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Article 7.4.8 (Mitigation of harm)

Last Updated: 03 December 2013 | [Print \(/instruments/commercial-contracts/unidroit-principles-2010/406-chapter-7-non-performance-section-4-damages/1030-article-7-4-8-mitigation-of-harm?tmpl=component&print=1&page=\)](#) | [Email \(/component/mailto/?tmpl=component&template=2017unij3nr&link=e629bfde0b6e864e7f718d5609007e58b555fbc6\)](#)

(1) The non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps.

(2) The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the harm.

COMMENT

1. Duty of aggrieved party to mitigate harm

The purpose of this Article is to avoid the aggrieved party passively sitting back and waiting to be compensated for harm which it could have avoided or reduced. Any harm which the aggrieved party could have avoided by taking reasonable steps will not be compensated.

Evidently, a party who has already suffered the consequences of non-performance of the contract cannot be required in addition to take time-consuming and costly measures. On the other hand, it would be unreasonable from the economic standpoint to permit an increase in harm which could have been reduced by the taking of reasonable steps.

The steps to be taken by the aggrieved party may be directed either to limiting the extent of the harm, above all when there is a risk of it lasting for a long time if such steps are not taken (often they will consist in a replacement transaction: see Article 7.4.5), or to avoiding any increase in the initial harm.

Illustrations

1. On 2 May, A requests B, a travel agency, to reserve a hotel room in city X for 1 June, at a cost of EUR 200. On 15 May, A learns that B has not made the reservation, A waits however until 25 May before making a new reservation and can only find a room costing EUR 300, whereas accommodation could have been secured for EUR 250 if A had taken action already on 15 May. A can recover only EUR 50 from B.

2. A, a company which has been entrusted by B with the building of a factory, suddenly stops work when the project is nearing completion. B looks for another company to finish the building of the factory but takes no steps to protect the buildings on the site the condition of which deteriorates as a result of bad weather. B cannot recover compensation for such deterioration as it is attributable to its failure to take interim protective measures.

2. Reimbursement of expenses

The reduction in damages to the extent that the aggrieved party has failed to take the necessary steps to mitigate the harm must not however cause loss to that party. The aggrieved party may therefore recover from the non-performing party the expenses incurred by it in mitigating the harm, provided that those expenses were reasonable in the circumstances (paragraph (2)).


Illustrations

3. The facts are the same as in Illustration 2, except that B has the necessary work carried out to ensure the interim protection of the buildings. The cost of such work will be added to the damages due by A for non-performance of the contract on condition that those costs were reasonable. If they were not, they will be reduced.

4. The facts are the same as in Illustration 1, except that A takes a room costing EUR 500 in a luxury hotel. A may only recover the 50 euro difference in respect of the room which A could have obtained for EUR 250.

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