VII.2 - Principle of foreseeability of loss

Content:
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Claims for damages are limited to the loss which the non-performing party foresaw or could reasonably have foreseen at the time of the conclusion of the contract as being the likely result of its non-performance.

Commentary:
1. The purpose of the Principle of foreseeability, which is modelled after Art. 74 CISG, is to ensure that the damages to be paid by the non-performing party are linked to the contract and do not fall outside the scope of that contract and are therefore totally unexpected by the other party.

2. This purpose makes it clear that the foreseeability test does not relate to the amount of damages, but to the type and nature of damages which must be seen in relation with the purpose and nature of the contract. The perspective to be taken in performing the foreseeability test is that of the non-performing party at the moment of the conclusion of the contract and, in cases in which that party is unable to foresee the damage for whatever reasons, the perspective of a reasonable person in the situation of that party.