

- (a) The claim must be based on fraud, and
- (b) The claim must relate to a contract of international sale of goods.

It is probably intended to apply to an action for annulment based on fraud. (A/C N.9/SR. II 5). But in some legal systems, a claim based on fraud and a claim based on breach of contract, are juristically distinct.

If a claim based on fraud and relating to an international contract of sale can fall within the ambit of the Convention, the line at which tortious or delictual claims are excluded becomes unclear. For example, A fraudulently conceals defects in goods before the conclusion of the contract, and sells them to B. The fraud and the defects are discovered after the conclusion of the contract, and B sues A in delict on the basis of the fraud. This would *prima facie* come within 9.2, and the action would appear to relate to the contract. But such actions are intended to fall outside the ambit of the Convention.

A phrase could also be added to deal with the case where the date when the fraud was discovered differs from the date on which it reasonably could have been discovered (e. g. "whichever was earlier").

The last sentence of 9.3 should be read with Article 1.2. While by reason of 1.2 the Convention does not affect requirements as to the time-limits within which notice has to be given (which, therefore, parties have to observe to safeguard their rights) the requirements as to such notices does not affect the running of time in terms of the Convention.

#### Article 9 (3) (A/CN. 9/70. Annex I)

(3) Subject to the provisions of paragraph 4 of this article, the limitation period in respect of a claim arising from defects in, or other lack of conformity of, the goods shall commence on the date on which the goods are placed at the disposition of the buyer by the seller according to the contract of sale, irrespective of the time at which such defects or other lack of conformity are discovered or damage therefrom ensues.

#### Article 11 (A/CN. 9/70. Annex I)

If the seller gives an express undertaking relating to the goods, which is stated to have effect for a certain period of time, whether expressed in terms of a specific period of time or otherwise the limitation period, in respect of any claim arising from the undertaking, shall commence on the date on which the buyer first informs the seller that he intends to assert a claim based on the undertaking, but not later than on the date of the expiration of the period of the undertaking.

#### Article 10 (1), (2), (3) (Final draft)

1. The limitation period in respect of a claim arising from a defect or lack of conformity which could be discovered when the goods are handed over to the buyer shall be two years from the date on which the goods are actually handed over to him.

2. The limitation period in respect of a claim arising from a defect or lack of conformity which could not be discovered when the goods are handed over to the buyer shall be two years from the date on which the defect or lack of conformity is or could reasonably be discovered, provided that the limitation period shall not extend beyond eight years from the date on which the goods are actually handed over to the buyer.

3. If the seller gives an express undertaking relating to the goods, which is stated to have effect for a certain period of time, whether expressed in terms of a specific period of time or otherwise, the limitation period in respect of any claim arising from the undertaking, shall commence on the date on which the buyer discovers or ought to discover the fact on which the claim is based, but not later than on the date of the expiration of the period of the undertaking.

#### Commentary

Paragraph 9(3) of the first draft was subjected to criticism during the debates at the fifth session. The criticism mainly consisted of two points :—



- (1) That the normal limitation period of 4 years was too long where questions of defects or lack of conformity was in question.
- (2) That the starting point for the running of time in these cases should not be fixed irrespective of the time at which such defects or lack of conformity were discovered by the buyer.

The final draft is a response to both criticisms. A number of relevant factors have to be considered and balanced in reaching a decision on these questions.

(a) A starting point as from the time the goods are handed over to the buyer can be easily ascertained and makes for certainty. As against this, it can lead to hardships for the buyer where latent defects manifest themselves late, after or just before the prescription period has expired, and where these could not have been discovered earlier by the exercise of due diligence. A starting point as from the time the defects are discovered by the buyer is relatively uncertain. Further, the evidence as to the latter time would be in the hands of the buyer alone. As against this, such a starting point would be the fairest from the point of view of a buyer faced with the latent defects which manifest themselves after some time and which he could not earlier have discovered by the exercise of due diligence.

(b) The longer the period of prescription, the longer the parties are left with possibility of claims still open as against them, with repercussions on financial stability. A very short period, however, may not be sufficient for defects to manifest themselves, so that the buyer may become unfairly penalized.

The two questions are interconnected, in that delaying the start of the running of prescription in effect leads to a longer period.

The Working Group drafting the Convention had in principle consistently placed the need for certainty as the first requirement in priority. At the debates, however, strong criticism was made by almost all the developing countries that *in the field of*

*claims arising out of defects or lack of conformity*, this would lead to unfairness. It was pointed out that in the case of plant and machinery, which was invariably purchased by the developing countries, these may come into commission several years after purchase. The present draft tries to satisfy all the relevant considerations in the following ways:—

- (1) In the case of so-called 'latent' defects, a period of 2 years, shorter than the normal 4 years, is fixed, commencing to run from the date when the buyer should have become aware of them (i.e. the date of handing over). This is justifiable because it would be unbusinesslike and unfair to allow the buyer to sleep over his rights for a longer period. The starting point is relatively certain.
- (2) In the case of so-called 'latent' defects, the same shorter period is used (for the same reasons), but the starting point is defined as the time the defect is or could reasonably have been discovered. This prevents hardship to the buyer. The interests of the seller in being free of possible claims after a certain period is protected by laying down an over-all limitation period of 8 years commencing from the date the goods are handed over.

One case which may require consideration is whether the buyer refuses to accept the goods because of a manifest patent defect, so that the goods are never "actually handed over". There may therefore be no starting point within the meaning of 10.1. The earlier formulation of "placed at the disposition of the buyer" avoided this difficulty, and it may be considered whether this wording should not be restored.

Provision may also be made in 10.2 for the case where there is a difference between the dates when the defect is discovered and could reasonably be discovered.

10.3 is intended to apply to a case when the seller gives an express undertaking relating to the goods. If 10.3 was absent under the normal rule the limitation period would commence



when the claims falls due. However, it is felt that by reason of the additional burden undertaken by the seller by the express undertaking, a later period of commencement is justified. The definition of the commencement period in the first draft (i.e. Article 2 of A/CN. 9/70, Annex I) was adopted in the interest of certainty, and is easier to apply. An example of a case covered by Article 10.3 would be the following :—

A sells a fleet of cars to B, and states that "no serious defect will arise for one year from commencement of use". One month after use commences, a serious defect develops, which only manifests itself requiring repair after eleven months have passed. Prescription starts to run from the latter date.

It has been suggested (A/CN. 9/70/Add. 1) that this article does not require that "the undertaking be contained in the contract of sale. The seller, after delivering the goods, might adjust certain components of the goods and in this connection might give an express warranty. Such an undertaking is governed by this article". An undertaking of this nature may constitute a separate contract with varying degrees of connection to the original contract. Whether it is desirable to make the Convention govern such a separate contract may require consideration.

Article 10.3 uses the phrase "express undertaking". "Express" terms are usually contrasted with "implied" terms, and are used to make the following distinctions :

- (i) An express term is explicitly stated by one party orally or in writing, and agreed to by the other. An implied term is not explicitly stated, but agreement as to its incorporation in the contract is implied by conduct, usage etc.
- (ii) An implied term is one on which there has been no agreement but is implied by law as a term of the contract.

In order to make for greater certainty, the replacement of the words "express undertaking" by the words "undertaking in

writing" may be considered. Every undertaking in writing would be an express undertaking.

#### Article 9(5) and 9(6) (A/CN. 9/70. Annex I)

(5) Where, as a result of a breach of contract by one party before performance is due, the other party thereby becomes entitled to and does elect to treat the contract as terminated, the limitation period in respect of any claim arising out of such breach shall commence on the date on which such breach occurred. If the contract is not treated as terminated, the limitation period shall commence on the date when performance is due.

(6) Where, as a result of a breach by one party of a contract for the delivery of or payment for goods by instalments, the other party thereby becomes entitled to and does elect to treat the contract as terminated, the limitation period in respect of any claim arising out of the contract shall commence on the date on which such breach of contract occurred, irrespective of any other breach of contract in relation to prior or subsequent instalments. If the contract is not treated as terminated, the limitation period in respect of each separate instalment shall commence on the date on which the particular breach or breaches complained of occurred.

#### Article 11(1) and 11(2) (Final draft)

1. If, in circumstances provided for by the law applicable to the contract, one party is entitled to declare the contract terminated before the time for performance is due, and exercises this right, the limitation period in respect of a claim based on any such circumstance shall commence on the date on which the declaration is made to the other party. If the contract is not declared to be terminated before performance becomes due, the limitation period shall commence on the date on which performance is due.

2. The limitation period in respect of a claim arising out of a contract for the delivery of or payment for goods by instalment shall, in relation to each separate instalment, commence on the date on which the particular breach occurs. If, under the law applicable to the contract, one party is entitled



to declare the contract terminated by reason of such breach, and exercises this right, the limitation period in respect of all relevant instalments shall commence on the date on which the declaration is made to the other party.

#### Commentary

This article provides for the case where under the applicable law one party is entitled to declare the contract terminated before the time for performance is due. He may become so entitled, for example either as a result of a breach of contract by the other party (e. g. a declaration by the other party that he will not perform on the due date) or owing to circumstances not amounting to a breach of contract (e. g. supervening impossibility of performance). The first draft only took account of breach of contract. The article probably covers not only the case where the termination takes effect by virtue of the declaration (i.e. where the party has an option either to terminate by declaration or not) but also the case where termination takes effect by operation of law independently of declaration by the party. In the latter case it may be said that the "party is entitled to declare the contract terminated" because it is already terminated by operation of law. Where there has been such a termination by declaration, it is logical to commence the running of the period of limitation from the date of declaration, for the parties thereafter have no excuse for not instituting legal proceedings. Where there has been no declaration, in a case where the party has an option in regard to termination, the party not making the declaration will be taken to be exercising the option to keep the contract alive, and claiming performance when it falls due. The claim would fall due when performance becomes due, and this is indicated as the start of the commencement of the limitation period.

If the article also covers the case where the contract is terminated by operation of law, it is arguable that the time of such termination is the logical starting point, and not the date on which performance falls due.

Article 11.2 is an application of the principle of 11.1 to the case of an instalment contract.

### INTERRUPTION OF THE LIMITATION PERIOD : LEGAL PROCEEDINGS: ACKNOWLEDGEMENT

#### Article 12 (A/C N. 9/70 Annex. I)

(1) The limitation period shall cease to run when the creditor performs any act recognized under the law of the jurisdiction where such act is performed:

(a) as instituting judicial proceedings against the debtor for the purpose of obtaining satisfaction or recognition of his claim; or

(b) as invoking his claim for the purpose of obtaining satisfaction or recognition thereof in the course of judicial proceedings which he has commenced against the debtor in relation to another claim.

(2) For the purposes of this article, any act performed by way of counterclaim shall be deemed to have been performed on the same date as the act performed in relation to the claim against which the counterclaim is raised, provided that such counterclaim does not arise out of a different contract.

### CESSATION AND EXTENSION OF THE LIMITATION PERIOD

#### Article 12 (Final draft)

1. The limitation period shall cease to run when the creditor performs any act which, under the law of the jurisdiction where such act is performed, is recognised as commencing judicial proceedings against the debtor or as asserting his claim in such proceedings already instituted against the debtor, for the purpose of obtaining satisfaction or recognition of his claim.

2. For the purposes of this article, any act performed by way of counterclaim shall be deemed to have been performed on the same date as the act performed in relation to the claim against which the counterclaim is raised. However, both the claim and counterclaim shall relate to a contract or contracts concluded in the course of the same transaction.



### Commentary

The entire group of articles contained under this heading are inter-related and the articles contained under the heading **"Effects of the expiration of the limitation period"** are also closely related. This article deals with the effect of the commencement of judicial proceedings on the running of the limitation period, and provides that the period shall 'cease to run' as from such commencement. The implications of 'ceasing to run' has to be gathered from this article together with Articles 15, 16, and the articles dealing with the effects of the expiration of the limitation period. The second limb of 12.1 ("or as asserting his claim.....the debtor") provides for the case where the creditor introduces a claim relating to an international contract of sale into an action already commenced. The law of the jurisdiction where the act is performed determines whether it has been done "for the purpose of obtaining satisfaction or recognition of his claim". Thus, depending on that law, a diversity of actions may be found sufficient for this purpose, e. g. actions for damages, specific performance, declaration of rights and possibly even criminal prosecutions. To cause the limitation period to cease to run, a counter-claim must qualify as an act of the type defined in 12.1.

There is no definition of what constitutes a sufficient act by way of counter-claim. One necessary condition must be that it must relate to an international contract of sale. Must it also be a counter to a claim relating to an international contract of sale? The effect of the last sentence of 12.2 (which is an innovation) appears to suggest that it need not. The following example illustrates the point:

A and B in the course of the same transaction enter into two contracts. The first is an international contract of sale, the second is not. A sues B both on the international contract and on the other contract. B, who has a counter-claim under the international contract, raises it, not in the action relating to the international contract, but in the other action. The applicable law of the forum permits this. The counter-claim will presumably operate to stop the running of this limitation period.

If it is intended that both or all the contracts concluded in the course of the same transaction need to be contracts of international sale of goods, this should be made explicit. The policy behind the first sentence of 12.2 has been said to be "to promote efficiency and economy in litigation by encouraging consolidation of actions rather than the hasty bringing of separate actions." (A/C N. 9/50, Annex II, p.31. and A/C N. 9/70/Add. I). If a counter-claim dates back to the date of the claim, it will be made in time if the claim is made in time. A party contemplating a claim can, therefore, rest on the secure assumption that however late a claim is made by the other party, he can assert his own claim as a counter-claim in the same action and not be ruled out on the ground of limitation. Another reason which has been urged to justify this doctrine is that "a litigant generally cannot complain of being visited with stale claims if he himself, by asserting a claim arising from the same event or transaction, disturbed the tranquillity sought to be safeguarded by the statute of limitation" (A/C N. 9/70/Add. 2, p.51). It might be objected, however, that a person who asserts a claim within time does not disturb the tranquillity safeguarded by the statute of limitations.

The effect of 12.2 on the provisions of Article 10 may also be considered. The following examples are given to illustrate same possible cases:—

- (1) A, the seller, on 1.1.74 hands over to B, the buyer, goods containing defects which can be discovered when the goods are handed over. B does not pay the price, neither does he assert a claim against A in respect of the defects. On 1.12.75 A brings an action for the price. B makes a counter-claim in this action on 1.1.77. Is B's claim out of time by reason of 10.1 (because it is brought more than two years after the goods have been handed over) or within time by reason of 12.2 (because it is deemed to have been performed on 1.12.75, within two years)?
- (2) A, the seller, sells and hands over goods to B, the buyer, on 1.1.73. The goods contain defects which



cannot be discovered at the time of handing over. B does not pay the price, and A institutes proceedings for the price on 30.12.76. B discovers the defects on 1.10.77, and makes a counter-claim. Does B's counter-claim relate back to 30.12.76 by reason of 12.2? If it does, it will relate back to a point of time before the claim fell due.

- (3) A, the seller, sells and hands over goods to B, the buyer on 1.1.73. The goods contain defects which cannot be discovered at the time of handing over. B does not pay the price, and A institutes proceedings for the price on 30.12.76. The proceedings are protracted and on 1.12.80 B discovers the defects. He makes a counter-claim on 1.2.81. Is the claim out of time by reason of the proviso of 10.2, (because more than eight years have elapsed from the date the goods were handed over) or within time by the operation of 12.2 (because it relates back to 30.12.76.)

It is to be noted that there is no relation back to the date of the original claim where a creditor adds a claim relating to an international contract of sale into proceedings already instituted; e.g.

A commences proceedings on an international contract of sale against B on 1.1.74. On 10.1.74 he introduces into this action a claim relating to another international contract of sale. The date when the period of limitation ceases to run in regard to the latter claim would be 10.1.74 and not 1.1.74.

#### Article 13 (A/C N. 9/70. Annex I)

- (1) Where the parties have agreed to submit to arbitration, the limitation period shall cease to run when either party commences arbitral proceedings by requesting that the claim in dispute be referred to arbitration in the manner provided for in the arbitration agreement or by the law applicable to that agreement.

- (2) In the absence of any such provision, the request shall take effect on the date on which it is delivered at the habitual residence or place of business of the other party, or, if he has no such residence or place of business, then at his last known residence or place of business.
- (3) The provisions of this article shall apply notwithstanding any term in the arbitration agreement to the effect that no right shall arise until an arbitration award has been made.

#### Article 13 (Final draft)

- (1) Where the parties have agreed to submit to arbitration, the limitation period shall cease to run when either party commences arbitral proceedings in the manner provided for in the arbitration agreement or by the law applicable to that agreement.
- (2) In the absence of any such provision, arbitral proceedings shall be deemed to commence on the date on which a request that the claim in dispute be referred to arbitration is delivered at the habitual residence or place of business of the other party, or if he has no such residence or place of business, then at his last known residence or place of business.
- (3) The provisions of this article shall apply notwithstanding any term in the arbitration agreement to the effect that no right shall arise until an arbitration award has been made.

#### Commentary

This article applies to arbitration the principle contained in the preceding article relating to judicial proceedings.

In the case of arbitration the event causing the period to cease to run is not referred to the law of the jurisdiction, as in the earlier Article 12, because contracts of arbitration often leave the question as to what act commences arbitration to the



agreement of the parties. 13.2 provides for the occasions where 13.1 cannot be applied. It requires actual delivery of the request for arbitration, and places the risk of non-delivery on the party making the request.

13.3 is intended to deal with a term in the arbitration agreement that "no right shall *arise* until an arbitration award has been *made*". Such a provision will not operate to prevent the limitation period from ceasing to run under 13.1, or to effect the provisions of the article as to when arbitration has commenced.

#### Article 15 (A/CN. 9/70. Annex I)

Where any legal proceedings are commenced upon the occurrence of :

- (a) the death or incapacity of the debtor;
- (b) the bankruptcy or insolvency of the debtor;
- (c) the dissolution of a corporation, company or other legal entity;
- (d) the seizure or transfer of the whole or part of the assets of the debtor,

the limitation period will cease to run only if the creditor performs an act recognized under the law applicable to those proceedings for the purpose of obtaining satisfaction or recognition of his claim. Such act may be performed before the expiration of any further period as may be provided for under that law.

#### Article 14 (Final draft)

In any legal proceedings other than those mentioned in Articles 12 and 13, including legal proceedings commenced upon the occurrence of :

- (a) the death or incapacity of the debtor,
- (b) the bankruptcy or insolvency of the debtor, or

- (c) the dissolution or liquidation of a corporation, company, association or entity;

the limitation period shall cease to run when the creditor asserts his claim in such proceedings for the purpose of obtaining satisfaction or recognition of the claim, unless the law governing the proceedings provides otherwise.

#### Commentary

The purpose of this article is to deal with the effect of those legal proceedings which do not fall within Article 12. This may be because they cannot be classified as judicial proceedings. Further, Article 12 only applies where the creditor commences judicial proceedings against the debtor. There are certain legal proceedings (including judicial proceedings) which are commenced by persons who are creditors under other transactions, or which may commence by operation of law.

The article has been amended in the final draft so that the types of legal proceedings enumerated are not exhaustive of the proceedings to which the article can apply. The only requirement now to make the period cease to run is that the creditor should assert his claim in legal proceedings for the purpose of obtaining satisfaction or recognition of the claim.

By reason of the last clause in the article, the body of the article has no effect if the law governing the proceedings provides otherwise, i.e. in such a case the limitation period will continue to run as against the debtor. Whether the law governing the proceedings provides otherwise or not will be determined by the interpretation of that law.

#### EXTENSION OF THE LIMITATION PERIOD

#### Article 18 (A/CN. 9/70. Annex I)

- (1) Where the creditor has commenced legal proceedings in accordance with Articles 12, 13, or 15 :
  - (a) the limitation period shall be deemed to have continued to run if the creditor subsequently discontinues the proceedings or withdraws his claim ;



- (b) where the court or arbitral tribunal has declared itself or been declared incompetent, or where the legal proceedings have ended without a judgement, award or decision on the merits of the claim, the limitation period shall be deemed to have continued to run and shall be extended for one year respectively from the date on which such declaration was made or from the date on which the proceedings ended.

(2) Where an arbitration has been commenced in accordance with Article 13, but such arbitration has been stayed or set aside by judicial decision, the limitation period shall be deemed to have continued to run and shall be extended for one year from the date of such decision.

#### Article 15 (Final draft)

1. Where a claim has been asserted in legal proceedings within the limitation period in accordance with Articles 12, 13, or 14 but such legal proceedings have ended without a final decision binding on the merits of the claim, the limitation period shall be deemed to have continued to run.

2. If, at the time such legal proceedings ended, the limitation period has expired or has less than one year to run, the creditor shall be entitled to a period of one year from the date on which the legal proceedings ended, unless they have ended because the creditor has discontinued them or allowed them to lapse.

#### Commentary

Articles 12, 13 and 14 provided for the cessation of the running of the limitation period. Where it has ceased to run under those articles, unless some further provision was made, the cessation would continue indefinitely. This article, and those following, deal with the problem and relate the future incidents of the running of the limitation period to the outcome of the legal proceedings.

Under 15.1, where the legal proceedings have "ended without a final decision binding on the merits of the claim,"

the period shall be deemed to have continued to run. Whether the proceedings have ended in the specified manner will have to be determined by the forum before which the question may arise upon an interpretation of the facts of the case and the language of the article. If they have ended in the specified manner, the creditor under 15.2 gets a further period from the date of ending for the purpose of instituting another action, if at the time the proceedings ended the limitation period had expired or has less than one year to run, unless the ending was the result of the creditor's discontinuing the proceedings or allowing them to lapse. Where the creditor has discontinued them or allowed them to lapse, there is no reason to give him another opportunity to commence proceedings since it is by his own default that he has lost the possibility of getting judgement. In other cases, since external causes have deprived him of the possibility of getting a final judgement, it is considered fair to give him a second opportunity.

The following questions may be considered in this connection:—

(1) Under the present draft, a creditor who finds the period of limitation is about to expire, and who desires to obtain an extension of the period, can commence proceedings which he knows are bound to end without a final decision binding on the merits of the claim. When proceedings are ended by order of the forum, he will get a further period of at least one year to institute proceedings again. Should a provision be inserted to prevent this? Opinion is divided on this point. While there is universal agreement that such conduct is undesirable, it is pointed out that in fact a creditor will not resort to such action because he will have to bear the costs of the abortive proceedings.

(2) Is the period of one year granted by 15.2 to be classified as 'the limitation period' within the meaning of Articles 12.2 and 15.2? Under the Draft in A/CN. 9/70, Annex 1, which speaks of "extending the limitation period," this would clearly be so. The change of language in the final draft leaves the matter in doubt. Further Article 8 states "Subject to the



provisions of Article 10, the limitation period shall be four years." This suggests that the term can only be applied to the period of four years, subject to the special exception created by the article.

The practical consequences depending on the classification may be illustrated by the following :—

A commences judicial proceedings against B on 1.1.74. The limitation period expires on 1.1.75. The action ends without a final decision binding on the merits of the claim on 1.1.76, without A having discontinued the proceedings or allowed them to lapse. On 1.6.76 A, as he is entitled to do under article 15.2, institutes a second action against B. This also ends on 1.3.77 without a final decision binding on the merits of the claim, without any responsibility on A's part. A now institutes a third action against B on 1.5.77.

(a) Does the period of one year commencing on 1.1.76 cease to run by the operation of Article 12.1 when the second action is instituted on 1.6.76 ? If the one year period allowed to A from 1.1.76 to 31.12.76 is within the meaning of the phrase 'the limitation period' in 12.1 this will be so.

(b) If the answer is in the affirmative, does Article 15.1 also apply to the second ending so as to give a further period of one year from 1.3.77 to institute another action ? If so, his third action also will not be out of time.

The special provision for arbitration contained in Article 18 (2) of the first draft has been deleted as unnecessary in terms of the final draft.

#### Article 21 (A/CN. 9/70. Annex I)

Where the creditor has obtained a final judgement or award on his claim in judicial or arbitral proceedings, but such judgement or award is not recognised in another jurisdiction, he shall be entitled, within a period of four years from the date of such final judgement or award, to institute legal proceedings in

that jurisdiction for the purpose of obtaining satisfaction or recognition of his claim.

#### Article 16 (Final draft)

1. Where a creditor has asserted his claim in legal proceedings within the limitation period in accordance with Articles 12, 13 or 14 and has obtained a decision binding on the merits of his claim in one State, and where, under the applicable law, he is not precluded by this decision from asserting his original claim in legal proceedings in another State, the limitation period in respect of this claim shall be deemed not to have ceased running by virtue of Articles 12, 13 or 14, and the creditor shall, in any event, be entitled to an additional period of one year from the date of the decision.
2. If recognition or execution of a decision given in one State is refused in another State, the limitation period in respect of the creditor's original claim shall be deemed not to have ceased running by virtue of Articles 12, 13 or 14, and the creditor shall, in any event, be entitled to an additional period of one year from the date of the refusal.

#### Commentary

Article 16.1 deals with a case where a creditor has obtained a decision binding on the merits of his claim, but where, under the applicable law, he is not precluded by this decision from asserting his original claim in legal proceedings in another State. The limitation period in respect of these possible proceedings is deemed to have continued to run. The result may be that the period may have expired or not, but in any event the creditor is entitled to an additional period of one year from the date of the decision for the purpose of instituting a second action, e.g. :—

A commences proceedings for non-payment of the price against B in State X on 1.1.74, and gets a decision