

**UNFAIR TERMS IN NON-CONSUMER  
CONTRACTS - COMPARATIVE ANALYSIS**  
WP 2022-08

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## Unfair terms in non-consumer contracts - comparative analysis

### Abstract

On the next pages, please find a scheme comparing the legal framework on unfair terms in non-consumer contracts in Belgium, France, Germany and the Netherlands. A comparison with harmonized EU law has been added for your convenience.

Comparisons with the rules on consumer contracts are marked against a light grey background, when applicable. When *lex specialis* applies, cells are in dark grey.

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# UNFAIR TERMS IN NON-CONSUMER CONTRACTS

## COMPARATIVE ANALYSIS

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On the next pages, please find a scheme comparing the legal framework on unfair terms in non-consumer contracts in Belgium, France, Germany and the Netherlands. A comparison with harmonized EU law has been added for your convenience.

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	Belgium	France	Germany	Netherlands	EU consumer law (to compare)		
<b>Legal base</b>	Code of Economic Law: 'Commercial practices': Arts. VI.91/1 – VI.91/10 <sup>1</sup>	Commercial Code: 'Freedom of price and competition': Arts. L442-1 & -3 <sup>2</sup>	Consumer Code: 'Formation and execution of contracts': Arts. L211-1 to -3 <sup>3</sup>	Civil Code: 'Contract contents': Art. 1171 (only)	Civil Code: 'Law of obligations': §§ 307 to 310	Directive 93/13	
<b>Terminology</b>	<i>Onrechtmatige bedingen</i>   <i>Clauses abusives</i>   Injust/Abusive clauses <ul style="list-style-type: none"> <li>Same terminology as consumer contracts</li> </ul>	<i>Obligations créant un déséquilibre significatif</i> <sup>a</sup>	<i>Clauses abusives</i> <ul style="list-style-type: none"> <li>Together with consumer contracts</li> </ul>	<i>Clause qui crée un déséquilibre significatif</i>	<i>Unangemessene Benachteiligung</i>   Unfair disadvantage <ul style="list-style-type: none"> <li>Together with consumer contracts</li> </ul>	<i>Onredelijk bezwarende bedingen</i>   Unreasonably burdensome clauses <sup>5</sup> <ul style="list-style-type: none"> <li>Together with consumer contracts</li> </ul>	<i>Unfair terms</i>

Field of application							
Ratione personae							
<i>Protected party</i>	<i>Onderneming</i>   <i>Entreprise</i>   Undertaking/Business/Enterprise <sup>6</sup> , = A. 1. (a) physical, or (b) legal person, & 2. durably pursuing economic goal or B. its associations <sup>7</sup>	[Not specified]	[Consumer <sup>8</sup> , and] Non-professional <sup>9</sup> , = 1. legal person, & 2. not acting for professional purposes <sup>10</sup>	[Not specified]	[Not specified] <ul style="list-style-type: none"> <li>Including consumers</li> <li>Including certain professionals<sup>11</sup> (for whom most of the lists don't apply):                             <ol style="list-style-type: none"> <li><i>Unternehmer</i>, =<sup>12</sup> <ol style="list-style-type: none"> <li>(A) (a) physical or (b) legal person, or (B) <i>rechtsfähige Personengesellschaft</i>, =<sup>13</sup> <ol style="list-style-type: none"> <li>Personengesellschaft, &amp;</li> <li>capacity to receive rights and to engage in obligations</li> </ol> </li> <li>acting, executing his                                     <ol style="list-style-type: none"> <li>economic, or</li> <li>independent practice, when concluding a <i>Rechtsgeschäft</i></li> </ol> </li> </ol> </li> <li><i>Juristische Person des öffentlichen Rechts</i></li> <li><i>Öffentlich-rechtlichen Sondervermögen</i></li> </ol> </li> </ul>	[Not specified] <ul style="list-style-type: none"> <li>Called <i>wederpartij</i>   'co-contracting party'<sup>14</sup></li> <li>Including:                             <ul style="list-style-type: none"> <li>consumers</li> <li>specific cases of representation<sup>15</sup></li> <li>(<i>a contrario</i>) [small undertakings] [only physical persons]</li> </ul> </li> </ul> <p><u>Excluded:</u></p> <p>I. Party which, at the time of conclusion of the contract: AA. is a <u>legal person</u> which:</p> <ol style="list-style-type: none"> <li>A. is a bank or financial institution<sup>16</sup>, or</li> <li>B. takes one of the following forms<sup>17</sup>:                             <ol style="list-style-type: none"> <li>cooperative</li> <li>NV   public ltd.</li> <li>BVBA   private ltd.</li> <li>(1) (a) <i>Comm. V.</i>   ltd. partnership or (b) <i>VOF</i>   general partnership, (2) of which all partners subject to liability, are corporate enterprises</li> <li>(1) (a) <i>stichting</i>   foundation or (b) <i>vereniging</i>   association, (2) maintaining undertaking(s) subject to registration and producing a specific turnover and which<sup>18</sup></li> <li>A. published its statutory account, or B. did not have to do so, because it is part of a concern, or BB. employs 50 or more employees<sup>19</sup>,                                     <ol style="list-style-type: none"> <li>in fact, or</li> <li>according to the Trade Registry</li> </ol> </li> </ol> </li> </ol> <p>II. Party which uses (almost) identical clauses in its contracts<sup>20</sup></p>	'Consumer' <sup>21</sup> , = 'natural person who... is acting for purposes which are outside his trade, business or profession'

	Belgium		France		Germany		Netherlands		EU consumer law (to compare)
<i>Co-contracting party</i>	Onderneming   <i>Entreprise</i>   Undertaking/Business/Enterprise <sup>22</sup> , = A. 1. (a) physical, or (b) legal person, & 2. durably pursuing economic goal or B. its associations <sup>23</sup> • Same as protected party!	Identical	Every person pursuing production, distribution or service activities <sup>24</sup>	Professional <sup>25</sup> , = 1. (a) physical, or (b) legal person, & • public/private 2. acting [incl. on behalf of others] for purposes in the framework of his: a) commercial, b) industrial, c) artisan, d) independent, or e) agricultural activity <sup>26</sup> • incl. when acting on behalf of other professionals	[Not specified]	[Not specified] • Called <i>Verwender</i>   'user' <sup>27</sup>	[Not specified] • Called <i>gebruiker</i>   'user' <sup>28</sup>		'Seller or supplier' <sup>29</sup> , = 'natural or legal person who... is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned'
<b>Ratione materiae</b>									
<i>Included, in principle (contents &amp; form)</i>	All types of contracts	Identical	All type of production, distribution and service activities <sup>30</sup> , • Conventions de délégation de service public   delegation of public service <sup>31</sup>	All types of contracts • Whatever form <sup>32</sup>	<i>Contrat d'adhésion</i>   Accession contracts, = [le contrat] qui comporte un ensemble de clauses non négociables, déterminées à l'avance par l'une des parties <sup>33</sup> • Differs from the term <i>conditions générales</i> <sup>34</sup>	<i>Allgemeine Geschäftsbedingungen</i>   General terms & conditions, = alle für eine Vielzahl von Verträgen vorformulierten Vertragsbedingungen, die eine Vertragspartei (Verwender) der anderen Vertragspartei bei Abschluss eines Vertrags stellt <sup>35</sup> Whatever form <sup>36</sup>	<i>Algemene voorwaarden</i>   General terms & conditions, = een of meer bedingen die zijn opgesteld teneinde in een aantal overeenkomsten te worden opgenomen <sup>37</sup>		All types of contracts • Esp. including 'pre-formulated standard contracts' <sup>38</sup>
<i>Excluded, fully</i>	A. Financial services <sup>39</sup> • Unless Royal Decree provides otherwise ( <i>quod non</i> ) B. Public procurement & contracts stemming from ~ <sup>40</sup> • Unless Royal Decree provides otherwise ( <i>quod non</i> )	No similar exclusion			None	A. Family law, or inheritance contracts <sup>41</sup> B. Company law contracts <sup>42</sup>	Labour law <sup>43</sup>		
<i>Excluded, partially</i>						A. Some construction works <sup>44</sup> B. Utility services <sup>45</sup> C. Labour law <sup>46</sup> [Conditions for all these categories:] • On specific conditions • For specific rules			
<b>Clause types</b>									
<i>Non-negotiated clauses only?</i>	No, all clauses	Identical	No, all clauses	No, all clauses	Yes, only clauses which are: <sup>47</sup> 1. <u>non-negotiable</u> , & 2. <u>stipulated in advance</u> by one of the parties	Yes, only clauses which are <u>not individually negotiated</u> <sup>48</sup>	Yes, only clauses that were drafted to be <u>incorporated in 'a number of contracts'</u> <sup>49</sup>		Yes, only clauses that have ' <u>not been individually negotiated</u> ' <sup>50</sup> , • '... shall always be regarded as not individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract' • 'Overall assessment' to be made at contract level <sup>51</sup> • Professional proves negotiations <sup>52</sup>

	Belgium	France	Germany	Netherlands	EU consumer law (to compare)		
<b>Exclusions</b>							
<i>Essential clauses</i>	Essential clauses <sup>53</sup> : A. Main subject matter of the contract B. Adequacy of price & remuneration	[Not explicit]	Essential clauses <sup>54</sup> : A. Main subject matter B. Adequacy of price & remuneration	Essential clauses <sup>55</sup> : A. Main subject matter B. Adequacy of price & remuneration	Essential clauses [implicit] <sup>56</sup>	Essential clauses, = clauses indicating the essence of the duties <sup>57</sup>	Essential clauses <sup>58</sup> A. Main subject matter B. Adequacy of price & remuneration
Condition for exclusion	Transparency <sup>59</sup> • See transparency requirement		Transparency <sup>60</sup> • See transparency requirement	None	Transparency <sup>61</sup> • See transparency requirement	Transparency <sup>62</sup> • See transparency requirement	Transparency <sup>63</sup> : 'In plain intelligible language'
<i>Statute law</i>	[Not explicit]	[Not explicit]	[Not explicit]	[Not explicit]	Clauses incorporating statute law <sup>64</sup> [Leitbild]	[Not explicit]	'Contractual terms which reflect mandatory statutory or regulatory provisions and ... international conventions'

**Open norm (criteria)**

<b>Main criterion</b>	'Causes a manifest imbalance in the parties' rights and obligations' <sup>65</sup> • Same terminology as consumer contracts, and thus as Dir	Identical + to the detriment of the consumer: art. 1.8, 2°	[( <i>Tenter de soumettre l'autre partie à des obligations créant un déséquilibre significatif dans les droits et obligations des parties</i>   'Significant imbalance in the parties' rights and obligations' <sup>66</sup> • Same terminology as consumer contracts, and thus as Dir	<i>Créer, au détriment du [consommateur ou] non-professionel, un déséquilibre significatif entre les droits et obligations des parties au contrat</i>   'Significant imbalance in the parties' rights and obligations, to the detriment of the [consumer or] non-professional' <sup>67</sup> • Same terminology as Dir	<i>Créer un déséquilibre significatif entre les droits et obligations des parties au contrat</i>   'Significant imbalance in the parties' rights' • Same terminology as consumer contracts, and thus as Dir	<i>Den Vertragspartner des Verwenders... unangemessen benachteiligen</i>   'Unfair disadvantage for the co-contracting party' <sup>68</sup>	<i>Onredelijk bezwarend... voor de wederpartij</i>   'Unreasonably burdensome for the co-contracting party' <sup>69</sup>	'Causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer' <sup>70</sup>
<b>Additional criteria</b>								
<i>Good faith</i>	No	Identical	No	No	No	<u>Necessary criterion</u> <sup>71</sup> : <i>Entgegen den Geboten von Treu und Glauben</i>	No	<u>Necessary criterion</u> (?) <sup>72</sup> : 'Contrary to the requirement of good faith'
<i>Other clauses</i>	Imbalance: alone or taken together with one or more other clauses <sup>73</sup> Taken into account: all other clauses of the contract or another, dependent contract (at moment of contract closing) <sup>74</sup>	Identical <sup>75</sup>	No	Taken into account: all other clauses of the contract or another, linked contract <sup>76</sup>	No	[Not explicit]	Taken into account: the other content of the contract <sup>77</sup>	Imbalance: All of the other terms of the contract or of another contract on which it is dependent
<i>Circumstances</i>	All circumstances surrounding the contract conclusion (at moment of contract closing) <sup>78</sup>	Identical <sup>79</sup>	In the framework of negotiating, conclusion or execution of the contract <sup>80</sup>	All circumstances surrounding the contract conclusion (at moment of contract closing) <sup>81</sup>	No	No • Contrary to consumer contracts <sup>82</sup>	[All] (other) circumstances of the case <sup>83</sup>	All circumstances attending the conclusion of the contract, at the time of conclusion of the contract <sup>84</sup>
<i>Economy of the contract</i>	Economy of the contract (at moment of contract closing) <sup>85</sup>	No	No	No	No	No	No	No
<i>Custom</i>	Commercial customs (at moment of contract closing) <sup>86</sup>	No	No	No	No	Commercial customs and practices as a criterion to take into account: <i>Auf die im Handelsverkehr geltenden Gewohnheiten und Gebräuche ist angemessen Rücksicht zu nehmen</i> <sup>87</sup>	No	No
<i>Nature of contract/products</i>	Nature of the products <sup>88</sup>	Identical <sup>89</sup>	No	No	No	[Not explicit] • Yet see § 307(2)(1)	Nature of the contract <sup>90</sup>	Nature of the goods or services <sup>91</sup>

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<i>Transparency</i>	Transparency <sup>92</sup> as a <u>circumstance</u> • See transparency requirement	Identical <sup>93</sup>	No	No	No	Transparency as a <u>sufficient</u> criterion <sup>94</sup>	No	[Not explicit, but CJEU]
<i>Drafting process</i>	No	Identical	No	No	No	No	The manner in which the clauses were established <sup>95</sup>	No
<i>Parties' interests</i>	No	Identical	No	No	No	No	The known mutual interests of the party <sup>96</sup>	No

## Lists

Types								
<i>Black (no discretion)</i>	Yes   Art. VI.91/4	Yes   Art. VI.83	Yes   Art. L442-3	Yes   Art. R212-1 <sup>97</sup> • Same as consumers	No	No   only consumer contracts <sup>98</sup>   § 309 <i>Indizwirkung</i>   Reflex effect possible <sup>99</sup>	No   only consumer contracts   Art. 6:236 Reflex effect possible <sup>100</sup>	No
<i>Grey (discretion)</i>	Yes   Art. VI.91/5	No	No	Yes   Art. R212-2 <sup>101</sup> • Same as consumers	No	Yes   § 308, 1a & 1b <sup>102</sup> • Other provisions in § 308 are only relevant for consumer contracts <sup>103</sup> , yet: • <i>Indizwirkung</i>   Reflex effect possible <sup>104</sup> - Notably if imbalance between parties <sup>105</sup>	No   only consumer contracts   Art. 6:237 Reflex effect possible <sup>106</sup>	No
<i>Criterion: What makes it a grey list?</i>	Party can prove otherwise			Party can prove otherwise		Wording allows for more discretion by the judiciary	Party can prove otherwise	
<i>Other</i>						'General list' of clauses to be found unfair 'in case of doubt'   § 307(2)		'Indicative and non-exhaustive list'   Art. 3.3 j° Annex
<i>Additional lists can be made?</i>	Yes   Art. VI.97	Yes <sup>107</sup>	Yes   Art. L212-1	Yes   Art. L212-1	No	No	Yes   Art. 6:239	No
<i>By whom?</i>	Royal Decree <sup>108</sup> • Lot of additional criteria	Similar		Decree by CdE • Additional criterion			General order in Council <sup>109</sup> • Lot of additional criteria	
<i>Put into practice?</i>	No	Yes		Yes				

## Listed clauses

<i>Shifting the economic risk</i>	Grey   3° <i>Zonder tegenprestatie het economische risico op een partij leggen indien die normaliter op de andere onderneming of op een andere partij bij de overeenkomst rust   Placer, sans contrepartie, le risque économique sur une partie alors que celui-ci incombe normalement à l'autre entreprise ou à une autre partie au contrat</i>	Non-existent						
<i>Limitation of essential parts</i>	Grey   6° <i>De onderneming te ontslaan ... behoudens overmacht, voor het niet-uitvoeren van de essentiële verbintenissen die het voorwerp van de overeenkomst uitmaken   Libérer l'entreprise ... sauf en cas de force majeure, du fait de toute inexécution des engagements essentiels qui font l'objet du contrat</i>	= Art. VI.83, 13°				'General list'   § 307(2)(2) Limiting essential rights or duties is unfair, if: <sup>110</sup> 1. in case of doubt, 2. rights/duties are essential because of the nature of the contract, & 3. these rights are limited thus that there is a risk the purpose of the contract will not be reached	Equally applicable	See art. 6:236, a & 6:237, b

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<b>Deviation from default rules</b> <i>General</i>	See art. VI.83, 1 <sup>o</sup>		'General list'   § 307(2)(1) Deviating from default rules: unfair if: <sup>111</sup> 1. in case of doubt, & 2. incompatible with the fundamental idea behind the default rules Equally applicable	See art. 6:237, b	
<b>Late Payment Law</b>	<b>Lex Specialis   Late Payment Statute Law<sup>112</sup></b> • Field of application: <i>Ratione materiae:</i> Transaction which leads to the delivery of goods or the provision of services for remuneration <i>Ratione personae:</i> A. Undertakings, = 'organisation... acting in the course of its independent economic or professional activity' (no <b>consumer</b> ) B. Undertaking & public authority • Main criteria: 1. Deviation from default rules, & 2. 'Gross unfairness' for creditor, incl. 1) 'Manifest imbalance in the parties' rights and obligations' • To the detriment of the creditor 2) No objective reasons for debtor to deviate • Additional criteria: - All circumstances - Good market practices - Nature of product/service • Sanction: - Judicial revision ( <i>herzien</i>   <i>réviser</i> ) - never more rights than default rules - Requested by creditor	<b>Specific rules   Arts. L441-10 to -16</b> • Not through 'unfair terms' <sup>113</sup> • Sanction: Administrative penalty <sup>114</sup>	<b>Specific rules   § 271a</b> • Field of application: <i>Ratione materiae:</i> All situations, except <i>die Vereinbarung von Abschlagszahlungen und sonstigen Ratenzahlungen</i> <i>Ratione personae:</i> Everyone, except when the debtor is a <b>consumer</b> • Criterion: 1. Deviation from default rules, & 2. 'Gross unfairness' for creditor • Sanction: - <i>Unwerksam</i> - Contract persists without clause	<b>Specific rules   § 119a and 119b</b> • Not through 'unfair terms' See specific cases below	<b>Lex Specialis   Late Payment Dir<sup>115</sup></b> 'A contractual term or a practice relating to the date or period for payment, the rate of interest for late payment or the compensation for recovery costs is either unenforceable or gives rise to a claim for damages if it is grossly unfair to the creditor. In determining whether a contractual term or a practice is grossly unfair to the creditor, within the meaning of the first subparagraph, all circumstances of the case shall be considered, including: (a) any gross deviation from good commercial practice, contrary to good faith and fair dealing; (b) the nature of the product or the service; and (c) whether the debtor has any objective reason to deviate...'
<b>Unilateral will to execute</b>	Black   1° <i>Te voorzien in een onherroepelijke verbintenis van de andere partij terwijl de uitvoering van de prestaties van de onderneming onderworpen is aan een voorwaarde waarvan de verwezenlijking uitsluitend afhankelijk is van haar wil  </i> <i>Prévoir un engagement irrévocable de l'autre partie, alors que l'exécution des prestations de l'entreprise est soumise à une condition dont la réalisation dépend de sa seule volonté  </i> See art. VI.83, 1° See art. VI.83, 9°	Grey   1° <i>Prévoir un engagement ferme du [non-professionnel], alors que l'exécution des prestations du professionnel est assujettie à une condition dont la réalisation dépend de sa seule volonté</i> Black   5° <i>Contraindre le [non-professionnel] à exécuter ses obligations alors que, réciproquement, le professionnel n'exécuterait pas ses obligations de livraison ou de garantie d'un bien ou son obligation de fourniture d'un service</i>	See § 308(3) See § 309(3)(a)	See art. 6:237, d See art. 6:237, i	Compare to Annex, point 1, c) 'making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realization depends on his own will alone'  Compare to Annex, point 1, o) 'obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his'



	Belgium	France	Germany	Netherlands	EU consumer law (to compare)	
<b>Unilateral will to cancel</b>	<p>See art. VI.83, 7° &amp; 8°</p> <p>See art. VI.83, 12°</p>	<p>Black   8° Interdire au [non-professionnel] le droit de demander la résolution ou la résiliation du contrat en cas d'inexécution par le professionnel de ses obligations de délivrance ou de garantie d'un bien ou de son obligation de fourniture d'un service</p> <p>Grey   8° Soumettre la résolution ou la résiliation du contrat à des conditions ou modalités plus rigoureuses pour le [non-professionnel] que pour le professionnel</p> <ul style="list-style-type: none"> <li>• Exception for certain financial transactions<sup>16</sup></li> </ul>		<p>See § 309(2)(b) &amp; 309(8)</p>	<p>See art. 6:236, b</p>	<p>Compare to Annex, point 1, f) 'authorizing the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer...'</p>
<b>Unilateral interpretation</b>	<p>Black   2° De onderneming het eenzijdige recht te geven om een of ander beding van de overeenkomst te interpreteren   Conférer à l'entreprise le droit unilatéral d'interpréter une quelconque clause du contrat</p>	<p>≈ Art. VI.83, 6°</p>	<p>Black   4° Accorder au seul professionnel le droit de déterminer si la chose livrée ou les services fournis sont conformes ou non aux stipulations du contrat ou lui conférer le droit exclusif d'interpréter une quelconque clause du contrat</p>	<p>See § 309(2)(b)</p>	<p>Compare to Annex, point 1, m) 'giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract'</p>	
<b>Presumed acceptance</b>	<p>Black   4° Op onweerlegbare wijze de kennisname of de aanvaarding van de andere partij vast te stellen met bedingen waarvan deze niet daadwerkelijk kennis heeft kunnen nemen vóór het sluiten van de overeenkomst   Constater de manière irréfragable la connaissance ou l'adhésion de l'autre partie à des clauses dont elle n'a pas eu, effectivement, l'occasion de prendre connaissance avant la conclusion du contrat   Establishing irrebuttable presumption of knowledge/acceptance of clauses the signee could not have been acquainted with</p>	<p>Similar to (but broader than) art. VI.83, 26°</p>	<p>Black   1° Constater l'adhésion du [non-professionnel] à des clauses qui ne figurent pas dans l'écrit qu'il accepte ou qui sont reprises dans un autre document auquel il n'est pas fait expressément référence lors de la conclusion du contrat et dont il n'a pas eu connaissance avant sa conclusion</p>	<p>See § 308(5) &amp; (6)</p>	<p>Compare to Annex, point 1, i) 'irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract'</p>	

	Belgium	France	Germany	Netherlands	EU consumer law (to compare)
<b>Keeping payments after cancellation</b>	See art. VI.83, 28°  See art. VI.83, 27°	Black   9° <i>Permettre au professionnel de retenir les sommes versées au titre de prestations non réalisées par lui, lorsque celui-ci résilie lui-même discrétionnairement le contrat</i>  Grey   2° <i>Autoriser le professionnel à conserver des sommes versées par le [non-professionnel] lorsque celui-ci renonce à conclure ou à exécuter le contrat, sans prévoir réciproquement le droit pour le [non-professionnel] de percevoir une indemnité d'un montant équivalent, ou égale au double en cas de versement d'arrhes au sens de l'article L. 214-1, si c'est le professionnel qui renonce</i>	See § 308(8)	See art. 6:237, 1	Compare to Annex, point 1, f) '... permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract'  Compare to Annex, point 1, d) 'permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract'
<b>Renunciation of means of redress</b>	Black   3° <i>In geval van betwisting, de andere partij te doen afzien van elk middel van verhaal tegen de onderneming   En cas de conflit, faire renoncer l'autre partie à tout moyen de recours contre l'entreprise</i>	= Art. VI.83, 22°	Grey   10° <i>Supprimer ou entraver l'exercice d'actions en justice ou des voies de recours par le [non-professionnel]...</i>		
<b>Obligatory out-of-court settlements</b>		Grey   10° <i>... notamment en obligeant le [non-professionnel] à saisir exclusivement une juridiction d'arbitrage non couverte par des dispositions légales ou à passer exclusivement par un mode alternatif de règlement des litiges</i>	See § 309(14)		Compare to Annex, point 1, q) 'giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement'

	Belgium	France	Germany	Netherlands	EU consumer law (to compare)	
<b>Limiting redress in case of default</b>	<p>Grey   4° Op ongepaste wijze de wettelijke rechten van een partij uit te sluiten of te beperken in geval van volledige of gedeelde wanprestatie of gebrekkige uitvoering door de andere onderneming van een van haar contractuele verplichtingen   Exclure ou limiter de façon inappropriée les droits légaux d'une partie, en cas de non-exécution totale ou partielle ou d'exécution défectueuse par l'autre entreprise d'une de ses obligations contractuelles</p> <p>= art. VI.83, 30° See also art. VI.83, 7° &amp; 8°</p>	<p>Black   6° Supprimer ou réduire le droit à réparation du préjudice subi par le [non-professionnel] en cas de manquement par le professionnel à l'une quelconque de ses obligations</p> <p>Black   7° Interdire au [non-professionnel] le droit de demander la résolution ou la résiliation du contrat en cas d'inexécution par le professionnel de ses obligations de délivrance ou de garantie d'un bien ou de son obligation de fourniture d'un service</p>				<p>Compare to Annex, point 1, b) 'inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations...'</p>
<b>Unilateral change</b>	<p>Grey   1° De onderneming het recht te verlenen om zonder geldige reden de prijs, de kenmerken of de voorwaarden van de overeenkomst eenzijdig te wijzigen   Autoriser l'entreprise à modifier unilatéralement sans raison valable le prix, les caractéristiques ou les conditions du contrat</p> <p>Compare art. VI.83, 2° to 5°</p>	<p>Black   3° Réserver au professionnel le droit de modifier unilatéralement les clauses du contrat relatives à sa durée, aux caractéristiques ou au prix du bien à livrer ou du service à rendre</p> <ul style="list-style-type: none"> <li>• Exceptions for certain financial transactions<sup>17</sup></li> </ul> <p>Grey   6° Réserver au professionnel le droit de modifier unilatéralement les clauses du contrat relatives aux droits et obligations des parties, autres que celles prévues au 3° de l'article R. 212-1</p> <ul style="list-style-type: none"> <li>• Exceptions for certain financial transactions<sup>18</sup></li> </ul>				<p>Compare to Annex, point 1, k) and l) 'enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided' 'providing for the price of goods to be determined at the time of delivery or allowing a seller of goods or supplier of services to increase their price without...'</p>

	Belgium	France	Germany	Netherlands	EU consumer law (to compare)	
<b>Automatic renewal without reasonable withdrawal term</b>	Grey   2° <i>Een overeenkomst van bepaalde duur stilzwijgend te verlengen of te vernieuwen zonder opgave van een redelijke opzegtermijn   Proroger ou renouveler tacitement un contrat à durée déterminée sans spécification d'un délai raisonnable de résiliation</i>	Compare art. VI.83, 19° & 20°		See § 309(9)	See art. 6:236, j, p, r & s & 237, k & o	Compare to Annex, point 1, h) 'automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express this desire not to extend the contract is unreasonably early'
<b>Absence of reasonable withdrawal term</b>	Grey   5° <i>Onverminderd artikel 1184 van het Burgerlijk Wetboek, de partijen te verbinden zonder opgave van een redelijke opzegtermijn   Sans préjudice de l'article 1184 du Code civil, engager les parties sans spécification d'un délai raisonnable de résiliation</i>	= art. VI.83, 18° (but broader?), see 11°	Grey   4° <i>Reconnaître au professionnel la faculté de résilier le contrat sans préavis d'une durée raisonnable</i> • Exceptions for certain financial transactions <sup>119</sup> Black   10° <i>Soumettre, dans les contrats à durée indéterminée, la résiliation à un délai de préavis plus long pour le [non-professionnel] que pour le professionnel</i>	See § 309(9)	See art. 6:236, j, q & r & 237, k & o See art. 6:237, l	Compare to Annex, point 1, g) 'enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so'
<b>Paid-for withdrawal</b>		Compare art. VI.83, 12°	Black   11° <i>Subordonner, dans les contrats à durée indéterminée, la résiliation par le [non-professionnel] au versement d'une indemnité au profit du professionnel</i>	See § 308(7)		
<b>Liability disclaimers</b>	Grey   6° <i>De onderneming te ontslaan van haar aansprakelijkheid voor haar opzet, haar zware fout   Libérer l'entreprise de sa responsabilité du fait de son dol, de sa faute grave</i>	= art. VI.83, 13°		See § 309(7)(b)	See art. 6:237, f	
<b>Disclaimer for staff</b>	Grey   6° <i>De onderneming te ontslaan van haar aansprakelijkheid voor [het] opzet, haar zware fout ... van haar aangestelden   Libérer l'entreprise de sa responsabilité du fait [du] dol, de [la] faute grave ... de ses préposés</i>	= art. VI.83, 13°, see also 29°	Black   2° <i>Restreindre l'obligation pour le professionnel de respecter les engagements pris par ses préposés ou ses mandataires</i>	Compare § 309(11)	See art. 6:237, f	Compare to Annex, point 1, n) 'limiting the seller's or supplier's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality'
<b>Indicating timing</b>		See art. VI.83, 5°	Grey   7° <i>Stipuler une date indicative d'exécution du contrat, hors les cas où la loi l'autorise</i>	See § 309(1) & (3)	See art. 6:237, e	

	Belgium	France	Germany	Netherlands	EU consumer law (to compare)	
<b>Non-proportionate damages</b>	Grey   8° <i>In geval van niet-uitvoering of vertraging in de uitvoering van de verbintenissen van de andere partij, schadevergoedingsbedragen vast te stellen die kennelijk niet evenredig zijn aan het nadeel dat door de onderneming kan worden geleden  </i> <i>Fixer des montants de dommages et intérêts réclamés en cas d'inexécution ou de retard dans l'exécution des obligations de l'autre partie qui dépassent manifestement l'étendue du préjudice susceptible d'être subi par l'entreprise</i>	= art. VI.83, 24°	Grey   3° <i>Imposer au [non-professionnel] qui n'exécute pas ses obligations une indemnité d'un montant manifestement disproportionné</i>	See § 309(5)	See art. 6:237, f	Compare to Annex, point 1, e) 'requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation'
<b>Proof: limiting permitted evidence</b>	Grey   7° <i>De bewijsmiddelen waarop de andere partij een beroep kan doen te beperken  </i> <i>Limiter les moyens de preuve que l'autre partie peut utiliser</i>	= art. VI.83, 21°	Grey   9° <i>Limiter indûment les moyens de preuve à la disposition du [non-professionnel]</i>		See art. 6:236, k	
<b>Proof: shifting burden</b>			Black   12° <i>Imposer au [non-professionnel] la charge de la preuve, qui, en application du droit applicable, devrait incomber normalement à l'autre partie au contrat.</i>	See § 309(12)	See art. 6:236, k	
<b>Retroactive discounts</b>		Black   a) <i>Beneficier retro-activement de remises, de ristournes ou d'accords de coopération commerciale  </i> Retroactively benefit remissions, discounts or commercial cooperation clauses				
<b>Most favourable pricing</b>		Black   b) <i>Beneficier automatiquement des conditions plus favorables consenties aux entreprises concurrentes par le cocontractant</i>				
<b>Transfer of rights</b>		See art. VI.83, 31°	Grey   5° <i>Permettre au professionnel de procéder à la cession de son contrat sans l'accord du [non-professionnel] et lorsque cette cession est susceptible d'engendrer une diminution des droits du [non-professionnel]</i>	See § 309(10)	See art. 6:236, e & f	Compare to Annex, point 1, p) 'giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement'

	Belgium	France	Germany	Netherlands	EU consumer law (to compare)	
<b>Late payment (specific clauses)</b>	<p><b>Lex Specialis   Late Payment Statute Law<sup>120</sup></b></p> <ul style="list-style-type: none"> <li>Field of application: <i>Ratione materiae:</i> Transaction which leads to the delivery of goods or the provision of services for remuneration</li> <li><i>Ratione personae:</i> A. Undertakings, = 'organisation... acting in the course of its independent economic or professional activity' (no <b>consumer</b>) B. Undertaking &amp; public authority</li> <li>Sanction: <ul style="list-style-type: none"> <li>- Judicial revision (<i>herzien   réviser</i>)</li> <li>- never more rights than default rules</li> <li>- Requested by creditor</li> </ul> </li> </ul>			<p><b>Specific rules   § 288</b></p> <ul style="list-style-type: none"> <li>Field of application: <i>Ratione personae:</i> Everyone, <b>except</b> when the debtor is a <b>consumer</b></li> <li>Sanction: <i>Unwirksam</i></li> </ul>	<p><b>Specific rules   Art. 6:96, 119a and 119b</b></p> <ul style="list-style-type: none"> <li>Field of application: <i>Ratione materiae:</i> Trade agreement, = <i>de overeenkomst om baat die een of meer van de partijen verplicht iets te geven of te doen</i></li> <li><i>Ratione personae:</i> Every party must be: A. Physical person acting in the course of its profession (no <b>consumer</b>) B. Legal person C. Public authority</li> </ul>	<b>Lex Specialis   Late Payment Dir<sup>121</sup></b>
<b>Interests</b>	<p>Black   Art. 7, 3<sup>rd</sup> intent <i>De betaling van interest voor betalingsachterstand uitsluiten   Excluant le versement d'intérêts pour retard de paiement</i></p>		<p>§288(6) 1<sup>st</sup> &amp; 2<sup>nd</sup> phrase <i>Eine im Voraus getroffene Vereinbarung, die den Anspruch des Gläubigers einer Entgeltforderung auf Verzugszinsen ausschließt, ist unwirksam. Gleiches gilt für eine Vereinbarung, die diesen Anspruch beschränkt ... wenn sie im Hinblick auf die Belange des Gläubigers grob unbillig ist.</i></p>	[No specific provision]	<p>Black   Art. 7.2 'Excludes interest for late payment'</p>	
<b>Recovery costs compensation</b>	<p>Grey   Art. 7, 4<sup>th</sup> intent <i>Een vergoeding van invorderingskosten ... uitsluiten   Excluant l'indemnisation pour les frais de recouvrement...</i></p>		<p>§288(6) 2<sup>nd</sup> &amp; 3<sup>rd</sup> phrase <i>Gleiches gilt [= unwirksam ist auch] für eine Vereinbarung, die den Anspruch des Gläubigers einer Entgeltforderung auf die Pauschale ... oder auf Ersatz des Schadens, der in Kosten der Rechtsverfolgung begründet ist, ausschließt oder beschränkt, wenn sie im Hinblick auf die Belange des Gläubigers grob unbillig ist. Eine Vereinbarung über den Ausschluss der Pauschale ... oder des Ersatzes des Schadens, der in Kosten der Rechtsverfolgung begründet ist, ist im Zweifel als grob unbillig anzusehen.</i></p>	<p>Art. 6:96, §4 <i>... Hiervan kan niet ten nadele van de schuldeiser worden afgeweken.   No deviation possible</i></p>	<p>Grey   Art. 7.3 'Excludes compensation for recovery costs'</p>	
<b>Term for payment</b>			<p>Grey   1a <i>Bestimmung, durch die sich der Verwender eine unangemessen lange Zeit für die Erfüllung einer Entgeltforderung des Vertragspartners vorbehält</i></p> <ul style="list-style-type: none"> <li>[only if Verwender is <b>no</b> consumer] 'in doubt', is presumed to be too long: <ul style="list-style-type: none"> <li>- over 30 days after delivery, or</li> <li>- over 30 days after invoice (if later)</li> </ul> </li> </ul>	<p>Art. 119a, §5</p> <ul style="list-style-type: none"> <li>Main criteria: <ol style="list-style-type: none"> <li>1. Deviation from default rules, &amp;</li> <li>2. 'Gross unfairness' for creditor, <b>incl.</b></li> </ol> </li> <li>Additional criteria: <ul style="list-style-type: none"> <li>- Objective reasons for debtor to deviate</li> <li>- Deviation from good market practices</li> <li>- Nature of product/service</li> </ul> </li> </ul>		
<b>Term for acceptance or verification</b>			<p>Grey   1b <i>Bestimmung, durch die sich der Verwender vorbehält, eine Entgeltforderung des Vertragspartners erst nach unangemessen langer Zeit für die Überprüfung oder Abnahme der Gegenleistung zu erfüllen</i></p> <ul style="list-style-type: none"> <li>[only if Verwender is <b>no</b> consumer] 'in doubt', over 15 days is presumed to be too long</li> </ul>	<p>Art. 119a, §4</p> <ul style="list-style-type: none"> <li>Main criteria: <ol style="list-style-type: none"> <li>1. Deviation from default rules, &amp;</li> <li>2. 'Gross unfairness' for creditor, <b>incl.</b></li> </ol> </li> <li>Additional criteria: <ul style="list-style-type: none"> <li>- Objective reasons for debtor to deviate</li> <li>- Deviation from good market practices</li> <li>- Nature of product/service</li> </ul> </li> </ul>		

	Belgium	France	Germany	Netherlands	EU consumer law (to compare)	
<b>Sanction</b>	Partial nullity <sup>122</sup>	Identical <sup>123</sup> <u>Open norm:</u> Liability, & Damages <sup>124</sup> <u>List:</u> Nullity <sup>125</sup>	<i>Réputée non écrite</i> <sup>126</sup> <i>Réputée non écrite</i>	<i>Unwirksam</i> <sup>127</sup>	Identical <i>Vernietigbaar</i>   ‘Annullable’ <sup>128</sup>	<ul style="list-style-type: none"> <li>MSs ensure that clause shall ‘not be binding’<sup>129</sup></li> <li>MSs ensure ‘adequate and effective means to prevent continued use of terms’<sup>130</sup></li> </ul>
<i>Action required?</i>	<i>Imperative law</i> Protected party asks Court upholds	See Dir 93/13 Every stakeholder <sup>131</sup>	‘Public order’ law <sup>132</sup> Protected party asks Courts upholds	Protected party can choose <sup>133</sup> : A. Extrajudicial annulment B. Annulment on request, by court	See Dir 93/13 <i>Imperative law</i> <sup>134</sup> Protected party can choose <sup>135</sup> : A. Extrajudicial annulment B. Annulment on request, by court	[See CJEU case law <sup>136</sup> ]
<i>Remaining clauses</i>	Contract persists without clauses if possible <sup>137</sup>	Identical <sup>138</sup>	Contract persists without clauses if possible <sup>139</sup>	[Not explicit] Contract persists without clauses, unless acceptable result <sup>140</sup>	Identical Contract persists without clauses, unless clause is too closely connected to the whole contract <sup>141</sup>	MSs ensure contract continues to bind if it is capable of continuing without the terms <sup>142</sup>

<b>Transparency requirement</b>	Yes <sup>143</sup>	No	Yes <sup>145</sup>	No	Yes <sup>146</sup>	No   Only consumer contracts   Art. 6:238, §2 j° 236 & 237	Yes [Consumer contracts]   Art. 5
<i>Field of application</i>	1. All contracts 2. In writing <sup>147</sup>	Identical	Contracts proposed by professional to [consumer or] non-professional		All contracts • Even if they are not <i>Allgemeine Geschäftsbedingungen</i>	Art. 6:236 & 237	1. Consumer contracts 2. In writing
<i>Condition</i>	<i>Duidelijk en begrijpelijk</i>   <i>Claire et compréhensible</i>   Clear and comprehensible <sup>148</sup> • Same terminology as consumer contracts	Identical	<i>Claire et compréhensible</i>   Clear and comprehensible <sup>149</sup> • Same terminology as consumer contracts		<i>Klar und Verständlich</i> • Same terminology as consumer contracts	<i>Duidelijk &amp; begrijpelijk</i>	Plain, intelligible language • Terminology differs from one language version to another
<i>Interpretation rule, or sanction</i>	Interpretation in function of ‘market practices that have a direct relation with the contract’ <sup>150</sup> • Partially same terminology as consumer contracts	Most favourable <sup>151</sup>	In case of doubts, most favourable interpretation for [consumer or] non-professional <sup>152</sup>		<i>Unwirksam</i>	Most favourable	In case of doubt... the interpretation most favourable to the consumer shall prevail

<sup>1</sup> Inserted by Statute Law of 4 April 2019  
<sup>2</sup> Inserted by Decree 2019-359 of 24 April 2019; identical to former Art. L442-6, I, 2°  
<sup>3</sup> Inserted by Decree 2016-301 of 14 March 2016  
<sup>4</sup> Art. L442-1, I, 2°  
<sup>5</sup> Art. 233, a  
<sup>6</sup> Art. VI.91/3, §1  
<sup>7</sup> Art. I.8, 39°  
<sup>8</sup> Art. L212-1, 1<sup>st</sup> indent  
<sup>9</sup> Art. L212-2;  
for lists, also see art. R212-5  
<sup>10</sup> Prelimin. art., 2<sup>nd</sup> hyphen  
<sup>11</sup> § 310(1), 1<sup>st</sup> phrase  
<sup>12</sup> § 14(1)  
<sup>13</sup> § 14(2)  
<sup>14</sup> Art. 6:231, c  
<sup>15</sup> Art. 6:235, §2  
<sup>16</sup> Art. 6:235, §1, a j° 2:360, §1  
<sup>17</sup> Art. 6:235, §1, a j° 2:360, §1  
<sup>18</sup> Art. 6:235, §1, a j° 2:430, §1  
<sup>19</sup> Art. 6:235, §1, b j° 2:360, §1  
<sup>20</sup> Art. 6:235, §3  
<sup>21</sup> Art. I.1 j° 2(b)

<sup>22</sup> Art. VI.91/3, §1  
<sup>23</sup> Art. I.8, 39°  
<sup>24</sup> Art. L442-1  
<sup>25</sup> Art. L212-2  
<sup>26</sup> Prelimin. art., 2<sup>nd</sup> hyphen  
<sup>27</sup> § 305(1), 1<sup>st</sup> phrase  
<sup>28</sup> Art. 6:231, b  
<sup>29</sup> Art. I.1 j° 2(c)  
<sup>30</sup> Art. L410-1  
<sup>31</sup> Art. L410-1  
<sup>32</sup> Art. L212-1, 1<sup>st</sup> and last indent  
<sup>33</sup> Art. 1110, 2<sup>nd</sup> indent  
<sup>34</sup> See art. 1119  
<sup>35</sup> § 305(1), 1<sup>st</sup> phrase  
<sup>36</sup> § 305(1), 2<sup>nd</sup> phrase  
<sup>37</sup> Art. 6:231, a  
<sup>38</sup> See at art. 3.2  
<sup>39</sup> Art. VI.91/1, §1  
<sup>40</sup> Art. VI.91/1, §2  
<sup>41</sup> § 310(4)  
<sup>42</sup> § 310(4)  
<sup>43</sup> Art. 6:245  
<sup>44</sup> § 310(1), 3<sup>rd</sup> phrase  
<sup>45</sup> § 310(2)  
<sup>46</sup> § 310(4)

<sup>47</sup> Added by Statute Law 2018-287 of 20 april 2018  
<sup>48</sup> § 305(1), 3<sup>rd</sup> phrase  
<sup>49</sup> Art. 6:231, a  
<sup>50</sup> Art. 3.1 and 3.1, 1<sup>st</sup> indent  
<sup>51</sup> Art. 3.2, 2<sup>nd</sup> indent  
<sup>52</sup> Art. 3.2, 3<sup>rd</sup> indent  
<sup>53</sup> Art. VI.91/3, §2, 3<sup>rd</sup> indent  
<sup>54</sup> Art L212-1, 3<sup>rd</sup> indent  
<sup>55</sup> Art. 1171, 2<sup>nd</sup> indent  
<sup>56</sup> W. WURMNEST, “§ 307”, *Münchener Kommentar zum BGB*, 2019  
<sup>57</sup> Art. 6:231, a  
<sup>58</sup> Art. 4.2  
<sup>59</sup> Art. VI.91/3, §2, 3<sup>rd</sup> indent  
<sup>60</sup> Art L212-1, 3<sup>rd</sup> indent  
<sup>61</sup> § 307(3), 3<sup>rd</sup> phrase; see W. WURMNEST, “§ 307”, *Münchener Kommentar zum BGB*, 2019, n 1  
<sup>62</sup> Art. 6:231, a  
<sup>63</sup> Art. 4.2  
<sup>64</sup> § 307(3), 1<sup>st</sup> phrase  
<sup>65</sup> Art. VI.91/3, §1  
<sup>66</sup> Art. L442-1, I, 2°

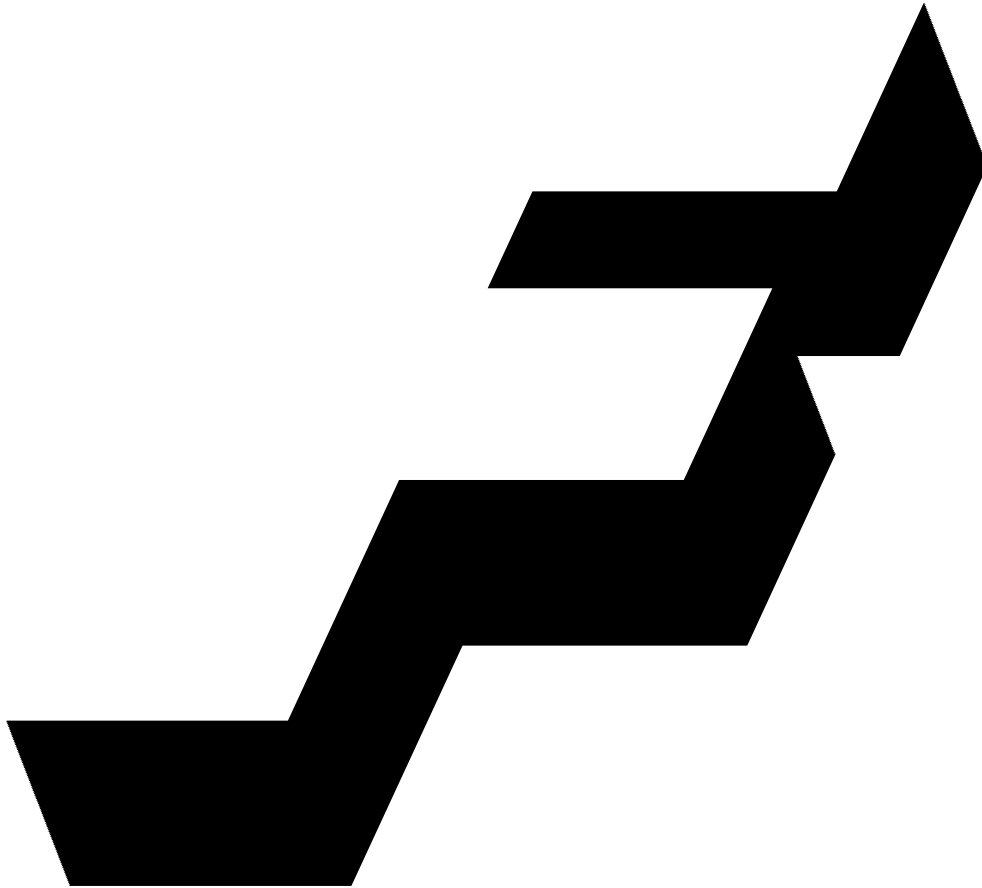
<sup>67</sup> Art. L212-1, 2<sup>nd</sup> indent  
<sup>68</sup> § 307(1), 1<sup>st</sup> phrase  
<sup>69</sup> Art. 233, a  
<sup>70</sup> Art. 3.1  
<sup>71</sup> § 307(1), 1<sup>st</sup> phrase; see at § 242  
<sup>72</sup> Art. 3.1  
<sup>73</sup> Art. VI.91/3, §1  
<sup>74</sup> Art. VI.93/3, §2, 1<sup>st</sup> indent  
<sup>75</sup> Art. I.8, 22° and art. VI.82, 1<sup>st</sup> indent  
<sup>76</sup> Art. L212-1, 2<sup>nd</sup> indent  
<sup>77</sup> Art. 233, a  
<sup>78</sup> Art. VI.93/3, §2, 1<sup>st</sup> indent  
<sup>79</sup> Art. VI.82, 1<sup>st</sup> indent  
<sup>80</sup> Art. L442-1, I  
<sup>81</sup> Art. L212-1, 1<sup>st</sup> indent  
<sup>82</sup> See at § 310(3), sub 3  
<sup>83</sup> Art. 233, a  
<sup>84</sup> Art. 4.1  
<sup>85</sup> Art. VI.93/3, §2, 1<sup>st</sup> indent  
<sup>86</sup> Art. VI.93/3, §2, 1<sup>st</sup> indent  
<sup>87</sup> § 310(1), 2<sup>nd</sup> phrase  
<sup>88</sup> Art. VI.93/3, §2, 1<sup>st</sup> indent  
<sup>89</sup> Art. VI.82, 1<sup>st</sup> indent  
<sup>90</sup> Art. 233, a  
<sup>91</sup> Art. 4.1

<sup>92</sup> Art. VI.93/3, §2, 2<sup>nd</sup> indent  
<sup>93</sup> Art. VI.82, 2<sup>nd</sup> indent  
<sup>94</sup> § 307(1), 2<sup>nd</sup> phrase  
<sup>95</sup> Art. 233, a  
<sup>96</sup> Art. 233, a  
<sup>97</sup> Ex art. L212-1, 4<sup>th</sup> indent; Decree 2016-884 of 29 June 2016  
<sup>98</sup> See §310(1)  
<sup>99</sup> BGH 25 January 1981, VIII ZR 35/80, NJW 1981, 1501; BGH 9 April 1981, VII ZR 194/80, NJW 1981, 1510; BGH 8 March 1984, VII ZR 349/82, NJW 1984, 1750; BGH 25 October 1995, VIII ZR 258/94, NJW 1996, 389; BGH 19 December 2007, XII ZR 13/06, NJW 2008, 1148; BGH 22 November 2012, VII ZR 222/12, NJW 2013, 856  
<sup>100</sup> See e.g. W.L. VALK, “Art. 6:237 BW”, *T&C BW*, 2011  
<sup>101</sup> Ex art. L212-1, 5<sup>th</sup> indent; Decree 2016-884 of 29 June 2016  
<sup>102</sup> See § 310(1)

<sup>103</sup> See § 310(1)  
<sup>104</sup> See at n 99  
<sup>105</sup> See e.g. J. BASEDOW, “§ 310”, *Münchener Kommentar zum BGB*, 2019, n 12  
<sup>106</sup> See at n 100  
<sup>107</sup> Art. VI.85  
<sup>108</sup> Art. VI.91/7  
<sup>109</sup> Art. 6:239  
<sup>110</sup> § 307(2)(2)  
<sup>111</sup> § 307(2)(1)  
<sup>112</sup> Art. 7 Statute Law of 2 August 2002  
<sup>113</sup> See M.V. JEANNIN and J.L. FOURGOUX, “Facturation”, *JCL. Comm.*, vol. 278, 2015, n 106  
<sup>114</sup> Art. L441-16, 1<sup>st</sup> and 2<sup>nd</sup> indent  
<sup>115</sup> Art. 7 Dir 2011/7  
<sup>116</sup> Art. R212-4, 2<sup>nd</sup> indent  
<sup>117</sup> Art. R212-3 and R212-4, 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> indent  
<sup>118</sup> Art. R212-3 and R212-4, 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> indent  
<sup>119</sup> Art. R212-3 and R212-4, 2<sup>nd</sup> indent

<sup>120</sup> Art. 7 Statute Law of 2 August 2002  
<sup>121</sup> Art. 7 Dir 2011/7  
<sup>122</sup> Art. VI.96/6  
<sup>123</sup> Art. VI.84, §1, 1<sup>st</sup> indent  
<sup>124</sup> Art. L442-1, I  
<sup>125</sup> Art. L442-3  
<sup>126</sup> Art. L241-1, 1<sup>st</sup> indent  
<sup>127</sup> § 307(1), 1<sup>st</sup> phrase j° § 135  
<sup>128</sup> Art. 233, a  
<sup>129</sup> Art. 6.1  
<sup>130</sup> Art. 7  
<sup>131</sup> Art. L442-4, I  
<sup>132</sup> Art. L212-3 and L241-1, last indent  
<sup>133</sup> See § 143  
<sup>134</sup> Art. 6:246 and 3:40  
<sup>135</sup> Art. 3:49 to 51  
<sup>136</sup> For an overview, see inter alia, S. GEIREGAT, “Nietigheid en ‘meest gunstige interpretatie’”, *TPR* 2016, p 97ff; and more recent, S. GEIREGAT, “Nietigheid van onrechtmatige bedingen”

(note), to be published in *Nieuw Juridisch Weekblad* 2019-20.  
<sup>137</sup> Art. VI.96/6  
<sup>138</sup> Art. VI.84, §1, 2<sup>nd</sup> indent  
<sup>139</sup> Art. L241-1, 2<sup>nd</sup> indent  
<sup>140</sup> § 306(1) and 306(3)  
<sup>141</sup> Art. 3:41  
<sup>142</sup> Art. 6.1  
<sup>143</sup> Art. VI.91/2, 1<sup>st</sup> indent  
<sup>144</sup> Art. VI.37, §1  
<sup>145</sup> Art. L211-4 j° L211-1  
<sup>146</sup> § 307(1), 2<sup>nd</sup> phrase and § 307(3), 2<sup>nd</sup> phrase  
<sup>147</sup> Art. VI.91/2, 1<sup>st</sup> indent  
<sup>148</sup> Art. VI.91/2, 1<sup>st</sup> indent  
<sup>149</sup> Art. L211-1, 1<sup>st</sup> indent  
<sup>150</sup> Art. VI.91/2, 2<sup>nd</sup> indent  
<sup>151</sup> Art. VI.37, §2  
<sup>152</sup> Art. L211-1, 2<sup>nd</sup> indent



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