

PRINCIPLES OF CONTRACT LAW OF THE EUROPEAN UNION

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Abstract

The Principles of European Contract Law (PECL) represent a significant scholarly effort to develop a common normative framework for contracts within the European Union, reflecting the core elements shared among the legal systems of the Member States. These principles, drafted by the Commission on European Contract Law under the leadership of Professor Ole Lando, combine aspects of the civil law and common law traditions, thereby offering a balanced and coherent set of rules intended to guide contractual relationships across Europe. Drawing on the case law of the Court of Justice of the European Union, as well as contemporary doctrinal developments, the PECL seek to enhance legal certainty, promote transparency, and ensure a fair equilibrium of rights and obligations between contracting parties. This paper examines the contribution of the PECL to the functioning of the EU internal market by harmonizing essential areas of contract law that traditionally differed significantly between national legal systems. The analysis focuses on fundamental notions such as good faith and fair dealing, party autonomy, proper performance of obligations, and liability for non-performance. Additionally, key doctrines such as force majeure and hardship are explored, as they are crucial in situations where unforeseen circumstances significantly alter the contractual balance. The aim of this study is to assess the importance of the PECL in the development of a more uniform European contract law regime and to evaluate their influence on national legal frameworks. Through comparative and historical analysis, the paper emphasizes that the PECL constitute an important step toward the approximation of private law in Europe and serve as a foundation for further integration initiatives, including the Draft Common Frame of Reference and potential future codification efforts.

Keywords: European Union, principles, contract law, contract, obligation.

1. Introduction

In 1974, a symposium held at the Copenhagen Business School on the law applicable to contractual and non-contractual obligations within the European Economic Community marked an important turning point in the intellectual debate on European private law. During the discussions, Professor Ole Lando emphasized that private international law alone could not provide the level of clarity and predictability required for a functioning common market. According to him, only a more coherent and unified body of private law rules could guarantee the legal certainty necessary for economic integration. In response, Winfried Hauschild expressed the need for a “European Code of Obligations,” a remark that inspired Lando to pursue the idea of a common European framework for contract law.

A subsequent symposium in Florence, dedicated to “New Perspectives on the Common Law of Europe,” provided Lando with a platform to further elaborate his proposal for a harmonized European commercial code. This initiative gradually developed into what later became known as the Principles of European Contract Law (PECL). The primary motivation behind this project was the recognition that the diversity of national contract laws posed practical barriers to cross-border transactions, thereby hindering the functioning of the internal market.

The work of the Lando Commission formally began in 1980 and brought together scholars and legal experts from both civil law and common law traditions across the Member States.¹ One of the main challenges of the Commission was bridging the conceptual and methodological differences between these two legal families. Over time, their efforts resulted in the publication of PECL in three stages: Part I in 1995, Part II in 1999, and the final Part III in 2003, forming a comprehensive attempt to outline shared principles of European contract law.

1.1 The European Union and Its Formation: During the second half of the twentieth century, Western Europe gradually positioned itself as the central reference point for defining the concept of “Europe.” The institutions created by Western European nations played a decisive role in shaping this meaning and expanding the idea of Europe beyond its geographical borders. Among the earliest institutions established were the Council of Europe, created in 1949, and the European Convention on Human Rights, which was later complemented by the establishment of the European Court of Human Rights in 1959. Economically, the establishment of the European Coal and Steel Community (ECSC) in 1951 marked a foundational moment, as it paved the way for the creation of the European Economic Community² (EEC) and, several decades afterward, for the emergence of the European Union (EU).³ At the same time, states that, for political reasons, did not anticipate joining the EEC, formed the European Free Trade Association (EFTA) in 1960. Efforts to enhance cooperation in economic, social, and cultural spheres—combined with rising East–West tensions and fears of renewed threats from Germany—also inspired developments in the security sector. The 1948 Brussels Treaty played a significant role here, and, in 1954, it was transformed into the Western European Union (WEU), through which the Federal Republic of Germany became part of the Western security architecture.⁴

Although the idea of a European defense identity remained underdeveloped until the 1980s and 1990s, the remarkable experience of Western Europe with regional integration introduced a new model in international relations. This model relied on institutions designed to address shared challenges through supranational mechanisms. Jean Monnet, a key figure in this process, advocated for the creation of common interests through technocratic cooperation in sectors where conflict had historically emerged. He believed that lasting peace could be achieved only by establishing institutions capable of producing joint solutions to collective problems.⁵

The EEC—and later the EU—evolved into a distinctive integration project grounded in cooperation, interdependence, institutional development, and, most importantly, the voluntary pooling of sovereignty among member states. Monnet’s functionalist vision rested on several fundamental ideas: the declining role of the traditional nation-state, the risks posed by nationalism, the need to reframe the context of political challenges, the establishment of new institutions to secure shared interests through increasingly technical processes, and the belief that periods of crisis would push political leaders toward collective action and reform.⁶

Today, the European Union operates as a distinctive political and economic entity that brings together 27 sovereign member states. Formed through a series of binding treaties, the EU represents the most advanced stage of an integration project launched after World War II to restore peace and promote economic reconstruction. Its founders believed that by sharing sovereignty in key sectors—initially coal, steel, trade, and nuclear energy—interdependence

¹ Në tekstin e mëposhtëm UEE.

² Po aty.

³ Adam Chalmers, *Refiguring the European Union’s Historical Dimension*, 2006, fq. 182.

⁴ Federiga Bindi, Irina Angelescu, *The Foreign Policy of the European Union*, Palgrave Macmillan, 2008, fq. 259.

⁵ Craig Parsons, *Showing Ideas as Causes: The Origins of the European Union*, International Organization, 2002.

⁶ Adam Chalmers, *Refiguring the European Union’s Historical Dimension*, 2006, fq. 190.

would deepen to such an extent that war in Europe would become unthinkable. Since the 1950s, European integration has expanded across various fields, resulting in the creation of a customs union, a single market enabling the free movement of goods, services, capital, and people, a common trade and agricultural policy, environmental and social policies, and the introduction of a shared currency—the euro—currently used by 19 member states.⁷

2. The Concept of Contract

The most common source of obligatory relationships is the contract. A contract is a legally enforceable agreement between two or more parties that creates, defines, and regulates the rights and obligations between them.⁸ The term “contract” originates from the Old French and Latin languages of the early fourteenth century. The Old French word contract referred to an agreement between at least two people to do or not to do something. The term also derives from the Latin *contractus*, meaning “to draw together” or “to unite.” The modern legal meaning of the term “contract” did not emerge until the early 1600s.⁹

The contract is perhaps the most familiar legal concept in our society, as it is fundamental to the core of our social, economic, and political life. In common language, the term “contract” is often used interchangeably with “agreement,” “bargain,” or “undertaking.” Regardless of the term used, the concept it embodies represents our understanding of the freedom to pursue life in cooperation with others. The contract is central because it is the mechanism through which a free society orders what would otherwise be a chaotic and tumultuous anarchy.¹⁰ The concept of the contract and our freedom to enter into contracts with one another is so commonplace that it is difficult to imagine a time when contracts were rare, when people’s daily associations were not freely determined. However, historically speaking, not long ago, contracts were indeed rare and entered into by very few people; the notion that affairs should be governed by mutual consent was largely unknown. In primitive societies and in feudal Europe, relationships between individuals were largely fixed traditions dictated the duties that each person owed to family, tribe, or landholding.¹¹ The classical concept of the contract considers it to be a legally enforceable obligation created by the agreement between a creditor and a debtor. Such an obligation is generally formed through the concurrence of the parties’ wills to achieve a specific economic purpose. The source and purpose of this obligation distinguish contract law from tort law and property law, in which obligations arise by operation of law and bind an indeterminate number of parties. The most distinctive and categorical feature of classical contracts was therefore that they were all specific forms of obligation created in a particular manner.¹²

A contract is a legally binding arrangement formed between two or more parties, which can be upheld and enforced by a court of law. For such an agreement to be legally enforceable, it must include several fundamental components, which have been recognized and refined by legal systems throughout centuries of jurisprudence. The principles of what must be agreed upon for a contract to be enforceable trace back to Roman law. The use of a written contract facilitates, to some extent, the enforcement of the agreement, since a party that breaches a contract may be sued in court for damages resulting from the breach. Even in the absence of litigation, a well-drafted contract may persuade the “other party” to reach an equitable out-of-court settlement, thereby saving the costs of legal proceedings. An oral contract is also enforceable by law; however, the difficulty of proving its essential terms makes its enforcement significantly more challenging.¹³ In its simplest definition, a contract may be described as a

⁷ Federiga Bindi, Irina Angelescu, *The Foreign Policy of the European Union*, Palgrave Macmillan, 2008, fq. 262.

⁸ Nerxhivane Dauti, *E drejta e detyrimeve*, Prishtinë, 1996, fq. 58.

⁹ Jeffrey Lipshaw, *Contract as Meaning: An Introduction to Contract as Promise*, Suffolk University, 2011, fq. 21.

¹⁰ Lawrence Solan, *Contract as Agreement*, Brooklyn Law School, 2007, fq. 353

¹¹ Po aty.

¹² Sidney DeLong, *What is a contract*, Seattle University School of Law, 2015, fq. 101.

¹³ Po aty.

legally enforceable promise. The promise may consist either in doing something or in refraining from doing something. The formation of a contract requires the mutual consent of two or more persons, one of whom usually makes an offer and the other accepts it. If one party fails to keep the promise, the other is entitled to fair compensation. Contract law examines such issues as whether a contract exists, what its meaning is, and, if a contract has not been performed, what remedies are available to the injured party.

3. The Concept of Legal Principles in the European Union

The use of principles transcends the boundaries of national legal orders. Principles play an essential role in international and European conventions relating to human rights.¹⁴ In recent decades, the Court of Justice of the European Union (CJEU) has developed a rich body of jurisprudence concerning the general principles of Union law. In recent years, these principles have also been incorporated into the Treaties of the European Union, which make extensive use of the concept of principles. In Europe, the application of principles was, in the past, primarily confined to the spheres of constitutional and administrative law. Within these domains alongside fundamental principles that reflect basic human rights (such as human dignity, equality, freedom of religion, etc.) principles have been developed to provide EU citizens with an effective and fair system of enforcement (for instance, the principles of primacy, effectiveness, and proportionality). However, in recent times, there has been a growing willingness to recognize as principles of general value those concepts traditionally regarded as belonging to the domain of private law.¹⁵

Firstly, in recent years, when adjudicating disputes in the field of public law, the CJEU has made several references to what it has characterized as general principles of civil law (for example, the principle of full compensation for the breach of EU law, the principle of good faith, and the principle prohibiting unjust enrichment). Secondly, in resolving purely private disputes such as those concerning consumer protection the CJEU has relied on classical principles of contract law, including the principle of party autonomy and the doctrine of *pacta sunt servanda*. Finally, important soft law instruments, reflecting the European Union's efforts to harmonize and unify contract law among its Member States, explicitly refer to several purported "principles" of European contract law.¹⁶ In the well-known project entitled the Principles of European Contract Law (PECL), the term "principles" was adopted by the drafters to denote a harmonized set of proposed norms of contract law. The notion of fundamental principles also played a crucial role in the unification project known as the Draft Common Frame of Reference (DCFR), which proposed a collection of "definitions, principles, and model rules" that arguably represent the shared core of ideas, norms, and institutions constituting the European common law of private law. These developments invite a more careful and systematic reflection on the potential role played by the so-called "principles" in the continuing efforts of various European institutions to harmonize significant parts of national contract law.¹⁷

¹⁴ Deklarata universale e të drejtave të njeriut (1948), Konventa evropiane për të drejtat e njeriut (1950), Karta e të drejtave themelore të Unionit Evropian (2000).

¹⁵ John Basedow, *The Court of Justice and Private Law: Vacillations, General Principles and the Architecture of the European Judiciary*, *European Review of Private Law*, 2010, fq. 462

¹⁶ John Basedow, *The Court of Justice and Private Law: Vacillations, General Principles and the Architecture of the European Judiciary*, *European Review of Private Law*, 2010, fq. 462.

¹⁷ Yehuda Adar, Pietro Sirena, *Principles and Rules in the Emerging European Contract Law: From the PECL to the CESL, and Beyond*, DeGruyter, 2013, fq. 13.

4. Principles of Contract Law and the Lando Commission

4.1. The History of the Principles of Contract Law: 1974, a symposium was held at the Copenhagen Business School on the topic of the Preliminary Convention of the European Economic Union on the Law Applicable to Contractual and Non-Contractual Obligations.¹⁸ During the dinner session, Professor Ole Lando reached the conclusion that private international law provided insufficient legal certainty for the functioning of a common European market. He further argued that only private law could ensure the necessary degree of uniformity. Upon hearing this, Dr. Winfried Hauschild¹⁹ replied, “We need a European Code of Obligations.”²⁰ This statement inspired Professor Lando to contemplate the development of a set of uniform rules applicable across Europe, ultimately planting the seeds for the idea of a European Contract Law. A subsequent symposium was organized at an academic institute in Florence, focusing on New Perspectives on the Common Law of Europe. It was there that Professor Lando presented a paper and found the opportunity to advocate for a uniform European Commercial Code - a proposal that later evolved into the Principles of European Contract Law (PECL).²¹ The dominant view at the time was that creating a functioning common market required a harmonized legal framework, especially in the area of contract law, because the coexistence of numerous national contract law systems was seen as a potential barrier to the effective operation of the internal market.²² The Lando Commission officially commenced its work in 1980, bringing together distinguished legal scholars and practitioners from all Member States of the European Economic Community. Its membership reflected both major European legal traditions, as it included experts from civil law as well as common law jurisdictions. There were notable differences among the members of these two legal traditions, as their approaches to the structure and reasoning of their respective legal systems diverged fundamentally.

5. The Lando Commission

One approach to addressing the complex issue of the Europeanization of private law is to focus on private initiatives and the Lando Commission is one of the most significant among them.²³ It has become one of the most renowned “non-governmental unification projects” within the field of private law. For more than twenty years, an ever-growing number of legal scholars from all Member States of the European Union have worked under the auspices of this project, elaborating the Principles of European Contract Law (PECL) as a set of common European principles of contract law. There was a clear and compelling reason why, in the early 1970s, the Lando Commission initiated a project aimed at achieving a uniform legal foundation across the Union in the field of contract law: the Commission began from the assumption that the mere unification of private international law rules could not adequately meet the needs of the European common market. The unification of rules concerning the “choice of law” could not overcome the fact that, for example, for a pasta manufacturer in Milan, Palermo is geographically and economically closer than Munich. This geographic/economic paradox stems from the reality that divergences among the legal systems of the Member States generate transaction costs for business operators.²⁴ From this geographic and economic perspective, trading under the laws of one’s own country appears more attractive than exporting goods under foreign and often unfamiliar laws even when the border lies nearby. This example reflects the

¹⁸ Danny Busch, *Indirect Representation in European Contract Law*, Kluwer Law International, 2005, fq. 198.

¹⁹ Dr. Winfried Hauschild ishte kreu i drejtorisë së përgjithshme për tregun e brendshëm.

²⁰ Ole Lando, Eric Clive, Andre Prum, Reinhard Zimmerman, *Principles of European Contract Law*, Kluwer Law International, 2003.

²¹ Po aty.

²² Kristina Riedl, *The Work of the Lando-Commission from an Alternative Viewpoint*, *European Review of Private Law*, 2000, fq. 71-83.

²³ Emri zyrtar i Komisionit Lando është „Komisioni për të Drejtën Evropiane Kontraktore” (CECL-Commission on European Contract Law).

²⁴ Lena Olsen, *The Choice of the Aggrieved Party - An Analysis of the Remedies in the Principles of the European Contract Law*, *European Review of Private Law*, 1999, fq. 21-44.

underlying problem that the very idea of European market integration seeks to address: the diverse rules of national contract laws can distort competition or discourage traders and consumers from engaging in cross-border transactions for goods and services. Thus, to complete a truly borderless common market, such obstacles to cross-border contracting stemming from the divergence of national contract laws must be removed.²⁵ One of the greatest challenges faced by the Commission was the harmonization of continental civil law and common law traditions. Since the European Member States embody two fundamentally different legal systems, it was inevitable that the Commission would need to integrate both in order to produce the best possible outcome in the general interest of the European Community. The sources, rules, and methods of the civil law and common law systems have long interacted with one another and reveal striking parallels within the PECL.²⁶

Common law, on the one hand, is rooted in judicial precedent, statutory interpretation, and legislation, whereas continental civil law is code-based and derived from Roman law. Common law evolved from custom and usage before being codified into written statutes, while continental civil law developed from Justinian's Roman law the *Corpus Juris Civilis* and subsequent codifications. The harmonization process thus encountered obstacles arising from the fundamental differences in approach between the two systems.²⁷ The text of the PECL was created through "hybridization" or "blending", selecting from the most suitable rules of either the civil law or common law traditions, as well as from common rules shared among the various legal systems.²⁸ At the same time, the PECL demonstrates its own distinct system, built upon the basis of commercial exchanges between the Member States of the European Union, influenced by established trade practices, and founded upon its autonomous interpretation of international legal norms guided by the principles of uniformity and good faith in commerce. The PECL matured in light of the limitations encountered by the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the UNIDROIT Principles of International Commercial Contracts, and evolved into a unique set of balanced rules bridging the principles that inspired both the common law and the continental civil law traditions. In 1995, the Lando Commission presented the first part of its Principles, and in November 1999 a new, slightly revised volume was published covering Parts I and II of the PECL. Part III - the final draft was published in 2003.

6. The Formation and Evolution of Contract Law Principles

The Principles of European Contract Law (PECL) were prepared by the Commission on European Contract Law, a body without any official status, originating from a private initiative by Professor Ole Lando of Copenhagen (as emphasized in earlier chapters). The Commission was composed of academics from all Member States of the European Union. Its development ran in parallel with that of the European Union itself. In general, the preparation of the Principles lasted more than twenty years, as the work began as early as 1982. Part I, published in 1995, contains 59 articles dealing with performance and its modalities, non-performance, remedies for non-performance, and a number of general questions such as applicability, general duties of conduct during a contractual relationship, and terminology. The 73 articles of Part II (published in 2000) cover the formation of contracts, authority of agents, validity (including defects in consent but excluding illegality), interpretation of contracts, content and effects (including contracts for the benefit of a third party). The third and final part of the Principles

²⁵ Po aty.

²⁶ Christan Joerges, *The Europeanisation of Private Law as a Rationalisation Process and as a Contest of Legal Disciplines: An Analysis of the Regulation of Unfair Terms in Consumer Contracts*, 1995, fq. 175.

²⁷ Po aty.

²⁸ Maria Perales Viscasillas, *The formation of Contracts and the Principles of European Contract Law*, *Pace Int'l Law Review*, 2001, fq. 371.

(2003) includes 69 articles on plurality of parties (plurality of creditors, joint and several obligations), assignment of claims, substitution of a new debtor (transfer of obligation) and transfer of contracts, set-off, prescription, illegality of contracts, conditions, and capitalization of interest. Unlike Part II, Part III has not been integrated into the existing body of the Principles but has, for the time being, been published separately.

The long preparation period, along with the fact that the work was divided into three stages, left a mark on the substance of the Principles. The basic concept the preparation of a set of principles covering the general law of contract dates back to a time before the EU had begun regulating an ever-widening range of issues related to consumer contracts (consumer law and consumer protection). As a result, the *acquis communautaire* has been largely ignored in the Principles. In particular, the Lando Commission never addressed the difficult question of how the (mostly mandatory) rules on consumer protection could be integrated into a set of general principles of contract law.²⁹ In another respect, the scope of application of the Principles has expanded over time. While the first two parts deal exclusively with contract law, the first four chapters of Part III address all types of obligations. Thus, they constitute the core components of the general law of obligations for Europe. A certain conceptual shift also seems to have occurred regarding the nature of the provisions included in the Principles. Initially, as is apparent from the title chosen for their work, the members of the Lando Commission did not seem to intend to draft a system of specific rules that could be directly applied by the courts. However, the rules contained in several later chapters (such as those on plurality of parties, assignment, set-off, and prescription) reach a level of specificity comparable to that of existing national civil codes.³⁰

Finally, the preparation of the Principles in three distinct stages has led to some coordination deficiencies. For instance, all three parts contain rules concerning the restitution of benefits (the unwinding of contracts). Article 5:114 PECL refers to situations where a contract has been avoided; Article 9:305 ff PECL deals with the consequences of termination of a contract in cases of non-performance; and Article 15:104 PECL covers the restitution of benefits received under a contract that has proved void for reasons of illegality. This duplication of rules, as well as the differences among them, is hardly justifiable. It is one among several issues that the Principles still need to refine and revise.³¹

7. The Objectives of the Principles of European Contract Law

The Lando Commission aimed to carry out a comparative analysis of fifteen different legal systems—covering both continental civil law and common law traditions—in order to formulate a unified set of rules. These rules would apply to all parties choosing to base their contractual relationships on the Principles of European Contract Law (PECL) within the framework of the European Union.³² There were considerable disparities among the national laws of the Member States governing contracts, covering key issues such as formation, formal and substantive validity, essential effects, remedies for non-performance, and the conditions under which performance could be excused.³³ Many European legal scholars have consistently maintained that the wide divergence among national private law systems creates a significant barrier to the efficient operation of the European Union's single market. They argue that this fragmentation can be overcome only by developing an authentic and coherent framework of

²⁹ Kristina Riedl, *The Work of the Lando-Commission from an Alternative Viewpoint*, *European Review of Private Law*, 2000, fq. 71-83.

³⁰ *Id.*

³¹ Eric Clive, *European Initiatives (CFR) and Reform of Civil Law in New Member States: Differences between the Draft Common Frame of Reference and the Principles of European Contract Law*, *Juridica International*, 2008.

³² Ole Lando, Eric Clive, *Principles of European Contract Law - Part III*, Springer, 2008.

³³ *Id.*

European private law.³⁴ The Lando Commission not only aimed to reduce the negative effects of divergences between national contract laws within the single European market, but also sought to provide a common foundation of contract law upon which more specific harmonization efforts could later be built. The legal experts and academics involved in the Commission on European Contract Law aimed to craft a unified set of general contractual principles and to promote a systematic harmonization of contract law throughout the European Union.³⁵ As to the purpose of the PECL, the Commission did not choose a single objective. Instead, it opted for a plurality of goals to be pursued simultaneously. The Commission explicitly intended that the PECL be used as broadly as possible. In its introduction, the Commission outlined five “benefits” that could derive from the PECL and five “objectives” for which they were created.³⁶ Moreover, Article 1:101 (Application of the Principles), which opens the PECL under the section titled “Scope of the Principles,” outlines six distinct circumstances in which the Principles may be invoked.

8. Essential Concepts Underlying the Principles of European Contract Law

- **Contract or Contractual Relationship**

The PECL uses the word “contract” in different ways. Usually, it refers to a type of agreement a bilateral or multilateral legal act. Sometimes, however, it refers to an ongoing relationship that results from such an act. This can be confusing even within a single language. For example, a meeting might involve a long and heated debate about whether something constitutes a contract, only to realize that people are using the term “contract” in different senses and that both sides are, in fact, correct. The use of “contract” in various meanings can lead to even more confusion when texts are translated and when rules are applied across different national legal systems.³⁷

- **Duty or Obligation**

The PECL does not make a clear distinction between a “duty” and an “obligation.” This creates significant difficulties concerning those few provisions that use the concept of duty instead of obligation, including the provision on good faith. Is a breach of the duty of good faith considered a non-performance of an obligation, implying that all remedies for non-performance are available? If so, why is it not called an obligation? Or, if it is not considered such a non-performance, do we then have a duty without a sanction? This would imply that either the drafting is defective or the result itself is flawed.³⁸

- **Performance or the Benefit Derived from Performance**

The PECL sometimes uses “performance” to refer to the act of fulfilling an obligation and at other times to the benefit obtained through that performance. The two are entirely different. An act of performance, once completed, for example, does not have a market value.³⁹

- **Termination or Cancellation**

Some articles in the PECL refer to the “termination” of a contract, for example, “a contract for an indefinite period may be terminated by either party by giving notice within a reasonable time.” Other articles refer to “cancellation.” For instance, a party who has requested adequate assurance of due performance and has not received such assurance within a reasonable time

³⁴ Po aty.

³⁵ Ole Lando, Principles of European Contract Law: An Alternative to or a Precursor of European Legislation? *Journal of Comparative Law*, 1992, fq. 576.

³⁶ Commission on European contract law, The Principles of European Contract Law, Introduction.

³⁷ Eric Clive, European Initiatives (CFR) and Reform of Civil Law in New Member States: Differences between the Draft Common Frame of Reference and the Principles of European Contract Law, *Juridica International*, 2008.

³⁸ Po aty.

³⁹ Kristina Riedl, The Work of the Lando-Commission from an Alternative Viewpoint, *European Review of Private Law*, 2000, fq. 71-83.

“may terminate the contract” by giving notice in certain situations. Here, there is a risk of confusion.⁴⁰

- **The Concept of Principles**

It is important to emphasize that the Principles of European Contract Law should be taken seriously when they refer to themselves as principles. They do not properly provide a definition of principles, but rather imply one. Article 1:101 of the PECL stresses that they “are intended to be applied as general rules of contract law in the European Union.” Such provisions apparently emphasize the generalization of the rules set out by the PECL as a criterion for classifying them as principles.⁴¹

Above all, however, it is evident that most of them cannot be said to be general at all in terms of their content, which is, on the contrary, quite specific and limited. They are sufficiently general (and are called rules of sale and purchase) because they apply to a contract regardless of whether it may be one of sale, a loan, etc., and for this reason they contrast with a set of possible rules that, on the contrary, may apply only to particular types of contracts (sale, loan, etc.). In other words, these statements reflect the traditional dialectic between general and special contract law, which is found in most national legal systems (and moreover, in their respective civil and commercial codes). But this feature is not sufficiently significant to justify their self-designation as principles. In this sense, it is quite decisive that they are drafted as a written consolidation of the common core of national legal traditions concerning contracts (the PECL) and of the so-called *lex mercatoria*, that is, all the legal practices that have established themselves in international trade.⁴² From this point of view (and perhaps not from others), they deserve the label of “principles” chosen by their drafters. In other words, the PECL can be said to aim to reflect a *ius commune Europaeum* (or even more), which in itself exists beyond the authority of any specific legislator.⁴³

9. Contract Law Principles as Elements of Contemporary Lex Mercatoria

Before examining the meaning of autonomous *lex mercatoria*, we must first consider the meaning of autonomy in its true sense. According to the dictionary, the word “autonomy” refers either to the right of self-government or to a self-governing state. This definition is insufficient for *lex mercatoria* to be regarded as autonomous, since it is synonymous with political authority.⁴⁴

Professor Peter Mazzacano has argued against this deficiency, stating that the self-governing nature of the medieval merchant class is evident in historical records; however, the medieval merchant class was merely free to contract in commercial matters and could not be regarded as a government or a state.⁴⁵ Furthermore, he emphasizes that medieval *lex mercatoria* was politically independent, without any interference from state governments or local laws. He therefore opposes the involvement of any government in the formation and continuation of *lex mercatoria*.⁴⁶ It should be recognized that *lex mercatoria* is not a formal institution or a codified body of rules tied to any specific state or jurisdiction. Rather, it represents a body of commercial customs and practices developed organically within the international trading community, with origins tracing back to the medieval period.⁴⁷ *Lex mercatoria* functions as a kind of freedom to be invoked when courts and arbitrators are confronted with the laws of several jurisdictions and

⁴⁰ Martijn Hesselink, *The Principles Of European Contract Law: Some Choices Made By The Lando Commission*, Global Jurist Frontiers, 2001, fq. 95.

⁴¹ Commission on European Contract Law, *The Principles of European Contract Law*, Introduction.

⁴² Koen Lenaerts, *The constitutional allocation of powers and general principles of EU law*, Common Market Law Review, 2010, fq. 1629.

⁴³ Christina Hultmark, *Obligations, Contracts and Sales*, in: Michael Bogdan, *Swedish Law in the New Millennium*, Stockholm, 2000, fq. 77.

⁴⁴ Galf Peter Calliess, *Lex Mercatoria: A Reflexive Law Guide To An Autonomous Legal System*, German Law Journal, 2001, fq. 181.

⁴⁵ Peter Mazzacano, *The Lex Mercatoria as Autonomous Law*, CLEA Meetings Paper, 2008, fq. 44.

⁴⁶ Po aty.

must reach an equivalent consensus in accordance with the customs and common laws of the international commercial community. The medieval period, namely around the eleventh century, witnessed major changes in *lex mercatoria*: the structures of what is now recognized as modern Western commercial law gradually emerged, and over time this branch of law came to be viewed as a coherent and evolving system — an autonomous legal framework operating beyond direct state control, whose underlying principles were widely relied upon to facilitate amicable dispute resolution and to ensure the efficient continuation of commercial activity.⁴⁸

In the twentieth century, *lex mercatoria* transitioned from an amorphous and flexible form of soft law into a more structured system of codified legal rules, such as those developed by UNIDROIT. Professor Lando maintains that *lex mercatoria* is composed of several key sources, including public international law, harmonized legal instruments, overarching legal principles, regulations issued by international bodies, established commercial customs and practices, standardized contract models, and published arbitral decisions.⁴⁹ As discussed above, the PECL is a combination of the fifteen legal systems of the European Union, and no national law dominates the Principles. None of the world's national legal systems serves as the exclusive foundation for these principles. The PECL specifically aimed to create a transnational law to resolve cross-border disputes relating to it or to form new rules for the improvement of the commercial community.⁵⁰ The creation of the PECL provided a system of its own, built on the basis of enabling commercial exchange between EU Member States influenced by developed commercial practices, and on the basis of offering its own autonomous interpretation of rules in international trade in accordance with the principles of uniformity and good faith. It may be concluded that the PECL fulfils the parameters of “self-governance” and “self-regulation” by having provisions for amendment and revision, creating space for the formulation of new rules and interpretations; the medieval *lex mercatoria* evolved on its own, without state or governmental intervention, it was a purely private initiative, and there is governmental or state intervention in the use of the PECL and it is not limited to a specific state or jurisdiction.⁵¹

Often, parties to international sales contracts do not agree on a national law governing their contractual relationship. Instead, they sometimes agree on the validity of internationally accepted legal principles, the so-called “general principles of law.” These principles of law, the *Lex Mercatoria*, on which a court may subsequently base its decision in order to resolve the parties' disputes, consist of the laws of several systems, the work of legal authors, and published arbitral awards, and thus the entirety of international legal practices in a specific field of law. Accordingly, the PECL, like the UNIDROIT Principles or the CISG, also form part of the *Lex Mercatoria*.⁵² If the *Lex Mercatoria* is subject to the parties' choice of law, however, this is actively debated in private international law. The same is true for its legal character in itself. The PECL does not play a significant role in the drafting of international sales contracts or as the law governing such contracts. The possibility of incorporating the PECL into such contracts whether expressly or by referring to “general principles of commerce” or similar is indeed expressly mentioned in the PECL.⁵³ The autonomous aspect of the *lex mercatoria* has been the subject of criticism. Many scholars have argued that *lex mercatoria* is neither national law nor international law, but rather a third legal order. Some scholars contend that *lex mercatoria* is frequently influenced by the mandatory rules of individual states rather than operating as an autonomous transnational system or a distinct third legal order. They also argue that both the UNIDROIT Principles of International Commercial Contracts and the PECL are essentially refined summaries of existing national legal principles.⁵⁴ In contrast to this argument, the PECL

⁴⁸ Po aty.

⁴⁹ Ole Lando, *The Lex Mercatoria in International Commercial Arbitration*, 1985.

⁵⁰ Po aty.

⁵¹ GralfPeter Calliess, *Lex Mercatoria: A Reflexive Law Guide To An Autonomous Legal System*, *German Law Journal*, 2001, fq. 181.

⁵² DannyBusch, *Indirect Representation in European Contract Law*, *Kluwer Law International*, 2005, fq. 198.

⁵³ Commission on European Contract Law, *The Principles of European Contract Law*, Introduction.

⁵⁴ Celia WassersteinFassberg, *Lex Mercatoria: Hoist with its own Petard?*, 2004, fq. 102.

is the product of various national principles, but no particular legal system nor any state intervention played a role in its formation, and the very first article states that the principles are intended to be applied as general rules and cannot be regarded as a code for contracts.⁵⁵ The PECL expressly allow for the exclusion of mandatory national provisions when a contract is governed by them, while also requiring that their application remain consistent with private international law. Modern commercial codes acknowledge general principles as a core component of the *lex mercatoria*. By opting for *lex mercatoria* or the PECL, contracting parties position themselves outside the constraints of domestic legal systems and thereby avoid national rules that may be inappropriate for international commercial agreements.⁵⁶ Contemporary *lex mercatoria* cannot yet be regarded as a fully independent legal order, as parties to international contracts frequently select a national legal system to govern their agreements. This choice effectively undermines the autonomy of *lex mercatoria*, since it prevents judges and arbitrators from replacing the chosen domestic law with a transnational set of principles. This illustrates the contractual freedom embedded in the PECL, which affords parties broad discretion in selecting the law that will govern their agreement. The PECL has given parties a broad freedom to select the rules that will govern their contract.⁵⁷ Another line of critique asserts that the PECL consist largely of abstractly formulated principles and that they are not rooted in concrete judicial decisions, but rather originate from the shared core of legal ideas identified by prominent comparative law scholars. The PECL is not ultimately an abstract compilation of principles, but they are intended to be applied as general rules for resolving international contract disputes. If the application of the PECL is reported in arbitral proceedings, it would constitute material with persuasive value for arbitrators in international commercial arbitration.⁵⁸

- **Contract Law Principles within the Framework of a Global *Lex Mercatoria***

The principles contained in the PECL are limited to the European Union and the Lando Commission, which aim at the creation of a European Civil Code applicable to all Member States of Europe. Their central aim was to facilitate seamless commercial interactions throughout the European Union. In addition, the PECL may contribute to the expansion of *lex mercatoria* by promoting the broad application of its principles and by generating new solutions and shaping a *sui generis* framework.⁵⁹ One of the major obstacles preventing the PECL from forming part of a universal *lex mercatoria* is the publication of arbitral awards. Most arbitral awards remain unpublished and are often withheld even from the broader commercial community. This lack of transparency hinders the evolution of the law, as the dissemination of decisions is a crucial component of *lex mercatoria*. Because most arbitrations and arbitral decisions in which the PECL are applied are not disclosed, there is no foundational body of precedent on which arbitrators can rely when invoking its principles.⁶⁰

Nevertheless, in recent decades there has been a tendency toward broader publication of arbitral awards. Among the few reported cases, there has been a significant diversity of approaches providing guidance, yet they do not offer arbitrators the firm body of established jurisprudence available in state courts. If arbitral awards issued on the basis of the PECL were made publicly accessible, they could then contribute to the development of a universal *lex mercatoria*; without such publication, however, they cannot fulfill this role.⁶¹ The incorporation of the principles into the PECL is indeed one of the historic achievements in the development of European private law. It constitutes an “independent” legal instrument applicable to contracts

⁵⁵ Ole Lando, *The Lex Mercatoria in International Commercial Arbitration*, 1985.

⁵⁶ Po aty.

⁵⁷ Celia WassersteinFassberg, *Lex Mercatoria: Hoist with its own Petard?*, 2004, fq. 102.

⁵⁸ GraftPeter Calliess, *Lex Mercatoria: A Reflexive Law Guide to An Autonomous Legal System*, German Law Journal, 2001, fq. 181.

⁵⁹ Po aty.

⁶⁰ Hector MacQueen, Reinhard Zimmermann, *European Contract Law: Scots and South African Perspectives*, Edinburgh University Press, 2006, fq. 36.

⁶¹ Po aty.

concluded between members of the European Union. It has provided substantial support to arbitrators and the international commercial sector, functioning as an alternative framework to the EEC, while helping to lower transaction costs in global trade and enhance legal predictability.⁶²

One of the significant accomplishments of the PECL is the harmonization of continental civil law and common law, with the aim of forming a unified civil law framework for all Member States. Based on the points discussed above, it can be inferred that the PECL amount to an autonomous legal framework—albeit one confined to the European context—as is clearly illustrated by the provision on their applicability in Article 1:101. Many scholars believe that the PECL have been increasingly used in arbitral proceedings since their publication. This is a major development for the PECL.⁶³ The extent to which the PECL may eventually form part of a universal *lex mercatoria* depends entirely on the public availability of arbitral awards. Based on the application of these principles and comparable situations, arbitrators could then form a shared consensus. Another important element of universality is acceptance by all legal systems. Most legal systems have incorporated the application of *lex mercatoria*. The PECL is indeed a remedy for the divergences in contract law within the EU. Even if it is debated whether the PECL forms part of national law, international law, or a third legal order, ultimately it is not the various legal systems that must be satisfied by the use of these principles, but rather international commercial legal advisers and the commercial community at large, who must ensure justice grounded in fairness and good faith.⁶⁴

Conclusion

The Principles of European Contract Law (PECL), crafted under the guidance of Ole Lando, stand as one of the most influential academic and institutional initiatives aimed at advancing the harmonization of private law across Europe. They offer a structured and contemporary set of contractual standards intended to narrow the divergences between the legal systems of EU Member States, while simultaneously maintaining respect for the individual characteristics of each national legal tradition. Through PECL, Lando and his colleagues established a common foundation built on fundamental values such as good faith, party autonomy, contractual balance, and legal certainty. The contribution of the PECL lies in their ability to offer structured and functional solutions to key contractual matters, including contract formation, interpretation, performance, non-performance, damages, force majeure, and hardship. By presenting these concepts in a harmonized and systematic manner, the principles enable legal practitioners, scholars, and courts to operate within a more unified contractual environment, thereby facilitating cross-border transactions and enhancing predictability in contractual relations. Beyond their practical value, the principles reflect a broader philosophical vision for European legal integration—one in which cooperation, coherence, and shared legal standards replace the fragmentation historically present among national legal systems. Drawing on insights from comparative law, judicial reasoning, and doctrinal scholarship, the PECL have significantly influenced subsequent European legal projects, including the Draft Common Frame of Reference (DCFR) and ongoing debates on the possible creation of a European Civil Code. Ultimately, the principles developed under Ole Lando demonstrate that harmonizing contract law across Europe is not only feasible but also vital for ensuring the effective functioning of the internal market and strengthening legal certainty within the European Union. The PECL

⁶² Commission on European Contract Law, *The Principles of European Contract Law*, Introduction.

⁶³ Celia Wasserstein Fassberg, *Lex Mercatoria: Hoist with its own Petard?*, 2004, fq. 102.

⁶⁴ Hector MacQueen, Reinhard Zimmermann, *European Contract Law: Scots and South African Perspectives*, Edinburgh University Press, 2006, fq. 36.

continue to serve as a foundational reference point in the evolution of European private law and stand as a lasting testament to successful cross-border academic and institutional cooperation.

References

- [1]. Adam Chalmers, *Refiguring the European Union's Historical Dimension*, 2006.
- [2]. Federiga Bindi, Irina Angelescu, *The Foreign Policy of the European Union*, Palgrave Macmillan, 2008
- [3]. Craig Parsons, *Showing Ideas as Causes: The Origins of the European Union*, International Organization, 2002.
- [4]. Adam Chalmers, *Refiguring the European Union's Historical Dimension*, 2006.
- [5]. Nerxhivane Dauti, *E drejta e detyrimeve*, Prishtinë, 1996.
- [6]. Jeffrey Lipshaw, *Contract as Meaning: An Introduction to Contract as Promise*, Suffolk University, 2011.
- [7]. Lawrence Solan, *Contract as Agreement*, Brooklyn Law School, 2007.
- [8]. Sidney DeLong, *What is a contract*, Seattle University School of Law, 2015.
- [9]. John Basedow, *The Court of Justice and Private Law: Vacillations, General Principles and the Architecture of the European Judiciary*, *European Review of Private Law*, 2010.
- [10]. Danny Busch, *Indirect Representation in European Contract Law*, Kluwer Law International, 2005.
- [11]. Ole Lando, Eric Clive, Andre Prum, Reinhard Zimmerman, *Principles of European Contract Law*, Kluwer Law International, 2003.
- [12]. Kristina Riedl, *The Work of the Lando-Commission from an Alternative Viewpoint*, *European Review of Private Law*, 2000.
- [13]. Lena Olsen, *The Choice of the Aggrieved Party - An Analysis of the Remedies in the Principles of the European Contract Law*, *European Review of Private Law*, 1999
- [14]. Christan Joerges, *The Europeanisation of Private Law as a Rationalisation Process and as a Contest of Legal Disciplines: An Analysis of the Regulation of Unfair Terms in Consumer Contracts*, 1995.
- [15]. Maria Perales Viscasillas, *The formation of Contracts and the Principles of European Contract Law*, *Pace Int'l Law Review*, 2001.