

Article 13

For the purposes of this Convention “writing” includes telegram and telex.

OVERVIEW

1. The purpose of article 13 of the Convention, which is based on article 1 (3) (g) of the 1974 Convention on the Limitation Period in the International Sale of Goods, is to ensure that communications taking the form of a telegram or telex are treated as “writings”,¹ and thus (in their form) can satisfy applicable writing requirements if such exist.² According to one court,³ the definition of “writing” under article 13 is flexible enough to also include e-mail and other electronic means of communication.

2. According to one court, where the parties themselves agreed on what is to be understood as “writing”, the agreed-upon definition prevails.⁴ That same court also stated that, in order to interpret the parties’ agreement as to form, resort is to be had to the interpretive criteria set forth in article 8 of the Convention.⁵

APPLICATION

3. The provision has rarely been resorted to in case law. One court, in deciding whether avoidance of a lease contract via telefax met a writing requirement in applicable domestic law, stated that, had the Convention governed, the telefax would be considered sufficient on the basis of article 13; but the court also held that article 13 applied only to international sales contracts, and should not be extended by analogy to leases or other non-sales contracts.⁶ The same court later reaffirmed its view that article 13 should not be applied by analogy, reasoning that the provision contains an exception and that exceptions must be interpreted restrictively.⁷

4. A different court⁸ stated that where the parties have agreed that their contract must be in writing, this requirement is met where the contract meets the definition of “writing” as defined under article 13. That court also stated that where the parties agree on a writing requirement, that requirement constitutes a validity requirement rather than a requirement for the sole purpose of proving the contract.

Notes

¹For a reference to the text of article 13 of the Convention, see District Court in Komarno, Slovakia, 24 February 2009, www.cisg.law.pace.edu.

²See CLOUT case No. 1083 [Tribunal of International Commercial Arbitration at the Ukraine Chamber of Commerce and Trade, Ukraine, 25 November 2002], English translation available on the Internet at www.cisg.law.pace.edu (relating to telefax communication); Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 28 April 1995, English translation available on the Internet at www.cisg.law.pace.edu (referring to telex communications).

³Supreme Court, Egypt, 11 April 2006, available on the Internet at www.cisg.law.pace.edu.

⁴Oberlandesgericht Innsbruck, Austria, 18 December 2007, English translation available on the Internet at www.cisg.law.pace.edu.

⁵Ibid.

⁶See Oberster Gerichtshof, Austria, 2 July 1993, Unilex.

⁷Oberster Gerichtshof, Austria, 26 April 1997, available on the Internet at www.cisg.at.

⁸Kantonsgericht Zug, Switzerland, 14 December 2009, available on the Internet at www.cisg-online.ch.