

PRIVATE LAW IN EUROPEAN CONTEXT SERIES

Financial Services, Financial Crisis and General European Contract Law

Failure and Challenges of Contracting

Edited by
Stefan Grundmann
Yeşim M. Atamer



Wolters Kluwer

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Law & Business

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

Printed on acid-free paper.

ISBN 978-90-411-3526-1

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Printed in Great Britain.

Financial Services, Financial Crisis and General European Contract Law

Private Law in European Context Series

VOLUME 17

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For the Society of European Contract Law (SECOLA)

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Contract law is probably the most dynamic area of European Private Law and also the fundamental private law discipline in all national legal systems. SECOLA was founded to assist the study of European contract law and to enhance its quality. SECOLA organizes an open, truly international and interdisciplinary discussion platform. The focus of the Society is upon newly enacted European Community legal measures, on core concepts in the field of European contract law and on proposals for further legislation. The Society organizes one or two international conferences each year, arranges for the publication of scholarly discussions in the field including books to be published in this series and assists with other network activities. In addition, SECOLA has created a journal dedicated to the same aims: the *European Review of Contract Law* (see <www.secola.org> and <www.degruyter.de/rs/280_7944_DEU_h.htm>).

A list of previous titles in the series may be found at the end of this volume.

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List of Abbreviations

ABS	Asset Backed Securities
CCD	Consumer Credit Directive
CDO	Collateralised Debt Obligations
CESR	Committee of European Securities Regulators
CMB	Capital Markets Board
CML	Capital Markets Law
CRT	Compilation and Redaction Team
DCFR	Draft Common Frame of Reference
EU	European Union
EUR	Euro
GDP	Gross Domestic Product
GLO	Group Litigation Order
IMCO	Internal Market and Consumer Protection
ISD	Investment Services Directive
MFT	Multilateral Trading Facilities
MiFID	Markets in Financial Instruments Directive
OECD	Organisation for Economic Co-Operation and Development
OFT	Office of Fair Trading
PSD	Payment Services Directive
SID	Services in the Securities Field
TFEU	Treaty on the Functioning of the European Union
TILA	Truth in Lending Act
UCITS	Undertakings for Collective Investments in Transferable Securities
UCP	Unfair Commercial Practices
UNIDROIT	International Institute for the Unification of Private Law
USD	United States Dollar

Preface

Financial services – banking contracts – is the area of European contract law which is most thoroughly developed. The directives cover the core types of businesses – although not in every detail and with lacunae. In large part, these directives also very densely cover the duties and sanctions within these types of businesses. And this is the only body of European contract law where all relevant legal measures have already been adopted in their second generation – with considerably greater coverage and density and with a style approaching (mini) codification. Banking contract law, however, is not merely harmonized in a remarkably deep manner. Rather, this harmonization is also especially meaningful in many more general respects . . . and, of course, of particular importance in a moment of financial crisis. These more general aspects include minimum, maximum or targeted harmonization; a highly differentiated approach to client protection; system-building and codification; and the interplay between market regulation, public supervision and (private) contract law standards. Modernity and its role as a paradigm make banking contract law much more than just one area of European contract law.

This book is based on the tenth annual SECOLA Conference which took place in Istanbul in June 2010. The Society of European Contract Law would like to express its gratitude to Professor Yeşim M. Atamer and her colleagues at Istanbul Bilgi University, especially Ece Baş, Başak Başoğlu, Seda Ergüneş and Kadir Berk Kapancı, for hosting the conference so successfully. Finally, we are grateful for the generous support of the Banks Association of Turkey (Türkiye Bankalar Birliği). This tenth conference was like a big ‘family reunion’, and as in previous years, it was the effective work at the board level that helped develop the topic so profoundly and provided the basis for this publication. Many thanks for this as well.

Stefan Grundmann and Yeşim M. Atamer
Berlin and Istanbul
2011

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