

### Article 16

(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

(2) However, an offer cannot be revoked:

(a) If it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or

(b) If it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

#### OVERVIEW—ARTICLE 16 (1)

1. Paragraph (1) of article 16 sets out rules for the effective revocation of an offer. “Revocation” of an offer under article 16 (1) is distinguished from “withdrawal” of an offer under article 15 (2): withdrawal refers to a retraction of an offer that reaches the offeree before or at the same time as the offer reaches the offeree, whereas revocation refers to a retraction of an offer that reaches the offeree after the offer has reached the offeree.<sup>1</sup> Until a contract is concluded, article 16 (1) empowers an offeror to revoke the offer provided the revocation reaches the offeree before he has dispatched an acceptance, unless the offer cannot be revoked by virtue of article 16 (2). Under articles 18 and 23, a contract is not concluded until the offeree’s indication of assent reaches the offeror (except where article 18 (3) applies); thus the rule of article 16 (1) precluding revocation from the time an acceptance is dispatched may block revocation for a period before the contract is concluded. A small number of cases refer to paragraph (1) article 16 CISG.<sup>2</sup>

#### OVERVIEW—ARTICLE 16 (2)

2. Subparagraph (a) of paragraph (2) provides that an offer cannot be revoked if it indicates that it is irrevocable, whether by stating a fixed time for acceptance or otherwise. There are no reported cases applying this subparagraph.

3. Subparagraph (b) of paragraph (2) provides that an offer cannot be revoked if the offeree relied on the offer and it was reasonable for him to do so. This subparagraph has been cited as evidence of a general principle of estoppel (“*venire contra factum proprium*”),<sup>3</sup> and as a general principle applicable to revocation of a declaration of avoidance of the contract.<sup>4</sup> It has also been held that domestic legal rules on promissory estoppel are not pre-empted except when the Sales Convention provides the equivalent of promissory estoppel, as it does in subparagraph (b).<sup>5</sup>

### Notes

<sup>1</sup> Article 24 defines when an offer or other expression of intention—presumably including a withdrawal or a revocation of an offer—“reaches” the offeree.

<sup>2</sup> See Higher Court in Ljubljana, Slovenia, 9 April 2008, English editorial remarks available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (holding that an attempted revocation of the offer which was received by the offeree after the acceptance was dispatched (and also after the offeree had shipped the goods) was ineffective under article 16 (1)). The following decision cites article 16, but because the case did not involve irrevocability of the offer—see paragraph 2—the citation effectively refers to paragraph (1) of article 16: Landgericht Oldenburg, Germany, 28 February 1996, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (citing articles 14, 15, 16, 17, 18 and 19).

<sup>3</sup> CLOUT case No. 94 [Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft-Wien, Austria, 15 June 1994], see also Unilex (seller’s continued requests for information about complaints induced buyer to believe that seller would not raise defence that notice of non-conformity was not timely).

<sup>4</sup> CLOUT Case No. 999 [Ad hoc Arbitral Tribunal, Denmark, 10 November 2000] (also citing article 7(2)).

<sup>5</sup> CLOUT case No. 579 [U.S. District Court, Southern District of New York, United States, 10 May 2002] (201 Federal Supplement (2nd Series) 236 (finding limited to scope of promissory estoppel as claimed by buyer). Confirmed by U.S. District Court, Southern District of New York, United States, 21 August 2002 (Geneva Pharmaceuticals Tech. Corp. v. Barr Labs. Inc.), available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu)).