

## CISG Advisory Council Opinion No. 1 (Revised)

### Electronic Communications Under CISG, Revised Opinion

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**Pilar Perales Viscasillas, Chair**

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**Milena Djordjević, Secretary**

## OPINION

### Relevant CISG articles

CISG Arts. 13, 15, 16(1), 17, 18(2), 19(2), 20(1), 21, 22, 24, 26, 27, 32(1), 39(1), 43, 47, 63, 65, 67, 71, 72, 79, 88(1) and (2)

### Black letter rules

1. Nothing in the CISG prevents a contract from being concluded, modified or terminated by electronic means of communication. A contract shall not be denied validity or enforceability on the sole ground that it was formed by electronic means of communication. Nothing in the CISG prevents a contract or communication from being evidenced by electronic means.
2. Any notice, request or other communication regulated by the CISG may be made by any means – including electronic communications – provided that the addressee expressly or impliedly has consented to receiving information in that format and to that address.
3. The term "writing" includes any electronic communication provided that the information contained therein is accessible so as to be usable for subsequent reference.
4. The term "dispatches" corresponds to the point in time when an electronic communication is made in the format and to an address expressly or impliedly consented to by the addressee and leaves an information system under the sender's control.
5. The term "reaches" corresponds to the point in time when an electronic communication becomes capable of being retrieved by the addressee provided that the addressee has expressly or impliedly consented to receiving electronic information in that format and at that address.

**6. The term "oral" includes any electronic communication that is instantaneous and simultaneous when the parties are aware that they are simultaneously communicating and they have a possibility to respond immediately. It may be in the form of electronically transmitted sound, sign language, letters or images.**

**7. A period of time for acceptance fixed by the offeror in non-simultaneous electronic communication begins to run when the offer is dispatched or from the date shown in the offer. A period of time for acceptance fixed by the offeror in simultaneous electronic communication begins to run from the moment that the offer reaches the offeree.**

*\* The CISG AC started as a private initiative which was founded and supported by Albert H Kritzer Executive Secretary of the Institute of International Commercial Law at Pace University School of Law and the Centre for Commercial Law Studies, Queen Mary, University of London. The International Sales Convention Advisory Council (CISG-AC) is in place to support understanding of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the promotion and assistance in the uniform interpretation of the CISG. At its formative meeting in Paris in June 2001, Prof. Peter Schlechtriem of Freiburg University, Germany, was elected Chair of the CISG-AC for a three-year term. Dr. Loukas A. Mistelis of the Centre for Commercial Law Studies, Queen Mary, University of London, was elected Secretary. The founding members of the CISG-AC were Prof. Emeritus Eric E. Bergsten, Pace University School of Law, Prof. Michael Joachim Bonell, University of Rome La Sapienza, Prof. E. Allan Farnsworth, Columbia University School of Law, Prof. Alejandro M. Garro, Columbia University School of Law, Prof. Sir Roy M. Goode, Oxford, Prof. Sergei N. Lebedev, Maritime Arbitration Commission of the Chamber of Commerce and Industry of the Russian Federation, Prof. Jan Ramberg, University of Stockholm, Faculty of Law, Prof. Peter Schlechtriem, Freiburg University, Prof. Hiroo Sono, Faculty of Law, Hokkaido University, Prof. Claude Witz, Universität des Saarlandes and Strasbourg University. Members of the Council are elected by the Council. At subsequent meetings, the CISG-AC elected as additional members Prof. Pilar Perales Viscasillas, Universidad Carlos III, Madrid; Prof. Ingeborg Schwenzer, University of Basel; Prof. John Y. Gotanda, Villanova University; Prof. Michael G. Bridge, London School of Economics; Prof. Han Shiyuan, Tsinghua University and Prof. Yeşim Atamer, Istanbul Bilgi University, Turkey, Prof. Ulrich G. Schroeter, University of Mannheim, Germany, Prof. Lauro Gama Jnr, Pontifical Catholic University, Justice Johnny Herre, Justice of the Supreme Court of Sweden, Prof. Harry M. Flechtner, University of Pittsburgh, Prof. Sieg Eiselen, Department of Private Law of the University of South Africa, Prof. Edgardo Muñoz López, Universidad Panamericana, Guadalajara, México, and Assoc. Prof. Lisa Spagnolo, Macquarie University. Prof. Jan Ramberg served for a three-year term as the second Chair of the CISG-AC. At its 11th meeting in Wuhan, People's Republic of China, Prof. Eric E. Bergsten of Pace University School of Law was elected Chair of the CISG-AC and Prof. Sieg Eiselen of the Department of Private Law of the University of South Africa was elected Secretary. At its 14th meeting in Belgrade, Serbia, Prof. Ingeborg Schwenzer of the University of Basel was elected Chair and at its 24th meeting in Antigua, Guatemala, Prof. Michael G. Bridge of the London School of Economics was elected Chair of the CISG-AC. At its 26th meeting in Asunción, Paraguay, Ass. Prof. Milena Djordjević, University of Belgrade, Serbia, was elected Secretary, and she was re-elected short after the 37th meeting in Rio de Janeiro. Prof. Pilar Perales Viscasillas of the University Carlos III of Madrid was elected Chair of the CISG-AC after the 37th meeting in Rio de Janeiro.*

## COMMENTS

### Introduction

We have aligned the wording to the UNCITRAL instruments, modern language and expressions with no intention to change the material rules as compared to the first version of Opinion No 1, unless explicitly explained in the comments.

**1. Nothing in the CISG prevents a contract from being concluded, modified or terminated by electronic means of communication. A contract shall not be denied validity or enforceability on the sole ground that it was formed by electronic means of communication. Nothing in the CISG prevents a contract or communication from being evidenced by electronic means.**

#### Article 11 CISG

1.1 The purpose of Article 11 CISG is to ensure that there are no form requirements of writing connected to the formation of contracts. This is in harmony with the principle of freedom of form and the non-discrimination against electronic communication principle. By not prescribing any form in this article, CISG enables the parties to conclude contracts by electronic means.<sup>1</sup>

1.2 This Opinion does not deal with reservations made by States in accordance with Article 96 CISG nor does it impose any restrictions on States that have made such a reservation.

1.3 Contracts can be concluded by e-mail, chat conversations, interaction at websites, on-line platforms, automated EDI message systems etc. A contract may be partly concluded by electronic means (mixed contract formation). For the purposes of concluding contracts, AI systems should not be treated differently than other electronic communications that is under the control of human operators and can be attributed to them.<sup>2</sup> See UNCITRAL Convention on the Use of Electronic Communications in International Contracts article 8(1) and 12; UNCITRAL Model Law on Electronic Commerce, articles 5, 9, 11(1) and 12.

**2. Any notice, request or other communication regulated by the CISG may be made by any means – including electronic communications – provided that the addressee expressly or impliedly has consented to receiving information in that format and to that address.**

2.1 Several CISG Articles deal with communicating information of various types, namely Articles 13, 15, 16(1), 17, 18(2), 19(2), 20(1), 21, 22, 24, 26, 27, 32(1), 39(1), 43, 47, 63, 65, 67, 71, 72, 79, 88(1) and 88(2). These articles cover communications during the negotiations

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<sup>1</sup> For a definition of “electronic communications”, see Article 4 UNCITRAL Convention on the Use of Electronic Communications in International Contracts ECC, which states: (a) “Communication” means any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation or performance of a contract; (b) “Electronic communication” means any communication that the parties make by means of data messages; (c) “Data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy.

<sup>2</sup> There is ongoing UNCITRAL work on automated contracts, see <[https://uncitral.un.org/working\\_groups/4/electronic\\_commerce](https://uncitral.un.org/working_groups/4/electronic_commerce)>.

to conclude a contract and communications during the performance of contracts. All such messages may be sent by non-electronic or electronic means. The important factor is that the information is conveyed to the addressee, not in what form it was conveyed. The form may, however, be of practical importance for evidentiary purposes.

2.2 Paper letters sent by paper envelope mail were the predominant way to communicate when CISG was drafted. This is no longer the case. Many businesses do not work from a physical office, and many do not have practical possibilities to handle paper envelope mail communications. This is why the parties must somehow indicate how they wish to communicate, through paper, e-mail, automated systems or otherwise.

2.3 This rule ensures that parties need to keep track of check or control only addresses that they have signaled that they use for the transaction concerned.

2.4 The parties may mutually agree on what type of form they accept to use for conveying information (Article 6 CISG). Parties sometimes agree to communicate through special platforms or automated systems, such as Electronic Data Interchange EDI, Distributed Ledger Technology DLT, M2M contracting, AI or other smart contract solutions.

2.5 A party's consent to using a particular form of communication may follow under Article 8 CISG, governing the interpretation of the statements and conduct of the parties. Examples of circumstances from which it may be implicit that a party has agreed to communicate include information at a business' website on how to place an order. A party that itself uses a certain form of communication indirectly consents to receive information in the same format. A party that supplies an address in a communication related to the contract, or in a way that reasonably indicates that the address may be used for the purpose of communications relevant to a contract, may be taken to be impliedly agreeing to the relevant address.

2.6 Implied consent may under Article 9(1) CISG be relevant if the parties have established a practice in their business.

2.7 Implied consent may be established under Article 9(2) CISG which refers to trade usages which the parties knew or ought to have known and which in international trade are widely known to, and regularly observed by, contracting parties of the type involved in the particular trade concerned. Unless the parties have limited the means of communication, there is a presumption that communications in formats frequently in use are accepted. This presumption could be strengthened or weakened in accordance with the parties' prior conduct or common usages: Articles 9(1) and 9(2) CISG.

2.8 It is normally not implied that an addressee has consented to receive messages to all electronic addresses and communication channels available to it. A sender should therefore ensure that the addressee is willing to use a particular means of communication for the kind of information the sender wishes to convey. This problem is related to imputation of knowledge – i.e. to what extent knowledge is attributed to a company when someone that is not involved in the particular matter receives information – which is not addressed in this opinion.

2.9 A sender should not address electronic communications containing information of a particular business nature (e.g. acceptance of a contract offer) to an electronic address the sender knows or ought to know would not be used to process this kind of communication (e.g. an e-mail address used to handle consumer complaints).

2.10 The fact that a party has indicated that it is willing to receive communications in a particular form does not necessarily preclude the use of other forms of communication. This is a question of the reasonable interpretation of the indication given. Thus, an offer that merely states that if the offeror wishes to accept the offer it can write to a given postal address would

not normally preclude an acceptance by e-mail to an e-mail address that has also been expressly or impliedly indicated.

2.11 A party may inform that it does not accept certain means of communication, for instance that it does not wish to communicate through paper letters, but only accepts communication by e-mail. Likewise, a party may inform that it only accepts electronic communications to a designated address. Such information should be respected by persons sending information to that party. If the parties have agreed by contract to communicate in a certain way, a party cannot later one-sidedly change such an agreement to the detriment of another party.

2.12 It sometimes happens that an address is not correctly stated by the sender. Such a message may enter the addressee's information system but never reach the addressee personally, so that it cannot be accessed by the addressee. An example is when the correct e-mail address is "Thomasine@companyx.com" but the sender writes "Tomasine@companyx.com." This wrongly spelled e-mail may sometimes enter company x's server, but get stuck in the server, since the server cannot find Thomasine without the 'h'. For such situations the risk is on the sender, since Thomasine has not indicated a willingness to receive electronic messages incorrectly addressed. Sometimes an electronic communication with an incorrect address is automatically forwarded by the information system to the correct address. The addressee has in such a situation informed the information system that e-mails incorrectly addressed in a certain way should be forwarded, and by doing so the addressee has expressed its general willingness to receive also the incorrectly addressed electronic message.

2.13 A message may be automatically directed to the addressee's spam filters, where it can be retrieved but often does not come to the addressee's attention at all or only after a long period of time. Such spam filter direction is programmed by the addressee and therefore within the addressee's sphere of control. Consequently, the risks that a spam filter entail are on the addressee and not on the sender. However, many spam filters operate in the same manner, for instance by directing messages that are sent to many recipients to the spam filter. The sender should be aware of such frequent spam filter procedures and therefore it may be implicit that the addressee has not accepted to receive electronic communication in a form that often ends up in spam filters.

2.14 A related matter is whether the addressee is able to process and understand the electronic communication. Due to incompatible information systems and computer programs, the text appearing to the addressee at a correct address may be incomprehensible. As described above, the crucial issue is to what extent the addressee has indicated that it is willing to receive that type of electronic communication.

2.15 Communications that have been conveyed to an address not accepted by the addressee or in a form not accepted by the addressee may still have legal effect when the sender can demonstrate that the addressee was (i) aware of the message and its content and (ii) able to access the message appropriately. However, it is not acceptable for an addressee to refer to a formalistic argument that a message has no legal effect solely because it has been inaccurately communicated in a situation where it is clear that the addressee has accessed the message and gained actual awareness of the information that the sender wanted to convey to the addressee.<sup>3</sup>

2.16 Notices that are not covered by CISG can be communicated by any means.

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<sup>3</sup> Article 5 UNCITRAL Convention on the Use of Electronic Communications in International Contracts article 10(2), UNCITRAL Model Law on Electronic Commerce.

See UNCITRAL Convention on the Use of Electronic Communications in International Contracts article 3 and 9; UNCITRAL Model Law on Electronic Commerce articles 6, 7 and 9.

**3. The term "writing" includes any electronic communication provided that the information contained therein is accessible so as to be usable for subsequent reference.**

3.1 CISG Articles 11, 12, 13, 21, 29 and 96 contain the term "writing".

3.2 In the traditional paper world the term "writing" was uncomplicated and referred to documents written on paper by pencil, pen, etc. The problem is now whether electronic documents other than telegram and telex also constitute "writing". The prerequisite of "writing" is fulfilled as long as the electronic communication is able to fulfil the same functions as a paper message. These functions are the possibilities to (i) get access to, (ii) save (storage) and to (iii) later refer to the message (reproduction).

3.3 Some forms of electronic communication are normally accessible and can be saved and reproduced, such as e-mails. Other forms are less frequently saved and more complicated to save. Whether the addressee has practical difficulties in saving the message and chooses not to save it is often not crucial for whether it constitutes "writing", as this is a decision of the addressee and cannot be controlled by the sender. Likewise, in the paper-world it is not crucial for "writing" whether the paper quality used easily dissolves or whether the addressee chooses not to save the paper document in a suitable manner. However, the fact that a form of electronic communication is less suitable for being saved may indicate that the addressee has not implicitly accepted to communicate through that form (see above black letter rule 2).

3.4 Communication can be made orally, by letters, by sign language or by pictures (for example emojis). All these types of communication are included in the notion of writing, as they all correspond to information that is accessible, can be saved and reproduced. Sometimes communication may be hard to interpret, such as misspelled words or emojis. The fact that information is hard to understand and may be ambiguous does not entail that the information does not constitute writing.

3.5 See the comment above to black letter rule 2 regarding the parties' consent to use certain formats for communication.

3.6 This Opinion does not deal with reservations made by States in accordance with Article 96 CISG nor does it impose any restrictions on States that have made such a reservation.

3.7 This Opinion does not deal with the definition of "signature".

See UNCITRAL Convention on the Use of Electronic Communications in International Contracts article 9; UNCITRAL Model Law on Electronic Commerce articles 6, 7 and 9

**4. The term "dispatches" corresponds to the point in time when an electronic communication is made in the format and to an address expressly or impliedly consented to by the addressee and leaves an information system under the sender's control.**

4.1 Some provisions in CISG refer to messages being "dispatched", namely articles 16(1), 19(2), 20(1), 21, 71(2) and 71(3). According to these provisions it is enough that the message has been dispatched; it does not have to also reach the addressee. Dispatch occurs when the communication leaves the sender's information system, for instance its server. This is parallel to a paper letter leaving the post office mailbox.

4.2 The message must have been dispatched in a way that corresponds to the addressee's indication of how it is willing to receive communications (in what format and to which address), see above black letter rule 2. For a paper communication letter to qualify as dispatched, it must be sent to the correct addressee. The same applies to electronic communications.

4.3 Communications that have been conveyed to an address or in a form not accepted by the addressee may still have been "dispatched" when the addressee can demonstrate that the addressee was (i) aware of the message and its content and (ii) able to process the message appropriately. It is not acceptable for a sender to refer to a formalistic argument that a message has not been dispatched solely because the message has been inaccurately communicated in a situation where it is clear that the addressee has processed the message and gained actual awareness of the information that the sender wanted to convey to the addressee.<sup>4</sup>

See Article 15 UNCITRAL Model Law on Electronic Commerce and Article 10(1) UNCITRAL Convention on the Use of Electronic Communications in International Contracts.

**5. The term "reaches" corresponds to the point in time when an electronic communication becomes capable of being retrieved by the addressee provided that the addressee has expressly or impliedly consented to receiving electronic information in that format and at that address.**

5.1 Articles 15(1) and (2), 16(1), 17, 18(2), 20(1), 21(2), 22, 24 CISG refer to when messages have reached the addressee.

5.2 The underlying purpose of Articles 15(1), 18(2), 21(2) and 24 CISG is to ensure that the addressee has an opportunity to read the information if it so chooses. It is not required that the addressee actually has read or processed the information, but rather that the message becomes accessible for reading or processing (the distinction between "reach the mind" and "reach the desk" or "reach the legal entity"). Accordingly, when a message has entered the addressee's information system and thereby its sphere of control, it is assumed to have reached the addressee.

5.3 The proposition that a message only needs to be accessible and not actually read is designed *inter alia* to facilitate evidence. It is possible (more or less easily, but at least conceptually) to prove when a message becomes accessible/retrievable; it is very difficult to prove when persons have actually addressed their minds to it.

5.4 A general problem, with respect to paper messages and electronic messages, is that the addressee is not always able to access the message at the point where it arrives. The important matter is whether the addressee is able to retrieve/access the message. This is why paper messages have reached the addressee when it reaches the addressee's location, irrespective of whether the addressee was present in person at that location. Likewise, electronic messages have reached the addressee when the message has entered the addressee's information system, for instance at its server.

5.5 From a pragmatic point of view, it is clear that the addressee of an electronic message may read it as soon as it is located on its information system. The addressee may have problems reaching the message due to internal problems in its own or its outsourced information system. This is normally within the addressee's sphere of control. Irrespective of how harsh it may be for the addressee that messages have arrived in its information system but cannot be accessed

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<sup>4</sup> See Article 5 UNCITRAL Convention on the Use of Electronic Communications in International Contracts article 10(2), UNCITRAL Model Law on Electronic Commerce.

due to internal problems, it is not appropriate to put the risk on the sender for the addressee's technical problems. The addressee may reduce the risk by choosing appropriate service providers or designing an adequate technical infrastructure to ensure that the internal communication functions satisfactorily. The sender of an electronic communication ought not to assume this risk.

5.6 For a message to have reached the addressee it is not sufficient that a message has entered the addressee's information system. The addressee must also have expressed somehow that it is willing to receive electronic communications, see above black letter rule 2.

5.7 Regarding whether a message has reached the addressee when it is automatically directed to a spam filter, see above the comment to black letter rule 2.

5.8 Regarding an electronic message sent to the wrong address or in the wrong format, see the comment to black letter rule 2.

5.9 According to Article 15(2) CISG an offer may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer. In communication on paper letters through the paper mail post service this rule enables the offeror to withdraw its offer by a faster means of communication. The offeror could, for instance, send an offer by paper letter through the paper mail post service and then later withdraw it by sending an e-mail that reaches the offeree before the paper letter. This situation rarely occurs in practice in relation to offers sent by electronic means of communication as there are rarely any means for the offeror to use a faster communication for the withdrawal. The only question of practical importance arises when the offer is sent by a paper letter through the paper mail post service while the withdrawal is sent electronically. The same applies *mutatis mutandi* to CISG Arts. 16(1), 17 and 22.

5.10 CISG Article 20(1) concerns computation of time and makes reference to when an offer "reaches" the offeree. See black letter rule 7 below regarding this matter.

5.11 Communications that have been conveyed to an address or in a form not accepted by the addressee may still have "reached" the addressee when the sender can demonstrate that the addressee was (i) aware of the message and its content and (ii) able to process the message appropriately. It is not acceptable for an addressee to refer to a formalistic argument that a message has not reached it solely because the message has been inaccurately communicated in a situation where it is clear that the addressee has processed the message and gained actual awareness of the information that the sender wanted to convey to the addressee.<sup>5</sup>

See Article 15 UNCITRAL Model Law on Electronic Commerce. UNCITRAL Article 10 Convention on the Use of Electronic Communications in International Contracts; Article 15 UNCITRAL Model Law on Electronic Commerce

**6. The term "oral" includes any electronic communication that is instantaneous and simultaneous when the parties are aware that they are simultaneously communicating and they have a possibility to respond immediately. It may be in the form of electronically transmitted sound, sign language, letters or images.**

6.1 Articles 18, 19(2), 21 and 24 CISG refer to oral communication. However, only Article 18 CISG poses a practical problem in relation to "oral" and electronic communication. The other

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<sup>5</sup> Article 10(2) UNCITRAL Convention on the Use of Electronic Communications in International Contracts article 10(2), Article 5 UNCITRAL Model Law on Electronic Commerce.

articles relate to *both* oral and written notices and, consequently, it is irrelevant whether the communication is oral or written. The meaning of “oral” is of practical relevance in order to decide if an offer must be accepted immediately according to Article 18 CISG.

6.2 Article 18 CISG states that an oral offer must be accepted immediately. The presumption in Article 18 CISG is that the offer must be accepted on the spot, in immediate connection to the negotiations. The relevant factor is that both parties are aware of being in a situation of simultaneous communication and that the counterparty has a possibility to respond immediately.

6.3 The CISG makes a distinction between “oral” and “other” communication. “Oral” is communication that has a quality of immediacy, as opposed to asynchronous communication. The reference to “oral” in Article 18 CISG is intended to address situations where the parties are exchanging communications instantaneously and simultaneously.

6.4 The notion of oral does not exclude electronic communication. However, not all electronic communication is instantaneous and simultaneous. The crucial question to determine whether a specific situation where electronic communication is used corresponds to “oral” is to what extent the communication is instantaneous and simultaneous.

6.5 “Oral” is not an antonym to “writing”. It is irrelevant whether the communication is made by voice, sign language, typed letters or emojis. This is clear by, for instance, persons communicating simultaneously by sign language. Such communication is covered by the reference to “oral” in Article 18 CISG. Modern techniques sometimes do not distinguish voice from written words as the message may appear to the addressee as voice although the sender typed it, or vice versa. Therefore, it is not meaningful to distinguish between voice, typed letters or images. For the same reason is not relevant to distinguish between various means/modality/remoteness of transmissions (such as electronic, chat-transmission, WhatsApp-transmission, Snapchat-transmission, sound transmission through air or through optic fiber).

6.6 The notion of oral covers situations where the parties’ communications are received at the same time that the communication is made, as for instance in video conferences and telephone conversations. In video conferences the parties may communicate simultaneously by talking, by typed letters in a document displayed to the counterparty during the video conference or by various signs such as a thumbs up-icon. Such types of communication correspond to “oral” in Article 18 CISG if made during a video conference.

6.7 “Oral” is not at hand when a message is sent by e-mail since such messages are typically not read while they are being created and it is not clear to the sender when the addressee will read the e-mail.

6.8 Communication through chat – such as WhatsApp, Snapchat, Messenger or at websites – may or may not correspond to oral communication in the meaning of Article 18 CISG. The relevant matter is whether the corresponding parties are present simultaneously and communicate by instant responses to each other’s messages. In some types of chat conversation, the sender writes an “a” and the letter “a” immediately appears on the addressee’s screen. Such communication qualifies as simultaneous communication, provided that both parties are aware that the addressee is present and reads the letter “a” at the same time when it appears on its screen. In other forms of chat conversation, the whole message appears on the addressee’s screen first when the sender presses “send”. Also, such communication qualifies as simultaneous communication, provided that both parties are aware that they are simultaneously communicating and that the counterparty has a possibility to respond immediately. Some chat conversation does not qualify as “oral”. This is the case when the chat

conversation is similar to e-mail communication in that the parties are not “present” to respond immediately but await to read and respond for a period of time.

6.9 Communication through automatic chat-robots sometimes entails that one party acts physically whereas the other party responds by automatically produced messages. This may correspond to “oral” communication, since both parties are aware that they are simultaneously communicating and that the counterparty has a possibility to respond immediately.

6.10 Mutual communication through automated systems, including AI, often resembles simultaneous communication and may therefore qualify as “oral”. Normally, it is not necessary to establish whether “oral” in Article 18 CISG applies to mutual communications through automated systems, as the parties often have agreed specifically on how contracts are to be formed by their agreed means of communication including how and within which period to make replies and notices.

6.11 A voice message to an addressee’s telephone answering machine does not correspond to “oral” in Article 18 CISG as it is not communicated during simultaneously present parties. For the same reason voice messages through recorded video films do not correspond to “oral” in Article 18 CISG.

6.12 This black letter rule 6 refers to “both” parties. When a communication involves more than two parties the communication is oral when all the communicating parties are aware that they are simultaneously communicating, and all the communicating parties have a possibility to respond simultaneously.

See UNCITRAL Convention on the Use of Electronic Communications in International Contracts article 10; UNCITRAL Model Law on Electronic Commerce article 15

**7. A period of time for acceptance fixed by the offeror in non-simultaneous electronic communication begins to run when the offer is dispatched or from the date shown in the offer. A period of time for acceptance fixed by the offeror in simultaneous electronic communication begins to run from the moment that the offer reaches the offeree.**

7.1 Article 20(1) CISG.

7.2 Article 20(1) CISG provides help to the interpreter of ambiguously stated periods for acceptance. When a period of, for instance, four days is stated in an offer without any indication from when this four-day period starts to run, Article 20(1) CISG provides a different starting point depending on the medium the offer was sent. For telegrams the period starts from the time the telegram is handed in for dispatch. If the message is sent in a paper letter, the period starts from the date shown on the letter, or if no such date is shown, from the date on the envelope. For telephone, telex or other means of instantaneous communication the period begins to run from the moment that the offer reaches the offeree.

7.3 The problem now in consideration is how to determine ambiguously stated periods for acceptance when the offer is made by electronic communication. In electronic communications it is usually clear when the communication is made and, consequently, the starting point for the period of acceptance is clear. Furthermore, the difference in time between dispatch and reach when communicating electronically is very short.

7.4 Periods for acceptance seem to rarely occur in today's commercial practice, because offerors typically fix an end date in order to be clear. Therefore, this matter is only rarely important in practice.

See Article 5 UNCITRAL Model Law on Electronic Commerce