

Schulze / Zoll

# European Contract Law

C.H.BECK · Hart · Nomos

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by

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2016

C.H.BECK · Hart · Nomos

*Published by*

Nomos Verlagsgesellschaft, Waldseestraße 3-5, 76530 Baden-Baden, Germany,  
email: [vertrieb@nomos.de](mailto:vertrieb@nomos.de)

*Co-published by*

Verlag C.H.BECK oHG, Wilhelmstraße 9, 80801 München, Germany,  
email: [bestellung@beck.de](mailto:bestellung@beck.de)

and

Hart Publishing, 16C Worcester Place, Oxford, OX1 2JW, United Kingdom,  
email: [orders@isbs.com](mailto:orders@isbs.com)

Published in North America (US and Canada) by Hart Publishing,  
c/o International Specialized Book Services,  
930 NE 58<sup>th</sup> Avenue, Suite 300, Portland, OR 97213-3786, USA,  
email: [orders@isbs.com](mailto:orders@isbs.com)

ISBN 978-3-8487-2194-8 (Nomos)

ISBN 978-3-8452-6510-0 (eLibrary)

ISBN 978-3-406-68537-8 (C.H.BECK)

ISBN 978-1-50990-042-8 (Hart Publishing)

First Edition 2016

© Nomos Verlagsgesellschaft, Baden-Baden 2016. Printed in Germany.

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## Foreword

Contract law is at the centre of the development of European private law. Thirty years of European directives and CJEU jurisprudence have contributed to the growth of an extensive *acquis communautaire* with its innovative approaches and increasing influence on the laws of the Member States. Furthermore, drafts such as the Principles of European Contract Law and legislative projects such as the European Commission's Proposal for a Common European Sales Law have also contributed to the conceptual development and structure of this new area of law. The development of European contract law requires contributions from jurists across Europe, therefore this volume intends to allow practitioners, students and scholars to participate in an ever growing, dynamic and highly interesting area of modern law. In order to do so the volume provides fundamental information about the content, methods and objectives of European legislation in the field of contract law and explains the interaction between the legislator, judges and academics during the creation of European contract law. It particularly attempts to show European contract law's characteristics as supranational law as well as the innovative features vis-à-vis traditional concepts in contract law. Above all, the volume strives to guide jurists along an often unfamiliar path and to promote an understanding of the characteristics of a new legal development.

The focus on the features of this development as well as the resulting structures is all the more important as this volume has been published at a time of great uncertainty regarding the next legislative steps in European private law. The European Commission has announced that it will retract its Proposal for a Common European Sales Law and will instead take other measures; though as yet no light has been cast on the form or scope of these measures. It is however likely that future legislation will relate to issues on online trading and 'digital contracts'. These recent developments may cause the reader to ask whether the Common European Sales Law's key role in this volume on European contract law is now superfluous. However, this concern is unfounded as the volume was not conceived with the intention to illustrate the individual doctrinal features of European private law but rather to depict how the legal system is developing and the important contributions made by the various different legal sources. The emerging *acquis communautaire* is involved in a tense relationship with the laws of the Member States, the EU legislator, the EU courts as well as academic drafts – above all in the form of comprehensive proposals aiming at greater coherency in European contract law. The Common European Sales Law indeed reflected a new stage in the development of a European contract law, though similar comments also apply to proposals such as the Draft Common Frame of Reference, the 'Acquis Principles' and many others.

The volume attempts to show how a system arises from the dialogue between the different sources; in this respect it is not limited to current legislation. It

adopts a method employed by the ‘Acquis Group’ which seeks to use fragmented European sources in order to create a system. The system is vastly different from the legal systems of the Member States which, however, also influence the development of a system of common European law. It will be seen from this volume that the development has certainly been dynamic, yet its path has taken many twists and turns. The Common European Sales Law will not vanish without a trace as it will have long-term influence on the features of the European legal landscape and will serve as a ‘reference’ for the future development of European private law.

The volume is based on the many discussions between the authors and their work together on a number of research projects. Its content and structure are based on the German edition (Nomos, April 2015) though with several additions (in particular on interpretation, change of circumstances, and an ‘outlook’) and updates. The Chapters 1, 3 I and IV, 5, 6 I and IV, 8 were written by Reiner Schulze and Chapters 2, 3 II and III, 4, 6 II and III, 7 by Fryderyk Zoll. These latter chapters formed part of the project ‘Made in Europe – European Legal Standards of Quality of Services Performed under the Competitive Conditions of the Global Market. The Model Solutions for Law of Obligations Oriented on Services’. The project was funded by the Narodowe Centrum Nauki (National Science Centre) under the decision no. DEC-2012/04/A/HS5/00709.

The authors would like to take this opportunity to once again thank their research assistants, Darja Bäßler, Benedikt Beierle, Sven Coerdes, Johannes Fiukowski, Benjamin Hassing, Julia Henning, Monika Kubela, Jana Schulte, and Claudia Switenko for their contribution to the German version and therefore in providing the basis for this English version. The authors especially thank Jonathon Watson for preparing the English version; the full responsibility remains however with the authors.

*September 2015*

*Reiner Schulze  
Fryderyk Zoll*

## Contents

List of Cases .....	XIII
Abbreviations .....	XV
Chapter 1 Foundations .....	1
I. Introduction .....	1
1. European contract law .....	1
2. Aim and structure of this book .....	2
3. Sources and literature .....	3
a) Sources .....	3
b) Literature .....	4
II. Contract Law as Part of European Private Law .....	5
1. Concept .....	5
a) Overview .....	5
b) Variety of concepts .....	6
2. Dualism of national and supranational law .....	9
a) Origins .....	9
b) Independence of the supranational legal order .....	10
c) Interdependency between national and supranational law ..	11
III. Contract Law in the Acquis Communautaire .....	12
1. Types of rules .....	12
2. Primary law .....	13
3. Directives .....	14
a) Development .....	14
b) Fragmentation .....	15
c) Minimum and full harmonization .....	15
4. Overview of key directives .....	17
a) Consumer protection .....	17
b) Small and medium-sized enterprises .....	19
c) E-Commerce .....	20
d) Payment services .....	20
e) Non-discrimination .....	20
f) Insurance contracts .....	21
g) Others .....	21
IV. Coherency of European Contract Law .....	22
1. Academic approaches .....	22
a) Principles of European Contract Law .....	22
b) Pavia Draft .....	23

c) Acquis Principles .....	23
2. Commission Action Plan and the Common Frame of Reference .....	25
a) ‘Basic sources’ .....	25
b) Draft Common Frame of Reference .....	26
V. Proposed Codification .....	27
1. Optional instrument .....	27
a) Concept .....	27
b) Preparation .....	27
2. Commission proposal .....	28
a) Scope of application .....	28
b) Structure .....	29
3. Legal basis and legislative process .....	30
Chapter 2 Core Elements .....	33
I. Concept of Contract .....	33
1. Contract and juridical act .....	33
2. Contract as consensus ad idem? .....	35
a) Contract and inertia selling .....	35
b) Complex process of conclusion of contract .....	37
3. Contract and notice .....	40
II. Types of Contract in the Acquis Communautaire .....	45
1. Specific circumstances .....	45
a) Commercial agency .....	45
b) Timeshare .....	46
c) Consumer sales .....	47
d) Consumer credit .....	49
2. Increase in contract types in the acquis communautaire .....	50
a) Framework contract .....	50
b) Advisory services .....	50
c) Service contracts .....	51
d) Typification of contracts under the CESL .....	54
III. Mixed Contracts and Contract Groups .....	60
IV. Freedom of Contract .....	68
1. Non-mandatory and mandatory law .....	68
2. Limitations on contract drafting by controlling contract terms .....	72
3. Freedom of contract in selecting the CESL .....	74
a) Territorial scope .....	75
b) Material scope .....	76
c) Personal scope .....	77
4. Good faith .....	85

V. Parties to the Contract .....	91
1. Overview .....	91
2. Notion of the consumer in the <i>acquis communautaire</i> .....	93
3. Other protected parties .....	97
4. Non-discrimination .....	98
5. Party status .....	100
VI. Interpretation of Juridical Acts .....	100
1. <i>Acquis communautaire</i> .....	100
2. DCFR .....	104
3. The interpretation of contracts under the CESL .....	107
Chapter 3 Conclusion and Content of Contracts .....	111
I. Conclusion of Contract .....	111
1. Overview .....	111
a) Introduction .....	111
b) <i>Acquis communautaire</i> .....	111
c) Academic drafts .....	113
d) CESL .....	114
2. Agreement .....	115
a) Principle .....	115
b) Requirements .....	116
c) Additional requirements? .....	117
3. Modes .....	118
a) Offer and acceptance .....	118
b) Conclusion without formal offer and acceptance .....	123
c) Specific media .....	125
4. Pre-contractual public statements .....	127
a) Party to the contract .....	127
b) Third parties .....	130
5. Unilateral promises .....	132
a) Binding effect .....	132
b) Protecting the offeror .....	133
6. Inertia selling .....	134
a) Principle .....	134
b) Functions .....	134
c) Requirements .....	135
d) Legal effects .....	136
II. Pre-contractual Duties .....	137
1. Overview .....	137
2. Comparative perspectives .....	143
3. Pre-contractual duties and good faith in the <i>acquis communautaire</i> .....	144
4. Pre-contractual duties and good faith in the CESL .....	145

5.	Pre-contractual duties and good faith in the DCFR .....	148
6.	Liability under the Acquis Principles .....	150
7.	Pre-contractual information duties in the Member States .....	151
8.	Information duties in the <i>acquis communautaire</i> .....	152
9.	Between pre-contractual information duties and fair trading ..	153
10.	Standardized performance .....	154
11.	Pre-contractual information duties in the CESL .....	154
12.	Pre-contractual information duties in the Acquis Principles and DCFR .....	155
13.	Consequences of breach .....	156
III.	Defects in Consent .....	157
1.	An alternative concept for protecting correct decisions? .....	157
2.	Defects in consent in the <i>acquis communautaire</i> .....	160
3.	Mistake and protection against unfair commercial practices ..	161
4.	CESL .....	163
a)	Overview .....	163
b)	Mistake .....	167
c)	Fraud .....	168
d)	Mistake caused by a third party .....	170
e)	Threat .....	170
f)	Unfair exploitation .....	171
IV.	Right of Withdrawal .....	172
1.	Overview .....	172
a)	Introduction .....	172
b)	Functions .....	173
c)	General part .....	174
2.	Legal nature and position in the legal system .....	175
3.	Scope .....	177
4.	Exercise .....	179
a)	Notice .....	179
b)	Dispatch principle .....	180
c)	Information on the right of withdrawal .....	180
5.	Effect .....	182
a)	Restitution .....	182
b)	Termination .....	183
c)	Obligations of the parties .....	184
d)	Service contracts .....	185
e)	Ancillary contracts .....	185
Chapter 4	Unfair Contract Terms .....	187
I.	Overview .....	187
1.	Unfair Terms Directive .....	187
2.	Unfair Terms in the Acquis Principles and DCFR .....	190

3. Unfair Terms in the CESL .....	190
II. Comparative Law Foundations .....	191
1. Development in German law .....	192
2. Control of terms under the French system .....	194
3. English and Scandinavian Systems .....	194
III. Unfair Terms Directive .....	195
1. Compromise .....	195
2. General clause and the list of unfair terms .....	195
IV. Late Payment Directive .....	199
V. Acquis Principles .....	201
VI. DCFR .....	204
VII. Reform .....	206
VIII. The Exclusion of Unfair Terms from the Consumer Rights Directive .....	207
IX. CESL .....	208
 Chapter 5 Performance Obligations .....	 213
I. Performance Obligations .....	213
1. Acquis communautaire .....	213
a) Overview .....	213
b) Consumer contracts .....	214
2. CESL .....	215
a) Overview .....	215
b) Main obligations .....	216
c) Service contracts .....	217
3. Manner of performance .....	218
a) Overview .....	218
b) Place and form of performance .....	219
c) Time .....	221
II. Risk .....	222
 Chapter 6 Consequences of Non-performance .....	 225
I. Introduction .....	225
1. Innovative approaches in the acquis communautaire .....	225
2. System .....	227
a) Acquis communautaire .....	227
b) CESL .....	228
II. Non-performance .....	230
1. Overview .....	230
2. Requirement in the acquis communautaire .....	231
3. Types of non-performance in the acquis communautaire .....	233

## Contents

4.	Requirement in the CESL .....	234
a)	Non-performance .....	234
b)	Excused non-performance .....	236
c)	Change of circumstances .....	237
III.	Right to Cure .....	238
1.	Acquis communautaire .....	238
2.	DCFR .....	240
3.	CESL .....	240
IV.	Remedies for the Injured Party .....	243
1.	Performance .....	243
a)	Overview .....	243
b)	Requirements and exclusion .....	246
c)	Subsequent performance .....	248
2.	Withholding performance .....	252
a)	Overview .....	252
b)	Requirements .....	253
c)	Consequence .....	253
3.	Termination .....	254
a)	Overview .....	254
b)	Requirements .....	256
c)	Notice .....	259
d)	Examination and notification duties .....	260
e)	Consequences .....	260
4.	Price reduction .....	261
a)	Overview .....	261
b)	Requirements and exclusion .....	262
c)	Consequences .....	263
5.	Damages and interest .....	263
a)	Overview .....	263
b)	Requirements .....	264
c)	Reimbursable loss .....	265
d)	Type and scope of damages .....	266
e)	Interest .....	269
6.	Restitution .....	271
Chapter 7	Preclusion and Prescription .....	275
I.	Acquis Communautaire .....	275
II.	Proposal for Comprehensive European Rules .....	277
Chapter 8	Outlook .....	285
Index	.....	289

# List of Cases

## *European Court of Justice*

- Case C–6/64 *Costa* [1964] ECR 585, 594 **1 25**  
Case C–11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125 **1 25**  
Case C–106/77 *Simmmenthal II* [1978] ECR 629 **1 25**  
Case C–66/81 *Pommerehne* [1982] ECR 1363 **1 25**  
Case C–26/91 *Handte* [1992] ECR I–3967 **1 30**  
Case C–269/95 *Benincasa* [1997] ECR I–3767 **1 47**  
Case C–45/96 *Dietzinger* [1998] ECR I–1199 **2 46**  
Case C–51/97 *Réunion européenne* [1998] ECR I–6511 **1 30**  
Case C–208/98 *Berliner Kindl* [2000] ECR I–1741 **1 37**  
Joined Cases C–240/98–244/98 *Océano* [2000] ECR I–4941 **4 4, 4 25, 4 29, 4 31**  
Case C–478/99 *Commission v Sweden* [2002] ECR I–4147 **4 22**  
Case C–481/99 *Heininger* [2001] ECR I–9945 **3 101, 3 160**  
Case C–96/00 *Rudolf Gabriel* [2002] ECR I–6367 **1 47, 3 18**  
Case C–168/00 *Leitner* [2002] ECR I–2631 **1 37, 6 81**  
Case C–334/00 *Tacconi* [2002] ECR I–7357 **1 30**  
Case C–400/00 *Club-Tour* [2002] ECR I–4051 **1 37**  
Case C–442/00 *Rodríguez Caballero* [2002] ECR I–11915 **2 147**  
Case C–473/00 *Cofidis* [2002] ECR I–10875 **1 37**  
Case C–464/01 *Gruber* [2005] ECR I–439 **2 138**  
Case C–264/02 *Cofinoga* [2004] ECR I–2157 **1 37, 4 4, 4 28, 4 29**  
Case C–70/03 *Commission v Spain* [2004] ECR I–7999 **2 152**  
Case C–336/03 *easyCar* [2005] ECR I–1947 **1 31**  
Case C–144/04 *Mangold* [2005] ECR I–9981 **1 31, 2 147**  
Case C–252/06 *Commission v Germany* [2006] ECR I–140 **1 38**  
Case C–306/06 *Telekom* [2008] ECR I–1923 **6 87**  
Case C–404/06 *Quelle* [2008] ECR I–2685 **1 37, 6 42, 6 68**  
Case C–412/06 *Hamilton* [2008] ECR I–2695 **3 101**  
Case C–427/06 *Bartsch* [2008] ECR I–7245 **1 31**  
Case C–453/06 *01051 Telecom* [2008] ECR I–1923 **1 38**  
Joined Cases C–261/07 and C–299/07 *VTB-VAB/Galtea* [2009] ECR I–2949 **1 43**  
Case C–298/07 *deutsche internet versicherung* [2008] ECR I–7841 **1 39**  
Case C–489/07 *Messner* [2009] ECR I–7315 **2 127, 3 164, 3 165**  
Case C–555/07 *Küçükdeveci* [2010] ECR I–365 **1 31**  
Case C–137/08 VB *Pénzügyi Lizing* [2010] ECR I–10847 **1 37, 4 31**  
Case C–147/08 *Römer* [2011] ECR I–3591 **1 31**  
Case C–243/08 *Pannon* [2009] ECR I–4713 **1 37, 4 31**  
Case C–304/08 *Plus Warenhandelsgesellschaft* [2010] ECR I–217 **1 43**  
Case C–434/08 *Harms* [2010] ECR I–4431 **1 30**  
Case C–484/08 *Caja de Ahorros* [2010] ECR I–4785 **1 37, 4 49**  
Case C–511/08 *Heinrich Heine* [2010] ECR I–3047 **3 164**  
Case C–522/08 *Telekomunikacja Polska* [2010] ECR I–2079 **1 43**  
Case C–540/08 *Mediaprint* [2010] ECR I–10909 **1 43**  
Joined Cases C–585/08 C–144/09 *Pammer/Hotel Alpenhof* [2010] ECR I–12527 **1 37**  
Joined Cases C–65/09 and C–87/09 *Weber/Putz* [2011] ECR I–5257 **1 37, 6 40, 6 41, 6 42**  
Case C–203/09 *Volvo Car Germany* [2010] ECR I–10721 **1 38**  
Case C–236/09 *Test-Achats* [2011] ECR I–773 **1 41**  
Case C–76/10 *Pohotovost'* [2010] ECR I–11557 **1 37**  
Case C–292/10 *G* [2012] ECR I–nyr **1 39**  
Case C–415/10 *Meister* [2012] ECR I–nyr **1 41**  
Case C–472/10 *Invitel* [2012] ECR I–nyr **1 37, 4 31**  
Case C–602/10 *SC Volksbank România* [2012] ECR I–nyr **1 37**  
Case C–618/10 *Banco Español de Crédito* [2012] ECR I–nyr **1 37, 1 43, 4 31**  
Case C–49/11 *Content Services* [2012] ECR I–nyr **2 29, 2 30, 3 30, 3 159, 3 160**  
Case C–128/11 *UsedSoft* [2012] ECR I–nyr **2 65**  
Case C–134/11 *Blödel-Pawlik AG* [2012] ECR I–nyr **1 37**  
Case C–283/11 *Sky Österreich* [2013] ECR I–nyr **1 30**  
Case C–335/11 *HK Danmark* [2013] ECR I–nyr **1 41**

## *List of Cases*

Case C–555/11 *EEAE* [2013] ECR I–nyr **1 38**  
Case C–32/12 *Duarte Hueros* [2013] ECR I–nyr  
**1 37, 6 56**  
Case C–57/12 *Femarbel* [2013] ECR I–nyr **1 43**  
Case C–184/12 *Unamar* [2013] ECR I–nyr **1 38**  
Case C–361/12 *Carratù* [2013] ECR I–nyr **1 41**  
Case C–262/12 *Citroën Belux* [2013] ECR I–nyr  
**1 43**  
Case C–26/13 *Kásler* [2014] ECR I–nyr **1 37,**  
**4 49**  
Case C–143/13 *Matei* [2015] ECR I–nyr **4 49**  
Case C–96/14 *van Hove* [2015] ECR I–nyr **1 37,**  
**4 49**

*General Court*  
Case T–203/96 *Embassy Limousines* [1998]  
ECR II–4239 **3 84**

### **Member States**

*Germany*  
RGZ 161, 323 **2 39**  
BGHZ 63, 306 **2 39**

### *United Kingdom*

*Carlill v Carbolic Smoke Ball Company* [1893]  
**1 QB 256 3 43**  
*Walford v Miles* [1992] **2 AC 128 3 66**

# Abbreviations

ABGB	Allgemeines bürgerliches Gesetzbuch; Austrian Civil Code
AcP	Archiv für die civilistische Praxis
ACQP	Principles of the Existing EC Contract Law (Acquis Principles)
ADR	Alternative Dispute Resolution
ADR Directive	Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes
AGB	Allgemeine Geschäftsbedingungen; general terms and conditions
Art(s)	Articles(s)
Bd.	Band; volume
BGB	Bürgerliches Gesetzbuch; German Civil Code
BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen; Decisions of the German Federal Court of Justice (Civil Law)
BT-Drucks.	Bundestagsdrucksache; Bundestag document
BW	Burgerlijk Wetboek; Dutch Civil Code
CESL	Common European Sales Law
CESL-D	Common European Sales Law (Draft Annex I)
CESL-Reg-D	Common European Sales Law (Draft Regulation)
CISG	United Nations Convention on Contracts for the International Sale of Goods
CJEU	Court of Justice of the European Union
CMLR	Common Market Law Review
Code Civil	French Civil Code
Codice Civile	Italian Civil Code
Commercial Agents Directive	Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents
Consumer Credit Directive	Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers
Consumer ODR Regulation	Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes
CoPECL	Common Principles of European Contract Law
Consumer Rights Directive	Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights
Consumer Sales Directive	Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees
Cultural Objects Directive	Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State
CUP	Cambridge University Press

## Abbreviations

DCFR	Draft Common Frame of Reference
Distance Marketing of Financial Services Directive	Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services
DNotZ	Deutsche Notar-Zeitschrift
EC	European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
E-Commerce Directive	Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market
ECR	European Court Reports
ECTHR	European Court of Human Rights
Ed(s)	Editor(s)
Edn	Edition
EEC	European Economic Community
E.g.	Exempli gratia; for example
EGBGB	Einführungsgesetz zum Bürgerlichen Gesetzbuche; Introductory Act to the German Civil Code
Employment Equality Directive	Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation
EP	European Parliament
ERCL	European Review of Contract Law
ERPL	European Review of Private Law
E-Signature Directive	Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures
Etc.	Et cetera; and the rest
Et seq.	Et sequential; and the following
EU	European Union
EUI	European University Institute
EuZW	Europäische Zeitschrift für Wirtschaftsrecht
EWS	Europäisches Wirtschafts- und Steuerrecht
Gender Directive	Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services
GPR	European Union Private Law Review
HK-BGB	Bürgerliches Gesetzbuch – Handkommentar
HZ	Historische Zeitschrift
i.e.	Id est; that is
INCOTERMS	International Commercial Terms
Insurance Mediation Directive	Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation
JR	Juristische Rundschau

## Abbreviations

JZ	JuristenZeitung
Late Payment Directive	Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions
Late Payment Directive 2000	Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions
Life Assurance Directive	Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance
Markets in Financial Instruments Directive	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments
MJ	Maastricht Journal of European and Comparative Law
MLR	Modern Law Review
MMR	Multimedia und Recht
Mortgage Credit Directive	Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property
MüKo	Münchener Kommentar zum Bürgerlichen Gesetzbuch
n	Footnote
No.	Number
NJW	Neue Juristische Wochenschrift
nyr	Not yet reported
ODR	Online Dispute Resolution
OJ	Official Journal of the European Union
OR	Obligationenrecht; Swiss Law of Obligations
OUP	Oxford University Press
Package Travel Directive	Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours
Para(s)	Paragraph(s)
Payment Services Directive	Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market
PECL	Principles of European Contract Law
PEL	Principles of European Law
PICC	Principles for International Commercial Contracts
QB	Queen's Bench Division
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht
Racial Equality Directive	Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
Reg	Regulation
RGZ	Decisions of the Reich Court (Civil Law)
RIDC	Revue internationale de droit comparé
Riv.Dir.Civ.	Rivista di Diritto Civile

## Abbreviations

Rome I Regulation	Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations
RTD Civ.	Revue Trimestrielle de Droit Civil
Schmidt-Kessel CESL	Schmidt-Kessel (ed), Der Entwurf für ein Gemeinsames Europäisches Kaufrecht – Kommentar (Sellier 2014)
Schulze CESL	Schulze (ed), Common European Sales Law – Commentary (Nomos 2012)
SE	Societas Europaea
Services Directive	Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market
SI	Statutory Instrument
SME	Small and medium-sized enterprise
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
Timeshare Directive	Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts
Unfair Commercial Practices Directive	Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market
UN	United Nations
UNIDROIT Principles	UNIDROIT Principles of International Commercial Contracts
UWG	Gesetz gegen den unlauteren Wettbewerb; German Unfair Competition Act
VUWLR	Victoria University of Wellington Law Review
ZEuP	Zeitschrift für Europäisches Privatrecht
ZIP	Zeitschrift für Wirtschaftsrecht
ZJS	Zeitschrift für das Juristische Studium
ZRP	Zeitschrift für Rechtspolitik