

ANNEX XI

Articles 41-49 of ULIS

Comments and proposals of the representative of France

[Original: French]

Articles 41 to 49 have given rise to only a few comments.

1. Sweden asked about the relation between article 42 (right of the buyer to specific performance of the contract) and article 44, paragraph 2, (right to fix an additional period of time for delivery).

The reply is as follows. Article 42 gives the buyer the right to specific performance of the contract (subject to article 16). Articles 43 to 45 govern his right to declare the contract avoided.

2. Norway proposes that in article 42, paragraph 1(a), the condition that the seller should be in a position to remedy the defects should be replaced by the condition that the remedying of defects should not cause the seller unreasonable inconvenience or expense.

This amendment makes the law more favourable to the seller, but it appears to be acceptable.

3. Norway proposes that in article 42, paragraph 1(c), the right to specific performance should exist only if the lack of conformity is of an essential nature.

This amendment does not appear to be desirable both on account of the existing reservation ("except where the purchase of goods in replacement...") and on account of article 33, paragraph 2.

4. Norway would like it to be said that the rights of the buyer should be exercised within a reasonable time after giving notice in accordance with article 39.

Is this clarification necessary since the parties are in contact as a result of article 39, paragraphs 1 and 2, and since in addition the second sentence of article 43 and article 49 afford the seller additional protection? What would the remedy be? An amendment does not appear to be advisable.

5. Norway believes that article 44, paragraph 2, goes too far and that, even after the expiration of the reasonable period of time granted by

the buyer to the seller, avoidance of the contract should not be permitted on account of an unimportant defect. Norway suggests that avoidance of the contract should be permissible but only in the cases specified in article 42.

On the question of substance, the Norwegian proposal would make the law more favourable to the seller, but it would appear to be very desirable. As for the form, on the other hand, the reference to article 42 does not appear to be justified. An additional condition should be introduced in the final text of article 44, paragraph 2, perhaps drafted as follows: "or, if the lack of conformity amounts to a fundamental breach of the contract, declare the contract avoided, provided that he does so promptly". It will be noted that the hypothesis that a lack of conformity amounts to a fundamental breach of the contract can be considered in connexion with article 44 since article 43 refers to a case in which the lack of conformity and also the failure to deliver on the date fixed amount to fundamental breaches of the contract.

6. Norway would like the scope of article 49 to be clarified and the period of limitation of one year prolonged to two or three years.

This question raises the general problem of loss of rights and prescriptions in ULIS.