

TEXT OF THE ACQUIS PRINCIPLES

Chapter 1: General Provisions

Section 1: Scope

Article 1:101: Scope and purpose of these Principles

- (1) The following principles and rules are formulated on the basis of the existing law of the European Community in the field of contract law.**
- (2) These principles and rules serve as a source for the drafting, the transposition and the Interpretation of European Community law.**
- (3) They are not formulated to apply in the areas of labour law, company law, family law or inheritance law.**

Section 2: Consumer and business

Article 1:201: Consumer

Consumer means any natural person who is mainly acting for purposes which are outside this person's business activity.

Article 1:202: Business

Business means any natural or legal person, irrespective of whether publicly or privately owned, who is acting for purposes relating to this person's self-employed trade, work or profession, even if this person does not intend to make profit in the course of this activity.

Article 1:203: Mandatory nature of consumer rules

- (1) Unless provided otherwise, contract terms which are prejudicial to the consumer and which deviate from rules applicable specifically to relations between businesses and consumers are not binding on the consumer. This does not apply to contracts which settle an existing dispute.**

(2) Paragraph (1) applies accordingly to unilateral promises.

Section 3: Notice and form

Article 1:301: Means of notice

Notice may be given by any means appropriate to the circumstances.

Article 1:302: Electronic notice

A notice transmitted by electronic means reaches the addressee when it can be accessed by this person. This rule is mandatory in the sense of Art. 1:203 in relations between businesses and consumers.

Article 1:303: Freedom of form

Unless provided otherwise, no form needs to be observed in legal dealings.

Article 1:304: Textual form

‘Textual form’ means a text which is expressed in alphabetical or other intelligible characters by means of any support that permits reading, recording of the information contained therein and its reproduction in tangible form.

Article 1:305: Durable medium

‘Durable medium’ means any instrument which enables the recipient to store information so that it is accessible for future reference for a period of time adequate to the purposes of the information, and which allows the unchanged reproduction of this information.

Article 1:306: In writing

A statement in textual form on a durable medium qualifies as having been made ‘in writing’ if the text is stored on the medium permanently and in directly legible characters.

Article 1:307: Signatures

- (1) 'Handwritten signature' means the name of, or sign representing, a person written by that person's own hand for the purpose of authentication;
- (2) 'electronic signature' means data in electronic form which are attached to or logically associated with other electronic data, and which serve as a method of authentication;
- (3) 'electronic' means relating to technology with electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;
- (4) 'advanced electronic signature' means an electronic signature which meets the following requirements:
 - (a) it is uniquely linked to the signatory;
 - (b) it is capable of identifying the signatory;
 - (c) it is created using means which can be maintained under the signatory's sole control; and
 - (d) it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.

Chapter 2: Pre-contractual Duties

Section 1: General duties

Article 2:101: Good faith

In pre-contractual dealings, parties must act in accordance with good faith.

Article 2:102: Legitimate expectations

In pre-contractual dealings, a business must act with the special skill and care that may reasonably be expected to be used with regard, in particular, to the legitimate expectations of consumers.

Article 2:103: Negotiations contrary to good faith

- (1) A party is free to negotiate and is not liable for failing to reach an agreement.
- (2) However, a party who has conducted or discontinued negotiations contrary to good faith is liable for loss caused to the other party.

- (3) In particular, a party acts contrary to good faith if it enters into or continues negotiations with no real intention of reaching an agreement.

Section 2: Pre-contractual information duties

Article 2:201: Duty to inform about goods or services

Before the conclusion of a contract, a party has a duty to give to the other party such information concerning the goods or services to be provided as the other party can reasonably expect, taking into account the standards of quality and performance which would be normal under the circumstances.

Article 2:202: Information duties towards consumers

- (1) In addition to Art. 2:201, where a business is marketing goods or services to a consumer, the business must, with due regard to all the circumstances and the limitations of the communication medium employed, provide such material information as the average consumer needs in the given context to take an informed decision on whether to enter into a contract.
- (2) Where a business uses a commercial communication which enables a consumer to buy goods or services, the following information must be provided to the consumer where this is not already apparent from the context of the commercial communication:
- the main characteristics of the goods or services, the address and identity of the business, the price including delivery charges, taxes and other costs, and, where it exists, the right of withdrawal;
 - peculiarities related to payment, delivery, performance and complaint handling, if they depart from the requirements of professional diligence.

Article 2:203: Information duties towards disadvantaged consumers

- (1) In the case of transactions that place the consumer at a significant informational disadvantage because of the technical medium used for contracting, the physical distance between business and consumer, or the nature of the transaction, the business must, as appropriate in the circumstances, provide clear information about the main characteristics of the goods or services, the price including delivery charges, taxes and other costs, the address and identity of the business with whom the consumer is transacting, the terms of the contract, the rights and obligations of both contracting parties, and any available redress procedures. This information must be provided at the latest at the time of conclusion of the contract.

- (2) Where more specific information duties are provided for specific situations, these take precedence over general information duties under paragraph (1).

Article 2:204: Information duties in real time communication

- (1) When initiating real time distance communication with a consumer, a business must provide at the outset explicit information on its identity and the commercial purpose of the contact.
- (2) Real time distance communication includes telephone and electronic means such as voice over internet protocol and internet related chat.
- (3) The business bears the burden of proof that the consumer has received the information required under paragraph (1).

Article 2:205: Formation by electronic means

- (1) If a contract is to be concluded by electronic means, a business, before the other party makes or accepts an offer, must provide reference to any contract terms used, which must be available in textual form. This provision is mandatory.
- (2) If a contract is to be concluded by electronic means and without individual communication, a business must provide the following information before the other party makes or accepts an offer:
 - (a) which technical steps must be followed in order to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the business and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors;
 - (d) the languages offered for the conclusion of the contract;

This paragraph is mandatory in the sense of Art. 1:203 in relations between businesses and consumers.

Article 2:206: Clarity and form of information

- (1) A duty to provide information imposed on a business is not fulfilled unless the information is clear and precise, and expressed in plain and intelligible language.
- (2) In the case of contracts between a business and a consumer concluded at a distance, information about the main characteristics of the goods or services, the price including delivery charges, taxes and other costs, the address and identity of the business with whom the consumer is transacting, the terms of the contract, the rights and obligations of both contracting parties, and any available

redress procedures, as may be appropriate in the particular case, need to be confirmed in writing at the time of conclusion of the contract.

- (3) Where more specific formal requirements for the provision of information are provided for specific situations, these take precedence over general requirements under paragraphs (1) and (2). Unless stated otherwise, writing may be replaced by another textual form on a durable medium, provided this is reasonably accessible to the recipient.
- (4) Failure to observe a particular form will have the same consequences as breach of information duties.

Article 2:207: Remedies for breach of information duties

- (1) If a business is required under Art. 2:203 to 2:205 above to provide information to a consumer before the conclusion of a contract from which the consumer has the right to withdraw, the withdrawal period commences when all this information has been provided. However, this rule does not postpone the end of the withdrawal period beyond one year counted from the time of the conclusion of the contract.
- (2) Even if no contract has been concluded, breach of the duties under Art. 2:201 to 2:206 entitles the other party to reliance damages. Chapter 8 applies accordingly.
- (3) If a party has failed to comply with its duties under Art. 2:201 to 2:206, and a contract has been concluded, this contract contains the obligations which the other party could reasonably expect as a consequence of the absence or incorrectness of the information. Remedies provided under Chapter 8 apply to non-performance of these obligations.

Section 3: Duty to prevent input errors

Article 2:301: Correction of input errors

- (1) A business which offers the facility to conclude contracts by electronic means and without individual communication must make available to the other party appropriate, effective and accessible technical means for identifying and correcting input errors before the other party makes or accepts an offer. This rule is mandatory in the sense of Art. 1:203 in relations between businesses and consumers.
- (2) Art. 2:207 applies accordingly.

Chapter 3: Non-Discrimination

Section 1: General rules / Definitions

Article 3:101: Principle of non-discrimination in contract law

Any discrimination based on sex, racial or ethnic origin is prohibited.

Article 3:102: Discrimination

(1) “Discrimination” means:

1. A situation where one person is treated less favourably than another person is, has been or would be treated in a comparable situation;
2. a situation where an apparently neutral provision, criterion or practice would place persons with a particular feature at a particular disadvantage when compared with other persons;

(2) Discrimination also includes

1. unwanted conduct which violates the dignity of a person and which creates an intimidating, hostile, degrading, humiliating or offensive environment, or which aims to do so (harassment); or
2. any form of unwanted physical, verbal, non-verbal, or psychological conduct of a sexual nature that violates the dignity of a person, or which aims to do so, in particular when such conduct creates an intimidating, hostile, degrading, humiliating or offensive environment (sexual harassment).

(3) Any instruction to discriminate also amounts to discrimination.

Article 3:103: Exception

Unequal treatment which is justified by a legitimate aim does not amount to discrimination if the means used to achieve that aim are appropriate and necessary.

Section 2: Remedies

Article 3:201: Remedies

- (1) A person who is discriminated against on the grounds of sex, ethnic or racial origin in relation to contracts that provide access to, or supply goods or services which are available to the public, including housing, is entitled to compensation.

- (2) Where appropriate, the discriminated person is entitled to other remedies which are suitable to undo the consequences of the discriminating act, or to prevent further discrimination.

Article 3:202: Content of the remedies

- (1) Compensation under Art. 3:201(1) may include damages for pecuniary and non-pecuniary losses.
- (2) The amount of any damages for non-pecuniary losses, and remedies granted under Art. 3:201(2), must be proportionate to the injury; the deterrent effect of remedies may be taken into account.

Article 3:203: Burden of proof

- (1) If a person who considers himself or herself discriminated against on one of the grounds mentioned in Art. 3:201(1) establishes, before a court or another competent authority, facts from which it may be presumed that there has been such discrimination, it falls on the other party to prove that there has been no breach of the principle of non-discrimination.
- (2) Paragraph (1) does not apply to proceedings in which it is for the court or another competent authority to investigate the facts of the case.

Chapter 4: Formation

Article 4:101: Agreement between the parties

A contract is concluded if the parties intend to be legally bound, and they reach a sufficient agreement.

Article 4:102: Conclusion of contract

- (1) A contract can be concluded by the acceptance of an offer in accordance with the following provisions.
- (2) The rules in this chapter apply accordingly when the process of conclusion of a contract cannot be analysed into offer and acceptance.

Article 4:103: Offer; public statements

- (1) A proposal amounts to an offer if:
 - (a) it is intended to result in a contract if the other party accepts it, and
 - (b) it contains sufficiently definite terms to form a contract.
- (2) An offer may be made to one or more specific persons or to the public.
- (3) A proposal to supply goods or services at stated prices made by a business in a public advertisement or a catalogue, or by a display of goods, is treated, unless the circumstances indicate otherwise, as an offer to sell or supply at that price until the stock of goods, or the business's capacity to supply the service, is exhausted.

Article 4:104: Unsolicited goods or services

If a business delivers unsolicited goods or services to a consumer, no obligation arises from the consumer's failure to respond.

Article 4:105: Pre-contractual statements by a contract party

Any public statement which a business, prior to the conclusion of the contract, makes about the specific characteristics of the goods or services which it supplies is binding under the contract unless:

- (a) when the contract was concluded, the other party was aware, or should have reasonably been aware that the statement was incorrect, or
- (b) the other party's decision to conclude the contract could not have been influenced by the statement, or
- (c) the statement had been corrected by the time of the conclusion of the contract.

Article 4:106: Pre-contractual statements by third parties

Art. 4:105 also applies to public statements made by the producer, another person within the business chain between producer and ultimate customer, or any person advertising or marketing services or goods for the business, unless the business was not, and could not reasonably have been, aware of the statement.

Article 4:107: Binding force of unilateral promises

- (1) A valid unilateral promise or undertaking is binding on the person giving it, if it is intended to be legally binding without acceptance.
- (2) If a unilateral promise is binding, provisions of contract law which protect one particular party apply in its favour.

Article 4:108: Acknowledgment of receipt

- (1) A business which offers the facility to conclude a contract by electronic means and without individual communication must acknowledge by electronic means the receipt of an offer or an acceptance by the other party.
- (2) Even if no contract has been concluded, breach of the duty under paragraph (1) entitles the other party to reliance damages.
- (3) If a business has failed to comply with its duty under paragraph (1), and a contract has been concluded, the provisions on remedies for non-performance apply to this failure.
- (4) Paragraphs. (1) to (3) are mandatory in the sense of Art. 1:203. in relations between businesses and consumers.

Chapter 5: Withdrawal

Section 1: Exercise and effect

Article 5:101: Mandatory nature

Where a party has a statutory right of withdrawal from a contract, the provisions in this section apply as mandatory rules.

Article 5:102: Exercise of a right of withdrawal

Withdrawal must be communicated from the entitled party to the other party in order to become effective. No reasons need to be given. Returning the subject matter of the contract is considered a tacit withdrawal.

Article 5:103: Withdrawal period

- (1) Unless provided otherwise, the right of withdrawal must be exercised within fourteen days after both the contract has been concluded and notice of the right pursuant to Art. 5:104 has been given, and no later than one year after the

conclusion of the contract. If the subject-matter of the contract is the delivery of goods, the period lapses not earlier than fourteen days after the goods have been received.

- (2) The notice of withdrawal is timely if dispatched within this period.

Article 5:104: Notice of the right of withdrawal

The entitled party must receive reasonable notice of the right of withdrawal from the other party. Such a notice must be brought appropriately to the entitled party's attention, and provide in textual form on a durable medium and in plain and intelligible language information about the right of withdrawal, the withdrawal period, and the name and address of the person to whom the withdrawal must be communicated.

Article 5:105: Effects of withdrawal

- (1) Withdrawal from a contract terminates the obligations to perform the contract. Each party has to return at its own expense to the other what it received under the contract, unless the contract provides otherwise in favour of the entitled party. The withdrawing party is not liable to pay any other costs and does not incur any other liability through the exercise of its rights of withdrawal. The other party must return any payment received from the party that has withdrawn free of charge and as soon as possible, and in any case not later than thirty days after the withdrawal becomes effective.
- (2) The party withdrawing from the contract is not liable for damage to the received goods, provided that it exercised reasonable care. The same party is not liable for diminished value of the received goods caused by inspecting and testing. It is liable for the diminished value that results from their normal use, unless the party had not received reasonable notice of its right of withdrawal.

Article 5:106: Linked contracts

- (1) If a consumer exercises a right of withdrawal from a contract for the supply of goods or services by a business, the effects of withdrawal extend to any linked contract.
- (2) Contracts are linked if they objectively form an economic unit.
- (3) If a contract is partially or exclusively financed by a credit contract, they form an economic unit in particular:
 1. if the business supplying goods or services finances the consumer's performance or
 2. if the supplier of credit uses the supplier of goods or services for the formation of the credit contract or

3. if the credit contract refers to specific goods or services to be financed with this credit, and if this link between both contracts was suggested by the supplier of goods or services, or by the supplier of credit, unless other circumstances indicate that these two contracts do not form an economic unit.
- (4) Art. 5:105 applies accordingly to the linked contract.
- (5) Paragraph (1) does not extend the effect of withdrawal from a credit contract to a contract for goods or services whose price depends on fluctuations in the financial market outside the control of the business, and which may occur during the withdrawal period.

Section 2: Particular rights of withdrawal

Article 5:201: Contracts negotiated away from business premises

- (1) A consumer is entitled to withdraw from the contract under which a business supplies goods or services, including financial services, if the consumer's offer or acceptance was expressed away from the business premises.
- (2) Unless the business has exclusively used means of distance communication for concluding the contract, paragraph (1) applies only to contracts under which a consumer has to pay at least a statutory minimum amount.
- (3) Paragraph (1) does not apply to
 - (a) contracts concluded by means of automatic vending machines or automated commercial premises,
 - (b) contracts concluded with telecommunications operators through the use of public payphones,
 - (c) contracts concluded for the construction and sale of immovable property or relating to other immovable property rights, excluding tenancy contracts,
 - (d) contracts for foods, beverages or other goods intended for everyday consumption supplied by regular roundsmen to the home, residence or workplace of the consumer,
 - (e) contracts concluded by means of distance communication, but outside of an organized distance sales or service-provision scheme run by the business,
 - (f) contracts for goods or services whose price depends on fluctuations in the financial market which may occur during the withdrawal period and which are outside the control of the business,
 - (g) contracts concluded at an auction,

- (h) travel and baggage or similar short-term insurance policies of less than one month's duration.
- (4) If the business has exclusively used means of distance communication for concluding the contract, paragraph (1) does also not apply to contracts
- (a) for accommodation, transport, catering or leisure services, where the business undertakes at the time of conclusion of the contract to supply these services on a specific date or within a specific period,
 - (b) for the supply of services other than financial services if performance has begun, at the consumer's express and informed request, before the end of the withdrawal period referred to in Art. 5:103 paragraph (1),
 - (c) for goods made to the consumer's specifications or which are clearly personalised or which, by reason of their nature, cannot be returned or are liable to deteriorate or expire rapidly,
 - (d) for audio or video recordings or computer software
 - (1) which were unsealed by the consumer, or
 - (2) which can be downloaded or reproduced for permanent use, in case of supply by electronic means.
 - (e) for newspapers, periodicals and magazines,
 - (f) for gaming and lottery services.
- (5) With regard to financial services, paragraph (1) does also not apply to contracts that have been fully performed by both parties, at the consumer's express and informed request, before the consumer purports to exercise a right of withdrawal.

Article 5:202: Timeshare contracts

- (1) A consumer who acquires a right which allows him or her to use immovable property under a timeshare contract with a business is entitled to withdraw from this contract.
- (2) Where a consumer exercises the right of withdrawal under paragraph (1), the contract may require the consumer to reimburse those expenses which:
 - (a) have been incurred as a result of the conclusion of and withdrawal from the contract, and
 - (b) correspond to legal formalities which must be completed before the end of the period referred to in Art. 5:103(1), and
 - (c) are reasonable and appropriate, and
 - (d) are expressly mentioned in the contract, and

(e) are in conformity with any applicable rules on such expenses.

The consumer is not obliged to reimburse any expenses when exercising the right of withdrawal under Art. 2:207(1).

- (3) The business must not demand or accept any advance payment by the consumer during the period in which the latter may exercise the right of withdrawal.

Chapter 6: Non-Negotiated Terms

Section 1: Scope of application

Article 6:101: Subject matter

- (1) The following provisions apply to contract terms which have not been individually negotiated, including standard contract terms.
- (2) A term supplied by one party (the user) is not individually negotiated if the other party has not been able to influence its content because it has been drafted in advance, in particular as part of a pre-formulated standard contract. In contracts between a business and a consumer, if terms have been drafted by a third person, the business is considered to be the user, unless the consumer introduced those terms to the contract.
- (3) Standard contract terms are terms which have been formulated in advance for several transactions involving different parties, and which have not been individually negotiated by the parties.
- (4) The user bears the burden of proof for its claim that a standard term has been individually negotiated.

Section 2: Inclusion and interpretation of terms

Article 6:201: Acquaintance with terms not individually negotiated

- (1) Contract terms which have not been individually negotiated bind a party who was unaware of them only if the user took reasonable steps to draw the other party's attention to them before or when the contract was concluded.
- (2) Terms are not brought appropriately to the other party's attention by a mere reference to them in a contract document, even if that party signs the document.

- (3) If a contract is to be concluded by electronic means, contract terms are not binding on the other party unless the user makes them available to the other party in textual form.
- (4) Consumers are not bound to terms to which they had no real opportunity to become acquainted before the conclusion of the contract.

Article 6:202: Preference to negotiated terms

Terms which have been individually negotiated take preference over those which have not.

Article 6:203: Interpretation of terms

- (1) Where the meaning of a term is unclear, that term is to be interpreted against the party who supplied it.
- (2) Paragraph (1) does not apply to collective proceedings for injunctions against the use of particular terms.

Article 6:204: Conflicting standard contract terms

- (1) If the parties have reached agreement except that the offer and acceptance refer to conflicting standard contract terms, a contract is nonetheless formed. The standard contract terms form part of the contract to the extent that they are common in substance.
- (2) However, no contract is formed if one party:
 - (a) has indicated in advance, explicitly, and not by way of standard contract terms, that it does not intend to be bound by a contract on the basis of paragraph (1); or
 - (b) without delay, informs the other party of such intention.

Section 3: Validity of terms

Article 6:301: Unfairness of terms

- (1) A contract term which has not been individually negotiated is considered unfair if it disadvantages the other party, contrary to the requirement of good faith, by creating a significant imbalance in the rights and obligations of the parties under

the contract. Without prejudice to provisions on collective proceedings, when assessing the unfairness of a contractual term, regard is to be given to the nature of the goods or services to be provided under the contract, to all circumstances prevailing during the conclusion of the contract, to all other terms of the contract, and to all terms of any other contract on which the contract depends.

- (2) A term in a contract between businesses which has not been individually negotiated is considered unfair only if using that term amounts to a gross deviation from good commercial practice.

Article 6:302: Transparency of terms

Not individually negotiated terms must be drafted and communicated in plain, intelligible language.

Article 6:303: Scope of the unfairness test

- (1) Contract terms which are based on statutory provisions or on international conventions to which the Member States are parties, or to which the European Union is a party, particularly in the transport area, are not subject to an unfairness test.
- (2) For contract terms which are drafted in plain and intelligible language, the unfairness test extends neither to the definition of the main subject matter of the contract, nor to the adequacy of the price to be paid.

Article 6:304: List of unfair terms

The following is a non-exhaustive list of terms which are unfair in contracts between a business and a consumer if they have not been individually negotiated:

terms conferring exclusive jurisdiction for all disputes arising under the contract on the court for the place where the business is domiciled.

Article 6:305: Indicative list of unfair terms

- (1) The following is an indicative and non-exhaustive list of terms which may be regarded as unfair in contracts between a business and a consumer if they have not been individually negotiated. This list comprises terms which would:
 - (a) exclude or limit the liability of a business for death or personal injury caused to a consumer through an act or omission of that business;

- (b) inappropriately exclude or limit the remedies, including any right to set-off, available to the consumer against the business or a third party for non-performance by the business;
- (c) make a contract binding on a consumer which is subject to a condition whose realization depends solely on the intention of the business;
- (d) permit a business to keep money paid by a consumer if the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the business in the reverse situation;
- (e) require a consumer who fails to fulfil his or her obligations to pay a disproportionately high amount of damages;
- (f) entitle a business to withdraw from, or terminate the contract on a discretionary basis without giving the same right to the consumer, or terms which entitle a business to keep money paid for services not yet supplied in the case that the business withdraws from, or terminates the contract;
- (g) enable a business to terminate a contract of indeterminate duration without reasonable notice, except where there are serious grounds for doing so; this does not affect terms in financial services contracts where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof immediately;
- (h) automatically extend a contract of fixed duration unless the consumer indicates otherwise, in cases where such terms provide for an unreasonably early deadline;
- (i) enable a business to alter the terms of the contract unilaterally without a valid reason which is specified in the contract; this does not affect terms under which a supplier of financial services reserves the right to change without notice the rate of interest to be paid by, or to, the consumer, or the amount of other charges for financial services where there is a valid reason, provided that the supplier is required to inform the consumer at the earliest opportunity and that the consumer is free to terminate the contract with immediate effect; neither does it affect terms under which a business reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that the business is required to inform the consumer with reasonable notice, and that the consumer is free to terminate the contract;
- (j) enable a business to alter unilaterally without a valid reason any characteristics of the goods or services to be provided;
- (k) provide that the price of goods is to be determined at the time of delivery, or which allow a business to increase the price without giving the consumer the right to withdraw from the contract if the increased price is too high in relation to the price agreed at the conclusion of the contract; this does not affect price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described;

- (l) give a business the right to determine whether the goods or services supplied are in conformity with the contract, or which give the business the exclusive right to interpret any term of the contract;
 - (m) limit the obligation of a business to respect commitments undertaken by its agents, or which make its commitments subject to compliance with a particular formality;
 - (n) oblige a consumer to fulfil all his or her obligations where the business fails to fulfil its own;
 - (o) allow a business to transfer its rights and obligations under the contract without the consumer's consent, if this could reduce the guarantees available to the consumer;
 - (p) exclude or impede a consumer's right to take legal action or to exercise any other remedy, in particular by referring the consumer to arbitration proceedings which are not covered by legal provisions, by unduly restricting the evidence available to the consumer, or by shifting a burden of proof onto the consumer.
- (2) Subparagraphs (g), (i) and (k) do not apply to:
- transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate beyond the control of the business;
 - contracts for the sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency.

Article 6:306: Effects of unfair terms

- (1) Unfair terms are not binding on a party who did not supply them.
- (2) If the contract can be maintained without the unfair terms, it remains otherwise binding on the parties.

Chapter 7: Performance of Obligations

Section 1. General duties

Article 7:101: Duty to perform

- (1) The debtor must perform its obligations in accordance with good faith.

- (2) A business must perform its obligations with the special skill and care that may reasonably be expected to be used with regard, in particular, to the legitimate expectations of consumers.

Article 7:102: Good faith in the exercise of rights

The creditor must exercise its rights to performance and remedies for non-performance in accordance with good faith.

Article 7:103: Duty of loyalty

If an obligation by its nature requires the debtor to manage the creditor's affairs, the debtor must give due regard to the creditor's interests related to those affairs.

Article 7:104: Duty to co-operate

The debtor and the creditor must co-operate with each other to the extent that this can reasonably be expected for the performance of an obligation.

Section 2. Modalities of performance

Article 7:201: Time of performance

- (1) If the contract does not fix the time of performance, the debtor must perform without undue delay.
- (2) Unless the parties have agreed otherwise, a business must execute the obligations incurred under contracts concluded at a distance no later than 30 days after the contract was concluded.
- (3) If a business must reimburse money received from a consumer, such reimbursement must be carried out as soon as possible and in any case no later than 30 days after the reimbursement obligation arose.
- (4) If the order of performance of reciprocal obligations cannot be otherwise determined from the terms regulating the obligations then, to the extent that the obligations can be performed simultaneously, the parties are bound to perform simultaneously unless the circumstances indicate otherwise.

Article 7:202: Place of performance

- (1) If the place of performance of an obligation cannot be otherwise determined from the terms regulating the obligation it is:
 - (a) in the case of a monetary obligation, the creditor's place of business;
 - (b) in the case of any other obligation, the debtor's place of business.
- (2) For the purposes of the preceding paragraph
 - (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the obligation; and
 - (b) if a party does not have a place of business, or the obligation does not relate to a business matter, the habitual residence is substituted.
- (3) If, in a case to which paragraph (1) applies, a party causes any increase in the expenses incidental to performance by a change in place of business or habitual residence subsequent to the time when the obligation was incurred, that party must bear the increase.

This provision has not yet been adopted by the Plenary Meeting of the Acquis Group.

Grey rule from DCFR II.-1:106(2).

This provision is currently under review and will be amended for a revised and extended version of the Acquis Principles.

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Chapter 8 which contains rules on remedies is currently under revision and therefore not included in this volume. It will be published in the next volume of the Acquis Principles.

This provision is currently under review and will be amended for a revised and extended version of the Acquis Principles.

Grey rule from DCFR II.-3:201.

Partially grey rule from DCFR II.-1:103(2).

Grey rule from DCFR II.-3:209.

Partially grey rule from DCFR III.-2:104.

Grey rule from DCFR III.-2:101.