



## General Assembly

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**United Nations Commission  
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### **UNCITRAL Digest of case law on the United Nations Convention on the International Sale of Goods\***

#### *Article 26*

A declaration of avoidance of the contract is effective only if made by notice to the other party.

#### **Purpose of the provision**

1. The article provides that any avoidance must be declared by the party who intends to terminate the contract and that the declaration must be effected by notice to the other party. The CISG does not acknowledge an automatic termination of contract.<sup>1</sup>

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<sup>1</sup> See CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996] (see full text of the decision); CLOUT case No. 294 [Oberlandesgericht Bamberg, Germany, 13 January 1999]; ICC Court of Arbitration, France, award No. 9887, *ICC International Court of Arbitration Bulletin* 2000, 109.

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\* The present digest was prepared using the full text of the decisions cited in the Case Law on UNCITRAL Texts (CLOUT) abstracts and other citations listed in the footnotes. The abstracts are intended to serve only as summaries of the underlying decisions and may not reflect all the points made in the digest. Readers are advised to consult the full texts of the listed court and arbitral decisions rather than relying solely on the CLOUT abstracts.

2. The purpose of the notice requirement is to ensure that the other party becomes aware of the status of the contract.

### Form of notice

3. The notice need not be given in a particular form (see also article 11). It therefore can be made in writing or even orally.<sup>2</sup> Also, a notice in the statement of claim filed with the court suffices.<sup>3</sup>

4. Article 26 does not mention the possibility of an implicit notice. Several courts have had to deal with this issue. One court found that the mere purchase by the buyer of substitute goods does not constitute a valid (implicit) notice of declaration of avoidance<sup>4</sup>; another court decided that the fact that the buyer sends back the delivered goods without further explanation does not amount to a valid notice of declaration of avoidance<sup>5</sup>.

### Contents of notice

5. The notice must express with sufficient clarity that the party will not be bound by the contract any longer and considers the contract terminated.<sup>6</sup> Therefore, any announcement that the contract will be terminated in future if the other party does not react<sup>7</sup> or a letter demanding either price reduction or taking the delivered goods back<sup>8</sup> or the mere sending back of the goods<sup>9</sup> does not constitute a valid notice because it does not state in unequivocal terms that the party wanting to terminate the contract believes that the contract is terminated. The same is true if a party requests damages<sup>10</sup>. However, the term “(declaration of) avoidance” need not be used nor need the relevant provision of the Convention be cited.<sup>11</sup> The use similar terms is sufficient. Thus, one court found that the buyer effectively gave notice by declaring that it could not use the defective goods and that it placed them at the disposal of the seller.<sup>12</sup> The same has been ruled with respect to a letter in which the buyer stated that no further business with the seller would be conducted.<sup>13</sup> Notice of non-conformity of the goods and notice of avoidance can be combined and expressed in one declaration.<sup>14</sup>

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<sup>2</sup> CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996].

<sup>3</sup> CLOUT case No. 308 [Federal Court of Australia, 28 April 1995].

<sup>4</sup> CLOUT case No. 294 [Oberlandesgericht Bamberg, Germany, 13 January 1999].

<sup>5</sup> CLOUT case No. 6 [Landgericht Frankfurt a.M., Germany, 16 September 1991].

<sup>6</sup> *Id.*

<sup>7</sup> Landgericht Zweibrücken, Germany, 14 October 1992, Unilex.

<sup>8</sup> Oberlandesgericht München, Germany, 2 March 1994, *Recht der Internationalen Wirtschaft* 1994, 515.

<sup>9</sup> CLOUT case No. 6 [Landgericht Frankfurt a.M., Germany, 16 September 1991].

<sup>10</sup> CLOUT case No. 176 [Oberlandesgericht München, Germany, 8 February 1995].

<sup>11</sup> CLOUT case No. 6 [Landgericht Frankfurt a.M., Germany, 16 September 1991] (see full text of the decision).

<sup>12</sup> CLOUT case No. 235 [Bundesgerichtshof, Germany 25 June 1997].

<sup>13</sup> CLOUT case No. 293 [Arbitration—Schiedsgericht der Hamburger freundschaftlichen Arbitrage 29 December 1998].

<sup>14</sup> CLOUT case No. 235 [Bundesgerichtshof, Germany, 25 June 1997].

### **Addressee of the notice**

6. The notice must be directed to the other party, normally the other party to the original contract or its authorised agent. If the contractual rights have been assigned to a third party the declaration must be addressed to this new party.<sup>15</sup>

### **Communication of notice**

7. Generally notice of avoidance need not be given within a specified time. Articles 49 (2) and 64 (2), however, prescribe that notice must be communicated within a reasonable time. Concerning article 49 it has been held that notice after several months is clearly not reasonable.<sup>16</sup> To meet any time limit dispatch of the notice within the period is sufficient (see article 27).

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<sup>15</sup> CLOUT case No. 6 [Landgericht Frankfurt a.M., Germany, 16 September 1991] (see full text of the decision).

<sup>16</sup> See CLOUT case No. 124 [Bundesgerichtshof, Germany, 15 February 1995] (notice after 5 months: too late); CLOUT case No. 84 [Oberlandesgericht Frankfurt a.M., Germany, 20 April 1994] (2 months: too late); CLOUT case No. 83 [Oberlandesgericht München, Germany, 2 March 1994] (4 months: too late); CLOUT case No. 6 [Landgericht Frankfurt a.M., Germany, 16 September 1991] (1 day: in time) (see full text of the decision).