

Title:

VII.3.2 - Calculation of damages



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(a) Damages to which the party who suffers a loss from the failure of the other party to deliver is entitled are typically measured by the market value of the benefit of which the aggrieved party has been deprived through the breach, or the costs of reasonable measures to bring about the situation that would have existed had the contract been properly performed.

(b) The aggrieved party may calculate his loss

- i) based on the difference between the contract price and the price of a replacement transaction (e.g. substitute sale or substitute purchase) concluded within a reasonable time and in a reasonable manner or,
- ii) based on the difference between the price in the unexecuted contract and the market price current at the date of default and at the place where the contract should have been performed, or, if there is no current price at that place, the current price at such other place that appears reasonable to take as a reference.

Commentary:

1 The Principle is based on the idea of damages as [full compensation](#) of the losses sustained by the aggrieved party and specifies the ways in which the aggrieved party may calculate the losses to be compensated by the damages.

2 Subsection (a) provides a general guideline for the calculation of the aggrieved party's direct loss resulting from the other party's breach. Such damage is typically measured by the difference between the value to the aggrieved party of the performance that should have been received and the value to that party of what, if anything, actually was received by it from the party in breach. The value is to be determined by reference to the market value of the benefit. Alternatively, the aggrieved party is entitled to recover the costs of measures it undertook to place it in the same position that it would have been in had the contract been properly performed by the party in breach, provided that such measures were [reasonable](#).

3 Subsection (b) is modelled after Artt. 75, 76 [CISG](#). It provides the aggrieved party with alternative ways of calculating its damage. The aggrieved party may calculate its direct loss with reference to a replacement transaction actually concluded by it, provided that this transaction is concluded, for the protection of the non-performing party, within a [reasonable](#) time and in a [reasonable](#) manner, or with reference to the market price at the date of default and at the place where the contract should have been performed, or, if there is no current price at that place, the current price at such other place that appears [reasonable](#) to take as a reference.