

**FIRST DRAFT OF
PRINCIPLES OF EUROPEAN LAW ON GRATUITOUS LOAN**

CHAPTER 1: GENERAL PROVISIONS

Article 1:101: Gratuitous Loan

- (1) These principles apply to contracts for gratuitous loan [of goods].*
- (2) A gratuitous loan is a contract under which one party, the [bailor], gratuitously undertakes to provide the other party, the [bailee], with a temporary right of use of goods or other [tangible] assets.*

Article 1:102: Relationship with the Principles of European Contract Law

- (1) The rules of the Principles of European Contract Law apply to any contract within the scope of the Principles of European Law on Gratuitous Loan, except where otherwise provided.*
- (2) To the extent of any conflict, the Principles of European Law on Gratuitous Loan prevail.*

Article 1:103: Application to immovable property

[To be drafted]

Article 1:104: Application to other assets

[To be drafted]

Article 1:105: Application to monetary loans

[To be drafted]

Article 1:106: Gratuitousness

- (1) An undertaking to provide the [bailee] with a temporary right of use is gratuitous if it is done without reward and with an intention to [enrich or otherwise] benefit the bailee.*
- (2) An undertaking to provide the [bailee] with a temporary right of use is not gratuitous if it is done by virtue of any obligation [such as those arising from a contract or other juridical act, a court order or a rule of law].*

Article 1:107: Mixed contracts

[To be drafted]

CHAPTER 2: FORMATION, PERIOD AND RETURN

Article 2:101: Formation

[To be drafted]

Article 2:102: Period

- (1) The loan period ends as specified in the contract.*
- (2) If no period is specified in the contract the loan period ends when the purpose of the loan is fulfilled.*
- (3) In the absence of a purpose agreed upon the bailor may end the loan by claiming back the goods [by respecting a reasonable notice period].*

Article 2:103: Change of Circumstances

The loan period ends by reasonable notice given by the bailor, if

- (a) he needs the goods owing to unforeseen circumstances; or*
- (b) the purpose of the loan contract is frustrated.*

CHAPTER 3: OBLIGATIONS AND REMEDIES

Section 1: Obligations of the Bailor

Article 3:101: Obligations in general

- (1) The bailor must deliver goods which conform to the contract.*
- (2) The goods must remain available for the bailee's use throughout the loan period.*

Article 3:102: Conformity of the goods on delivery

- (1) The goods do not conform to the contract if they do not possess the qualities which the bailee could reasonably expect unless the bailee knew of the lack of quality or could reasonably be expected to have known of it when the contract was concluded.*
- (2) In determining what qualities the bailee could reasonably expect, the gratuitous nature of the contract is to be taken in to account.*
- (3) The goods do not conform to the contract if they are not of a quantity, quality or description provided for by the terms of the contract.*

Article 3:103: Third party rights or claims

The goods do not conform to the contract unless they are free from any right or claim of a third party other than a right or claim of a third party:

- (a) provided for by the terms of the contract; or*
- (b) of which the bailee knew or could reasonably be expected to have known when the contract was concluded.*

Article 3:104: Duty not to obstruct

The bailor is under no obligation to maintain the goods during the loan period. The general duties under articles 1:201 and 1:202 PECL remain extant.

Section 2: Remedies of the Bailee

Article 3:201: Application of the Principles of European Contract Law

If the bailor fails to perform any of his obligations under the contract, Chapters 8 and 9 of the Principles of European Contract Law apply to the remedies of the bailee, unless otherwise provided in this Section.

Article 3:202: Restricted Right to performance

- (1) If the goods do not conform with the terms of the contract, the bailee may not require replacement or repair under article 9:102 PECL.*
- (2) The bailee may not require performance under article 9:102 PECL in the case of goods which are neither upon conclusion of the contract nor subsequent to the conclusion of the contract within the control of the bailor.*

Article 3:203: Right to damages

- (1) The bailee is entitled to damages, if the non-performance was intentional or negligent.*
- (2) If at the time of the conclusion of the contract the bailor is not in the position to perform, the bailee is not entitled to damages, unless the bailor was aware or negligently unaware of being not in the position to perform.*
- (3) The definitions of intention and negligence in articles 3:101 and 3:102 PEL Liab.Dam. apply with appropriate modifications, however regard is to be had to the gratuitous nature of the loan.*
- (4) The bailee is, in the event that the goods are placed within the immediate control of the bailee, entitled to damages for lack of conformity only if at the time of the conclusion of the contract the bailor knew the lack of conformity and fraudulently concealed it.*
- (5) This article does not affect liability under the PEL Liab.Dam.*

Article 3:204: Measure of Damages

- (1) The bailor is obliged to compensate the bailee for loss suffered by the bailee acting in the reasonable belief that the bailor would fulfil the obligations.*
- (2) A supplementary sum of damages may be awarded by the court if it is seen as just and reasonable in the circumstances. The amount of damages may not exceed such a sum as will*

put the aggrieved party as nearly as possible into the position in which it would have been if the contract had been duly performed.

(3) In determining what is just and reasonable under paragraph (2) the court apart from the gratuitous nature of the contract shall take into account:

- (a) the declarations and acts of the parties;*
- (b) the purpose of the loan known by the parties or obvious to them; and*
- (c) the fact, that the non-performance was intentional.*

(4) Paragraphs (1) and (2) apply unless the parties agree otherwise.

(5) This article does not affect liability under the PEL Liab.Dam.

Section 3: Obligations of the Bailee

Article 3:301: General

But for the obligation to return the goods at the end of the loan period (Art. ■) the bailee must

- (a) take delivery; and*
- (b) preserve the goods, deal careful with third party claims and handle the goods in accordance with the contract.*

Article 3:302: Obligation to take delivery

The bailee performs the obligation to take delivery and accept transfer by carrying out all the acts which could reasonably be expected of the bailee in order to enable the bailor to perform the obligations to deliver and transfer.

Article 3:303: Preservation of the goods

- (1) The bailee is obliged to preserve the goods in a reasonable condition.*
- (2) The bailee is not liable for normal wear and tear.*

Article 3:304: Third party claims

- (1) The bailee is obliged to exercise reasonable care as regards third party claims to the goods.*
- (2) The bailee has a right against the bailor for indemnification, reimbursement [remuneration] and reparation under articles 3:101 to 3:104 PEL Ben.Int.*

Article 3:305: Handling the goods

The bailee is obliged to handle the goods with reasonable care.

Section 4: Remedies of the Bailor

Article 3:401: Application of the Principles of European Contract Law

If the bailee fails to perform any of his obligations under the contract, Articles 7:110 and 7:111 and Chapters 8 and 9 of the Principles of European Contract Law apply to the remedies of the bailor, unless otherwise provided in this Section.

[Article 3:402: Restricted right to specific performance

The bailor is not entitled to specific performance of the obligation to take delivery.]

CHAPTER 4: RETURN OF THE GOODS

Article 4:101: Obligation to return the goods

(1) When the loan period ends or the contract is terminated the bailee has to return the goods.

(2) The bailee may return other goods of the same kind and quality if this is agreed upon in the contract.

[(3) Article 7:102 PECL (Time of Performance) applies with reasonable modifications.]

Article 4:102: Remedies of the bailor

If the bailee fails to perform the obligation to return the goods Chapters 8 and 9 of the Principles of European Contract Law apply to the remedies of the bailor, unless otherwise provided in this Section.

Article 4:103: Obligation to take delivery

[To be drafted]

Article 4:102: Remedies of the bailee

[To be drafted]