

# PRINCIPLES OF EUROPEAN LAW ON SERVICE CONTRACTS (PELSC)

## CHAPTER 1 (GENERAL PROVISIONS)

### Article 1:101: Scope of Application

- (1) (1) *This Chapter applies to contracts whereby one party, the service provider, is to supply a service to the other party, the client, in exchange for remuneration.*
- (2) (2) *This Chapter applies to contracts for construction, processing, storage, design, information, and treatment, unless provided otherwise in Chapters 2 to 7.*
- (3) (3) *When, under a contract, a party is bound to supply a service and to do something else, both this Chapter and, so far as relevant, Chapters 2 to 7 apply to the parts of the contract that involve services, with appropriate modifications.*
- (4) (4) *Without prejudice to paragraph (3), this Chapter does not apply to contracts for transport, insurance, guarantee, or for the supply of a financial product or a financial service.*
- (5) (5) *This Chapter does not apply to employment contracts.*
- (6) (6) *This Chapter, with the exception of Article 1:102, applies with appropriate modifications to contracts whereby the service provider is to supply a service to the client otherwise than for remuneration.*

### Article 1:102: Price

- (1) *Unless agreed otherwise, a service provider who has entered into the contract in the course of a profession or business is entitled to a price.*
- (2) *Where the contract does not fix the price or the method of determining it, the price is the market price generally charged at the time of the conclusion of the contract.*

### Article 1:103: Pre-contractual Duties to Warn

- (1) (1) *The service provider is under a pre-contractual duty to warn the client if the service provider becomes aware or if the service provider has reason to know that the service requested:*
  - (a) (a) *may not achieve the result stated or envisaged by the client, or*
  - (b) (b) *may damage other interests of the client, or*
  - (c) (c) *may become more expensive or take more time than reasonably expected by the client.*
- (2) (2) *The duty to warn in paragraph (1) does not apply if the client:*
  - (a) (a) *already knows of the risks referred to in subparagraph (1)(a), (b), or (c); or*
  - (b) (b) *has reason to know of the risks.*
- (3) (3) *If an event referred to in paragraph (1) occurs and the client was not duly warned:*
  - (a) (a) *the client need not accept a change of the service under Article 1:111 unless the service provider proves that the client, if the client would have been duly warned, would have entered into a contract taking into account the event; and*

- (b) (b) *the client may recover damages in accordance with Article 4:117(2) and (3) PECL (Damages).*
- (4) (4) *The client is under a pre-contractual duty to warn the service provider if the client becomes aware, or if the client has reason to know of unusual facts that are likely to cause the service to become more expensive or take more time than expected by the service provider.*
- (5) (5) *If the facts referred to under paragraph (4) occur and the service provider was not duly warned, the service provider is entitled to:*
  - (a) (a) *damages for the loss the service provider sustained as a consequence of the non-performance; and*
  - (b) (b) *an adjustment of the time of performance that is required for the service.*
- (6) (6) *For the purpose of paragraph (1), the service provider has ‘reason to know’ if the risks would be obvious to a comparable service provider in the same situation as this service provider from all the facts and circumstances known to the service provider, considering the information that the service provider must collect about the result stated or envisaged by the client and the circumstances in which the service is to be carried out.*
- (7) (7) *For the purpose of subparagraphs (2)(b) and (4), the client has ‘reason to know’ if the risks would be obvious to a comparable client in the same situation as this client from all the facts and circumstances known to the client without investigation. The client is not treated as knowing of a risk, or having reason to know of it, merely because the client was competent, or was advised by others who were competent, in the relevant field, unless such other person acted as the agent of the client, in which case Article 1:305 PECL (Imputed Knowledge and Intention) applies.*

#### **Article 1:104: Duty to Co-operate**

- (1) *The duty under Article 1:202 PECL (Duty to Co-operate) requires in particular:*
  - (a) (a) *the client to answer reasonable requests by the service provider for information in so far as this is reasonably necessary to enable the service provider to perform the contract;*
  - (b) (b) *the client to give directions regarding the performance of the service in so far as this is reasonably necessary to enable the service provider to perform the contract;*
  - (c) (c) *the client, in so far as the client is to obtain permits or licenses, to obtain these at such time as is reasonably necessary to enable the service provider to perform the contract;*
  - (d) (d) *the service provider to give the client a reasonable opportunity to determine whether the service provider is performing the obligations under the contract; and*
  - (e) (e) *the parties to co-ordinate their respective efforts in so far as this is reasonably necessary to perform the contract.*
- (2) (2) *If the client fails to perform the duties under subparagraph (1)(a) or (b), the service provider may either withhold performance under Article 9:201 PECL (Right to Withhold Performance), or base performance upon the expectations, preferences and priorities a person in the same situation as the client may reasonably be considered to have, given the information and directions that have been gathered, provided that the client is warned in accordance with Article 1:110.*

- (3) (3) *If the client fails to perform the duties under paragraph (1) causing the service to become more expensive or to take more time than agreed upon in the contract, the service provider is entitled to:*
- (a) *damages for the loss the service provider sustained as a consequence of the non-performance; and*
  - (b) *an adjustment of the time of performance that is required for the service.*

#### **Article 1:105: Circumstances in which the Service Is to Be Performed**

*The service provider must, in so far as this is reasonably necessary for the performance of the service, collect information about the circumstances in which the service has to be performed and ensure that performance of the service takes into account these circumstances.*

#### **Article 1:106: Duties of the Service Provider regarding Input**

- (1) *The service provider may subcontract the performance of the service in whole or in part without the client's consent, unless personal performance is of the essence of the contract.*
- (2) *Any subcontractor so engaged by the service provider must be of adequate competence.*
- (3) (3) *In so far as the service provider uses tools and materials for the performance of the service, they must be in conformity with the contract and the applicable statutory rules, and fit to achieve the particular purpose for which they are to be used.*
- (4) *In so far as the service provider must transfer ownership to the client of an immovable structure, a movable or incorporeal thing, or a right, such transfer must be free from any right or claim of a third party.*
- (5) *The service provider must adequately plan the performance of the service.*
- (6) *In so far as subcontractors are nominated by the client or tools and materials are provided by the client, the responsibility of the service provider is governed by Article 1:109 and Article 1:110.*

#### **Article 1:107: General Standard of Care for Services**

- (1) (1) *The service provider must perform the service:*
  - (a) *with the care and skill that a reasonable service provider would exercise under the circumstances; and*
  - (b) *in conformity with any statutory or other binding legal rules that are applicable to the service.*
- (2) (2) *If the service provider professes a higher standard of care and skill the provider must exercise that care and skill.*
- (3) (3) *If the service provider is, or purports to be, a member of a group of professional service providers for which standards exist that have been set by a relevant authority or by that group itself, the service provider must exercise the care and skill expressed in these standards.*
- (4) (4) *In determining the care and skill the client is entitled to expect, regard is to be had, among other things, to:*

- (a) *the nature, the magnitude, the frequency and the foreseeability of the risks involved in the performance of the service for the client;*
  - (b) *if damage has occurred, the costs of precautions that would have prevented this or similar damage from occurring;*
  - (c) *whether the service is rendered by a non-professional or gratuitously;*
  - (d) *the amount of the remuneration for the service; and*
  - (e) *the time reasonably available for the performance of the service.*
- (5) *The duties under this Article require in particular the service provider to take reasonable precautions in order to prevent the occurrence of personal injury or damage to immovable structures and movable or incorporeal things as a consequence of the performance of the service.*

### **Article 1:108: Result Stated or Envisaged by the Client**

*The supplier of a service must achieve the specific result stated or envisaged by the client at the time of the conclusion of the contract, provided that:*

- (a) *any result envisaged but not stated was one that a reasonable client in the same circumstances as the client might have envisaged; and*
- (b) *a reasonable client in the same circumstances would have no reason to believe that there was a substantial risk that the result would not be achieved by the service.*

### **Article 1:109: Directions of the Client**

- (1) *The service provider must follow all timely directions of the client regarding the performance of the service, provided that the directions:*
  - (a) *(a) are part of the contract itself or are specified in any document that the contract refers to; or*
  - (b) *(b) result from the realisation of choices left to the client by the contract in pursuance of Article 6:105 PECL (Unilateral Determination by a Party); or*
  - (c) *(c) result from the realisation of choices initially left open by the parties.*
- (2) *If non-performance of one or more of the duties of the service provider under Articles 1:107 or 1:108 is the consequence of following a direction falling under paragraph (1), the service provider is not liable under those Articles, provided that the client was duly warned under Article 1:110.*
- (3) *If the service provider perceives a direction falling under paragraph (1) to be a variation of the contract under Article 1:111, the service provider must warn the client accordingly. Unless the client then revokes the direction without undue delay, the service provider must follow the direction and the direction is deemed to be a variation of the contract.*

### **Article 1:110: Contractual Duty of the Service Provider to Warn**

- (1) (1) *The service provider is under a duty to warn the client if the service provider becomes aware or if the service provider has reason to know that the service requested:*
  - (a) *(a) may not achieve the result stated or envisaged by the client at the time of conclusion of the contract, or*
  - (b) *(b) may damage other interests of the client, or*

- (c) (c) *may become more expensive or take more time than agreed upon in the contract,*  
*either as a result of following information or directions given by the client or collected in accordance with Article 1:105, or as a result of the occurrence of any other risk.*
- (2) (2) *The service provider must take reasonable measures to ensure that the client understands the content of the warning.*
- (3) (3) *The duty to warn in paragraph (1) does not apply if the client:*  
 (a) (a) *already knows of the risks referred to in paragraph (1)(a), (b), or (c); or*  
 (b) (b) *has reason to know of the risks.*
- (4) (4) *If an event referred to in paragraph (1) occurs and the client was not duly warned, the client need not accept a change of the service under Article 1:111.*
- (5) (5) *For the purpose of paragraph (1), the service provider has ‘reason to know’ if the risks would be obvious to a comparable service provider in the same situation as this service provider from all the facts and circumstances known to the service provider without investigation.*
- (6) (6) *For the purpose of paragraph (3)(b), the client has ‘reason to know’ if the risks would be obvious to a comparable client in the same situation as this client from all the facts and circumstances known to the client. The client is not treated as knowing of a risk, or having reason to know of it, merely because the client was competent, or was advised by others who were competent, in the relevant field, unless such other person acted as the agent of the client, in which case Article 1:305 PECL (Imputed Knowledge and Intention) applies.*

#### **Article 1:111: Variation of the Service Contract**

- (1) *Without prejudice to the client’s right to cancel the contract under Article 1:115, a party must accept a change of the service that is to be provided under the contract or when read with any direction under Article 1:109, if such a change is reasonable, taking into account:*  
 (a) *the result of the service that is to be achieved;*  
 (b) *the interests of the client;*  
 (c) *the interests of the service provider; and*  
 (d) *the circumstances at the time of the change of the service.*
- (2) *A change of the service is deemed to be reasonable if that change:*  
 (a) *is necessary in order to enable the service provider to act in accordance with Article 1:107 or, as the case may be, Article 1:108; or*  
 (b) *is the consequence of a direction that is given in accordance with Article 1:109(1) and the client has not revoked the direction without undue delay after having been warned in accordance with Article 1:109(3); or*  
 (c) *is a reasonable response to a warning from the service provider under Article 1:110.*
- (3) *For the purpose of paragraphs (1) and (2) a change of service required by a change of circumstances within the meaning of Article 6:111 PECL (Change of Circumstances) is regarded as a reasonable change of service.*
- (4) *The price that is due as a result of the change of the service has to be reasonable and is to be determined using the same methods of calculation as were used to establish the original price for the service.*
- (5) *In so far as the service is reduced, the loss of profit, the expenses saved and any possibility that the service provider may be able to use the released capacity for other*

*purposes are to be taken into account in the calculation of the price that is due as a result of the change of the service.*

- (6) *A change of the service may lead to an adjustment of the time of performance that is proportionate to the extra work required in relation to the work originally required for the performance of the service and the time span determined for performance of the service.*

#### **Article 1:112: Remedies for Breach of Duties of the Service Provider**

- (1) *Damages recoverable by the client include the costs the client has incurred in order to establish the breach of any duty of the service provider, and or to prevent the result stated or envisaged by the client from not being achieved, provided that the client acted reasonably in incurring these costs.*
- (2) *If the service provider has breached a duty under the contract, and if it is not yet clear whether the result stated or envisaged by the client will be achieved, the client may withhold performance of any reciprocal obligations under Article 9:201 PECL (Right to Withhold Performance).*
- (3) *The client is entitled to terminate the contract in accordance with Article 9:304 PECL (Anticipatory Non-Performance) only if it is clear that the breach of a duty of the service provider under the contract will result in a non-performance of an obligation fundamental to the contract in accordance with Article 8:103 PECL (Fundamental Non-Performance).*

#### **Article 1:113: Failure to Notify for Non-Conformity**

- (1) *The client is under a duty to notify the service provider if the client becomes aware, or if a comparable client in the same situation as this client from all the facts and circumstances known to the client without investigation has reason to know that the service provider will either fail to achieve the result stated or envisaged by the client or has failed to achieve that result.*
- (2) *If the client fails to notify under paragraph (1) that the service provider will fail to achieve the result stated or envisaged by the client, causing the service to become more expensive or to take more time than agreed upon in the contract, the service provider is entitled to:*
  - (a) *damages for the loss the service provider sustained as a consequence of the non-performance; and*
  - (b) *an adjustment of the time of performance that is required for the service.*

#### **Article 1:114: Limitation of Liability**

- (1) *The service provider may neither limit nor exclude liability for death or personal injury caused by the performance of the service.*
- (2) *The service provider may limit or exclude liability for damage, other than death or personal injury, caused by the performance of the service if, at the moment of conclusion of the contract, a term to that extent can be considered fair and reasonable in the circumstances of the case, unless provided otherwise in Chapters 2 to 7.*

## **Article 1:115: Cancellation of the Service Contract**

- (1) *The client may cancel the contract at any time.*
- (2) *If the contract is cancelled under this Article the service provider is entitled to damages to put the service provider as nearly as possible into the position in which the service provider would have been if the contract had been duly performed. Such damages cover the loss which the service provider has suffered and the gain of which the service provider has been deprived.*
- (3) *In determining the position into which the service provider is to be put under paragraph (2), regard is to be had, among other things, to the following rules:*
  - (a) *(a) if payment of a price was agreed, the service provider is entitled to that price minus the expenses that should reasonably have been saved and the benefit that could reasonably have been earned using the capacity that has become available;*
  - (b) *(b) if payment of a fee based on a particular rate was agreed, the service provider is entitled to payment of the fee on the basis of that rate, to the extent that the service has already been performed; and*
  - (c) *(c) if payment of a fee based on a 'no cure no pay' basis was agreed, the service provider is entitled to payment of both the reasonable costs incurred, to the extent that the service has already been performed, and to the gain of which the service provider has been deprived as a result of the cancellation.*

## **CHAPTER 2 (CONSTRUCTION)**

### **Article 2:101: Scope of Application**

- (1) *This Chapter applies to contracts whereby one party, the constructor, is to construct a building or other immovable structure, or to materially alter an existing building or other immovable structure, following a design provided by the client.*
- (2) *This Chapter applies with appropriate modifications to contracts whereby the constructor is to construct a movable or incorporeal thing, following a design provided by the client.*
- (3) *This Chapter applies with appropriate modifications to contracts whereby the constructor is to construct a building or other immovable structure, to perform construction work on an existing building or other immovable structure, or to construct a movable or incorporeal thing, following a design provided by the constructor.*
- (4) *When, under a contract, a party is bound to construct and to supply another service, this Chapter applies to the parts of the contract that involve construction, with appropriate modifications.*

### **Article 2:102: Duty to Co-operate of the Client**

*The duties under Article 1:202 PECL (Duty to Co-operate) and Article 1:104 (Duty to Co-operate) require in particular the client to:*

- (a) *(a) provide access to the site where the construction has to take place in so far as is reasonably necessary to enable the constructor to perform the contract; and*

- (b) (b) *in so far as they must be provided by the client, provide the components, materials and tools at such time as is reasonably necessary to enable the constructor to perform the contract.*

### **Article 2:103: Duty of Care of the Constructor**

*The duties under Article 1:107 (General Standard of Care for Services) require in particular the constructor to take reasonable precautions in order to prevent any damage to the structure.*

### **Article 2:104: Conformity**

- (1) (1) *The constructor must deliver a structure that is of the quantity, quality and description required by the contract.*
- (2) (2) *Except where the parties have agreed otherwise, the structure does not conform to the contract unless it is:*
- (a) (a) *fit for any particular purpose expressly or impliedly made known to the constructor at the time of the conclusion of the contract or at the time of any variation in accordance with Article 1:111 (Variation of the Service Contract) pertaining to the issue in question; and*
- (b) (b) *fit for the particular purpose or purposes for which a structure of the same description would ordinarily be used.*
- (3) *The client is not entitled to invoke a remedy for non-conformity if a direction provided by the client pursuant to Article 1:109 (Directions of the Client) is the cause of the non-conformity and the constructor did not breach the duty to warn pursuant to Article 1:110 (Contractual Duty of the Service Provider to Warn).*

### **Article 2:105: Inspection, Supervision and Acceptance**

- (1) *In accordance with Article 1:104(1)(d) (Duty to Co-operate), the client may inspect or supervise the input in the construction process, the process of construction and the resulting structure in a reasonable manner and at any reasonable time, but is not bound to do so.*
- (2) *If the parties agree that the constructor has to present certain elements of the input, process or the resulting structure to the client for acceptance, the constructor may not proceed with the construction before having been allowed by the client to do so.*
- (3) *Absence of, or inadequate, inspection, supervision or acceptance does not relieve the constructor wholly or partially from liability. This rule also applies when the client is under a contractual obligation to inspect, supervise or accept the structure or the construction of it.*

### **Article 2:106: Handing-over of the Structure**

- (1) *If the constructor regards the structure, or any part of it that is fit for independent use, as sufficiently completed and wishes to transfer control over it to the client, the client must accept such control within a reasonable time after being notified. The client may refuse to accept the control when the structure, or the relevant part of it, does not conform to the contract and such non-conformity makes it unfit for use.*

- (2) *Acceptance by the client of the control over the structure does not relieve the constructor wholly or partially from liability. This rule also applies when the client is under a contractual obligation to inspect, supervise or accept the structure or the construction of it.*

### **Article 2:107: Payment of the Price**

*The price or a proportionate part of it is due and payable as of the time the constructor transfers the control of the structure or a part of it to the client in accordance with Article 2:106.*

### **Article 2:108: Risks**

- (1) (1) *This Article applies if the structure is destroyed or damaged due to an event for which the constructor cannot be held accountable and which the constructor could not have avoided or overcome.*
- (2) *When the situation mentioned under paragraph 1 has been caused by an event occurring before the structure or control of it has been, or should have been, transferred to the client in accordance with Article 2:106 and it is still possible to perform:*
- (a) *the constructor still has to perform or, as the case may be, perform again;*
  - (b) *the client is only obliged to pay for the constructor's performance under (a);*
  - (c) *the time of performance is extended in accordance with Article 1:111(6) (Variation of the Service Contract);*
  - (d) *the rules of Article 8:108 PECL (Excuse Due to an Impediment) may apply to the constructor's original performance; and*
  - (e) *the constructor is not obliged to compensate the client for losses to input provided by the client.*
- (3) *When the situation mentioned under paragraph 1 has been caused by an event occurring before the structure or control of it has been, or should have been, transferred to the client in accordance with Article 2:106, and it is no longer possible to perform:*
- (a) *the client does not have to pay for the service rendered;*
  - (b) *the rules of Article 8:108 PECL (Excuse Due to an Impediment) may apply to the constructor's performance; and*
  - (c) *the constructor is not obliged to compensate the client for losses to input provided by the client, but is obliged to return the structure or what remains of it to the client.*
- (4) *When the situation mentioned under paragraph 1 has been caused by an event occurring after the structure or the control of it has been, or should have been, transferred to the client in accordance with Article 2:106:*
- (a) *the constructor does not have to perform again; and*
  - (b) *the client remains obliged to pay the price.*

### **Article 2:109: Specific Performance and Cure**

- (1) *If the constructor does not deliver a structure in accordance with Article 2:104, the client is entitled to have the non-conformity cured by specific performance under Article 9:102 PECL (Non-Monetary Obligations), provided that:*
  - (a) *cure is not unlawful or impossible;*
  - (b) *cure will not cause the constructor unreasonable effort or expense; and*
  - (c) *the performance does not consist in the provision of services or work of a personal character or depends on a personal relationship.*
- (2) *Article 9:102(d) PECL (Non-Monetary Obligations) does not apply to any case to which paragraph (1) applies.*
- (3) *If the constructor fails to deliver a structure in accordance with Article 2:104, the constructor may cure the non-conformity, provided that this can be done:*
  - (a) *before the end of any additional period of reasonable length fixed by a notice by the client under Article 8:106(3) PECL (Notice Fixing Additional Period for Performance); and*
  - (b) *before the delay caused by the cure constitutes a fundamental non-performance under Article 8:103(b) or (c) PECL (Fundamental Non-Performance).*
- (4) *Article 8:103(a) PECL (Fundamental Non-Performance) does not apply to any case to which paragraph (3) applies, unless it is expressly agreed that strict compliance with the time of delivery is essential to the contract.*
- (5) *The constructor is free to determine how to meet the obligation of specific performance. In particular, the constructor is free to decide whether to repair the structure, replace it by a new structure or have the structure repaired at the constructor's expense by a third party.*
- (6) *Until the constructor has cured the non-conformity, the client may withhold performance under Article 9:201 PECL (Right to Withhold Performance).*
- (7) *The client may claim damages under Chapter 9, Section 5 PECL (Damages and Interest) for any loss not remedied by the constructor's cure.*

### **Article 2:110: Resort to Other Remedies**

- (1) *The client may resort to other remedies as provided in this Article, if*
  - (a) *the constructor refuses to cure because the client is not entitled to ask for cure under Article 2:109(1); or*
  - (b) *the constructor is unable or fails to cure according to Article 2:109(3).*
- (2) *The client may terminate the contract in accordance with Chapter 9, Section 3 PECL (Termination of the Contract) if the non-conformity is a fundamental non-performance according to Article 8:103(b) or (c) PECL (Fundamental Non-Performance).*
- (3) *The client may reduce the price in accordance with Article 9:401 PECL (Right to Reduce Price).*
- (4) *The client may claim damages under Chapter 9, Section 5 PECL (Damages and Interest), including the costs of repair or replacement.*

### **Article 2:111: Prescription of Remedies based on Non-Conformity**

- (1) *In accordance with Article 14:201 PECL (General Period), the prescription period for a remedy for non-conformity of the structure is three years.*

- (2)(2) *In accordance with Article 14:203(1) PECL (Commencement), the period of prescription runs from the time that the control over the structure, or part of it, is handed over to the client in accordance with Article 2:106.*
- (3)(3) *In accordance with Article 14:301(1) PECL (Suspension in Case of Ignorance), the running of the period of prescription is suspended as long as the creditor does not know of, and could not reasonably know of, the facts giving rise to the claim including, in the case of a right to damages, the type of damage. This does not apply to remedies other than damages.*
- (4)(4) *In accordance with Article 14:307 PECL (Maximum Length of Period), the period of prescription cannot be extended, by suspension of its running or postponement of its expiry, to more than ten years or, in the case of claims for personal injuries, to more than thirty years. This does not apply to suspension under Article 14:302 (Suspension in Case of Judicial and Other Proceedings).*

## **CHAPTER 3 (PROCESSING)**

### **Article 3:101: Scope of Application**

- (1) *This Chapter applies to contracts whereby one party, the processor, is to perform a service on an existing movable or incorporeal thing or to an immovable structure for another party, the client.*
- (2) *This Chapter applies in particular to contracts whereby the processor is to repair, maintain or clean an existing movable or incorporeal thing or immovable structure.*
- (3) *When, under a contract, a party is bound to process and to supply another service, this Chapter applies to the parts of the contract that involve processing, with appropriate modifications.*

### **Article 3:102: Duty to Co-operate of the Client**

*The duties under Article 1:202 PECL (Duty to Co-operate) and Article 1:104 (Duty to Co-operate) require in particular the client to:*

- (a) *hand over the thing or to give the control of it to the processor, or to give access to the site where the service is to be performed in so far as is reasonably necessary to enable the processor to perform the contract; and*
- (b) *in so far as they must be provided by the client, provide the components, materials and tools at such time as is reasonably necessary to enable the processor to perform the contract.*

### **Article 303: Circumstances in which the Service Is to Be Performed**

*The duties under Article 1:105 (Circumstances in which the Service Is to Be Performed) require in particular the processor to collect information about the characteristics of the thing on which the service is to be performed in so far as is reasonably necessary to perform the service.*

### **Article 3:104: Duty of Care of the Processor**

*The duties under Article 1:107 (General Standard of Care for Services) require in particular the processor to take reasonable precautions in order to prevent any damage to the thing or other loss.*

### **Article 3:105: Conformity**

*The processor must achieve the specific result stated or envisaged by the client at the time of the conclusion of the contract, provided that:*

- (a) any result envisaged but not stated was one that a reasonable client in the same circumstances as the client might have envisaged; and*
- (b) a reasonable client in the same circumstances would have no reason to believe that there was a substantial risk that the result would not be achieved by the service.*

### **Article 3:106: Inspection and Supervision**

- (1) In accordance with Article 1:104(1)(d) (Duty to Co-operate), if the service is to be performed at a site provided by the client, the client may inspect or supervise the input, the performance of the service and the thing on which the service is performed in a reasonable manner and at any reasonable time, but is not bound to do so.*
- (2) Absence of, or inadequate inspection or supervision does not relieve the processor wholly or partially from liability. This rule also applies when the client is under a contractual obligation to accept, inspect or supervise the processing of the thing.*

### **Article 3:107: Return of the Thing**

- (1) If the processor regards the service as sufficiently completed and wishes to return the thing or the control of it to the client, the client must accept such return or control within a reasonable time after being notified. The client may refuse to accept the return or control when the thing is not fit for use in accordance with the particular purpose for which the client had the service performed, provided that such purpose was made known to the processor or that the processor otherwise has reason to know of it.*
- (2) The processor must return the thing or the control of it within a reasonable time after being so requested by the client.*
- (3) Acceptance by the client of the return of the structure or the control of it does not relieve the processor wholly or partially from liability for non-performance.*
- (4) If, given the nature of the thing and the contract, the processor has become the owner of the thing as a consequence of the performance of the contract, the processor must transfer ownership of the thing when the thing is returned.*

### **Article 3:108: Payment of the Price**

*The price is due and payable as of the moment the processor transfers the thing or the control of it to the client in accordance with Article 3:107 or the client, without being entitled to do so, refuses to accept the return of the thing.*

### **Article 3:109: Risks**

- (1) This Article applies if the thing is destroyed or damaged due to an event for which the processor cannot be held accountable and which the processor could not have avoided or overcome.*

(2) *If, prior to the event mentioned in paragraph (1), the processor had indicated that the processor regarded the service as sufficiently completed and that the processor wished to return the thing or the control of it to the client:*

- (a) the processor is not required to perform again; and*
- (b) the client must pay the price.*

*The price is due as of the occurrence of the event and the moment that the processor returns the remains of the thing, if any, or the client indicates that the client does not want the remains. In the latter case, the processor may dispose of the remains at the client's costs.*

*This provision does not apply if the client was entitled to refuse the return of the thing under Article 3:107(1).*

(3) *If the parties had agreed that the processor would be paid for each period that has elapsed, the client is obliged to pay the price for each period that has elapsed before the event mentioned in paragraph (1) occurred.*

(4) *If, after the event mentioned in paragraph (1) occurred, performance of the contract is still possible for the processor:*

- (a) the processor still has to perform, as the case may be, again;*
- (b) the client is only obliged to pay for the processor's performance under (a); the processor's entitlement to a price under paragraph (3) is not affected by this provision;*
- (c) the client is obliged to compensate the processor for the costs the processor has to incur in order to acquire materials replacing the materials supplied by the client, unless the client upon being so requested by the processor supplies these materials himself; and*
- (d) if need be, the time for performance is extended in accordance with Article 1:111(6) (Variation of the Service Contract).*

*The client is, however, entitled to cancel the contract under Article 1:115 (Cancellation of the Service Contract); the consequences of such cancellation are governed by that provision.*

(5) *If, in the situation mentioned in paragraph (1), performance of the contract is no longer possible for the processor:*

- (a) the client does not have to pay for the service rendered; the processor's entitlement to a price under paragraph (3) is not affected by this provision; and*
- (b) the processor is obliged to return to the client the thing and the materials supplied by the client or what remains of them, unless the client indicates that the client does not want the remains. In the latter case, the processor may dispose of the remains at the client's costs.*

### **Article 3:110: Specific Performance and Cure**

(1) *If the processor has not fulfilled the duties under Article 3:105, the client may claim specific performance under Article 9:102 PECL (Non-Monetary Obligations). Article 9:102(2)(d) PECL (Non-Monetary Obligations) does not apply.*

(2) *The processor may cure the non-conformity, provided that this can be done:*

- (a) before the end of any additional period of reasonable length fixed by a notice by the client under Article 8:106(3) PECL (Notice Fixing Additional Period for Performance); and*
- (b) before the delay caused by the cure would constitute a fundamental non-performance under Article 8:103(b) or (c) PECL (Fundamental Non-Performance).*

- (3) *Article 8:103(a) PECL (Fundamental Non-Performance) does not apply to any case covered by paragraph (2), unless it is expressly agreed that strict compliance with the time for delivery is of the essence of the contract.*
- (4) *The processor is entitled to choose the method of specific performance or cure.*
- (5) *Until the processor has cured the non-conformity, the client may withhold performance under Article 9:201 PECL (Right to Withhold Performance).*
- (6) *The client may claim damages under Chapter 9, Section 5 PECL (Damages and Interest) for any loss not remedied by the processor's cure.*

### **Article 3:111: Resort to Other Remedies**

- (1) *The client may resort to other remedies as provided in this Article, if:  
(a) the client is not entitled to specific performance under Article 9:102 PECL (Non-Monetary Obligations) and Article 3:110(1); and  
(b) the processor is unable or fails to cure according to Article 3:110(2).*
- (2) *The client may terminate the contract in accordance with Chapter 9, Section 3 PECL (Termination of the Contract) if the non-performance is a fundamental non-performance according to Article 8:103(b) or (c) PECL (Fundamental Non-Performance).*
- (3) *The client may reduce the price in accordance with Article 9:401 PECL (Right to Reduce Price).*
- (4) *The client may claim damages under Chapter 9, Section 5 PECL (Damages and Interest), including the costs of repair or replacement.*

### **Article 3:112: Limitation of Liability**

*In contracts between two parties that both act in the course of their business, a term restricting the processor's liability for non-performance to the value of the thing, had the service been performed correctly, is presumed to be fair and reasonable within the meaning of Article 1:114(2) (Limitation of Liability), unless the damage was caused intentionally or by way of grossly negligent behaviour on the part of the processor or any person for whose actions the processor is responsible.*

## **CHAPTER 4 (STORAGE)**

### **Article 4:101: Scope of Application**

- (1) *This Chapter applies to contracts whereby one party, the storer, is to store a movable or incorporeal thing for another party, the client.*
- (2) *When, under a contract, a party is bound to store and to supply another service, this Chapter applies with appropriate modifications to the parts of the contract that involve storage.*
- (3) *This Chapter does not apply to the storage of:  
(a) immovable structures;  
(b) movable or incorporeal things during transportation; and  
(c) money, securities or rights.*

#### **Article 4:102: Pre-contractual Duty to Warn of the Client**

*The duty under Article 1:103(4) (Pre-contractual Duties to Warn) requires in particular the client to warn the storer of any unusual danger connected with the thing or the storage of it that the client knows of.*

#### **Article 4:103: Circumstances in which the Service Is to Be Performed**

*The duties under Article 1:105 (Circumstances in which the Service Is to Be Performed) require in particular the storer to collect information about the characteristics of the thing to be stored insofar as is necessary for the performance of the service.*

#### **Article 4:104: Duties of the Storer Regarding Input**

- (1) The duties under Article 1:106 (Duties of the Service Provider regarding Input) require in particular the storer, insofar as the storer provides the storage place, to provide a place fit for storing the thing in such a manner that the thing can be returned in the condition the client may expect.*
- (2) The storer may not subcontract the performance of the service without the client's consent.*

#### **Article 4:105: Duty of Care of the Storer**

- (1) The duties under Article 1:107 (General Standard of Care for Services) require in particular the storer to take reasonable precautions in order to prevent unnecessary deterioration, decay or depreciation of the thing stored.*
- (2) The storer may use the thing handed over for storage only if the client has agreed to such use.*

#### **Article 4:106: Return of the Thing**

- (1) The storer must return the thing within a reasonable time after being so requested by the client.*
- (2) The client must accept the return of the thing at the agreed time or, if the storer is entitled to terminate the contract for non-performance by the client, within a reasonable time after notification of the termination of the contract.*
- (3) Acceptance by the client of the return of the thing does not relieve the storer wholly or partially from liability for non-performance.*
- (4) If the client fails to accept the return of the thing at the time provided under paragraph (2), the storer has the right to sell the thing in accordance with Article 7:110(2)(b) PECL (Property Not Accepted), provided that the storer has given the client reasonable warning of the storer's intention to do so.*
- (5) If, during storage, the thing bears fruit, the storer must hand this fruit over when the thing is returned to the client.*
- (6) If, given the nature of the thing or the contract, the storer has become the owner of the thing as a consequence of the performance of the contract, the storer must return a thing of the same kind and the same quality and quantity and transfer ownership of that thing. Paragraph (1) applies accordingly.*
- (7) This Article applies accordingly if a third party that holds sufficient title to receiving the thing requests its return.*

#### **Article 4:107: Conformity**

- (1) *The storer must store the thing in accordance with the contract.*
- (2) *The storage of the thing does not conform with the contract unless the thing is returned in the same condition as it was in when handed over to the storer.*
- (3) *If, given the nature of the thing or the contract, it cannot reasonably be expected that the thing is returned in the same condition, the storage of the thing does not conform with the contract if the thing is not returned in such condition as the client could reasonably expect it to be returned.*
- (4) *If, given the nature of the thing or the contract, it cannot reasonably be expected that the same thing is returned, the storage of the thing does not conform with the contract if the thing that is returned is not in the same condition as the thing that was handed over for storage, or if it is not of the same kind, quality and quantity, or if ownership of the thing is not transferred in accordance with Article 4:106(6).*

#### **Article 4:108: Payment of the Price**

- (1) *The price is due as of the moment the storer returns the thing to the client in accordance with Article 4:106 or the client, without being entitled to do so, refuses to accept the return of the thing.*
- (2) *The storer may withhold the thing until the client pays the price. Article 9:201 PECL (Right to Withhold Performance) applies accordingly.*

#### **Article 4:109: Duty to Give Account**

*After ending of the storage, the storer must inform the client of:*

- (a) *any damage that has occurred to the thing during storage; and*
- (b) *the necessary precautions that the client must take before using or transporting the thing, unless the client has reason to be aware of these precautions.*

#### **Article 4:110: Risks**

- (1) *This Article applies if the thing is destroyed or damaged due to an event for which the storer cannot be held accountable and which the storer could not have avoided or overcome.*
- (2) *If, prior to the event mentioned in paragraph (1), the storer had notified the client that the client was required to accept the return of the thing, the client must pay the price. The price is due as of the occurrence of the event and the moment that the storer returns the remains of the thing, if any, or the client indicates that the client does not want the remains of the thing. In the latter case, the storer may dispose of the remains of the thing at the client's expense.*
- (3) *If the parties had agreed that the storer would be paid for each period of time that has elapsed, the client must pay the price for each period that has elapsed before the event mentioned in paragraph (1) occurred.*
- (4) *If, after the event mentioned in paragraph (1) occurred, further performance of the contract is still possible for the storer, the storer is required to continue performance of the contract. The client is, however, entitled to cancel the contract under Article 1:115*

- (Cancellation of the Service Contract); the consequences of such cancellation are governed by that provision.*
- (5) *If, in the situation mentioned in paragraph (1), performance of the contract is no longer possible for the storer:*
- (a) *the client does not have to pay for the service rendered; the storer's entitlement to a price under paragraph (3) is not affected by this provision; and*
  - (b) *the storer must return to the client the remains of the thing unless the client indicates that the client does not want the remains of the thing. In the latter case, the storer may dispose of the remains of the thing at the client's costs.*

#### **Article 4:111: Remedies for Non-Conformity**

*In the case of non-conformity under Article 4:107, the client may resort to any of the remedies under Chapter 9 PECL (Particular Remedies for Non-Performance).*

#### **Article 4:112: Limitation of Liability**

*In contracts between two parties that both act in the course of their business, a term restricting the storer's liability for non-performance to the value of the thing is presumed to be fair and reasonable within the meaning of Article 1:114(2) (Limitation of Liability), unless the damage was caused intentionally or by way of grossly negligent behaviour on the part of the storer or any person for whose actions the storer is responsible.*

#### **Article 4:113: Liability of the Hotel-Keeper**

- (1) *This Article does not apply if and to the extent that a separate storage contract is concluded between the hotel-keeper and any guest for any thing brought to the hotel. A separate storage contract is deemed to have been concluded if a thing is handed over for the storage to the hotel-keeper. Article 4:101(3) does not apply.*
- (2) *A hotel-keeper is liable as a storer for any damage to or destruction or loss of a thing brought to the hotel by any guest who stays at the hotel and has sleeping accommodation there.*
- (3) *Any thing:*
  - (a) *which is at the hotel during the time when the guest has the use of sleeping accommodation there; or*
  - (b) *of which the hotel-keeper or a person for whose actions the hotel-keeper is responsible takes charge outside the hotel during the period for which the guest has the use of the sleeping accommodation at the hotel; or*
  - (c) *of which the hotel-keeper or a person for whose actions the hotel-keeper is responsible takes charge whether at the hotel or outside it during a reasonable period preceding or following the time when the guest has the use of sleeping accommodation at the hotel;**shall be deemed to be a thing brought to the hotel.*
- (4) *The hotel-keeper is not liable insofar as the damage, destruction or loss is due to:*
  - (a) *a guest or any person accompanying, employed by or visiting the guest; or*
  - (b) *an impediment beyond the hotel-keeper's control under Article 8:108 PECL (Excuse Due to an Impediment); or*
  - (c) *the nature of the thing.*

- (5) *A term excluding or limiting the liability of the hotel-keeper is deemed not to be fair and reasonable under Article 1:114(2) (Limitation of Liability) if it excludes or limits liability in a case where the hotel-keeper, or a person for whose actions the hotel-keeper is responsible, causes the damage, destruction or loss intentionally or by way of grossly negligent conduct.*
- (6) *Except where the damage, destruction or loss is caused intentionally or by way of grossly negligent conduct of the hotel-keeper or a person for whose actions the hotel-keeper is responsible, the guest must inform the hotel-keeper of the damage, destruction or loss without undue delay. If the guest fails to inform the hotel-keeper without undue delay, the hotel-keeper will not be held liable.*
- (7) *The hotel-keeper has the right to withhold any thing referred to in paragraph (2) until the guest has met any claim the hotel-keeper has against the guest with respect to accommodation, food, drink and solicited services performed for the guest in the hotel-keeper's professional capacity.*

## **CHAPTER 5 (DESIGN)**

### **Article 5:101: Scope of Application**

- (1) *This Chapter applies to contracts whereby one party, the designer, is to design for another party, the client, an immovable structure that is to be constructed by or on behalf of the client.*
- (2) *This Chapter applies to contracts whereby the designer is to design a movable or incorporeal thing or service that is to be constructed or performed by or on behalf of the client.*
- (3) *When, under a contract, a party is bound to design and to supply another service, this Chapter applies to the parts of the contract that involve design, with appropriate modifications.*
- (4) *If the other service mentioned in paragraph (3) consists of carrying out the design, the rules governing the supply of the subsequent service prevail. However, Articles 5:105 and 5:108 do not apply.*

### **Article 5:102: Pre-contractual Duty of the Designer to Warn**

*The duties under Article 1:103 (Pre-contractual Duties to Warn) require in particular the designer to warn the client in so far as the designer lacks special expertise in specific problems, which require the involvement of specialists.*

### **Article 5:103: Duty to Co-operate of the Client**

*In so far as the designer has warned the client under Article 1:103 (Pre-contractual Duties to Warn) and Article 5:102 that further expertise is required to enable the designer to perform the contract, the duties under Article 1:202 PECL (Duty to Co-operate) and Article 1:104 (Duty to Co-operate) require in particular the client to employ such expertise.*

### **Article 5:104: Duty of Care of the Designer**

*The duties under Article 1:107 (General Standard of Care for Services) require in particular the designer to:*

- (a) (a) attune the design work to the work of other designers who contracted with the client, in order to enable an efficient performance of all services involved;*
- (b) (b) integrate the work of other designers, which is necessary to ensure that the design will be in accordance with Article 5:105;*
- (c) (c) include any information for the interpretation of the design that is necessary for a user of the design of average competence or of a specific user made known to the designer at the conclusion of the contract to give effect to the design;*
- (d) (d) enable the user of the design to give effect to the design without violation of public law rules or interference based on justified third-party rights of which the designer knows or could reasonably be expected to know; and*
- (e) (e) provide a design that allows economic and technically efficient realisation.*

### **Article 5:105: Conformity**

- (1) (1) Except where the parties have agreed otherwise, the design does not conform to the contract unless it enables the user of the design to achieve a specific result by carrying out the design following the required standard of care with regard to the carrying out of the design.*
- (2) (2) The client is not entitled to invoke a remedy for non-conformity if a direction provided by the client pursuant to Article 1:109 (Directions of the Client) is the cause of the non-conformity and the designer did not breach the duty to warn pursuant to Article 1:110 (Contractual Duty of the Service Provider to Warn).*

### **Article 5:106: Handing over of the Design**

*In so far as the designer regards the design, or a part of it that is fit for carrying out independently from the completion of the rest of the design, as sufficiently completed and wishes to transfer the design to the client, the client must accept it within a reasonable time after being notified. The client may refuse to accept the design when it, or the relevant part of it, does not conform to the contract and such non-conformity amounts to a fundamental non-performance within the meaning of Article 8:103 PECL (Fundamental Non-Performance).*

### **Article 5:107: Duty of the Designer to Keep Records**

*After performance of both parties' contractual obligations, the client may ask the designer to hand over all relevant documents at least in copy. The designer must store these documents for a reasonable time. Before the destruction of the documents, the designer must reoffer them to the client.*

### **Article 5:108: Limitation of Liability**

*In contracts between two parties that both act in the course of their business, a term restricting the designer's liability for non-performance to the value of the structure, thing or service that is to be constructed or performed by or on behalf of the client following the design, is presumed to be fair and reasonable within the meaning of Article 1:114(2) (Limitation of Liability) unless the damage was caused intentionally or by way of grossly negligent behaviour on the part of the designer or any person for whose actions the designer is responsible.*

## **CHAPTER 6 (INFORMATION)**

### **Article 6:101: Scope of Application**

- (1) *This Chapter applies to contracts whereby one party, the information provider, is to supply information, such as factual information, evaluative information or a recommendation to another party, the client.*
- (2) *When, under a contract, a party is bound to supply information and to supply another service, this Chapter applies to the parts of the contract that involve the supply of information, with appropriate modifications.*

### **Article 6:102: Circumstances in which the Service Is to Be Performed**

- (1) *The duties under Article 1:105 (Circumstances in which the Service Is to Be Performed) require in particular the information provider, in so far as this is reasonably necessary for the performance of the service, to collect information about:*
  - (a) *(a) the particular purpose for which the client requires the information;*
  - (b) *(b) the client's preferences and priorities in relation to the information;*
  - (c) *(c) the decision the client can be expected to make on the basis of the information; and*
  - (d) *(d) the personal situation of the client.*
- (2) *(2) In case the information is intended to be passed on to a group of persons, the information to be collected must relate to the purposes, preferences, priorities and personal situations that can reasonably be expected from individuals within such a group.*
- (3) *(3) In so far as the information provider must obtain information from the client, the information provider must explain what the client is required to provide.*

### **Article 6:103: Duties of the Information Provider regarding Input**

*Unless agreed otherwise, the information provider is required in particular to collect and use the expert knowledge to which the information provider has or should have access as a professional information provider, in so far as reasonably necessary for the performance of the service.*

### **Article 6:104: Duty of Care of the Information Provider**

- (1) *The duties under Article 1:107 (General Standard of Care for Services) require in particular the information provider to:*
  - (a) *(a) take reasonable measures to ensure that the client understands the content of the information;*
  - (b) *(b) act with the care and skill that a reasonable information provider would demonstrate under the circumstances when providing evaluative information; and*
  - (c) *(c) in any case where the client is expected to make a decision on the basis of the information, inform the client of the risks involved, in so far as such risks could reasonably influence the client's decision.*
- (2) *When the service provider expressly or impliedly undertakes to provide the client with a recommendation to enable the client to make a subsequent decision, the information provider must:*
  - (a) *base the recommendation upon a skilful analysis of the expert knowledge to be collected in relation to the purposes, priorities, preferences and personal situation of the client;*
  - (b) *inform the client of alternatives the information provider can personally provide relating to the subsequent decision and of their advantages and risks, as compared with those of the recommended decision; and*
  - (c) *inform the client of other alternatives the information provider cannot personally provide, unless the information provider expressly informs the client that only a limited range of alternatives is offered or this is apparent from the situation.*

### **Article 6:105: Conformity**

- (1) *The information provider must provide information that is of quantity, quality and description required by the contract.*
- (2) *The factual information provided by the information provider to the client must be a correct description of the actual situation described.*

### **Article 6:106: Duty to Give Account**

*In so far as reasonably necessary, having regard to the interest of the client, the information provider must give account regarding the information provided in accordance with this Chapter.*

### **Article 6:107: Conflict of Interest**

- (1) *When the information provider expressly or impliedly undertakes to provide the client with a recommendation to enable the client to make a subsequent decision, the information provider must disclose any possible conflict of interest that might influence the performance of the information provider's duties.*
- (2) *As long as the contract has not been completely performed, the information provider may not enter into a relation with another party that may amount to a possible conflict with the interests of the client, without full disclosure to the client and the client's explicit or implicit agreement.*

- (3) *If the parties deviate from the liability rule of paragraph (2), the information provider may invoke such a clause against the client only in so far as the information provider drew the clause to the attention of the client in a way that was reasonably appropriate in the circumstances.*

#### **Article 6:108: Influence of Ability of the Client**

- (1) *The involvement in the supply of the service of other persons on the client's behalf or the mere competence of the client does not relieve the information provider of the duties under this Chapter.*
- (2) *The information provider is relieved of those duties if the client already has knowledge of the information or if the client has reason to know of the information.*
- (3) *For the purpose of paragraph (2), the client has 'reason to know' if the information would be obvious to a comparable client in the same situation as this client from all the unusual facts and circumstances known to the client without investigation.*

#### **Article 6:109: Causation**

*If the information provider knows or should be aware that a subsequent decision will be based on the information to be provided, the breach of duty of the information provider is presumed to have caused the damage if the client substantiates that, if the provider had provided all information required, a reasonable client in the same situation as this client would have seriously considered taking an alternative subsequent decision.*

### **CHAPTER 7 (TREATMENT)**

#### **Article 7:101: Scope of Application**

- (1) *This Chapter applies to contracts whereby one party, the treatment provider, is to provide medical treatment for another party, the patient.*
- (2) *This Chapter applies with appropriate modifications to contracts whereby the treatment provider is to provide any other service in order to change the physical or mental condition of a person.*
- (3) (3) *Where the patient is not the contracting party, the patient may require performance of the duties of the treatment provider imposed by this Chapter in accordance with Article 6:110 PECL (Stipulation in Favour of a Third Party).*
- (4) *When, under a contract, a party is bound to provide treatment and to supply another service, this Chapter applies to the parts of the contract that involve treatment, with appropriate modifications.*

### **Article 7:102: Circumstances in which the Service Is to Be Performed**

*The duties under Article 1:105 (Circumstances in which the Service Is to Be Performed) require in particular the treatment provider, in so far as reasonably necessary for the performance of the service, to:*

- (a) (a) interview the patient about the patient's health condition, symptoms, previous illnesses, allergies, previous or other current treatment and the patient's preferences and priorities in relation to the treatment;*
- (b) (b) carry out the examinations necessary to diagnose the health condition of the patient; and*
- (c) (c) consult with any other treatment providers involved in the treatment of the patient.*

### **Article 7:103: Duties of the Treatment Provider regarding Input**

*The duties under Article 1:106 (Duties of the Service Provider regarding Input) require in particular the treatment provider to use instruments, medication, materials, installations and premises of at least the quality demanded by accepted and sound professional practice, that conform to applicable statutory rules, and that are fit to achieve the particular purpose for which they are to be used.*

### **Article 7:104: Duty of Care of the Treatment Provider**

- (1) (1) The duties under Article 1:107 (General Standard of Care for Services) require in particular the treatment provider to provide the patient with the care and skill that a reasonable treatment provider exercising and professing care and skill would demonstrate under the given circumstances.*
- (2) (2) If the treatment provider lacks the experience or skill to treat the patient in accordance with Article 1:107 (General Standard of Care for Services), the treatment provider must refer the patient to a treatment provider that can meet the standard set in these rules.*

### **Article 7:105: Duty to Inform of the Treatment Provider**

- (1) (1) The treatment provider must, in order to give the patient a free choice regarding treatment, and in a way understandable to the patient, in particular inform the patient about:*
  - (a) (a) the patient's health status;*
  - (b) (b) the nature of the proposed treatment;*
  - (c) (c) the advantages of the proposed treatment;*
  - (d) (d) the risks of the proposed treatment;*
  - (e) (e) the alternatives to the proposed treatment as well as their advantages and risks as compared to those of the proposed treatment; and*
  - (f) (f) the consequences of abstaining from any treatment.*
- (2) (2) The treatment provider must, in any case, inform the patient about any risk or alternative that may reasonably influence the patient's decision on whether to give consent to the proposed treatment or not. A risk is presumed to be capable of influencing that decision if its materialisation leads to serious detriment to a patient in*

*that situation. Unless otherwise provided, the duty to inform is subject to the provisions of Chapter 6 (Information).*

#### **Article 7:106: Duty to Inform in case of Unnecessary or Experimental Treatment**

- (1) (1) *If the treatment is unnecessary in respect of the patient's health condition, all known risks must be disclosed.*
- (2) (2) *If the treatment is experimental, all information regarding the objectives of the experiment, the nature of the treatment, its advantages and risks and its alternatives, be it only potential, must be disclosed.*

#### **Article 7:107: Exceptions to the Duty to Inform**

- (1) *The information that must be provided under Article 7:105 and 7:106 may be withheld from the patient:*
  - (a) (a) *if there are objective reasons to believe that it would seriously and negatively influence the patient's health or life; or*
  - (b) (b) *if the patient expressly states that the patient wishes not to be informed, provided that the non-disclosure of the information does not endanger the health or safety of third parties.*
- (2) *Article 7:105 does not apply if treatment must be provided in an emergency. In such a case the treatment provider must, so far as possible, provide the information later.*

#### **Article 7:108: Duty to Obtain Consent**

- (1) (1) *The treatment provider may not carry out treatment unless the treatment provider has obtained prior informed consent from the patient.*
- (2) (2) *The patient may withdraw consent at any time.*
- (3) (3) *In so far as the patient is incapable of giving consent, the treatment provider must:*
  - (a) (a) *obtain informed consent from a person or institution legally entitled to take decisions regarding the treatment on behalf of the patient; or*
  - (b) (b) *comply with any rules or procedures enabling treatment to be lawfully given without such consent.*
- (4) (4) *In the situation described in paragraph (3), the treatment provider must, in so far as possible, consider the opinion of the incapable patient, and the opinion of the patient expressed before the patient became incapable.*
- (5) (5) *In the situation described in paragraph (3), the treatment provider may only carry out treatment that is intended to improve the health condition of the patient.*
- (6) (6) *In the situation described in Article 7:106(2), consent must be given in an express and specific way.*
- (7) (7) *This Article does not apply if the treatment must be provided in an emergency.*

#### **Article 7:109: Duty to Give Account**

- (1) (1) *The treatment provider must create adequate records of the treatment. Such records must include, in particular, information collected in pursuance of Article 7:102, information regarding the consent of the patient and information regarding the treatment performed.*
- (2) (2) *The treatment provider must give the patient, or if the patient is incapable of giving consent, the person or institution legally entitled to take decisions on behalf of the patient, access to the records.*
- (3) (3) *The treatment provider must answer, in so far as reasonable, questions regarding the interpretation of the records.*
- (4) (4) *If the treatment provider fails to comply with paragraphs (2) and (3), breach of the duty under Article 7:104 and causation are presumed.*
- (5) (5) *The treatment provider must keep the records, and give information about their interpretation, during a reasonable time of at least 10 years after the treatment has ended, depending on the usefulness of these records for the patient or the patient's heirs and for future treatments. Records that can reasonably be expected to be important after the reasonable time must be kept by the treatment provider after that time. If for any reason the treatment provider ceases activity, the records must be deposited or delivered to the patient for future consultation.*
- (6) (6) *The treatment provider may not disclose information about the patient or other persons involved in the patient's treatment to third parties unless disclosure is necessary in order to protect third parties or the public interest. The treatment provider may use the records in an anonymous way for statistical or scientific purposes.*

#### **Article 7:110: Remedies for Non-Performance**

*With regard to any non-performance, Chapters 8 (Non-Performance and Remedies in General) and 9 (Particular Remedies for Non-Performance) PECL apply, with the following modifications:*

- (a) (a) *the treatment provider may not withhold performance or terminate the contract in pursuance of Chapter 9, Sections 2 and 3 PECL (Withholding Performance, Termination of the Contract) if this seriously endangers the health condition of the patient;*
- (b) (b) *in so far as the treatment provider has the right to withhold performance or to terminate the contract and is planning to exercise that right, the treatment provider must refer the patient to another treatment provider;*
- (c) (c) *termination is not allowed, unless the patient fails to comply with Article 104 (Duty to Co-operate).*

#### **Article 7:111: Central Liability of Treatment Providing Organisations**

- (1) (1) *If, in the process of performance of the treatment contract, activities take place in a hospital or on the premises of another treatment-providing organisation, and the hospital or that other treatment-providing organisation is not a party to the treatment contract, it must make clear to the patient that it is not the contracting party.*
- (2) (2) *Where the treatment provider cannot be identified, the hospital or treatment-providing organisation in which the treatment took place shall be treated as the treatment provider unless the hospital or treatment-providing organisation*

*informs the patient, within a reasonable time, of the identity of the treatment provider.*