

Article 27

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

OVERVIEW

1. Article 27 states that, in general, the dispatch principle applies to all kinds of communications provided for in Part III of the Convention (articles 25-89). Under this principle the declaring party has only to dispatch its communication by using an appropriate means of communication; the addressee then bears the risk of correct and complete transmission of the communication.¹

THE DISPATCH PRINCIPLE

2. The dispatch principle is the general principle of the Convention applicable to communications after the parties have concluded their contract. According to the principle, a notice, request or other communication becomes effective as soon as the declaring party releases it from its own sphere by an appropriate means of communication.² This rule applies to notice of non-conformity or of third-party claims (articles 39, 43); to requests for specific performance (article 46), price reduction (article 50), damages (article 45 (1) (b)) or interest (article 78); to a declaration of avoidance (articles 49, 64, 72, 73); to the fixing of an additional period for performance (articles 47, 63); and to other notices, as provided for in articles 32 (1), 67 (2) and 88. As a general principle for Part III of the Convention, the dispatch principle applies as well to any other communication the parties may provide for in their contract unless they have agreed that the communication has to be received to be effective.³

3. Some provisions of Part III of the Convention, however, expressly provide that a communication becomes effective only when the addressee “receives” it (see articles 47 (2), 48 (4), 63 (2), 65, 79 (4)).

APPROPRIATE MEANS OF COMMUNICATION

4. The declaring party must use appropriate means of communication in order for a notice to benefit from the rule of article 27. In one case a court stated that giving notice to a self-employed broker who did not act as a commercial agent for the seller was not an appropriate means of communication

with the seller: the notice would only be deemed given by appropriate means if the buyer assured itself about the reliability of the self-employed broker; the buyer also had to indicate to the broker its function as a messenger, as well as the importance of the notice, and had to control the performance of the commission.⁴

5. Article 27 does not explicitly deal with how the language of a communication impacts its appropriateness. In order to be effective, however, the communication must be in the language the parties have explicitly chosen, or that has previously been used among them, or that the receiving party understands or has communicated that it understands.⁵

6. It has been held that article 27 does not govern oral communications.⁶ One court stated that such communications are effective if the other party can hear and—with respect to language—understand them.⁷

EFFECT OF APPROPRIATE AND INAPPROPRIATE COMMUNICATIONS

7. Where the declaring party uses an inappropriate means of transmission the risk of delay, error or failure in transmission is generally on the sender, which may render the communication ineffective. Therefore, e.g., the buyer loses its remedies for non-conformity in the delivered goods if the buyer transmits the notice of non-conformity to the wrong person.⁸ On the contrary, where the buyer uses an appropriate means any delay, error or failure of transmission of the notice of non-conformity does not deprive the buyer of its remedies.⁹

BURDEN OF PROOF

8. It has been held that the declaring party must prove actual dispatch of the communication as well as the time and method of dispatch.¹⁰ If the parties have agreed on a specific form of communication the declaring party must also prove that it used the agreed form.¹¹ However the declaring party does not need to prove that the communication reached the addressee.¹²

Notes

¹ CLOUT case No. 540 [Oberlandesgericht Graz, Austria, 16 September 2002]; CLOUT case No. 305 [Oberster Gerichtshof, Austria, 30 June 1998]. See also CLOUT case No. 723 [Oberlandesgericht Koblenz, Germany, 19 October 2006] (notice of non-conformity by fax); Oberlandesgericht München, Germany, 17 November 2006, CISG-online No. 1395; Oberster Gerichtshof, Austria, 24 May 2005, *Internationales Handelsrecht* 2005, 249.

² CLOUT case No. 540 [Oberlandesgericht Graz, Austria, 16 September 2002]; CLOUT case No. 723 [Oberlandesgericht Koblenz, Germany, 19 October 2006].

³ Landgericht Stuttgart, Germany, 13 August 1991, Unilex (according to the contract, notice of non-conformity had to be by registered letter; as a result, the court held, the notice had to be received by the other party and the declaring party had the burden of proving that the notice had been received by the other party). See also CLOUT case No. 305 [Oberster Gerichtshof, Austria, 30 June 1998].

⁴ CLOUT case No. 409 [Landgericht Kassel, Germany, 15 February 1996].

⁵ CLOUT case No. 132 [Oberlandesgericht Hamm, Germany, 8 February 1995]; Amtsgericht Kehl, Germany, 6 October 1995, Unilex; CLOUT case No. 409 [Landgericht Kassel, Germany, 15 February 1996] (see full text of the decision).

⁶ CLOUT case No. 305 [Oberster Gerichtshof, Austria, 30 June 1998] (see full text of the decision).

⁷ Ibid.

⁸ See CLOUT case No. 409 [Landgericht Kassel, Germany, 15 February 1996] (see full text of the decision).

⁹ Handelsgericht Zürich, Switzerland, 30 November 1998, *Schweizerische Zeitschrift für Internationales und Europäisches Recht* 1999, 186.

¹⁰ CLOUT case No. 305 [Oberster Gerichtshof, Austria, 30 June 1998]; Landgericht Stuttgart, Germany, 13 August 1991, Unilex; CLOUT case No. 362 [Oberlandesgericht Naumburg, Germany, 27 April 1999] (see full text of the decision); CLOUT case No. 723 [Oberlandesgericht Koblenz, Germany, 19 October 2006]; Rechtbank Arnhem, the Netherlands, 11 February 2009, English translation available on the Internet at www.cisg.law.pace.edu. See also Amtsgericht Freiburg, Germany, 6 July 2007, CISG-online No. 1596.

¹¹ Landgericht Stuttgart, Germany, 13 August 1991, Unilex; Rechtbank Arnhem, Netherlands, 11 February 2009, English translation available on the Internet at www.cisg.law.pace.edu.

¹² CLOUT case No. 362 [Oberlandesgericht Naumburg, Germany, 27 April 1999] (see full text of the decision).