

CISG-online 169

Jurisdiction	Germany
Tribunal	Landgericht Aachen (District Court Aachen)
Date of the decision	20 July 1995
Case no./docket no.	41 O 111/95
Case name	<i>Unspecified goods</i>

Translation by Peter Feuerstein***

*Translation edited by Ruth M. Janal****

Grounds for the Decision

[...]

In this matter, the plaintiff's claim is admissible and founded; thus, a judgment in absentia could be rendered according to the content of the operative provisions of the judgment. **1**

This applies also to the interest rate. **2**

In Art. 78 CISG there is a regulation for interest. This provision is applicable in principle, as Art. 4, sentence 1, CISG stipulates that the Convention governs all rights and obligations of the seller and the buyer arising from the contract of sale. **3**

This provision [Art. 78 CISG] provides only for an obligation to pay interest. **4**

This norm does not say anything about the interest rate to be paid. Thus there is a gap in the law; there is dispute about how to fill it. **5**

* All translations should be verified by cross-checking against the original text.

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It has been argued that the interest rate must be determined by having recourse to the general principles of the CISG in order to achieve an internationally uniform regulation (*cf.* Eberstein/Bacher in von Caemmerer/Schlechtriem (eds.), *Kommentar zum Einheitlichen UN-Kaufrecht*, 2nd ed., Art. 78 para. 21 footnote 30). Against this, it has been argued that a uniform solution could not be achieved at the conferences for the drafting of the CISG, as the different opinions about the interest obligation were irreconcilable (*cf.* Eberstein/Bacher, *op. cit.*, para. 2).

6

Preferable is the opinion that the interest rate is to be taken from the applicable national law supplementing the CISG, which in turn is to be determined in accordance with the conflict of laws rules of the forum State (*cf.* Eberstein/Bacher, *op. cit.*, para. 21 footnote 31). According to German private international law, the interest rate is determined – even though this is not undisputed (*cf.* Heldrich in Palandt, *BGB*, 54th ed., Art. 32 EGBGB para. 5) – according to the law governing of the contract; thus, according to the law which would be applicable to the sales contract if the contract were not subject to the Convention. According to Art. 28 EGBGB, the law of the State which has had the closest connection with the contract would have to be applied (Art. 28(1) sentence 1 EGBGB). Thereby one has to look to the characteristic performances under the contract (*cf.* Art. 28(2) sentence 1 EGBGB, respectively Art. 4(2) 1980 Rome Convention). With contracts of sales, therefore, the law of the State where the seller has its main place of business is applicable (*cf.* Heldrich in Palandt, *op. cit.*, Art. 28 EGBGB para. 8).

7

Thus, Italian law applies to the interest rate. In Italian law - insofar equivalent to the German regulation - there is a distinction between the legal interest rate and an interest rate based on damages caused by delay. Since under Art. 1284(1) Codice civile (Italian Civil Code) the legal interest rate is already 10%, there is no objection to the requested interest rate in the present case.

8

The point in time from which interest is owed is derived from Art. 78 CISG. According to this provision, the maturity of the obligation to pay the price or any other sum in arrears is sufficient for the right to request interest. A default must not be present (*cf.* Eberstein/Bacher, *op. cit.*, para. 9).

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The pre-trial costs have to be reimbursed under Art. 78 CISG in connection with Arts. 74, 61(1)(b) CISG.

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