

Article 21

(1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.

(2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

OVERVIEW

1. Article 21 provides that a late acceptance is nevertheless effective if the conditions set out in paragraphs (1) or (2) are satisfied. Other provisions of Part II of the Convention defined when an acceptance is late. Thus article 18 (2) requires a timely acceptance to reach the offeror within the time period specified in that paragraph and calculated as provided in article 20; article 24 defines when a revocation “reaches” the offeree. Article 18 (3), however, identifies circumstances in which an acceptance is effective when the offeree performs “an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror [...]”.

2. Paragraph (1) provides that a late acceptance is effective if the offeror notifies the offeree without delay that

the acceptance is effective.¹ According to a Supreme Court decision, the contract is then retroactively concluded at the time the late acceptance reached the offeror (not when the offeror’s message reaches the offeree).² The offeror’s confirming answer two months after the late acceptance is ineffective because it was not sent “without delay”³ while an answer after one week meets the requirements of a timely acceptance.⁴

3. Paragraph (2) provides that a “letter or other writing containing a late acceptance” is nevertheless effective as an acceptance if the writing shows that it would normally have reached the offeror within the time period for acceptance, unless the offeror notifies the offeree without delay that he considers the offer to have lapsed. There are no reported cases applying paragraph (2).

Notes

¹ Court of Arbitration of the International Chamber of Commerce, 1994 (Arbitral award No. 7844), *The ICC International Court of Arbitration Bulletin* (Nov. 1995) 72-73 (reference to Austrian law and the Convention for proposition that a late acceptance would not be effective unless the offeror notified the offeree without delay that the acceptance is effective). The same result was reached in Landgericht Hamburg, Germany, 21 December 2001, English translation available on the Internet at www.cisg.law.pace.edu (although the contract was considered concluded because it had been performed by the seller’s shipment of the goods and their acceptance by the buyer).

² Bundesgerichtshof, Germany, 7 January 2014, *Internationales Handelsrecht* 2014, 56 = CISG-online No. 2477.

³ Oberlandesgericht Frankfurt, 24 March 2009, *Internationales Handelsrecht* 2010, 250 (252) = CISG-online No. 2165.

⁴ Oberlandesgericht Dresden, Germany, 30 November 2010, *Internationales Handelsrecht* 2011, 142 (144) = CISG-online No. 2183.