

Principles of the Existing EC Contract Law
(Acquis Principles)

Contract II

General Provisions, Delivery of Goods,
Package Travel and Payment Services

Principles of the Existing EC Contract Law
(Acquis Principles)

Contract II

General Provisions, Delivery of Goods,
Package Travel and Payment Services

prepared by

Research Group on the Existing EC Private Law
(Acquis Group)


sellier.
european law
publishers

ISBN (print) 978-3-86653-024-9
ISBN (eBook) 978-3-86653-873-3

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>.

© 2009 by sellier. european law publishers GmbH, Munich.

All rights reserved. No part of this publication may be reproduced, translated, stored in a retrieval system or transmitted, in any form or by any means, electronic, mechanical, photo-copying, recording or otherwise, without prior permission of the publisher.

Design: Sandra Sellier, Munich. Production: Karina Hack, Munich. Typesetting: fidus Publikations-Service GmbH, Nördlingen. Typeface: Goudy Old Style and Goudy Sans from Linotype. Printing and binding: Friedrich Pustet KG, Regensburg. Printed on acid-free, non-ageing paper. Printed in Germany.



Table of Contents

Preface

The second volume of the Acquis Principles <i>Gianmaria Ajani/Hans Schulte-Nölke</i>	xiii
---	------

Contributors

Members of the Acquis Group	xv
Authors of the Comments to the Acquis Principles	xxi

Introductory Part

Structure and Values of the Acquis Principles: New features and their possible use for political purposes <i>Hans Schulte-Nölke/Fryderyk Zoll</i>	xxiii
---	-------

Consolidating EC Contract Law: an Introduction to the Work of the Acquis Group <i>Gerhard Dannemann</i>	xxxvi
---	-------

Consolidating EC Contract Law Terminology: The Contribution of the Terminology Group <i>Gerhard Dannemann/Silvia Ferreri/Michele Graziadei</i>	l
--	---

Acquis Principles

Structure of the Acquis Principles	3
------------------------------------	---

Text of the Acquis Principles	5
-------------------------------	---

Rules and Comments	49
--------------------	----

Chapter I: Introductory Provisions

Section 1: Scope

Article 1:101: Scope and purpose of these Principles	49
--	----

Table of Contents

Section 2: Consumer and business	
Article 1:201: Consumer	55
Article 1:202: Business	63
Article 1:203: Mandatory nature of consumer rules	67
Section 3: Notice and form	
Article 1:301: Means of notice	71
Article 1:302: Effectiveness of notice	72
Article 1:303: Electronic notice	73
Article 1:304: Freedom of form	75
Article 1:305: Textual form	81
Article 1:306: Durable medium	84
Article 1:307: In writing	89
Article 1:308: Signatures	94
Chapter 2: Pre-Contractual Duties	
General Provisions	
Section 1: General duties	
Article 2:101: Good faith	99
Article 2:102: Legitimate expectations	106
Article 2:103: Negotiations contrary to good faith	110
Section 2: Pre-contractual information duties	
Article 2:201: Duty to inform about goods or services	115
Article 2:202: Information duties in marketing towards consumers	119
Article 2:203: Information duties towards disadvantaged consumers	125
Article 2:204: Clarity and form of information	132
Article 2:205: Information about address and identity	135
Article 2:206: Information about price	140
Article 2:207: Burden of proof	143
Article 2:208: Remedies for breach of information duties	144
Specific Provisions	
Part A: Contracts Negotiated Away from Business Premises	
Article 2:A-01: Specific pre-contractual information duties for distance selling of financial services ^{Placeholder}	149



Table of Contents

Part B: Contracts for the Delivery of Goods

Article 2:B-01: Pre-contractual information on consumer guarantees ^{Placeholder}	149
---	-----

Part C: Timeshare Contracts

Article 2:C-01: Specific pre-contractual information duties for timeshare contracts ^{Placeholder}	149
--	-----

Part D: Service Contracts

Article 2:D-01: Specific pre-contractual information duties for service contracts ^{Placeholder}	149
--	-----

Part E: Package Travel Contracts

Article 2:E-01: Specific pre-contractual duties for package travel contracts	149
--	-----

Part F: Consumer Credit Contracts

Article 2:F-01: Specific pre-contractual information duties for consumer credit contracts ^{Placeholder}	155
--	-----

Part G: Payment Services	155
--------------------------	-----

Chapter 3: Non-discrimination

Section 1: General Rules/Definitions

Article 3:101: Principle of non-discrimination in contract law	157
Article 3:102: Discrimination	163
Article 3:103: Exception	167

Section 2: Remedies

Article 3:201: Remedies	170
Article 3:202: Content of the remedies	175
Article 3:203: Burden of proof	178

Chapter 4: Formation

General Provisions

Article 4:101: Agreement between the parties	181
Article 4:102: Conclusion of contract	184
Article 4:103: Offer; public statements	187
Article 4:104: Information duties in real time communication	188
Article 4:105: Formation by electronic means	193
Article 4:106: Unsolicited goods or services	200
Article 4:107: Pre-contractual statements by a contract party	205
Article 4:108: Pre-contractual statements by third parties	209
Article 4:109: Binding force of unilateral promises	213
Article 4:110: Acknowledgment of receipt	216

Specific Provisions

Part C: Timeshare Contracts

Article 4:C-01: Timeshare contracts	222
-------------------------------------	-----

Part E: Package Travel Contracts

Article 4:E-01: Package travel contracts	228
--	-----

Part F: Consumer Credit Contracts

Article 4:F-01: Consumer credit contracts ^{Placeholder}	231
--	-----

Chapter 5: Withdrawal

General Provisions

Article 5:101: Mandatory nature	233
Article 5:102: Exercise of a right of withdrawal	239
Article 5:103: Withdrawal period	245
Article 5:104: Information on the right of withdrawal	254
Article 5:105: Effects of withdrawal	260
Article 5:106: Linked contracts	266

Table of Contents

Specific Provisions

Part A: Contracts Negotiated Away from Business Premises

Article 5:A-01: Right to withdraw from contracts negotiated away from business premises	274
Article 5:A-02: Effects of withdrawal in case of supply of equivalent goods or services.	285
Article 5:A-03: Effects of withdrawal from financial services contracts ^{Placeholder}	287

Part C: Timeshare Contracts

Article 5:C-01: Right to withdraw from timeshare contracts	288
Article 5:C-02: Effects of withdrawal from timeshare contracts	293

Chapter 6: Non-Negotiated Terms

Section 1: Scope of Application

Article 6:101: Subject matter	297
-------------------------------	-----

Section 2: Inclusion and interpretation of terms

Article 6:201: Acquaintance with terms not individually negotiated	305
Article 6:202: Preference to negotiated terms	312
Article 6:203: Interpretation of terms	314
Article 6:204: Conflicting standard terms	316

Section 3: Validity of terms

Article 6:301: Unfairness of terms	319
Article 6:302: Transparency of terms	324
Article 6:303: Scope of the unfairness test	326
Article 6:304: List of unfair terms	329
Article 6:305: Indicative list of unfair terms	331
Article 6:306: Effects of unfair terms	335

Chapter 7: Performance of Obligations

General Provisions

Section 1: General duties

Article 7:101: Duty to perform	339
Article 7:102: Good faith in the exercise of rights	346
Article 7:103: Duty of loyalty	349
Article 7:104: Duty to co-operate	352
Article 7:105: Language of communications	356

Section 2: Modalities of Performance

Article 7:201: Time of performance	361
Article 7:202: Place of performance	367

Specific Provisions

Part A: Contracts Negotiated Away from Business Premises

Article 7:A-01: Goods or services of equivalent quality	368
---	-----

Part B: Contracts for the Delivery of Goods

Article 7:B-01: Conformity of goods to the contract	373
Article 7:B-02: Mandatory nature for consumer contracts	377

Part E: Package Travel Contracts

Article 7:E-01: Mandatory nature	380
Article 7:E-02: Definition of package travel contract	382
Article 7:E-03: Revision of price	387
Article 7:E-04: Duty to notify of proposed modifications	391
Article 7:E-05: Business's right of termination	396
Article 7:E-06: Information before departure ^{Rules only}	398

Part G: Payment Services	399
--------------------------	-----

Part H: Commercial Agency Contracts	399
-------------------------------------	-----

*Table of Contents***Chapter 8: Remedies****General Provisions****Section 1: General Rules**

Article 8:101: Definition of non-performance	401
Article 8:102: Exclusion or restriction of remedies	405

Section 2: Performance and cure of non-performance

Article 8:201: Monetary obligations-performance	408
Article 8:202: Nonmonetary obligations	409

Section 3: Termination and reduction of performance

Article 8:301: Grounds for termination and reduction	411
Article 8:302: Notice of termination	421
Article 8:303: Effects of termination	421
Article 8:304: Right to withhold performance of reciprocal obligation	425

Section 4: Damages

Article 8:401: Right to damages	427
Article 8:402: Measure of damages	433
Article 8:403: Contributory negligence and mitigation	437
Article 8:404: Interest on delayed payment	440
Article 8:405: Interest in case of creditor's non-performance	440
Article 8:406: Interest in commercial contracts	442
Article 8:407: Unfair terms relating to interest	444

Specific Provisions**Part A: Contracts Negotiated Away from Business Premises**

Article 8:A-01: Goods or services ordered are unavailable	448
---	-----

Part B: Contracts for the Delivery of Goods

Article 8:B-01: Mandatory nature for consumer contracts	451
Article 8:B-02: Time of conformity	452
Article 8:B-03: Presumption	455
Article 8:B-04: Choice of cure	458
Article 8:B-05: Return of replaced goods	461
Article 8:B-06: Right of redress ^{Placeholder}	464
Article 8:B-07: Time limit ^{Placeholder}	464



Table of Contents

Part E: Package Travel Contracts

Article 8:E-01: Mandatory nature	464
Article 8:E-02: Alternative arrangements in case of partial non-performance	466
Article 8:E-03: Duty of assistance	469
Article 8:E-04: Duty to inform about non-performance	472

Part G: Payment Services	474
--------------------------	-----

Part H: Commercial Agency Contracts

Article 8:H-01: Immediate termination of agency contract ^{Placeholder}	474
---	-----

Annexes

Table of Derivations	477
List of “grey rules” taken from the Draft CFR (DCFR)	481
Table of Legislation and other Sources	483
Table of Cases	503
Abbreviations	509
Glossary	513