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Article 57

(1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

(a) At the seller's place of business; or

(b) If the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

(2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

* 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.

Introduction

1. This provision defines, firstly, the place where payment is to be made (paragraph (1)). Absent an agreement of the parties, the price is to be paid at the seller's place of business unless it has been agreed that the price should be payable against the handing over of the goods or of documents, in which case payment is to be made at the place where the handing over takes place (paragraph (1)). As noted in two court decisions, the burden of proof of payment of the price rests on the buyer¹.

2. Furthermore, this provision anticipates the possibility that the seller might change its place of business following the conclusion of the contract (paragraph (2)), in which case any increase in the expenses incidental to payment caused by the change in the place of business is to be borne by the seller.

Determination of the place of payment of the price

3. Article 57 (1) has attracted a vast amount of comment in case law. Judges refer to this provision, for example, in determining the currency of payment².

4. Above all, however, article 57 (1) plays an important role in the practice of countries whose legal systems provide for jurisdictional competence at the place of performance of obligations.³ This is the case in Europe, for example. In fact, article 5.1 of the 1968 Brussels Convention, which is binding for the countries of the European Union and relates to jurisdiction and the enforcement of judgements in civil and commercial matters, permits the plaintiff to sue the defendant "in matters relating to a contract, in the courts for the place of performance of the obligation in question" (article 5.1). This same provision was incorporated in the Convention of Lugano of 16 September 1988, which is binding on the countries of the European Free Trade Association (EFTA). The combined effect of article 5.1 of the Brussels and Lugano Conventions and article 57 of the United Nations Convention on Contracts for the International Sale of Goods is that the seller can bring a defaulting buyer before the court having jurisdiction at the seller's place of business in connection with an international sale of goods covered by the Convention. This practice has developed especially in the countries of the European Union since the European Community Court of Justice was able to remove the hesitations that might have been felt by confirming that the place where the obligation to pay the price is to be performed "must be determined on the basis of the substantive law provisions governing the obligation at issue according to the rules of conflict of the jurisdiction in which the action was brought, even if those rules indicate that a unified substantive law, such as the 1964 Hague Convention relating to the Uniform Law on the International Sale of Goods, must apply to the contract"⁴. Court decisions

¹ CLOUT case No. 273 [Oberlandesgericht München, Germany, 9 July 1997]; see also Court of Tijuana, Mexico, 14 July 2000, *Internationales Handelsrecht*, 2001, 38 (decided in the same way but on the basis of Mexican procedural law).

² See Digest, article 54 at para. 6.

³ It is rare for Art. 57 (1) to be applied independently of this question. See, however, Oberster Gerichtshof, Austria, 22 October 2001, available on the Internet at <<http://www.cisg.law.pace.edu/cisg/wais/db/cases2/011022a3.html>>. See further footnote 2.

⁴ CLOUT case No. 298 [European Court of Justice, C-288/92, 29 June 1994].

applying article 57 of the CISG Convention in connection with the implementation of article 5.1 of the Brussels⁵ and Lugano⁶ Conventions have been numerous.

5. On 1 March 2002, in the countries of the European Union, with the exception of Denmark, the Council Regulation No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁷, entered into force, which is replacing the Brussels Convention. For those European States article 57 of the United Nations Convention on Contracts for the International Sale of Goods will thus cease to play the role it has hitherto played in the determination of jurisdiction. In fact, the question of special competence in contractual matters is substantially revised by the new text. Although the basic rule is retained (article 5.1 (a)), the regulation determines substantively the place of performance to be considered, unless otherwise agreed between the parties, for two types of contract, namely contracts for the sale of goods

⁵ See in particular Bundesgerichtshof, Germany, 30 April 2003, available on the Internet at <<http://www.cisg.law.pace.edu/cisg/wais/db/cases2/030430g1.html>>; Rechtbank van Koophandel Veurne, Belgium, 19 March 2003, available on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/2003-03-19.htm>>; Bundesgerichtshof, Germany, 2 October 2002, available on the Internet at <<http://www.cisg-online.ch/cisg/urteile/700.htm>>; Hof van Beroep Gent, Belgium, 15 May 2002, available on the Internet at <<http://www.cisg.law.pace.edu/cisg/wais/db/cases2/020515b1.html>>; Hof van Beroep Gent, Belgium, 31 January 2002, available on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/2002-01-31.htm>>; Bundesgerichtshof, Germany, 7 November 2001, available on the Internet at <<http://www.cisg.law.pace.edu/cisg/wais/db/cases2/011107g1.html>>; Cour de cassation, 1^{re} chambre civile, France, 26 June 2001, *Recueil Dalloz*, 2001, Jurisprudence, 2593; Landgericht Flensburg, Germany, 19 January 2001, available on the Internet at <<http://www.cisg-online.ch/cisg/urteile/619.htm>>; CLOUT case No. 379 [Corte di Cassazione S.U., Italy, 14 December 1999]; CLOUT case No. 343 [Landgericht Darmstadt, Germany, 9 May 2000] (see full text of the decision); Landgericht Trier, Germany, 7 December 2000, *Internationales Handelsrecht*, 2001, 35; CLOUT case No. 320 [Audencia Provinciale de Barcelona, Spain, 4 June 1999] (see full text of the decision); CLOUT case No. 274 [Oberlandesgericht Celle, Germany, 11 November 1998]; CLOUT case No. 223 [Cour d'appel, Paris, France, 15 October 1997] (see full text of the decision); CLOUT case No. 287 [Oberlandesgericht München, Germany, 9 July 1997]; CLOUT case No. 284 [Oberlandesgericht Köln, Germany, 21 August 1997] (see full text of the decision); CLOUT case No. 162 [Østre Landsret, Denmark, 22 January 1996]; CLOUT case No. 205 [Cour d'appel, Grenoble, France, 23 October 1996]; Landgericht Siegen, Germany, 5 December 1995, available on the Internet at <<http://www.cisg-online.ch/cisg/urteile/287.htm>>; Gerechtshof 's-Hertogenbosch, the Netherlands, 9 October 1995, *Nederlands International Privaatrecht* 1996, No. 118; Oberlandesgericht München, Germany, 28 June 1995, available on the Internet at <<http://www.cisg-online.ch/cisg/urteile/406.htm>>; CLOUT case No. 153 [Cour d'appel, Grenoble, France, 29 March 1995] (see full text of the decision); Rechtbank Middelburg, the Netherlands, 25 January 1995, *Nederlands International Privaatrecht*, 1996, No. 127; Hof 's-Hertogenbosch, 26 October 1994, *Nederlands International Privaatrecht*, 1995, No. 261; CLOUT case No. 156 [Cour d'appel, Paris, France, 10 November 1993] (see full text of the decision) CLOUT case No. 25 [Cour d'appel, Grenoble, France, 16 June 1993].

⁶ Handelsgericht Aargau, Switzerland, 5 November 2002, available on the Internet at <<http://www.cisg-online.ch/cisg/urteile/715.htm>>; Landgericht Freiburg, Germany, 26 April 2002, available on the Internet at <<http://www.cisg-online.ch/cisg/urteile/690.htm>>; CLOUT case No. 221 [Zivilgericht des Kantons Basel-Stadt, Switzerland, 3 December 1997]; CLOUT case No. 194 [Bundesgericht, Switzerland, 18 January, 1996].

⁷ *Official Journal of the European Community*, Legislation, 16 January 2001.

and contracts for the provision of services (article 5.1 (b)). For the sale of goods, the place in question is “the place in a Member State where, under the contract, the goods were delivered or should have been delivered”, the aim of the authors being to regroup such actions, whatever the obligations at issue might be, and to avoid making it too easy for the seller to sue the buyer before the courts of the seller’s place of domicile or place of business. When the place of delivery is not in a Member State, article 5.1 (b) does not apply. The basic rule (article 5.1 (a)) is applicable and article 57 of the CISG regains all its importance in this case. Council Regulation No. 44/2001 of 22 December 2000 applies every time the defendant is domiciled (article 2) or has its statutory seat, its central administration, or its principle place of business (article 60) in a Member State, whatever its nationality. A similar rule exists in the 1968 Convention of Brussels (articles 2 and 53) and in the 1988 Convention of Lugano adopted by the member states of the EFTA (articles 2 and 53).

Application of article 57 (1) to sums of money other than the price

6. Case law is not uniform on the question whether the rule established by article 57 (1), establishing payment of the price at the seller’s place of business as a general principle, can be applied also to other monetary obligations emerging from the contract of sale, such as compensation due from a party who has been in breach of contract, or return of the sale price by the seller following avoidance of the contract.

7. Certain decisions refer to the national law governing the contract. Thus the Supreme Court of one State affirmed that article 57 of the Convention was not applicable to claims for restitution of the sale price following amicable avoidance of the contract and stated that the place for bringing such claims should be determined by the law applicable to the avoided contract⁸. According to another decision, it is impossible to discern any general principle with regard to restitution of the sale price following avoidance of a contract because the obligation to pay at the seller’s place of business established by article 57 of the Convention could correspond to the principle of payment at the seller’s domicile as well as to that of payment at the creditor’s domicile⁹. These legal decisions seem to support the thesis that the applicable law should be the national law determined by the choice-of-law rules.

8. Decisions opting for the existence of a general principle within the Convention are more numerous. Thus in order to determine the place of payment of compensation due for non-conformity of the goods one court stated that “if the purchase price is payable at the place of business of the seller”, under article 57 of the Convention, then “this indicates a general principle valid for other monetary claims as well”¹⁰. In a comparable situation, another court, considering an action for restitution of an excess in the price received by the seller, stated that there was a

⁸ Oberster Gerichtshof, Austria, 10 March 1998, *Österreichische Zeitschrift für Rechtsvergleichung*, 1998, 161.

⁹ CLOUT case No. 312 [Cour d’appel, Paris, France, 14 January 1998].

¹⁰ CLOUT case No. 49 [Oberlandesgericht Düsseldorf, Germany, 2 July 1993]. In a similar vein, Oberster Gerichtshof, Austria, 18 December 2002, available on the Internet at <<http://www.cisg.law.pace.edu/cisg/wais/db/cases2/021218a3.html>>; Landgericht Gießen, Germany, 17 December 2002, *Internationales Handelsrecht*, 2003, 276.

general principle under which “payment is to be made at the creditor’s domicile, a principle that is to be extended to other international trade contracts under article 6.1.6 of the UNIDROIT Principles”¹¹. The Supreme Court of another State, which had previously adopted the reverse principle, decided that the gap of the Convention in respect of the legal consequences of avoidance, particularly with regard to the performance of restitution obligations, were to be filled by means of a general principle of the Convention, according to which “the place for performance of restitution obligations should be determined by transposing the primary obligations—through a mirror effect—into restitution obligations”¹².

The change in the seller’s place of business

9. In providing that the seller must bear any increase in the expenses incidental to payment which is caused by a change in its place of business subsequent to the conclusion of the contract, article 57 (2) imposes on the buyer the obligation to pay the price at the seller’s new address. This being so, it is necessary that the seller should have informed the buyer of the change in a timely manner. Under article 80 of the Convention the seller has no right to rely on any delay in payment of the price caused by late notification of the change of address. Under article 57 (2), the seller must bear any increase in expenses associated with the change in its place of business, such as increases in the expenses associated with payment of the price.

10. An issue to be noted is whether article 57 (2) remains applicable when the seller assigns the right to receive payment of the purchase price to another party. According to one court, the assignment of the right to receive the purchase price does have the effect of transferring the place of payment from the business premises of the assignor to those of the assignee¹³.

¹¹ CLOUT case No. 205 [Cour d’appel, Grenoble, France 23 October 1996] (see full text of the decision).

¹² Oberster Gerichtshof, Austria, 29 June 1999, *Transportrecht-Internationales Handelsrecht*, 1999, 48.

¹³ CLOUT case No. 274 [Oberlandesgericht Celle, Germany, 11 November 1998].