ņemot vērā minēto, Piegādātājs norāda, ka pie šī brīža situācijas pasūtījumu izpildīs līdz 2023.gada 30.novembrim. Kavējums ir radies no Piegādātāja neatkarīgu apstākļu - force majeure – rezultātā, ko apliecina pielikumā pievienotā Latvijas Tirdzniecības un rūpniecības kameras 2023.gada 22.septembra izziņa Nr. [redacted] kurā detalizēti izanalizēti Līguma izpildes kavējošie apstākļi un to ietekme uz pasūtījuma izpildi. Lūdzam Pasūtītāju pagarināt konkrētā pasūtījuma izpildi līdz minētajam termiņam.

Pielikumā: Latvijas Tirdzniecības un rūpniecības kameras 22.09.2023. izziņa Nr. 2023/839.

Ar cieņu,
Sabiedrības ar ierobežotu atbildību [redacted]
Valdes priekšsēdētājs [redacted]

DOKUMENTS PARAKSTĪTS ELEKTRONISKI AR DROŠU ELEKTRONISKO PARAKSTU

UN SATUR LAIKA ZĪMOGU

[redacted]

Kods: HABALV22
Konts: LV72HABA0551020306463

*Annex 8*