



## **CISG: Why Is It Important To Determine When An Offer Takes Effectiveness? In a Comparative Law Perspective**

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### **Introduction**

It is important to determine when an offer becomes effective, particularly with regards to the three legal acts which are likely to be observed after an offer becomes effective: acceptance (or rejection), revocation and withdrawal of an offer. The consequences of an offer becoming effective shall be evaluated below in relation to these three legal acts.

### **Significance in relation to acceptance**

Article 15(1) of the United Nations Convention on Contracts for the International Sale of Goods (the “CISG” or the “Convention”) provides that “*An offer becomes effective when it reaches the offeree.*” Although the provision does not hold a mandatory nature<sup>1</sup>, it foresees that an offer gains effectiveness only when it reaches the addressee, which, when read in reverse, results in the ineffectiveness of an offer that has not reached the addressee. As a result, such an

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<sup>1</sup> FERRARI, F., Introduction to Articles 14-24. “Article 14” In S. Kröll, L. Mistelis, & P. Viscasillas (Eds.), UN Convention on Contracts for the International Sale of Goods (CISG): Commentary, München, C.H. Beck, 2011

ineffective offer is incapable of being reciprocated with an acceptance, even if the addressee got to acquire information concerning the content of the offer through different channels.<sup>2</sup>

Plausibly, an addressee cannot accept an offer that has not yet become effective. For example, the offeror sends a letter by post whereby it offers the addressee to sell certain amount of goods at a certain price. The addressee learns about the content of this letter by another person. So before the letter is delivered to its place of business, the addressee sends an e-mail to the offeror to inform him that it accepts the offer. However, the letter has not “reached” the addressee at that moment yet in the sense of Article 24 of the Convention, hence; the said offer has not yet become effective pursuant to Article 15. Therefore, the e-mail sent by the addressee cannot constitute an acceptance given that a legally effective offer, which is capable of being reciprocated with an acceptance, has not come into existence yet in the first place.

### **Significance in relation to withdrawal**

Article 15(2)<sup>3</sup> of the Convention provides that an offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer. Again, the Article takes reference the “reaching” point of an indication of intention; therefore subjecting itself to the principles set forth under Article 24. More importantly, the Article explicitly sets forth that the time when the offer becomes effective is the fundamental dynamic in determining whether the right to withdrawal is properly invoked.

Under Turkish law, too, an offer may always be withdrawn provided that the withdrawal reaches the offeree before or at the same time as the offer. However, Turkish law introduces an additional situation where an offer may be withdrawn even if the withdrawal reaches the offeree after the offer does and that is when the offeree has not yet become aware of such offer. Hence, the offeror

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<sup>2</sup> SAĞLAM, İ., *Milletlerarası Mal Satımına İlişkin Sözleşmeler Hakkında Birleşmiş Milletler Antlaşması Uyarınca Sözleşmenin Kurulması (CISG m. 14-24)*, İstanbul, On İki Levha Yayıncılık, 2013, p.99.

<sup>3</sup> Article 15(2) of the Convention: “An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.”

may withdraw its offer, despite the fact that its withdrawal reaches the offeree after its offer does, as long as it can prove that the offeree has not yet become aware of the offer.

### **Significance in relation to revocability**

The time when an offer takes effectiveness has also significance over the issue of “revocation” of an offer. A withdrawal that reaches the offeree after the offer may be deemed as a “revocation”<sup>4</sup>. Such that, in cases where the offeror fails to act on time to invoke its right to withdraw an offer; there still exists a possibility to “revoke” such offer provided that the conditions set forth under Article 16 are met.

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<sup>4</sup> FERRARI, F. (2011). Introduction to Articles 14-24. “*Article 15*”.