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Accepted invoice principle: when not challenging invoice in timely manner proves existence of contractual claim

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Introduction

Article 109 of the Luxembourg Commercial Code states that an accepted invoice can prove the existence of a sales contract.

Based on this provision, traditional Luxembourg case law and legal doctrine have established the so-called "accepted invoice principle", which rests on two presumptions.

- First, if an invoice is not challenged by its recipient in a timely manner, the recipient is presumed to have accepted the invoice.
- Second, if the recipient has accepted the invoice, the invoice issuer has a valid contractual claim against the invoice recipient.

This principle has substantial implications in practice, as it means that an invoice recipient would be ill-advised to simply ignore the invoice and not pay. Instead, an invoice recipient should pro-actively challenge the invoice as soon as possible to avoid the claim being presumed valid and the invoice amount being presumed due.

Luxembourg courts assess the exact time period within which the recipient is expected to challenge the invoice on a case-by-case basis, depending on circumstances such as:

- the invoice's object and description;
- the amount at stake; and

- the obvious (or not so obvious) nature of the invalidity of the claim.

In recent years, the highest courts have provided important clarifications on the exact timeframe and scope of the accepted invoice principle.

In judgments rendered on 1 July 2021⁽¹⁾ and 3 March 2022⁽²⁾ respectively, the Luxembourg Court of Cassation and Court of Appeal confirmed that the accepted invoice principle constitutes a mode of proof of article 18 (2) of the Rome I Regulation⁽³⁾ on the law applicable to contractual obligations.

Consequently, pursuant to the Rome I Regulation, as soon as a Luxembourg court has jurisdiction to hear a case, the accepted invoice principle is deemed to be an admissible mode of proof, even if the contractual relationship itself is governed by law other than Luxembourg law.

Court of Appeal decision

In a judgment rendered on 29 June 2021,⁽⁴⁾ the Court of Appeal confirmed that the accepted invoice principle only applies where a commercial undertaking has issued an invoice. This is in line with the lower courts' consistent case law.⁽⁵⁾

It is also well-established case law that the accepted invoice principle only applies if the recipient of the invoice is also a commercial undertaking.⁽⁶⁾

Court of Cassation decision

In a judgment rendered on 24 January 2019,⁽⁷⁾ the Court of Cassation ruled that the irrebuttable legal presumption set by article 109 of the Luxembourg Commercial Code only applies to sales contracts, as this is the only type of contract explicitly mentioned by article 109.

With this ruling, which is based on a literal reading and strict application of the law, the Court took a clear position in a long-lasting debate.

The Court confirmed the approach that had already been suggested by a judgment rendered on 9 June 2005,⁽⁸⁾ in which the court had only mentioned the application of article 109 of the Luxembourg Commercial Code to sales contracts, but had not explicitly ruled out its application to other types of contracts.

More importantly, the Court departed from a position that it had previously taken with a judgment rendered on 12 November 1998.⁽⁹⁾ In that case, the Court had stated that the accepted invoice principle set out by article 109 of the Luxembourg Commercial Code applies to any type of commercial contract, such as service contracts. The majority of the lower courts had endorsed this decision.⁽¹⁰⁾

However, in its 2019 judgment, the Court confirmed an interesting nuance by stating that the acceptance of an invoice (ie, the fact that an invoice has not been challenged by its recipient in a timely manner) may still lead to the presumption that a non-sales contract exists, but that this presumption is then not an irrefutable legal presumption based on article 109 of the Luxembourg Commercial Code.

Consequently, according to this position, when the recipient of an invoice that does not refer to a sale fails to challenge the invoice in a timely manner, they are allowed to try and prove that the invoice is not based on a valid contractual claim.

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Endnotes

(1) No. 109/2021.

(2) No. 30/22 III-COM.

(3) (EC) No. 593/2008 of 17 June 2008.

(4) No. 88/21 IV-COM.

(5) See, for example, District Court of Luxembourg, 21 December 2005, No. 96046.

(6) See, for example, Court of Appeal, 16 May 2000, No. 23584.

(7) No. 16/2019.

(8) No. 42/05.

(9) No. 52/98.

(10) See, for example, Court of Appeal, 13 December 2017, No. 43891.