

**Lecture and Exercise
Relevant Statutory Law**

Summer Semester 2026

Version 1.0

I.	Treaty on the European Union (TEU).....	2
II.	Treaty on the Functioning of the European Union (TFEU)	11
III.	Basic Law for the Federal Republic of Germany (GG).....	27
IV.	German Civil Code (BGB).....	30
V.	German Commercial Code (HGB).....	108
VI.	Limited Liabilities Act (GmbHG).....	113
VII.	German Stock Corporation Act (AktG)	122
VIII.	Rome I (Regulation (EC) No 593/2008)	133
IX.	Rome II (Regulation (EC) No 864/2007).....	140
X.	Regulation (EC) No 1215/2012 (Brussels Ibis)	145
XI.	General Data Protection Regulation (GDPR) Regulation (EC) No 679/2016).....	150

I. TREATY ON THE EUROPEAN UNION (TEU)

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 3

- (1) The Union's aim is to promote peace, its values and the well-being of its peoples.
- (2) The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
- (3) The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

- (4) The Union shall establish an economic and monetary union whose currency is the euro.
- (5) In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.
- (6) The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

Article 4

- (1) In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.

(2) ¹The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. ²It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. ³In particular, national security remains the sole responsibility of each Member State.

(3) ¹Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. ²The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

³The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

Article 5

(1) ¹The limits of Union competences are governed by the principle of conferral. ²The use of Union competences is governed by the principles of subsidiarity and proportionality.

(2) ¹Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. ²Competences not conferred upon the Union in the Treaties remain with the Member States.

(3) ¹Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

(4) ²The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. ³National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

(5) ¹Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

²The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

Article 6

(1) ¹The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

²The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

³The rights, freedoms and principles in the Charter shall be interpreted in accordance with the

general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

(2) ¹The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. ²Such accession shall not affect the Union's competences as defined in the Treaties.

(3) Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article 9

¹In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. ²Every national of a Member State shall be a citizen of the Union. ³Citizenship of the Union shall be additional to and not replace national citizenship.

Article 13

(1) ¹The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.

²The Union's institutions shall be:

- the European Parliament,
- the European Council,
- the Council,
- the European Commission (hereinafter referred to as 'the Commission'),
- the Court of Justice of the European Union,
- the European Central Bank,
- the Court of Auditors.

(2) ¹Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. ²The institutions shall practice mutual sincere cooperation.

(3) The provisions relating to the European Central Bank and the Court of Auditors and detailed provisions on the other institutions are set out in the Treaty on the Functioning of the European Union.

(4) The European Parliament, the Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.

Article 14

(1) The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the

Treaties. It shall elect the President of the Commission.

(2) The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number, plus the President. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats.

The European Council shall adopt by unanimity, on the initiative of the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles referred to in the first subparagraph.

(3) The members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot.

(4) The European Parliament shall elect its President and its officers from among its members.

Article 15

(1) The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.

(2) The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy shall take part in its work.

(3) The European Council shall meet twice every six months, convened by its President. When the agenda so requires, the members of the European Council may decide each to be assisted by a minister and, in the case of the President of the Commission, by a member of the Commission. When the situation so requires, the President shall convene a special meeting of the European Council.

(4) Except where the Treaties provide otherwise, decisions of the European Council shall be taken by consensus.

(5) The European Council shall elect its President, by a qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end the President's term of office in accordance with the same procedure.

(6) The President of the European Council:

(a) shall chair it and drive forward its work;

(b) shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council;

(c) shall endeavour to facilitate cohesion and consensus within the European Council;

(d) shall present a report to the European Parliament after each of the meetings of the European Council.

The President of the European Council shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy.

The President of the European Council shall not hold a national office.

Article 16

(1) The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Treaties.

(2) The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote.

(3) The Council shall act by a qualified majority except where the Treaties provide otherwise.

(4) As from 1 November 2014, a qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union.

A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.

The other arrangements governing the qualified majority are laid down in Article 238(2) of the Treaty on the Functioning of the European Union.

(5) The transitional provisions relating to the definition of the qualified majority which shall be applicable until 31 October 2014 and those which shall be applicable from 1 November 2014 to 31 March 2017 are laid down in the Protocol on transitional provisions.

(6) The Council shall meet in different configurations, the list of which shall be adopted in accordance with Article 236 of the Treaty on the Functioning of the European Union.

(7) The General Affairs Council shall ensure consistency in the work of the different Council configurations. It shall prepare and ensure the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission.

(8) The Foreign Affairs Council shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent.

(9) A Committee of Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council.

(10) The Council shall meet in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting shall be divided into two parts, dealing respectively with deliberations on Union legislative acts and non-legislative activities.

(11) The Presidency of Council configurations, other than that of Foreign Affairs, shall be held

by Member State representatives in the Council on the basis of equal rotation, in accordance with the conditions established in accordance with Article 236 of the Treaty on the Functioning of the European Union.

Article 17

(1) The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.

(2) Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide.

(3) The Commission's term of office shall be five years.

The members of the Commission shall be chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt.

In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 18(2), the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.

(4) The Commission appointed between the date of entry into force of the Treaty of Lisbon and 31 October 2014, shall consist of one national of each Member State, including its President and the High Representative of the Union for Foreign Affairs and Security Policy who shall be one of its Vice-Presidents.

(5) As from 1 November 2014, the Commission shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.

The members of the Commission shall be chosen from among the nationals of the Member States on the basis of a system of strictly equal rotation between the Member States, reflecting the demographic and geographical range of all the Member States. This system shall be established unanimously by the European Council in accordance with Article 244 of the Treaty on the Functioning of the European Union.

(6) The President of the Commission shall:

(a) lay down guidelines within which the Commission is to work;

- (b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body;
- (c) appoint Vice-Presidents, other than the High Representative of the Union for Foreign Affairs and Security Policy, from among the members of the Commission.

A member of the Commission shall resign if the President so requests. The High Representative of the Union for Foreign Affairs and Security Policy shall resign, in accordance with the procedure set out in Article 18(1), if the President so requests.

(7) Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.

The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission. They shall be selected, on the basis of the suggestions made by Member States, in accordance with the criteria set out in paragraph 3, second subparagraph, and paragraph 5, second subparagraph.

The President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.

(8) The Commission, as a body, shall be responsible to the European Parliament. In accordance with Article 234 of the Treaty on the Functioning of the European Union, the European Parliament may vote on a motion of censure of the Commission. If such a motion is carried, the members of the Commission shall resign as a body and the High Representative of the Union for Foreign Affairs and Security Policy shall resign from the duties that he carries out in the Commission.

Article 18

(1) The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the High Representative of the Union for Foreign Affairs and Security Policy. The European Council may end his term of office by the same procedure.

(2) The High Representative shall conduct the Union's common foreign and security policy. He shall contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.

(3) The High Representative shall preside over the Foreign Affairs Council.

(4) The High Representative shall be one of the Vice-Presidents of the Commission. He shall ensure the consistency of the Union's external action. He shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other

aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the High Representative shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 and 3.

Article 19

(1) The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

(2) The Court of Justice shall consist of one judge from each Member State. It shall be assisted by Advocates-General.

The General Court shall include at least one judge per Member State.

The Judges and the Advocates-General of the Court of Justice and the Judges of the General Court shall be chosen from persons whose independence is beyond doubt and who satisfy the conditions set out in Articles 253 and 254 of the Treaty on the Functioning of the European Union. They shall be appointed by common accord of the governments of the Member States for six years. Retiring Judges and Advocates-General may be reappointed.

(3) The Court of Justice of the European Union shall, in accordance with the Treaties:

- (a) rule on actions brought by a Member State, an institution or a natural or legal person;
- (b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;
- (c) rule in other cases provided for in the Treaties.

Article 49

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

Article 50

(1) Any Member State may decide to withdraw from the Union in accordance with its own

constitutional requirements.

(2) A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

(3) The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

(4) For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

(5) If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

II. TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (TFEU)

Article 18

Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination.

Article 21

(1) Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.

(2) If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1.

(3) For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament.

FREE MOVEMENT OF GOODS

Article 28

(1) The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

(2) The provisions of Article 30 and of Chapter 3 of this Title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.

Article 29

Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

THE CUSTIOMS UNION

Article 30

Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.

Article 31

Common Customs Tariff duties shall be fixed by the Council on a proposal from the Commission.

Article 34

Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.

Article 35

Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.

Article 36

¹The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. ²Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Article 38

- (1) The Union shall define and implement a common agriculture and fisheries policy.
- (2) The internal market shall extend to agriculture, fisheries and trade in agricultural products. 'Agricultural products' means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture, and the use of the term 'agricultural', shall be understood as also referring to fisheries, having regard to the specific characteristics of this sector.
- (3) Save as otherwise provided in Articles 39 to 44, the rules laid down for the establishment and functioning of the internal market shall apply to agricultural products.
- (4) The products subject to the provisions of Articles 39 to 44 are listed in Annex I.
- (5) The operation and development of the internal market for agricultural products must be accompanied by the establishment of a common agricultural policy.

Article 45

- (1) Freedom of movement for workers shall be secured within the Union.

- (2) Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
- (3) It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
- (a) to accept offers of employment actually made;
 - (b) to move freely within the territory of Member States for this purpose;
 - (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.
- (4) The provisions of this Article shall not apply to employment in the public service.

Article 46

The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures required to bring about freedom of movement for workers, as defined in Article 45, in particular:

- (a) by ensuring close cooperation between national employment services;
- (b) by abolishing those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers;
- (c) by abolishing all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as imposed on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned.
- (d) by setting up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

Article 49

¹Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. ²Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

³Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

Article 51

The provisions of this Chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may rule that the provisions of this Chapter shall not apply to certain activities.

Article 52

(1) The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

(2) The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the coordination of the abovementioned provisions.

Article 54

¹Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

²'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

Article 56

¹Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

²The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Union.

Article 57

Services shall be considered to be 'services' within the meaning of the Treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

'Services' shall in particular include:

- (a) activities of an industrial character;
- (b) activities of a commercial character;
- (c) activities of craftsmen;
- (d) activities of the professions.

Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Article 63

- (1) Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.
- (2) Within the framework of the provisions set out in this Chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited.

Article 65

- (1) The provisions of Article 63 shall be without prejudice to the right of Member States:
 - (a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;
 - (b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.
- (2) The provisions of this Chapter shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with the Treaties.
- (3) The measures and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 63.
- (4) In the absence of measures pursuant to Article 64(3), the Commission or, in the absence of a Commission decision within three months from the request of the Member State concerned, the Council, may adopt a decision stating that restrictive tax measures adopted by a Member State concerning one or more third countries are to be considered compatible with the Treaties in so far as they are justified by one of the objectives of the Union and compatible with the proper functioning of the internal market. The Council shall act unanimously on application by a Member State.

Article 101

(1) The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(2) Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

(3) The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 102

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;

- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 107

(1) Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

(2) The following shall be compatible with the internal market:

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
- (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.

(3) The following may be considered to be compatible with the internal market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
- (e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

Article 125

(1) The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the

joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.

(2) The Council, on a proposal from the Commission and after consulting the European Parliament, may, as required, specify definitions for the application of the prohibitions referred to in Articles 123 and 124 and in this Article.

Article 127

(1) The primary objective of the European System of Central Banks (hereinafter referred to as 'the ESCB') shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119.

(2) The basic tasks to be carried out through the ESCB shall be:

- to define and implement the monetary policy of the Union,
- to conduct foreign-exchange operations consistent with the provisions of Article 219,
- to hold and manage the official foreign reserves of the Member States,
- to promote the smooth operation of payment systems.

(3) The third indent of paragraph 2 shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

(4) The European Central Bank shall be consulted:

- on any proposed Union act in its fields of competence,
- by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 129(4).

The European Central Bank may submit opinions to the appropriate Union institutions, bodies, offices or agencies or to national authorities on matters in its fields of competence.

(5) The ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

(6) The Council, acting by means of regulations in accordance with a special legislative procedure, may unanimously, and after consulting the European Parliament and the European Central Bank, confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

Article 157

- (1) Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
- (2) For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
 - (b) that pay for work at time rates shall be the same for the same job.
- (3) The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.
 - (4) With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Article 206

By establishing a customs union in accordance with Articles 28 to 32, the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

Article 207

- (1) The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.
- (2) The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.
- (3) Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 218 shall apply, subject to the special provisions of this Article.

The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.

(4) For the negotiation and conclusion of the agreements referred to in paragraph 3, the Council shall act by a qualified majority.

For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.

The Council shall also act unanimously for the negotiation and conclusion of agreements:

- (a) in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity;
- (b) in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them.

(5) The negotiation and conclusion of international agreements in the field of transport shall be subject to Title VI of Part Three and to Article 218.

(6) The exercise of the competences conferred by this Article in the field of the common commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of the Member States in so far as the Treaties exclude such harmonisation.

Article 263

The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers.

The Court shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.

Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Article 264

If the action is well founded, the Court of Justice of the European Union shall declare the act concerned to be void.

However, the Court shall, if it considers this necessary, state which of the effects of the act which it has declared void shall be considered as definitive.

Article 265

Should the European Parliament, the European Council, the Council, the Commission or the European Central Bank, in infringement of the Treaties, fail to act, the Member States and the other institutions of the Union may bring an action before the Court of Justice of the European Union to have the infringement established. This Article shall apply, under the same conditions, to bodies, offices and agencies of the Union which fail to act.

The action shall be admissible only if the institution, body, office or agency concerned has first been called upon to act. If, within two months of being so called upon, the institution, body, office or agency concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court that an institution, body, office or agency of the Union has failed to address to that person any act other than a recommendation or an opinion.

Article 266

The institution, body, office or entity whose act has been declared void or whose failure to act has been declared contrary to the Treaties shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article 340.

Article 267

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Treaties;

- (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

Article 285

The Court of Auditors shall carry out the Union's audit.

It shall consist of one national of each Member State. Its Members shall be completely independent in the performance of their duties, in the Union's general interest.

Article 286

(1) The Members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective States to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

(2) The Members of the Court of Auditors shall be appointed for a term of six years. The Council, after consulting the European Parliament, shall adopt the list of Members drawn up in accordance with the proposals made by each Member State. The term of office of the Members of the Court of Auditors shall be renewable.

They shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected.

(3) In the performance of these duties, the Members of the Court of Auditors shall neither seek nor take instructions from any government or from any other body. The Members of the Court of Auditors shall refrain from any action incompatible with their duties.

(4) The Members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

(5) Apart from normal replacement, or death, the duties of a Member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 6.

The vacancy thus caused shall be filled for the remainder of the Member's term of office.

Save in the case of compulsory retirement, Members of the Court of Auditors shall remain in office until they have been replaced.

(6) A Member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.

(7) The Council shall determine the conditions of employment of the President and the Members of the Court of Auditors and in particular their salaries, allowances and pensions. It shall also determine any payment to be made instead of remuneration.

(8) The provisions of the Protocol on the privileges and immunities of the European Union applicable to the Judges of the Court of Justice of the European Union shall also apply to the Members of the Court of Auditors.

Article 287

(1) The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union. It shall also examine the accounts of all revenue and expenditure of all bodies, offices or agencies set up by the Union in so far as the relevant constituent instrument does not preclude such examination.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the Official Journal of the European Union. This statement may be supplemented by specific assessments for each major area of Union activity.

(2) The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Union.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

(3) The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Union, on the premises of any body, office or agency which manages revenue or expenditure on behalf of the Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The other institutions of the Union, any bodies, offices or agencies managing revenue or expenditure on behalf of the Union, any natural or legal person in receipt of payments from the

budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In respect of the European Investment Bank's activity in managing Union expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of Union expenditure and revenue managed by the Bank. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions of the Union and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the Official Journal of the European Union.

The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the Union.

It shall adopt its annual reports, special reports or opinions by a majority of its Members. However, it may establish internal chambers in order to adopt certain categories of reports or opinions under the conditions laid down by its Rules of Procedure.

It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

The Court of Auditors shall draw up its Rules of Procedure. Those rules shall require the approval of the Council.

Article 288

To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions shall have no binding force.

Article 289

(1) The ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. This procedure is defined in Article 294.

(2) In the specific cases provided for by the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament, shall constitute a special legislative procedure.

(3) Legal acts adopted by legislative procedure shall constitute legislative acts.

(4) In the specific cases provided for by the Treaties, legislative acts may be adopted on the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank.

Article 290

(1) A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

(2) Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:

(a) the European Parliament or the Council may decide to revoke the delegation;

(b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.

For the purposes of (a) and (b), the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.

(3) The adjective ‘delegated’ shall be inserted in the title of delegated acts.

Article 291

(1) Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

(2) Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.

(3) For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

(4) The word ‘implementing’ shall be inserted in the title of implementing acts.

Article 352

(1) If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in

accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.

(2) Using the procedure for monitoring the subsidiarity principle referred to in Article 5(3) of the Treaty on European Union, the Commission shall draw national Parliaments' attention to proposals based on this Article.

(3) Measures based on this Article shall not entail harmonisation of Member States' laws or regulations in cases where the Treaties exclude such harmonisation.

(4) This Article cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy and any acts adopted pursuant to this Article shall respect the limits set out in Article 40, second paragraph, of the Treaty on European Union

III. BASIC LAW FOR THE FEDERAL REPUBLIC OF GERMANY (GG)

Article 1

[Human dignity – Human rights – Legally binding force of basic rights]

- (1) ¹Human dignity shall be inviolable. ²To respect and protect it shall be the duty of all state authority.
- (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.
- (3) The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.

Article 2

[Personal freedoms]

- (1) Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.
- (2) ¹Every person shall have the right to life and physical integrity. ²Freedom of the person shall be inviolable. ³These rights may be interfered with only pursuant to a law.

Article 3

[Equality before the law]

- (1) All persons shall be equal before the law.
- (2) ¹Men and women shall have equal rights. ²The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist.
- (3) ¹No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. ²No person shall be disfavoured because of disability.

Article 4

[Freedom of faith and conscience]

- (1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.
- (2) The undisturbed practice of religion shall be guaranteed.
- (3) ¹No person shall be compelled against his conscience to render military service involving the use of arms. ²Details shall be regulated by a federal law.

Article 5

[Freedom of expression, arts and sciences]

- (1) ¹Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible

sources. ²Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. ³There shall be no censorship.

(2) These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honour.

(3) ¹Arts and sciences, research and teaching shall be free. ²The freedom of teaching shall not release any person from allegiance to the constitution.

Article 8 **[Freedom of assembly]**

(1) All Germans shall have the right to assemble peacefully and unarmed without prior notification or permission.

(2) In the case of outdoor assemblies, this right may be restricted by or pursuant to a law.

Article 12 **[Occupational freedom]**

(1) ¹All Germans shall have the right freely to choose their occupation or profession, their place of work and their place of training. ²The practice of an occupation or profession may be regulated by or pursuant to a law.

(2) No person may be required to perform work of a particular kind except within the framework of a traditional duty of community service that applies generally and equally to all.

(3) Forced labour may be imposed only on persons deprived of their liberty by the judgment of a court.

Article 14 **[Property – Inheritance – Expropriation]**

(1) ¹Property and the right of inheritance shall be guaranteed. ²Their content and limits shall be defined by the laws.

(2) ¹Property entails obligations. ²Its use shall also serve the public good.

(3) ¹Expropriation shall only be permissible for the public good. ²It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. ³Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. ⁴In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts.

Article 19 **[Restriction of basic rights – Legal remedies]**

(1) ¹Insofar as, under this Basic Law, a basic right may be restricted by or pursuant to a law, such law must apply generally and not merely to a single case. ²In addition, the law must specify the basic right affected and the Article in which it appears.

(2) In no case may the essence of a basic right be affected.

(3) The basic rights shall also apply to domestic artificial persons to the extent that the nature of such rights permits.

(4) ¹Should any person's rights be violated by public authority, he may have recourse to the courts. ²If no other jurisdiction has been established, recourse shall be to the ordinary courts. ³The second sentence of paragraph (2) of Article 10 shall not be affected by this paragraph.

Article 20
[Constitutional principles – Right of resistance]

(1) The Federal Republic of Germany is a democratic and social federal state.

(2) ¹All state authority is derived from the people. ²It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies.

(3) The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice.

(4) All Germans shall have the right to resist any person seeking to abolish this constitutional order, if no other remedy is available.

Article 31
[Supremacy of federal law]

Federal law shall take precedence over *Land* law.

Article 101
[Ban on extraordinary courts]

(1) ¹Extraordinary courts shall not be allowed. ²No one may be removed from the jurisdiction of his lawful judge.

(2) Courts for particular fields of law may be established only by a law.

Article 102
[Abolition of capital punishment]

Capital punishment is abolished.

Article 103
[Fair trial]

(1) In the courts every person shall be entitled to a hearing in accordance with law.

(2) An act may be punished only if it was defined by a law as a criminal offence before the act was committed.

(3) No person may be punished for the same act more than once under the general criminal laws.

IV. GERMAN CIVIL CODE (BGB)

Book 1

Section 1 Beginning of legal capacity

The legal capacity of a human being begins on the completion of birth. Section 2
Beginning of majority

Majority begins at the age of eighteen.

Section 13 Consumer

A consumer means every natural person who enters into a legal transaction for purposes that predominantly are outside the consumer's trade, business or profession.

Section 14 Trader

(1) A trader means a natural or legal person or a partnership with legal personality who or which, when concluding a legal transaction, acts in exercise of their trade, business or profession.

(2) A partnership with legal personality is a partnership that has the capacity to acquire rights and to enter into obligations.

Section 90 Concept of the thing

Only corporeal objects are things as defined by law. Section 90a
Animals

¹Animals are not things. ²They are protected by special statutes. ³The provisions that apply to things are to be applied accordingly to animals, unless otherwise provided.

Section 104 Incapacity to contract

A person is incapable of contracting if

1. the person has not yet attained the age of seven years,
2. the person is in a state of pathological mental disturbance, which prevents the free exercise of will, unless the state by its nature is a temporary one.

Section 105 Voidness of declaration of intent

(1) The declaration of intent of a person incapable of contracting is void.

(2) Also void is a declaration of intent that is made in a state of unconsciousness or temporary

mental disturbance.

Section 105a **Everyday transactions**

If a person of full age incapable of contracting enters into an everyday transaction that it is possible to effect using means of low value, then the contract that person enters into is regarded as effective with regard to performance and, if agreed, consideration, as soon as performance has been effected and consideration rendered. Sentence 1 does not apply in the case of considerable danger to the person incapable of contracting or their assets.

Section 106 **Limited capacity for minors to contract**

A minor who has reached the age of seven has limited capacity to contract under sections 107 to 113.

Section 107 **Consent of legal representative**

For a declaration of intent as a result of which minors do not receive merely a legal benefit, the minors require consent by their legal representative.

Section 108 **Entry into a contract without consent**

(1) If the minor enters into a contract without the necessary consent of the legal representative, the effectiveness of the contract is subject to approval by the legal representative.

(2) If the other party demands that the representative declare approval, the declaration may be made only to the other party; a declaration or refusal of approval made to the minor before the demand of the other party becomes ineffective. The approval may only be declared before the expiry of two weeks following receipt of the demand; if approval is not declared, then it is considered to have been refused.

(3) If the minor has become fully capable of contracting, then the approval by the minor will take the place of the approval by the representative.

Section 109 **Right of withdrawal by the other party**

(1) Until the contract is ratified, the other party is entitled to withdraw from it. The declaration of withdrawal also may be made to the minor.

(2) If the other party knew that they were dealing with a minor, they may withdraw from the contract only if the minor untruthfully stated that the legal representative had given consent; they may not withdraw even in this case if, when the contract was concluded, they were aware of the lack of consent.

Section 110 **Performance effected with means of the minor's own**

A contract concluded by the minor without the approval of the legal representative is deemed

effective from the outset if the minor effects performance under the contract with means that were made available to the minor for this purpose or for the minor's free disposition by the legal representative or by a third party with the representative's approval.

Section 111 Unilateral legal transactions

A unilateral legal transaction that a minor undertakes without the necessary consent of the legal representative is ineffective. If the minor undertakes such a legal transaction with regard to another person with this consent, the legal transaction is ineffective if the minor does not present the consent in writing and the other person rejects the legal transaction for this reason without undue delay. Rejection is not possible if the representative had given the other person notice of the consent.

Section 113 Service or employment relationship

(1) If the legal representative authorises the minor to enter service or employment, the minor has unlimited capacity to enter into transactions that relate to entering or leaving service or employment of the permitted nature or performing the duties arising from such a relationship. Contracts are exempt for which the legal representative needs to obtain the ratification of the family court.

(2) The authorisation may be revoked or restricted by the legal representative.

(3) If the legal representative is a guardian and they refuse to grant the authorisation, then on demand by the minor, the family court may grant a substitute authorisation. The family court is to grant substitute authorisation if this is in the interest of the ward.

(4) The authorisation given for an individual case in case of doubt is deemed to constitute a general authorisation to enter into relationships of the same kind.

Section 119 Voidability for mistake

(1) A person who, when making a declaration of intent, was mistaken about its contents or had no intention whatsoever of making a declaration with this content, may avoid the declaration if it is to be assumed that the person would not have made the declaration had they been aware of the factual position and had they had a sensible understanding of the case.

(2) A mistake about such characteristics of a person or a thing as are regarded as essential in business dealings also is deemed a mistake about the content of the declaration.

Section 120 Voidability for incorrect transmission

A declaration of intent that has been incorrectly transmitted by the person or facilities used for its transmission may be avoided subject to the same prerequisite as that governing the avoidance of a declaration of intent made by mistake under section 119.

Section 121
Period for avoidance

(1) Avoidance must be effected, in the cases governed by sections 119 and 120, without culpable delay (without undue delay) after the person entitled to avoid obtains knowledge of the ground for avoidance. Avoidance effected to an absent person is deemed to have been effected in good time if the declaration of avoidance is forwarded without undue delay.

(2) Avoidance is excluded if 10 years have passed since the declaration of intent was made.

Section 122
Liability in damages of the person avoiding a declaration

(1) If a declaration of intent is void under section 118, or if it is avoided on the basis of sections 119 and 120, then the declarant is to pay damages, if the declaration was to be made to another person, to that person, or failing this to any third party, for the damage that the other person or the third party suffers as a result of having relied on the validity of the declaration; but not in excess of the total amount of the interest that the other person or the third party has in the validity of the declaration.

(2) A duty to pay damages does not arise if the injured person knew the reason for the voidness or the voidability or did not know it as a result of negligence (ought to have known).

Section 123
Voidability on the grounds of deceit or duress

(1) A person who has been induced to make a declaration of intent by deceit or unlawfully by duress may avoid the declaration.

(2) Where a third party committed this deceit, a declaration that had to be made to another person may be avoided only if the latter knew of the deceit or ought to have known of it. If a person other than the person to whom the declaration was to be made acquired a right as a direct result of the declaration, the declaration made to that person may be avoided if they knew or ought to have known of the deceit.

Section 124
Period of time for avoidance

(1) The avoidance of a declaration of intent voidable under section 123 may be effected only within one year.

(2) In the case of deceit, the period commences at the time when the person entitled to avoid discovers the deceit, and, in case of duress, from the time at which the duress ends. The provisions in sections 206, 210 and 211 applicable to limitation apply accordingly to the running of the period.

(3) Avoidance is barred if 10 years have passed since the declaration of intent was made.

Section 125
Voidness resulting from a defect of form

A legal transaction that lacks the form prescribed by statute is void. In case of doubt, lack of the form specified by legal transaction also results in voidness.

Section 126
Written form

- (1) If written form is prescribed by statute, the document must be signed by the issuer with their name in their own hand, or by their notarially certified mark.
- (2) In the case of a contract, the signature of the parties must be made on the same document. If more than one counterpart of the contract is drawn up, it suffices if each party signs the document intended for the other party.
- (3) The written form may be replaced by electronic form, unless the statute leads to a different conclusion.
- (4) A declaration in written form also includes a publicly certified declaration pursuant to Section 129 (1) sentence 1 number 2, or a declaration pursuant to Section 129 (3).
- (5) The written form is replaced by notarization.

Section 126a
Electronic form

- (1) If electronic form is to replace the written form prescribed by statute, the issuer of the declaration must add their name to it and provide the electronic document with a qualified electronic signature.
- (2) In the case of a contract, the parties must each provide a counterpart with an electronic signature as described in subsection (1).

Section 126b
Text form

If text form is prescribed by statute, a readable declaration, in which the person making the declaration is named, must be made on a durable medium. A durable medium is any medium that

1. enables the recipient to keep a record of or store a declaration included on the medium that is addressed to the recipient personally such that it is accessible to the recipient for a period of time adequate to its purpose, and
2. that allows the unchanged reproduction of such declaration.

Section 127
Agreed form

- (1) The provisions of sections 126, 126a or 126b also apply, in case of doubt, to the form specified by legal transaction.
- (2) For compliance with the written form required by legal transaction it suffices, unless a different intention is to be assumed, for the message to be transmitted using means of telecommunication and, in the case of a contract, by the exchange of letters. If such a form is chosen, notarial recording in accordance with section 126 may be demanded subsequently.
- (3) For compliance with the electronic form required by legal transaction, unless a different

intention is to be assumed, an electronic signature other than that provided for in section 126a also suffices and, in the case of a contract, the exchange of a declaration of an offer and of acceptance that are each provided with an electronic signature. If such a form is chosen, an electronic signature in accordance with section 126a may be demanded subsequently, or if this is not possible for one of the parties, notarial recording corresponding to the stipulations of section 126.

Section 128 Notarial recording

If the notarial recording of a contract is prescribed by statute, it suffices if first the offer and then the acceptance of the offer is recorded by a notary.

Section 129 Official certification

(1) If the official certification of a declaration is prescribed by statute, then the declaration must be made in writing and the signature of the declarant must be certified by a notary. If the declaration is signed by the issuer making a mark, then the certification of the mark provided for in section 126 (1) will be required and sufficient.

(2) The notarial recording of the declaration replaces the official certification.

(3) If a declaration in an electronic document has been provided by the declarant with a notarized handwritten electronic signature or a notarized handwritten electronic mark, it is deemed to be a publicly certified declaration.

(4) Public certification is replaced by notarization.

Section 130 Effectiveness of a declaration of intent to absent parties

(1) A declaration of intent that is to be made to another person becomes effective, if made in that person's absence, at the point in time at which said declaration reaches them. It does not become effective if a revocation reaches the other person previously or at the same time.

(2) A declaration of intent that has been notarized or publicly certified also becomes effective if a publicly certified copy of the original is delivered to the recipient of the declaration.

(3) The effectiveness of the declaration of intent is not affected if the declarant dies or becomes legally incapacitated after making the declaration.

(4) These provisions also apply where the declaration of intent is to be made to a public authority.

Section 131 Effectiveness in relation to persons without full capacity to contract

(1) If a declaration of intent is made to a person incapable of contracting, then it does not become effective until it has reached that person's legal representative.

(2) The same applies if the declaration of intent is made to a person with limited capacity to contract. If, however, the declaration merely provides a legal advantage to the person with

limited capacity to contract, or if the legal representative has given consent, then the declaration becomes effective at the time it reaches the person with limited capacity.

Section 133
Interpretation of a declaration of intent

When a declaration of intent is interpreted, it is necessary to ascertain the true intention rather than adhering to the literal meaning of the declaration.

Section 134
Statutory prohibition

A legal transaction that violates a statutory prohibition is void, unless the statute leads to a different conclusion.

Section 135
Statutory prohibition of alienation

(1) If the disposition over a thing violates a statutory prohibition against alienation intended solely for the protection of particular persons, the disposition is ineffective only in relation to these persons. A disposition by legal transaction is equivalent to a disposition that is effected by means of compulsory enforcement or enforcement of a seizure.

(2) The provisions to the benefit of those who derive rights from an unauthorised person apply accordingly.

Section 136
Official prohibition of alienation

A prohibition of alienation that is issued by a court or by any other public authority in keeping with its competence is equivalent to a statutory prohibition of alienation of the kind described in section 135.

Section 137
Prohibition of dispositions in a legal transaction

The power to dispose over an alienable right may not be excluded or restricted by a legal transaction. This effectiveness of an obligation not to dispose over such a right is not affected by this provision.

Section 138
Legal transaction offending common decency; usury

(1) A legal transaction that offends common decency is void.

(2) In particular, a legal transaction is void by which a person, by exploiting the predicament, inexperience, lack of sound judgment or considerable weakness of will of another, causes a promise to be made to them or to a third party, in exchange for an act of performance, for pecuniary advantages that are clearly disproportionate to the performance, or causes such pecuniary advantages to be granted.

Section 139
Partial invalidity

If a part of a legal transaction is void, then the entire legal transaction is void, unless it is to be assumed that it would have been undertaken even without the void part.

Section 140
Re-interpretation

Where a void legal transaction meets the requirements of another legal transaction, the latter is deemed to have been entered into if it may be assumed that its validity would be intended if the invalidity were known.

Section 141
Confirmation of a void legal transaction

(1) If a void legal transaction is confirmed by the person who undertook it, then the confirmation is to be seen as the transaction once again being entered into.

(2) If a void contract is confirmed by the parties, then in case of doubt they are obliged to grant to each other what they would have granted if the contract had been valid from the outset.

Section 142
Effect of avoidance

(1) If a voidable legal transaction is avoided, it is to be regarded as having been void from the outset.

(2) A person who knew or ought to have known of the possibility of avoidance is treated, in case of avoidance, as if they had known or ought to have known of the invalidity of the legal transaction.

Section 143
Declaration of avoidance

(1) Avoidance is effected by declaration to the opponent.

(2) The opponent is, in the case of a contract, the other contractual party and, in the case governed by section 123 (2) sentence 2, the person who has acquired a right directly under the contract.

(3) In the case of a unilateral legal transaction that was to be entered into in relation to another person, the other person is the opponent. The same applies to a legal transaction that is required to be entered into in relation to another person or to a public authority, even if the legal transaction has already been entered into in relation to the authority.

(4) In the case of any other kind of unilateral legal transaction, the person who has received a legal advantage directly on the basis of the legal transaction is the opponent. However, the avoidance may be made, if the declaration of intent was to be made to a public authority, by declaration to the authority; the public authority as a rule is to inform the person who was directly affected by the legal transaction of the avoidance.

Section 144
Confirmation of a voidable legal transaction

(1) Avoidance is excluded if the voidable legal transaction is confirmed by the person entitled to avoid.

(2) The confirmation is not subject to the requirements as to form laid down for the legal transaction.

Section 145
Binding effect of an offer

Any person who offers to another to enter into a contract is bound by the offer, unless the person has ruled out the offer's being binding upon them.

Section 146
Expiry of an offer

An offer expires if a refusal is made to the offeror, or if no acceptance is made to the offeror in good time in accordance with sections 147 to 149.

Section 147
Period for acceptance

(1) An offer made to a person who is present may only be accepted immediately. This also applies to an offer made by one person to another using a telephone or some other technical system.

(2) An offer made to a person who is absent may be accepted only until the time at which the offeror may expect to receive the answer under ordinary circumstances.

Section 148
Fixing a period for acceptance

If the offeror has determined a period of time for the acceptance of an offer, the acceptance may only be effected within this period.

Section 149
Late receipt of a declaration of acceptance

If a declaration of acceptance received late by the offeror was sent in such a way that it would have reached the offeror in good time had it been forwarded in the usual way, and if the offeror ought to have recognised this, then the offeror is to notify the acceptor of the delay following receipt of the declaration without undue delay, unless this had been done already previously. If the offeror delays the sending of the notification, the acceptance is deemed not to be late.

Section 150
Late acceptance and acceptance altering the offer

(1) The late acceptance of an offer is considered to be a new offer.

(2) An acceptance with expansions, restrictions or other alterations is deemed to be a rejection combined with a new offer.

Section 151
Acceptance without declaration to the offeror

A contract comes into existence through the acceptance of the offer, without the offeror needing to be notified of acceptance, if such a declaration is not to be expected according to customary practice, or if the offeror has waived it. The point in time at which the offer expires is determined in accordance with the intention of the offeror, which is to be inferred from the offer or the circumstances.

Section 152
Acceptance in the case of notarial recording

If a contract is recorded by a notary without both parties being present at the same time, then the contract comes into existence, unless otherwise provided, on the recording of acceptance effected in accordance with section 128. The provision of section 151 sentence 2 applies.

Section 157
Interpretation of contracts

Contracts are to be interpreted as required by good faith, taking customary practice into consideration.

Section 164
Effect of a declaration made by the agent

(1) A declaration of intent that a person makes within the scope of their own power of agency in the name of a principal takes effect directly for and against the principal. It is irrelevant whether the declaration is made explicitly in the name of the principal, or whether it may be gathered from the circumstances that it is intended to be made in the principal's name.

(2) If the intent to act on behalf of another is not evident, then no regard will be had to the lack of intent on the part of the agent to act on their own behalf.

(3) The provisions of subsection (1) apply accordingly if a declaration of intent to be made to another is made to their agent.

Section 165
Agent with limited capacity to contract

The effectiveness of a declaration of intent made by or to an agent is not adversely affected by the agent having limited capacity to contract.

Section 166
Vitiation of intent; imputed knowledge

(1) Insofar as the legal consequences of a declaration of intent are influenced by a vitiation of intent or by the knowledge or the constructive notice of certain circumstances, regard will be had not to the person of the principal, but to that of the agent.

(2) If, in the case of a power of agency granted by a legal transaction (authority), the agent has acted in compliance with certain instructions given by the principal, then the latter may not invoke the lack of knowledge of the agent with regard to circumstances of which the principal was aware. The same rule applies to circumstances which the principal ought to have known,

insofar as constructive notice is equivalent to knowledge.

Section 167
Conferment of authority

(1) Authority is conferred by declaration to the person to be granted authority, or to the third party in relation to whom the authority is to have effect.

(2) The declaration is not required to be in the form laid down for the legal transaction to which the authority relates.

Section 168
Expiry of authority

The expiry of the authority depends on the legal relationship on which its conferment is based. The authority is also revocable if the legal relationship is continued, unless this relationship leads to a different conclusion. The provision under section 167 (1) applies accordingly to the declaration of revocation.

Section 172
Letter of authorisation

(1) If the principal has delivered a letter of authorisation to the agent and the agent presents it to a third party, then this is equivalent to a separate notification of authorisation by the principal.

(2) The power of agency remains effective until the letter of authorisation is returned to the principal or declared to be invalid.

Section 174
Unilateral legal transaction by an authorised representative

A unilateral legal transaction that an authorised representative undertakes in relation to another is ineffective if the authorised representative does not present a letter of authorisation and the other rejects the legal transaction without undue delay for this reason. Rejection is excluded if the principal notified the other of the authorisation.

Section 177
Entry into contract by a representative having no power of agency

(1) If a person enters into a contract in the name of another without having power of agency, then the effectiveness of the contract to the benefit or detriment of the principal requires the ratification of the principal.

(2) If the other party demands that the principal make a declaration as to the ratification of the contract, the declaration may be made only to that other party; a ratification or a refusal of ratification declared to the representative before the demand becomes ineffective. The ratification may only be declared before the expiry of two weeks following receipt of the demand; if it is not declared, then it is considered to have been refused.

Section 178
Right of revocation of the other party

Until the ratification of the contract, the other party is entitled to revoke it unless they knew of

the lack of power of agency when they concluded the contract. The revocation also may be declared to the representative.

Section 179
Liability of a representative having no power of agency

(1) A person who has concluded a contract as an agent is, unless they furnish proof of having been granted power of agency, obliged to the other party at the other party's choice either to perform the contract or to pay damages to the latter, if the principal refuses to ratify the contract.

(2) If the agent was not aware of their lack of power of agency, they are obliged to provide compensation only for the damage which the other party suffers as a result of relying on the power of agency; but not in excess of the total amount of the interest which the other or the third party has in the effectiveness of the contract.

(3) The representative is not liable if the other party knew or ought to have known of the lack of power of agency. The representative also is not liable if they had limited capacity to contract, unless they acted with the approval of their legal representative.

Section 181
Contracting with oneself

Agents may not, unless otherwise permitted, enter into a legal transaction in the name of the principal with themselves in their own name or as the agent of a third party, unless the legal transaction consists solely in the performance of an obligation.

Section 182
Approval

(1) If the effectiveness of a contract, or of a unilateral legal transaction to be undertaken in relation to another, depends on the approval of a third party, the grant and refusal of approval may be declared either to one party or to the other.

(2) The approval is not required to have the form specified for the legal transaction.

(3) If a unilateral legal transaction the effectiveness of which depends on the approval of a third party is undertaken with the consent of the third party, then the provisions of section 111 sentences 2 and 3 apply accordingly.

Section 183
Revocability of consent

Prior approval (consent) may be revoked until the legal transaction is undertaken, unless the legal relationship on which this approval is based leads to a different conclusion. Revocation may either be declared to one party or to the other.

Section 184
Retroactive effect of ratification

(1) Subsequent approval (ratification) operates retroactively from the point in time onwards at which the legal transaction was undertaken, unless otherwise provided.

(2) The retroactive effect does not cancel the effectiveness of dispositions made by the ratifying

person before the ratification of the subject matter of the legal transaction, or made by way of compulsory enforcement or enforcement of a seizure or by the insolvency administrator.

Section 185
Disposition by an unauthorised person

(1) A disposition over a thing made by a person without the authority to do so is effective if made with the consent of the person entitled.

(2) The disposition becomes effective if the person entitled ratifies it, or if the person disposing acquires the thing or if the person entitled has succeeded to the estate of the disposer and has unlimited liability for the obligations of the estate. In the last two cases, if more than one conflicting disposition has been made in respect of the thing, then only the earlier disposition is effective.

Section 195
Standard limitation period

The standard limitation period is three years.

Section 199
Commencement of the standard limitation period and maximum limitation periods

(1) Unless another commencement of limitation is determined, the standard limitation period commences at the end of the year in which:

1. the claim arose and
2. the obligee obtains knowledge of the circumstances giving rise to the claim and of the identity of the obligor, or would have obtained such knowledge if they had not shown gross negligence.

(2) Claims for damages based on injury to life, limb, health or liberty, notwithstanding the manner in which they arose and notwithstanding knowledge or a grossly negligent lack of knowledge, are statute-barred 30 years from the date on which the act, breach of duty or other event that caused the damage occurred.

(3) Other claims for damages become statute-barred

1. notwithstanding knowledge or a grossly negligent lack of knowledge, 10 years after they arise and
2. regardless of how they arose and of knowledge or a grossly negligent lack of knowledge, 30 years from the date on which the act, breach of duty or other event that caused the damage occurred.

The period that ends first is applicable.

(3a) Claims based on the passing of an inheritance or whose claiming is contingent on knowledge of a disposition *mortis causa* become statute-barred 30 years from when the claim comes into being regardless of knowledge or of grossly negligent lack of knowledge.

(4) Notwithstanding knowledge or a grossly negligent lack of knowledge, claims other than

those under subsections (2) to (3a) become statute-barred 10 years after the date on which they arise.

(5) If the claim is for forbearance, the date of the breach of such an obligation takes the place of the date on which the claim arose.

Section 204 **Suspension of limitation as a result of prosecution of rights**

(1) The limitation period is suspended by:

1. the bringing of an action for performance or for establishment of the existence of a claim, for the granting of a clause of execution or for the issuance of a judgment for enforcement,
2. [...]

Section 209 **Effect of suspension**

A period in which limitation is suspended is not included in the calculation of the limitation period.

Section 214 **Effect of limitation**

(1) After limitation occurs, the obligor is entitled to refuse performance.

(2) Performance rendered in satisfaction of a claim that is statute-barred may not be claimed back even if performance was rendered without knowledge of the limitation. The same applies to an acknowledgement made in accordance with a contract and to a security provided by the obligor.

Section 218 **Ineffectiveness of revocation**

(1) Revocation for non-performance or for the failure to perform as contractually agreed is ineffective if the claim for performance or the claim to cure has become statute-barred and the obligor invokes this. This applies even if, in accordance with section 275 (1) to (3), section 439 (4) or section 635 (3), the obligor is not required to perform and the claim for performance or cure would be statute-barred. Section 216 (2) sentence 2 remains unaffected.

(2) Section 214 (2) applies accordingly.

Section 227 **Self-defence against persons**

(1) An act required for self-defence is not unlawful.

(2) Self-defence is the defence required to ward off a present unlawful assault on oneself or another.

Section 228
Necessity

A person who damages or destroys a thing belonging to another in order to ward off from themselves or from another a danger threatened by the thing is not acting unlawfully if the damage or destruction is necessary to ward off the danger and the damage is not out of proportion to the danger. If the person acting in this manner is at fault for the danger, then they are obliged to pay damages.

Section 229
Self-help

A person who, for the purpose of self-help, removes, destroys or damages a thing, or a person who, for the purpose of self-help, arrests an obliged person who is suspected of flight, or overcomes the resistance to an act of an obliged person who has a duty to tolerate that act, is not acting unlawfully if help cannot be obtained from the authorities in good time and there is the danger, if no immediate intervention takes place, that the realisation of the claim will be frustrated or become considerably more difficult.

Section 230
Limits of self-help

- (1) Self-help may not extend beyond what is required to ward off the danger.
- (2) In the case in which things are removed, then, unless compulsory enforcement is being effected, a writ of attachment in rem is to be sought.
- (3) In the case of the arrest of the person obliged, unless the person obliged is set free again, an application for their preventive custody is to be filed with the local court in the district of which the arrest took place; the person obliged is to be presented to the court without undue delay.
- (4) If the application for arrest is delayed or rejected, the things seized are to be returned and the person arrested is to be released without undue delay.

Section 231
Self-help by mistake

If a person does any of the acts described in section 229 in the mistaken assumption that the prerequisites necessary to exclude unlawfulness are satisfied, then that person is obliged to pay damages to the other party, even if the mistake does not result from negligence.

Book 2

Section 241
Duties arising from an obligation

- (1) By virtue of an obligation, an obligee is entitled to claim performance from the obligor. The performance may also consist of forbearance.
- (2) By its contents, an obligation may oblige each party to take account of the rights, legal interests and other interests of the other party.

Section 241a
Unsolicited performance

(1) The supply of movable things that are not being sold based on measures of compulsory enforcement or other judicial measures (goods), or the provision of other services to the consumer by a trader, does not give rise to a claim against the consumer if the consumer has not ordered these goods or other services.

(2) Statutory claims are not excluded if the performance was not intended for the recipient or was made in the mistaken belief that there had been an order, and the recipient was aware of this or could have been aware of this had they exercised the care required in business dealings.

(3) There may be no derogation from the stipulations of this provision to the disadvantage of the consumer. The stipulations apply even if they are circumvented by other arrangements.

Section 242
Performance in good faith

An obligor has a duty to perform according to the requirements of good faith, taking customary practice into consideration.

Section 243
Obligation described by class

(1) A person who owes a thing defined only by class is to supply a thing of average kind and quality.

(2) If the obligor has done what is necessary on their part to supply such a thing, then the obligation is restricted to that thing.

Section 246
Statutory interest rate

Where interest is payable on a debt by law or under a legal transaction, the rate of interest is four per cent per year, unless otherwise provided.

Section 247
Basic rate of interest

(1) The basic rate of interest is 3.62%. It changes on 1 January and 1 July each year by the percentage points by which the reference rate has risen or fallen since the last change in the basic rate of interest. The reference rate is the rate of interest for the most recent main refinancing operation of the European Central Bank before the first calendar day of the relevant six-month period.

(2) Deutsche Bundesbank announces the effective basic rate of interest in the Federal Gazette without undue delay after the dates referred to in subsection (1) sentence 2.

Section 249
Nature and extent of compensation of damages

(1) A person who is liable in damages is to restore the position that would exist if the circumstance obliging them to pay damages had not occurred.

(2) Where damages are payable for injury to a person or damage to a thing, the obligee may demand the required amount of money in lieu of restoration. Where a thing is damaged, the amount of money required under sentence 1 only includes value-added tax if and to the extent that it is actually incurred.

Section 250

Damages in money after the specification of a period of time

The obligee may specify a reasonable time limit for the person liable in damages to undertake restoration and declare that they will reject restoration after the period of time ends. After the end of the period, the obligee may demand damages in money if restoration does not occur in good time; the claim to restoration is excluded.

Section 251

Damages in money without the specification of a period of time

(1) To the extent that restoration is not possible or is not sufficient to compensate the obligee, the person liable in damages is to compensate the obligee in money.

(2) The person liable in damages may compensate the obligee in money if restoration is possible only at disproportionate expense. Expenses incurred as a result of the curative treatment of an injured animal are not disproportionate merely because they significantly exceed the value of the animal.

Section 252

Lost profits

The damage to be compensated also comprises the profits lost. Those profits are considered lost that in the normal course of events or in the special circumstances, particularly due to the measures and precautions taken, could be expected to be attained as a matter of likelihood.

Section 253

Intangible damage

(1) Money may be demanded in compensation for any damage that is not a pecuniary loss only in the cases stipulated by law.

(2) If damages are to be paid for an injury to body, health, freedom or sexual self-determination, then equitable compensation in money also may be demanded for any damage that is not a pecuniary loss.

Section 254

Contributory negligence

(1) Where fault on the part of the injured person contributed to the occurrence of the damage, liability in damages as well as the extent of compensation to be provided depend on the circumstances, in particular on the extent to which the damage was caused mainly by one or the other party.

(2) This also applies if the fault of the injured person is limited to failing to draw the attention of the obligor to the danger of unusually extensive damage, where the obligor neither was aware of the danger nor ought to have been aware of it, or to failing to avert or mitigate the damage. The provision of section 278 applies accordingly.

Section 266
Part performance

The obligor is not entitled to render part performance.

Section 267
Performance by third parties

(1) If the obligor need not perform in person, then a third party also may render performance. Consent by the obligor is not required.

(2) The obligee may reject the performance if the obligor objects.

Section 269
Place of performance

(1) Where no place of performance has been specified or where it is not evident from the circumstances, in particular from the nature of the obligation, performance is to be made at the place at which the obligor had their residence at the time the obligation arose.

(2) If the obligation arose in the commercial undertaking of the obligor, then the place of the commercial establishment takes the place of the residence if the obligor maintains their commercial establishment at another place.

(3) It is not to be concluded solely from the circumstance that the obligor has assumed the costs of shipping that the place to which shipment is to be made is intended to be the place of performance.

Section 270
Place of payment

(1) In case of doubt, the obligor is to transfer money at their own risk and their own expense to the obligee at the residence of the latter.

(2) If the obligation came about in the commercial undertaking of the obligee, then the place of the commercial establishment takes the place of the residence if the obligee maintains their commercial establishment at another place.

(3) If, as the result of a change in the obligee's residence or commercial establishment occurring after the obligation arises, the costs or risk of transmission increase, the obligee is to bear the increased costs in the former case and is to bear the risk in the latter case.

(4) The provisions on the place of performance remain unaffected.

Section 271
Time of performance

(1) Where no time for performance has been specified or where it is not evident from the circumstances, the obligee may demand performance immediately, and the obligor may effect it immediately.

(2) Where a time has been specified, then it is to be assumed, in case of doubt, that the obligee may not demand performance, but the obligor may effect it prior to that time.

Section 275
Exclusion of the duty of performance

- (1) A claim for performance is excluded to the extent that performance is impossible for the obligor or for any other person.
- (2) The obligor may refuse performance to the extent that performance requires an expenditure of time and effort that, taking into account the subject matter of the obligation and the requirement of acting in good faith, is grossly disproportionate to the obligee's interest in performance. In determining what efforts reasonably may be required of the obligor, it also is to be taken into account whether they are responsible for the impediment preventing performance.
- (3) In addition, the obligor may refuse performance if they are to render the performance in person and, having weighed the impediment preventing performance by them against the obligee's interest in performance, performance cannot reasonably be required of the obligor.
- (4) The rights of the obligee are governed by sections 280, 283 to 285, 311a and 326.

Section 276
Responsibility of the obligor

- (1) The obligor is responsible for intent and negligence if a higher or lower degree of liability neither is laid down nor is to be inferred from the other subject matter of the obligation, in particular the giving of a guarantee or the assumption of a procurement risk. The provisions of sections 827 and 828 apply accordingly.
- (2) Anyone acts negligently who fails to exercise the care required in dealings.
- (3) The obligor may not be released in advance from liability for intent.

Section 277
Standard of care in one's own affairs

A person who owes only the care that they customarily exercise in their own affairs is not released from liability for gross negligence.

Section 278
Responsibility of the obligor for third parties

The obligor is responsible for fault on the part of their legal representative, and of persons of whose services they avail themselves in order to perform their obligation, to the same extent they are responsible for fault on their own part. The provision of section 276 (3) does not apply.

Section 280
Damages for breach of duty

- (1) If the obligor breaches a duty arising from the obligation, then the obligee may demand compensation of the damage caused thereby. This does not apply if the obligor is not responsible for the breach of duty.
- (2) The obligee may demand compensation of damages for delay in performance only subject to the additional prerequisite set out in section 286.

(3) Damages in lieu of performance may be demanded by the obligee only subject to the additional prerequisites set out in sections 281, 282 or 283.

Section 281

Damages in lieu of performance for non-performance or failure to render performance as owed

(1) To the extent that the obligor does not render performance when it is due or does not render performance as owed, the obligee may, subject to the prerequisites set out in section 280 (1), demand damages in lieu of performance, if the obligee has set a reasonable time limit for the obligor for performance or cure and this has expired without result. If the obligor has performed only in part, then the obligee may demand damages in lieu of complete performance only if they have no interest in the part performance. If the obligor has not rendered performance as owed, then the obligee may not demand damages in lieu of performance if the breach of duty is trivial.

(2) Setting a period of time for performance may be dispensed with if the obligor seriously and definitively refuses performance or if there are special circumstances which, having weighed the interests of both parties against each other, justify the immediate assertion of a claim for damages.

(3) If the nature of the breach of duty is such that setting a period of time is not an available option, then a warning notice is to be given instead.

(4) The claim for performance is excluded as soon as the obligee has demanded damages in lieu of performance.

(5) Where the obligee demands damages in lieu of complete performance, the obligor is entitled to claim the return of their performance in accordance with sections 346 to 348.

Section 282

Damages in lieu of performance for breach of a duty under section 241 (2)

If the obligor breaches a duty under section 241 (2), then the obligee may, subject to the prerequisites set out in section 280 (1) having been met, demand damages in lieu of performance if it cannot reasonably be required of the obligee any longer to accept performance by the obligor.

Section 283

Damages in lieu of performance where the duty of performance is excluded

If, under section 275 (1) to (3), the obligor has not duty of performance, then the obligee may, subject to the prerequisites set out in section 280 (1) having been met, demand damages in lieu of performance. Section 281 (1) sentences 2 and 3 and subsection (5) apply accordingly.

Section 286

Default of the obligor

(1) If the obligor fails to perform, following a warning notice from the obligee that is made after performance is due, then the obligor will be in default as a result of the dunning letter. Bringing an action for performance and serving an order for payment in summary proceedings for a payment order are equivalent to a dunning letter.

(2) There is no need for a dunning letter if

1. a period of time defined in calendar terms has been specified,
2. performance is to be preceded by an event, and a reasonable time limit for performance has been specified in such a way that it is possible to calculate it in calendar terms from the event onwards,
3. the obligor seriously and definitively refuses performance,
4. having weighed the interests of both parties against each other, the immediate commencement of default is justified for special reasons.

(3) The obligor of a claim for payment will be in default at the latest if they do not perform within 30 days after the due date and receipt of an invoice or equivalent statement of payment; this applies to an obligor who is a consumer only if these consequences specifically have been noted in the invoice or statement of payment. If the time at which the invoice or payment statement is received by the obligor is uncertain, then an obligor who is not a consumer will be in default at the latest 30 days after the due date and receipt of the consideration.

(4) The obligor is not in default for as long as performance is not made as the result of a circumstance for which they are not responsible.

(5) Section 271a (1) to (5) applies accordingly to an agreement made in derogation from subsections (1) to (3) concerning the time at which the obligor begins to be in default.

Section 287 Responsibility during default

While the obligor is in default, they are responsible for all negligence. The obligor is liable for performance in the case of chance as well, unless the damage would have occurred even if performance had been made in good time.

Section 288 Default interest and other damage caused by default *)

(1) Any money debt is to bear interest during the time of default. The default rate of interest per year is five percentage points above the basic rate of interest.

(2) In the case of legal transactions entered into by parties other than a consumer, the rate of interest for claims to payment is nine percentage points above the basic rate of interest.

(3) The obligee may demand higher interest on other legal grounds.

(4) The assertion of further damage is not excluded.

(5) Where the obligor is not a consumer and is in default in making payment, the obligee of such claim for payment moreover is entitled to payment of a lump sum in the amount of 40 euros. This applies also where the claim for payment consists of a part payment or of some other type of instalment. The lump sum pursuant to sentence 1 is to be set off from damages owed inasmuch as the damages are caused by the costs of litigation.

(6) An agreement is ineffective that is made in advance and rules out the entitlement to default

interest of the obligee who has a claim for payment. The same applies to an agreement restricting such claim or ruling out or restricting the entitlement, of the obligee who has a claim for payment, to the lump sum defined in subsection (5) or to the compensation of the damages they have suffered by reason of the costs of litigation, if said agreement is grossly inequitable with a view to the concerns of the obligee. In case of doubt, an agreement ruling out the lump sum pursuant to subsection (5) or the compensation of the damage by reason of the costs of litigation is to be considered grossly inequitable. Sentences 1 to 3 are not to be applied if the claim is directed against a consumer.

Section 305

Incorporation of standard business terms into the contract

(1) Standard business terms are all contract terms that are pre-worded for more than two contracts which one contractual party (the user) presents to the other party when the contract is concluded. It is irrelevant whether the provisions take the form of a physically separate part of a contract or are made part of the contractual document itself, what their volume is, what typeface is used for them and what form the contract takes. Contract terms are not standard business terms insofar as they have been negotiated in detail by the contractual parties.

(2) Standard business terms become part of a contract only if the user, when concluding the contract,

1. refers the other contractual party to them explicitly or if, due to the manner in which the contract is concluded, making such explicit reference would be possible only with disproportionate difficulty, if the user posts a clearly visible notice at the place at which the contract is concluded, and
2. gives the other contractual party the opportunity to take notice of their contents in a manner that reasonably can be expected of the other party to accept and that also adequately takes account of any physical handicap of the other contractual party that is discernible to the user,

and if the other contractual party agrees to their applying.

(3) The contractual parties may agree in advance, while observing the requirements set out in subsection (2), that specific standard business terms are to govern a specific type of legal transaction.

Section 305a

Incorporation in special cases

The following are incorporated, even without compliance with the requirements cited in section 305 (2) nos. 1 and 2, if the other contractual party agrees to their applying:

1. the tariffs and regulations of the railways issued with the approval of the competent transport authority or on the basis of international conventions, and the terms of transport approved under the Passenger Transport Act (*Personenbeförderungsgesetz*), of trams, trolley buses and motor vehicles in regular public transport services,
2. the standard business terms published in the gazette of the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway (*Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen*) and kept available on the

business premises of the user,

- a) into transport contracts concluded off business premises by the posting of items in post boxes,
 - b) into contracts on telecommunications, information services and other services that are provided directly by the use of distance communication and at one time and without interruption during the supply of a telecommunications service, if it is disproportionately difficult to make the standard business terms available to the other party before the contract is concluded.
3. the approved investment terms of capital management companies.

Section 305b
Priority of individually agreed terms

Individually agreed terms take priority over standard business terms.

Section 305c
Surprising and ambiguous clauses

- (1) Provisions in standard business terms which in the circumstances, in particular with regard to the outward appearance of the contract, are so unusual that the party contracting with the user need not expect to encounter them, do not form part of the contract.
- (2) Any doubts in the interpretation of standard business terms are resolved to the detriment of the user.

Section 306
Legal consequences of non-incorporation and ineffectiveness

- (1) If standard business terms as a whole or in part have not become part of the contract or are ineffective, then the remainder of the contract will remain in effect.
- (2) To the extent that the terms have not become part of the contract or are ineffective, the contents of the contract are determined by the statutory provisions.
- (3) The contract is ineffective if upholding it, even taking into account the alteration provided for in subsection (2), would constitute an unreasonable hardship for one party.

Section 306a
Prohibition of circumvention

The provisions of this Division apply even if they are circumvented by other arrangements.

Section 307
Test of reasonableness of contents

- (1) Provisions in standard business terms are ineffective if, contrary to the requirement of good faith, they unreasonably disadvantage the party contracting with the user. An unreasonable disadvantage also may arise from the provision not being clear and comprehensible.
- (2) In case of doubt, an unreasonable disadvantage is to be assumed to exist if a provision

1. is not compatible with essential principles of the statutory provision from which it deviates, or
2. limits essential rights or duties inherent in the nature of the contract to such an extent that attainment of the purpose of the contract is jeopardised.

(3) Subsections (1) and (2) as well as sections 308 and 309 apply only to provisions in standard business terms on the basis of which arrangements deviating from legal provisions, or arrangements supplementing those legal provisions, are agreed. Other provisions may be ineffective by virtue of subsection (1) sentence 2 in conjunction with subsection (1) sentence 1.

Section 308 **Prohibited clauses with the possibility of valuation**

In standard business terms, the following in particular are ineffective:

1. (Period of time for acceptance and performance) a provision by which the user reserves the right to unreasonably long or insufficiently specific periods of time for acceptance or rejection of an offer or for rendering performance; the reservation of the right not to perform until after the end of the period of time for withdrawal provided for in section 355 subsections (1) and (2) is exempt herefrom;
 - 1a. (Payment deadline) a provision by which the user reserves the right to an unreasonably long period of time for discharging a claim for payment of the other contracting party; where the user is not a consumer, the presumption will be, in case of doubt, that a period of more than 30 days following receipt of the consideration or, if an invoice or an equivalent statement of payment is submitted to the obligor following receipt of the consideration, a period of more than 30 days following receipt of such invoice or statement of payment is unreasonably long;
 - 1b. (Verification period and period for acceptance) a provision by which the user reserves the right to an unreasonably long period of time for verification or acceptance of the consideration before discharging a claim for payment of the other contracting party; where the user is not a consumer, the presumption will be, in case of doubt, that a period of more than 15 days following receipt of the consideration is unreasonably long;
2. (Additional period of time) a provision by which the user, contrary to legal provisions, reserves the right to an unreasonably long or insufficiently specific additional period of time for the performance the user is to render;
3. (Reservation of revocation) the agreement of a right of the user to free themselves from their obligation to perform without any objectively justified reason indicated in the contract; this does not apply to continuing obligations;
4. (Reservation of the right to modify) the agreement of a right of the user to modify the performance promised or deviate from it, unless the agreement of the modification or deviation reasonably can be expected of the other party to the contract when the interests of the user are taken into account;
5. (Fictitious declarations) a provision by which a declaration by the party contracting with

the user, made when performing or omitting a specific act, is deemed to have been made or not made by the party contracting with the user unless

- a) the other contracting party is granted a reasonable time limit to make an express declaration, and
 - b) the user agrees to especially draw the attention of the other contracting party, at the beginning of the period of time, to the intended consequences of the contracting party's behaviour;
6. (Fictitious receipt) a provision stipulating that a declaration by the user that is of special importance is deemed to have been received by the other party to the contract;
7. (Winding up of contracts) a provision by which the user, in order to provide for the event that a contractual party revokes the contract or gives notice of termination of the contract, may demand
- a) unreasonably high remuneration for the use or deployment of a thing or for the exercise of a right or for performance rendered, or
 - b) unreasonably high reimbursement of expenses;
8. (Unavailability of performance) the agreement, admissible under no. 3, of the reservation by the user of a right to free themselves from the duty to perform the contract in the absence of availability of performance, if the user does not agree to
- a) inform the other contracting party, without undue delay, of the unavailability, and
 - b) reimburse the other contracting party, without undue delay, for consideration.
9. (Exclusion of assignment) a provision by which assignability is excluded
- a) for a claim to money of the other contractual party against the user, or
 - b) for some other right that the other contractual party has against the user if
 - aa) the user has no interest meriting protection in the exclusion of assignment or if
 - bb) legitimate concerns of the other contractual party in the assignability of the right outweigh the user's interest meriting protection in the exclusion of assignment;

letter (a) does not apply to claims under payment services framework contracts, and letters (a) and (b) do not apply to claims to benefits within the meaning of the Company Pensions Act (*Betriebsrentengesetz*).

Section 309 **Prohibited clauses without the possibility of valuation**

Even to the extent that a deviation from the statutory provisions is permissible, the following are ineffective in standard business terms:

1. (Price increases at short notice) a provision stipulating an increase in payment for goods or services that are to be delivered or rendered within four months of the contract having been concluded; this does not apply to goods or services delivered or rendered in connection with continuing obligations;

[...]

6. (Penalty for breach of contract) a provision by which the user is promised the payment of a contractual penalty in the event of non-acceptance or late acceptance of the performance, in the event of payment default or in the event that the other party to the contract frees itself from the contract;
7. (Exclusion of liability for injury to life, limb or health and in case of gross fault)
 - a) (Injury to life, limb or health) an exclusion or limitation of liability for damage from injury to life, limb or health due to negligent breach of duty by the user or intentional or negligent breach of duty by a legal representative or the user or by a person deployed to perform an obligation of the user;
 - b) (Gross fault) an exclusion or limitation of liability for other damage arising from a grossly negligent breach of duty by the user or from an intentional or grossly negligent breach of duty by a legal representative of the user or by a person deployed to perform an obligation of the user;

letters (a) and (b) do not apply to limitations of liability in terms of transport and tariff rules, authorised in accordance with the Passenger Transport Act (*Personenbeförderungsgesetz*), of trams, trolley buses and motor vehicles in regular public transport services, to the extent that they do not deviate to the disadvantage of the passenger from the Order on Standard Transport Terms for Tram and Trolley Bus Transport and Regular Public Transport Services with Motor Vehicles (*Verordnung über die Allgemeinen Beförderungsbedingungen für den Strassenbahn- und Obusverkehr sowie den Linienverkehr mit Kraftfahrzeugen*) of 27 February 1970; letter (b) does not apply to limitations on liability for state-approved lotteries and gaming contracts;

8. (Other exclusions of liability for breaches of duty)
 - a) (Exclusion of the right to free oneself from the contract) a provision which, in the event of a breach of duty for which the user is responsible and which does not consist of a defect of the object of the purchase or the work, excludes or restricts the right of the other party to the contract to free itself from the contract; this does not apply to the terms of transport and tariff rules referred to in no. 7 under the prerequisites set out there;
 - b) (Defects) a provision by which, in contracts relating to the supply of newly produced things and contracts relating to the performance of work
 - aa) (Exclusion and referral to third parties) the claims against the user due to defects are excluded in their entirety or with regard to individual parts, are limited to the granting of claims against third parties or made contingent on prior court action taken against third parties;

- bb) (Limitation to cure) the claims against the user are limited in their entirety or with regard to individual parts to a right to cure, to the extent that the right is not expressly reserved for the other party to the contract to reduce the purchase price if the cure should fail or, except where building work is the object of liability for defects, at its option to revoke the contract;
- cc) (Expenses for cure) the duty of the user to bear, or reimburse, the expenses necessary for the purpose of effecting cure pursuant to section 439 subsections (2) and (3) or section 635 (2) is excluded or limited;
- dd) (Withholding cure) the user makes cure dependent upon prior payment of the entire fee or a portion of the fee that is disproportionate when taking the defect into account;
- ee) (Cut-off period for notice of defects) the user sets a cut-off period for the other party to the contract to give notice of non-obvious defects which is shorter than the permissible period of time under double letter (ff) below;
- ff) (Easing of limitation) the limitation of claims against the user due to defects in the cases governed by section 438 (1) no. 2 and section 634a (1) no. 2 is eased, or in other cases a limitation period of less than one year reckoned from the beginning of the statutory limitation period is attained;

[...]

12. (Burden of proof) a provision by which the user modifies the burden of proof to the disadvantage of the other party to the contract, in particular by

- a) imposing on the latter the burden of proof for circumstances lying in the sphere of responsibility of the user, or
- b) having the other party to the contract confirm certain facts;

letter (b) does not apply to acknowledgements of receipt that are signed separately or provided with a separate qualified electronic signature;

[...]

14. (Waiver of action) a provision by which the other party to the contract is permitted to assert its claims vis-à-vis the user in court only after it has attempted to amicably settle the matter in proceedings serving the out-of-court resolution of disputes.

Section 310 **Scope of application**

[...]

(3) In the case of contracts between a trader and a consumer (consumer contracts) the rules of this Division apply subject the following provisos:

1. Standard business terms are deemed to have been presented by the trader, unless they were introduced into the contract by the consumer;
2. [...]
3. in judging an unreasonable disadvantage under section 307 (1) and (2), the other circumstances attending the conclusion of the contract also are to be taken into account.

Section 311

Obligations created by legal transaction and obligations similar to legal transactions

(1) In order to create an obligation by legal transaction and to alter the contents of an obligation, a contract between the parties is required, unless otherwise provided by statute.

(2) An obligation with duties under section 241 (2) also comes into existence by

1. the commencement of contract negotiations
2. the initiation of a contract where one party, with regard to a potential contractual relationship, gives the other party the possibility of affecting its rights, legal interests and other interests, or entrusts these to the other party, or
3. similar business contacts.

(3) An obligation with duties under section 241 (2) may also come into existence in relation to persons who are not themselves intended to be contractual parties. Such an obligation comes into existence in particular if the third party, by laying claim to being given a particularly high degree of trust, substantially influences the pre-contract negotiations or the conclusion of the contract.

Section 311a

Impediment preventing performance at conclusion of contract

(1) A contract is not prevented from being effective by the fact that under section 275 (1) to (3), the obligor does not need to perform and the impediment preventing performance already exists when the contract is concluded.

(2) The obligee may, at its option, demand damages in lieu of performance or reimbursement of its expenses in the scope specified in section 284. This does not apply if the obligor was not aware of the impediment preventing when concluding the contract and is also not responsible for their lack of awareness. Section 281 (1) sentences 2 and 3 and subsection (5) apply accordingly.

Section 311b

Contracts on plots of land, assets and an estate

(1) A contract by which one party agrees to transfer or acquire ownership of a plot of land is to be recorded by a notary. A contract not concluded in this form becomes valid with all its contents if a declaration of conveyance and registration in the Land Register are effected.

(2) A contract by which one party agrees to transfer its future assets or a fraction of its future assets or to charge them with a usufruct is void.

(3) A contract by which one party agrees to transfer its present assets or a fraction of its present assets or to charge them with a usufruct is to be recorded by a notary.

(4) A contract relating to the estate of a third party who is still alive is void. The same applies to a contract relating to a compulsory portion or a legacy from the estate of a third party who is still alive.

(5) Subsection (4) does not apply to a contract concluded between future heirs on intestacy relating to the hereditary share on intestacy or the compulsory portion of one of them. Such a contract is to be recorded by a notary.

Section 312 **Scope of application**

(1) The provisions of Chapters 1 and 2 of this Subtitle are to be applied to consumer contracts in which the consumer enters into obligation to pay a price.

[...]

Section 312b **Off-premises contracts**

(1) Off-premises contracts are contracts

1. that are concluded with the simultaneous physical presence of the consumer and of the trader, in a place that is not the business premises of the trader,
2. for which an offer was made by the consumer in the same circumstances as referred to in no. 1,
3. that are concluded on the business premises of the trader or through any means of distance communication, but where, immediately prior to such conclusion, the consumer had been personally and individually addressed, in a place that is not the business premises of the trader, in the simultaneous physical presence of the consumer and the trader, or
4. that are concluded during an excursion organised by the trader or with the trader's assistance, with the aim of promoting goods or services to the consumer and entering into the corresponding contracts with them.

Any persons acting in the trader's name or on the trader's behalf are in a position equivalent to that of the trader.

(2) Business premises within the meaning of subsection (1) are any immovable retail premises in which the trader carries out their activity on a permanent basis and any movable retail premises in which the trader carries out their activity on a usual basis. Any retail premises in which the person acting in the trader's name or on the trader's behalf carries out their activity on a permanent basis or customarily are equivalent to the premises of the trader.

Section 312c **Distance contracts**

(1) Distance contracts are contracts for which the trader, or a person acting in the trader's name

or on the trader's behalf, and the consumer exclusively avail themselves of means of distance communication in negotiating and concluding the contract, except where the conclusion of the contract does not take place in the context of a sales or service-provision scheme organised for distance sales.

(2) Means of distance communication within the meaning of this Code are all means of communication that may be used to initiate or to conclude a contract, without requiring the simultaneous physical presence of the contractual parties, such as letters, catalogues, telephone calls, faxes, emails, text messages sent via the mobile telephone service (SMS) as well as messages broadcast and sent via digital services pursuant to Section 1(4) No. 1 of the Digital Services Act.

Section 312d **Obligations to provide information**

(1) In the case of off-premises contracts and of distance contracts, the trader is obliged to inform the consumer according to the stipulations of Article 246a of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). Unless the contractual parties expressly have agreed otherwise, the information the trader provides by way of meeting this obligation becomes part of the contract's content.

(2) In the case of off-premises contracts and of distance contracts for financial services, the trader is obliged, in derogation from subsection (1), to inform the consumer in accordance with the stipulations of Article 246b of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*).

Section 312g **Right of withdrawal**

(1) In the case of off-premises contracts and of distance contracts, the consumer has a right of withdrawal in accordance with section 355.

(2) Unless otherwise agreed by the parties, the right of withdrawal does not exist for the following contracts:

1. contracts for the supply of goods that are not pre-fabricated and the production of which is governed by an individual choice of, or decision by, the consumer, or that are clearly tailored to personal needs of the consumer,
2. contracts for the supply of goods that are highly perishable, or that may quickly pass their expiration date,
3. contracts for the supply of sealed goods that are not suitable for return due to health protection or hygiene reasons, if such goods were unsealed after delivery,
4. contracts for the supply of goods that, by their nature, are inseparably mixed, after delivery, with other items,
5. contracts for the supply of alcoholic beverages, the price of which has been agreed upon at the time of the conclusion of the sales contract, the delivery of which can only take place at the earliest after 30 days following the conclusion of the sales contract, and the current value of which is dependent on market fluctuations outside of the trader's

control,

6. contracts for the supply of sealed audio or sealed video recordings or sealed computer software, if they were unsealed after delivery,
7. contracts for the delivery of newspapers, periodicals or magazines with the exception of subscription contracts for the supply of such publications,
8. contracts for the supply of goods or the provision of services including the provision of financial services, the price of which is dependent on fluctuations on the financial market that are outside of the trader's control and that may occur within the withdrawal period, including in particular services in connection with stock, with shares in open-ended investment assets within the meaning of section 1 (4) of the Investment Code (*Kapitalanlagegesetzbuch*), and with other tradeable securities, foreign currencies, derivatives or money market instruments,
9. contracts for the provision of services in the fields of accommodation other than for residential purposes, transport of goods, car rental services, deliveries of food and beverages, or further services related to leisure activities, if the contract provides for a specific date or period of performance,
10. contracts that are concluded in the context of a method of sale where goods or services are offered by the trader to consumers, who attend or are given the possibility to attend the auction in person, through a transparent, competitive bidding procedure run by an auctioneer and where the successful bidder is obliged to purchase the goods or services (publicly accessible auction),
11. contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance; this does not apply as regards additional services provided on the occasion of such visit that the consumer has not specifically requested, or as regards any goods delivered on the occasion of such visit that are not absolutely required as replacement parts in carrying out the maintenance or in making the repairs,
12. contracts for the provision of betting and lottery services, unless the consumer has made their declaration as to the conclusion of a contract by telephone or the contract is an off-premises contract, and
13. contracts that are recorded by a notary; this will apply to distance contracts relating to financial services only in those cases in which the notary confirms that the rights of the consumer set out in section 312d (2) are safeguarded.

(3) In addition, the right of withdrawal does not exist for contracts regarding which the consumer, under sections 495 and 506 to 513, already is entitled to a right of withdrawal under section 355, nor does it exist in the case of off-premises contracts regarding which the consumer is already entitled to a right of withdrawal pursuant to section 305 subsections (1) to (6) of the Investment Code (*Kapitalanlagegesetzbuch*).

Section 313 **Interference with the basis of the transaction**

(1) If circumstances that became the basis of a contract have undergone serious change since

the contract was concluded and if the parties would not have concluded the contract or would have concluded it with different contents had they foreseen this change, then adaptation of the contract may be demanded to the extent that, taking account of all the circumstances of the specific case, in particular the contractual or statutory distribution of risk, one of the parties cannot reasonably be required to uphold the contract without alteration.

(2) It is equivalent to a change of circumstances if material conceptions that have become the basis of the contract are found to be incorrect.

(3) If adaptation of the contract is not possible or if one party cannot reasonably be required to accept it, then the disadvantaged party may revoke the contract. In the case of continuing obligations, the right to terminate takes the place of the right of revocation.

Section 314

Termination, for a compelling reason, of contracts for the performance of a continuing obligation

(1) Each party may terminate a contract for the performance of a continuing obligation for a compelling reason without a notice period. A compelling reason is given if the terminating party, having taken into account all the circumstances of the specific case and having weighed the interests of both parties against each other, cannot reasonably be required to continue the contractual relationship until the agreed end or until the expiry of a notice period.

(2) Where the compelling reason consists of the breach of a duty under the contract, the contract may be terminated only after the expiry without result of a period of time specified for relief or after a warning notice has failed to obtain a result. Section 323 (2) no. 1 and 2 applies accordingly as regards the dispensability of specifying a period of time for such relief and as regards the dispensability of a warning notice. Specifying a period of time for relief and issuing a warning notice also may be dispensed with if special circumstances are given that, having weighed the interests of both parties against each other, justify immediate termination.

(3) The person entitled may give notice only within a reasonable time limit after obtaining knowledge of the reason for termination.

(4) The termination does not rule out the entitlement to demand compensation of damages.

Section 320

Defence of unperformed contract

(1) A person who is a party to a reciprocal contract may refuse their part of the performance until the other party renders consideration, unless the person is obliged to perform in advance. If performance is to be made to more than one person, an individual person may be refused the part performance due to that person until the complete consideration has been rendered. The provision of section 273 (3) does not apply.

(2) If one party has performed in part, consideration may not be refused to the extent that refusal, in the circumstances, in particular because the part in arrears is relatively trivial, would be in bad faith.

Section 323

Revocation for non-performance or for performance not as contractually agreed

(1) If, in the case of a reciprocal contract, the obligor does not render an act of performance which is due, or does not render it as contractually agreed, then the obligee may revoke the contract, provided the obligee has specified, without result, an additional period of time for performance or cure.

(2) Specifying a period of time may be dispensed with if

1. the obligor seriously and definitively refuses performance,
2. the obligor does not render performance by a date specified in the contract or within a period of time specified in the contract, in spite of the fact that, according to a notice given by the obligee to the obligor prior to conclusion of the contract or based on other circumstances attending at the time of its conclusion, the performance as per the date specified or within the period of time specified is of essential importance to the obligee, or
3. in the case of work not having been carried out as contractually agreed, special circumstances exist that, having weighed the interests of both parties against each other, justify immediate revocation.

(3) If the nature of the breach of duty is such that setting a period of time is not an available option, a warning notice takes the place of setting the period of time.

(4) The obligee may revoke the contract before performance is due if it is obvious that the prerequisites for revocation will be met.

(5) If the obligor has performed in part, the obligee may revoke the whole contract only if the obligee has no interest in part performance. If the obligor has not performed as contractually agreed, the obligee may not revoke the contract if the breach of duty is trivial.

(6) Revocation is excluded if the obligee is solely or very predominantly responsible for the circumstance that would entitle them to revoke the contract or if the circumstance for which the obligor is not responsible occurs at a time when the obligee is in default of acceptance.

Section 324

Revocation for breach of a duty under section 241 (2)

If the obligor, in the case of a reciprocal contract, breaches a duty under section 241 (2), then the obligee may revoke the contract if the obligee no longer reasonably can be expected to uphold the contract.

Section 325

Damages and revocation

The right to demand damages in the case of a reciprocal contract is not excluded by revocation.

Section 326

Release from consideration and revocation where the duty of performance is excluded

(1) If, under section 275 (1) to (3), the obligor is not obliged to perform, there is no entitlement

to consideration; in the case of part performance, section 441 (3) applies accordingly. Sentence 1 does not apply if the obligor, in the case of failure to perform as contractually agreed, does not, under section 275 (1) to (3), have to effect cure.

(2) If the obligee is solely or very predominantly responsible for the circumstance due to which the obligor does not, under section 275 (1) to (3), have to perform, or if this circumstance for which the obligor is not responsible occurs at a time when the obligee is in default of acceptance, the obligor retains the entitlement to consideration. However, the obligor must allow to be credited against them what they save due to their being released from performance or what they acquire or wilfully fail to acquire from other use of their labour.

(3) If the obligee demands, under section 285, the surrender of the substitute benefit obtained for the object owed or assignment of the claim to reimbursement, the obligee remains obliged to render consideration. However, the consideration is reduced under section 441 (3) to the extent that the value of the reimbursement or of the claim to reimbursement falls short of the value of the performance owed.

(4) To the extent that the consideration that is not owed under this provision is effected, what is performed may be claimed back under sections 346 to 348.

(5) If, under section 275 (1) to (3), the obligor does not have to perform, then the obligee may revoke the contract; section 323 applies accordingly to the revocation, subject to the proviso that setting a period of time may be dispensed with.

Section 327 **Scope of application**

(1) The provisions of this Subtitle are to be applied to consumer contracts the subject matter of which is the supply by the trader of digital content or digital services (digital products) against payment of a price. A price as defined in this Subtitle also is a digital presentation of a value.

(2) Digital content is data that are created and supplied in digital form. Digital services are services that allow

1. the consumer to create, process, store or access data in digital form, or
2. the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service.

(3) The provisions of this Subtitle are to be applied also to consumer contracts on the supply of digital products under which the consumer provides or undertakes to provide personal data to the trader, except where the prerequisites stipulated in section 312 (1a) sentence 2 have been met.

(4) The provisions of this Subtitle are to be applied also to consumer contracts that have as their subject matter digital products that are developed in accordance with the consumer's specifications.

(5) To the exception of sections 327b and 327c, the provisions of this Subtitle are to be applied also to consumer contracts that have as their subject matter the supply of tangible media serving exclusively as the carriers of digital content.

(6) The provisions of this Subtitle are not to be applied to:

1. contracts on services other than digital services, regardless of whether digital forms or means are used by the trader to produce the output of the service or to deliver or transmit it to the consumer,
2. contracts on electronic communications services as defined in section 3 no. 61 of the Telecommunications Act (*Telekommunikationsgesetz – TKG*) of 23 June 2021 (BGBl. (Federal Law Gazette I, p. 1858) with the exception of number-independent interpersonal communications services as defined in section 3 no. 40 of the Telecommunications Act,
3. treatment contracts pursuant to section 630a,
4. contracts on gambling services that involve wagering a stake with pecuniary value and that are provided by electronic means or any other technologies for facilitating communication and at the individual request of a recipient of such services,
5. contracts relating to financial services,
6. contracts on the supply of software by the trader under a free and open-source licence, where the consumer does not pay a price and the personal data provided by the consumer exclusively are processed by the trader for the purpose of improving the security, compatibility or interoperability of the software offered by the trader,
7. contracts on the supply of digital content where the digital content is made available to the general public other than by signal transmission as part of a performance or event,
8. contracts on the supply of information as defined in the Act on the Further Use of Information Held by Public Bodies (*Informationsweiterverwendungsgesetz – IWG*) of 13 December 2006 (BGBl. (Federal Law Gazette I, p. 2913), as amended by Article 1 of the Act of 8 July 2015 (BGBl. (Federal Law Gazette I, p. 1162).

Section 327a

Application to bundle contracts and contracts relating to things with digital elements

(1) The provisions of this Subtitle are to be applied also to consumer contracts that, in a contract between the same contractual parties, have as their subject matter the supply of other things or the supply of other services besides the supply of digital products (bundle contract). Unless otherwise provided hereinbelow, the provisions of this Subtitle are to be applied only to those parts of the bundle contract, however, that relate to the digital products.

(2) The provisions of this Subtitle are to be applied also to consumer contracts concerning things that incorporate or are inter-connected with digital products. Unless otherwise provided hereinbelow, the provisions of this Subtitle are to be applied only to those parts of the contract, however, that relate to the digital products.

(3) Subsection (2) does not apply to sales contracts concerning goods that incorporate or are inter-connected with digital products in such a way that the absence of those digital products would prevent the goods from performing their functions (goods with digital elements). When a good with digital elements is purchased, it is to be assumed in case of doubt that the seller's obligation includes the supply of the digital content or digital services.

Section 327b

Supply of digital products

- (1) Where the trader is obliged under a consumer contract as defined in section 327 or section 327a to supply a digital product to the consumer, the following provisions apply to the specification of the time of performance as well as to the modalities of the supply by the trader.
- (2) If the contractual parties have not agreed a time for the supply of the digital product in accordance with subsection (1), then the consumer may demand that supply be effected without undue delay following the conclusion of contract and the trader may effect it immediately.
- (3) Digital content is supplied as soon as the digital content or the means suitable for accessing or downloading said digital content has/have been supplied or made accessible to the consumer directly or via a facility chosen by the consumer for that purpose.
- (4) A digital service is supplied as soon as the digital service has been made accessible to the consumer directly or via a facility chosen by the consumer for that purpose.
- (5) If the trader is obliged under the contract to perform a series of individual acts of supply, then subsections (2) to (4) apply to each individual act of supply forming part of the series.
- (6) In derogation from section 363, the burden of proof for the supply having been effected in accordance with subsections (1) to (4) is on the trader.

Section 327c

Rights in the case of failure to effect supply

- (1) If the trader's obligation to supply the digital product has fallen due and the trader fails to comply with it without undue delay upon the consumer's demand, then the consumer may terminate the contract. Once a demand as per sentence 1 has been made, it is possible to arrange a different time for the supply only by express agreement.
- (2) Where the prerequisites for terminating the contract in accordance with subsection (1) sentence 1 have been met, the consumer may demand compensation of damages in accordance with sections 280 and 281 (1) sentence 1 or reimbursement of futile expense in accordance with section 284, provided that the prerequisites stipulated in said provisions have been met. Section 281 (1) sentence 1 is to be applied subject to the proviso that the specification of a reasonable period is replaced by the demand as per subsection (1) sentence 1. Claims of the consumer to compensation of damages as defined in sections 283 and 311a (2) remain unaffected.
- (3) The demand as per subsection (1) sentence 1 and (2) sentence 2 may be dispensed with if
 1. the trader refuses to effect supply,
 2. it is clearly recognisable from the circumstances that the trader will not supply the digital product, or
 3. the trader fails to effect supply by a specified date or within a specified period of time despite its having been agreed, or its being evident to the trader from the clearly recognisable circumstances attending the conclusion of the contract that a specific time or period of time for the supply is essential for the consumer.

In the cases governed by sentence 1, the dunning letter defined in section 286 may be dispensed

with in all cases.

(4) Sections 327o and 327p are to be applied accordingly the termination of the contract on the basis of subsection (1) sentence 1 and the legal consequences of such termination. The same applies in the event of the consumer demanding, in the cases governed by subsection (2), compensation of damages instead of the entire performance. Section 325 applies accordingly.

(5) Section 218 is to be applied accordingly to the termination of the contract on the basis of subsection (1) sentence 1.

(6) Should the consumer be in a position to terminate the contract on the basis of subsection (1) sentence 1, they may revoke the contract with regard to the entirety of the elements of the bundle contract if they have no interest in the other part of the bundle contract without the digital product that has not been supplied. Sentence 1 is not to be applied to bundle contracts in which the other element is a telecommunications service as defined in section 3 no. 61 of the Telecommunications Act.

(7) Should the consumer be in a position to terminate the contract on the basis of subsection (1) sentence 1, they may revoke the contract with regard to all elements of a contract in accordance with section 327a (2) if, because of the digital product not having been supplied, the thing is not suitable for customary use.

Section 327d **Conformity of digital products**

Where the trader is obliged under a consumer contract as defined in section 327 or section 327a to supply a digital product, the trader is to supply the digital product free of product deficiencies and defects of title within the meaning of sections 327e to 327g.

Section 327e **Product deficiency**

(1) The digital product is free of product deficiencies if it conforms, at the relevant time under the provisions of this Subtitle, to the subjective requirements, the objective requirements and the requirements regarding integration. Unless otherwise provided hereinbelow, the relevant time is the point in time at which supply is effected in accordance with section 327b. If the trader is obliged under the contract to continuously effect supply over a period of time (continuous supply), then the relevant period is the entire period of supply agreed (supply period).

(2) The digital product conforms to subjective requirements if

1. the digital product
 - a) is of the nature agreed in the contract, including the requirements as to its quantity, its functionality, its compatibility and its interoperability,
 - b) is suitable for the use on which the contract is premised,
2. it is supplied with the accessories, instructions and customer assistance as agreed in the contract and
3. the updates agreed in the contract are supplied during the relevant period stipulated by

the contract.

Functionality is the ability of a digital product to perform its functions in keeping with its purpose. Compatibility is the ability of a digital product to function with hardware or software with which, as a rule, digital products of the same type are used without having to be converted. Interoperability is the ability of a digital product to function with hardware or software different from that with which, as a rule, digital products of the same type are used.

(3) The digital product conforms to objective requirements if

1. it is suitable for customary use,
2. it is of a nature, including in relation to quantity, functionality, compatibility, accessibility, continuity and security, that is usual for digital products of the same type and that the consumer may reasonably expect, given the nature of the digital product,
3. it corresponds to the nature of a trial version or preview made available to the consumer by the trader before the conclusion of the contract,
4. it is supplied along with the accessories and instructions that the consumer may expect to receive,
5. updates are supplied to the consumer in accordance with section 327f and the consumer is informed of such updates and,
6. unless the parties have agreed otherwise, if it is supplied in the most recent version available at the time of the conclusion of the contract.

The usual nature as defined in sentence 1 no. 2 also includes requirements that the consumer may reasonably expect to be met based on public statements made by the trader or by other persons in previous links of the distribution chain, either themselves or on their behalf, particularly in advertisement or on labelling. This does not apply if the trader was not, and could not reasonably have been, aware of the public statement in question; if, by the time of conclusion of the contract, the public statement had been corrected in the same way as, or in a way comparable to how, it had been made; or if the decision to acquire the digital product could not have been influenced by the public statement.

(4) Inasmuch as an integration is to be performed, the digital product conforms to integration requirements if

1. the integration has been performed correctly or
2. if, despite the integration having been performed incorrectly, this is based neither on an incorrect integration by the trader nor on a deficiency in the instructions supplied by the trader.

Integration is the linking of a digital product with the components of the consumer's digital environment or its incorporation into same in order to enable the use of the digital product in keeping with the requirements stipulated by the provisions of this Subtitle. Digital environment is hardware, software and network connections of any kind used by the consumer to access or make use of a digital product.

(5) It is equivalent to a product deficiency if the trader supplies a different digital product than

the digital product owed under the contract.

Section 327f **Updates**

(1) The trader is to ensure that, over the relevant period of time, the consumer is informed of and supplied with updates that are necessary to keep the digital product in conformity. The necessary updates also include security updates. The relevant period of time as per sentence 1 is,

1. where the contract provides for the continuous supply of a digital product, the supply period,
2. in all other cases, the period that the consumer may reasonably expect, given the type and purpose of the digital product and taking into account the circumstances and nature of the contract.

(2) Where the consumer fails to install, within a reasonable time limit, an update supplied by the trader in accordance with subsection (1), the trader will not be liable for any product deficiency resulting solely from the lack of the relevant update, provided

1. the trader informed the consumer about the availability of the update and the consequences of the failure of the consumer to install it, and
2. the failure of the consumer to install the update or the incorrect installation by the consumer of the update was not due to shortcomings in the installation instructions provided by the trader.

Section 327g **Defect of title**

The digital product is free of defects of title if the consumer is able to use it in accordance with the subjective or objective requirements defined in section 327e (2) and (3) without violating the rights of third parties.

Section 327h **Deviating agreements on product features**

It is possible to deviate from the objective requirements set out in section 327e (3) sentence 1 nos. 1 to 5 and sentence 2, section 327f (1) and section 327g only if it was specially made known to the consumer prior to their making their declaration as to the conclusion of a contract that a certain feature of the digital product deviates from those objective requirements and this deviation was expressly and separately agreed in the contract.

Section 327i **Rights of the consumer in the case of deficiencies**

If the digital product is deficient, then the consumer may, provided the prerequisites set out in the following provisions have been met,

1. demand cure as defined in section 327l,
2. terminate the contract on the basis of section 327m (1), (2), (4) and (5) or reduce the

price under the terms of section 327n, and

3. demand compensation of damages on the basis of section 280 (1) or section 327m (3) or reimbursement of futile expenses as defined in section 284.

Section 327j Limitation

(1) The claims designated in section 327i no. 1 and 3 will become statute-barred after two years. The limitation period commences upon supply.

(2) In the case of continuous supply, the claims will not become statute-barred prior to the expiry of 12 months following the end of the supply period.

(3) Claims for a violation of the obligation to provide updates will not become statute-barred prior to the expiry of 12 months following the end of the period of time relevant for the obligation to provide updates.

(4) Where a deficiency has become apparent in the course of the limitation period, the claims will not become statute-barred prior to the expiry of four months following that point in time at which the deficiency first became apparent.

(5) Section 218 applies accordingly to the rights designated in section 327i no. 2.

Section 327k Shifting the burden of proof

(1) If, within one year since its having been supplied, the lack of conformity of the digital product to the requirements set out in section 327e or section 327g becomes apparent, then the presumption will be that the digital product was deficient already at the time of supply.

(2) If, in the course of its supply, the lack of conformity of a digital product supplied on a continuous basis to the requirements set out in section 327e or section 327g becomes apparent, then the presumption will be that the digital product was deficient over the course of its supply thus far.

(3) Subject to subsection (4), the assumptions as per subsections (1) and (2) do not apply if

1. the consumer's digital environment was incompatible with the technical requirements of the digital product at the relevant time or
2. the trader is unable to determine whether the prerequisites set out in no. 1 had been met because the consumer fails to perform an act of cooperation necessary for this purpose that would have been possible for it to perform and the trader intended to deploy technical means to make said determination that would have been least invasive for the consumer.

(4) Subsection (3) is to be applied only if the trader has informed the consumer, prior to the conclusion of contract, in clear and comprehensible terms, of

1. the technical requirements as to the digital environment of the digital product in the case of subsection (3) no. 1 or

2. the obligations of the consumer as set out in subsection (3) no. 2.

Section 327l

Cure

(1) If the consumer demands cure from the trader, the latter is to bring the digital product into conformity while bearing the expenses required for the cure. The trader is to effect the cure within a reasonable time limit from that point in time at which the consumer informed it of the deficiency, without causing any significant inconvenience to the consumer.

(2) The claim defined in subsection (1) is excluded if cure is impossible or possible for the trader only at disproportionate cost. In this context, regard is to be had in particular to the value of the digital product in a deficiency-free state and the significance of the deficiency. Section 275 (2) and (3) does not apply.

Section 327m

Termination of the contract and compensation of damages

(1) If the digital product is deficient, the consumer may terminate the contract on the basis of section 327o if

1. the claim to cure is excluded by virtue of section 327l (2)
2. the consumer's claim to cure was not complied with as stipulated in section 327l (1),
3. a deficiency becomes apparent in spite of the trader's attempts to effect cure,
4. the deficiency is so serious that the immediate termination of the contract is justified,
5. the trader has refused to effect the proper cure as defined in section 327l (1) sentence 2, or
6. it is obvious from the circumstances that the trader will not effect the proper cure as defined in section 327l (1) sentence 2.

(2) A termination of the contract on the basis of subsection (1) is excluded if the deficiency is trivial. This does not apply to consumer contracts as defined in section 327 (3).

(3) In the cases governed by subsection (1) nos. 1 to 6, the consumer may demand compensation of damages instead of performance, provided the prerequisites stipulated in section 280 (1) have been met. Section 281 subsection (1) sentence 3 and subsection (4) are to be applied accordingly. Where the consumer demands compensation of damages instead of the full performance, the trader is entitled to claim the return of its performance under the terms of sections 327o and 327p. Section 325 applies accordingly.

(4) Should the consumer be in a position to terminate the contract on the basis of subsection (1), they may revoke the contract with regard to the entirety of the elements of the bundle contract if they have no interest in the other part of the bundle contract without the deficient digital product. Sentence 1 is not to be applied to bundle contracts in which the other element is a telecommunications service as defined in section 3 no. 61 of the Telecommunications Act.

(5) Should the consumer be in a position to terminate the contract on the basis of subsection (1), they may revoke the contract with regard to all elements of a contract in accordance with

section 327a (2) if, because of the deficiency of the digital product, the thing is not suitable for customary use.

Section 327n Reduction of price

(1) Instead of terminating the contract on the basis of section 327m (1), the consumer may, by declaration to the trader, reduce the price. The ground for exclusion defined in section 327m (2) sentence 1 does not apply. Section 327o (1) is to be applied accordingly.

(2) In abating the price, it is to be reduced in the ratio of the value that the deficiency-free digital product would have had to its actual value at the time it was supplied. In the case of contracts on the continuous supply of a digital product, the price is to be reduced, under corresponding application of sentence 1, only pro-rata for the duration of the deficiency.

(3) If required, the reduction is to be identified by way of an estimate.

(4) Where the consumer has paid more than the reduced price, the trader is to reimburse the consumer for the amount overpaid. The amount overpaid is to be reimbursed without undue delay, but in any case within 14 days. The period of time commences upon the declaration as to the reduction being received by the trader. The trader must use the same means of payment for the reimbursement that the consumer used in making the payment, unless expressly agreed otherwise and provided the use of some other means of payment does not impose any costs on the consumer. The trader may not seek compensation from the consumer for the costs that it incurs for reimbursing the amount overpaid.

Section 327o Declaration of termination of contract and its legal consequences

(1) The termination of the contract is effected by a declaration being made to the trader in which the consumer's decision to terminate is expressed. Section 351 is to be applied accordingly.

(2) In the case of the contract being terminated, the trader is to reimburse the consumer for the payments that the consumer has made in performance of the contract. The trader's claim to payment of the agreed price ceases to exist in relation to performance that no longer is to be rendered due the contract's termination.

(3) In derogation from subsection (2) sentence 2, the trader's claim ceases to exist also for performance already rendered under contracts on the continuous supply of a digital product, but only for that phase of the supply period during which the digital product was deficient. The price paid for the period of time regarding which the claim has ceased to exist as per sentence 1 is to be reimbursed to the consumer.

(4) Section 327n (4) sentences 2 to 5 is to be applied accordingly to the reimbursements stipulated by subsections (2) and (3).

(5) The consumer is obliged to return to the trader without undue delay a tangible medium the latter has supplied if the trader so demands, such demand to be made no later than 14 days after termination of the contract. The trader is to bear the costs of the return shipment. Section 348 is to be applied accordingly.

Section 327p
Continued use following termination of the contract

(1) Upon the contract having been terminated, the consumer may not continue to use the digital product, nor may the consumer make it available to third parties. The trader is entitled to prevent the consumer from continuing the use. Subsection (3) remains unaffected hereby.

(2) Upon the contract having been terminated, the trader may not continue to use the content that does not consist of personal data and that the consumer has supplied or created in using the digital product supplied by the trader. This does not apply if the content

1. serves no use outside of the context of the digital product supplied by the trader,
2. is connected exclusively to the consumer's use of the digital product supplied by the trader,
3. was aggregated by the trader with other data and it is not possible to disaggregate it or only at disproportionate expense or
4. was created by the consumer together with others, insofar as other consumers are able to continue to use the content.

(3) Upon demand by the consumer, the trader is to supply to same the content defined in subsection (2) sentence 1. This does not apply to content defined in subsection (2) sentence 2 nos. 1 to 3. The content must be supplied to the consumer free of charge, without any impediments imposed by the trader, within a reasonable time limit and in a customary and machine-readable format.

Section 327q
Consequences under contract law of declarations governed by data protection law made by the consumer

(1) Where, following the conclusion of the contract, the consumer exercises their rights as a data subject under data protection law and where they make declarations governed by data protection law, the effectiveness of the contract remains unaffected.

(2) Where the consumer revokes consent they have previously granted under the rules on the protection of personal data or where they object to the further processing of their personal data, the trader may terminate a contract obligating it to a series of individual acts of supply of digital products or to the continuous supply of a digital product without observing a period of notice if, having regard to the scope of data processing that continues to be permissible and weighing the parties' interests against each other, it cannot reasonably be required of the trader to continue the contractual relationship up until the agreed end of the contract or the expiration of a statutory or contractual period of notice.

(3) Claims of compensation on the part of the trader against the consumer because of a restriction of the permissible data processing caused by the exercise of the rights under data protection law or the fact of declarations governed by data protection law having been made are excluded.

Section 327r

Modifications of digital products

(1) In the case of continuous supply, the trader may make modifications to the digital product going beyond the degree required to keep it in conformity as defined in section 327e (2) and (3) and section 327f only if

1. the contract provides for this possibility and sets out a valid reason for doing so,
2. no additional costs are imposed on the consumer by the modification and
3. the consumer is informed in clear and comprehensible terms of the modification.

(2) The trader may make a modification to the digital product that impairs the consumer's ability to access the digital product or the usability of the digital product for the consumer only if the trader informs the consumer thereof via a durable medium within a reasonable time limit prior to the time of the modification. The information must provide the following details:

1. features of the modification and the point in time at which it will be made,
2. the rights of the consumer as defined in subsections (3) and (4).

Sentence 1 does not apply if the impairment of the ability to access the digital product or of its usability is merely trivial.

(3) Where a modification of the digital product impairs the ability to access it or its usability within the meaning of subsection (2) sentence 1, the consumer may terminate the contract within 30 days at no charge. The period of time commences running upon receipt of the information defined in subsection (2). Where the modification is made after the information has been received, the point in time at which the information is received is replaced by the point in time at which the modification is made.

(4) Termination of the contract on the basis of subsection (3) sentence 1 is excluded if

1. impairment of the ability to access the digital product or of its usability is merely trivial
or
2. the consumer retains the ability to access the unmodified digital product and the unmodified digital product continues to be usable for the consumer without any additional cost.

(5) Sections 327o and 327p are to be applied accordingly to the termination of the contract on the basis of subsection (3) sentence 1 and to the legal consequences of such termination.

(6) Subsections (1) to (5) are not to be applied to bundle contracts in which the other element of the bundle contract has as its subject matter the supply of an internet access service or of a publicly accessible number-based interpersonal communications service as part of a bundle contract as defined in section 66 (1) of the Telecommunications Act.

Section 327s

Deviating agreements

(1) The trader may not rely on an agreement with the consumer that deviates from the provisions

of this Subtitle to the disadvantage of the consumer unless the agreement was made only after the consumer notified the trader of the failure to supply the digital product or of the digital product's deficiency.

(2) The trader may not rely on an agreement with the consumer on a modification of the digital product that deviates from the provisions of this Subtitle to the disadvantage of the consumer unless the agreement was made after the consumer was informed of the modification of the digital product in accordance with section 327r.

(3) The provisions of this Subtitle apply even if they are circumvented by other arrangements.

(4) Subsections (1) and (2) do not apply to the exclusion or limitation of the claim to compensation of damages.

(5) Section 327h remains unaffected.

Section 327t **Scope of application**

By way of supplementation, the provisions of this Subtitle are to be applied to contracts between traders serving the supply of digital products in accordance with the consumer contracts defined in sections 327 and 327a that are included in the scope of application of Subtitle 1.

Section 327u **Recourse of the trader**

(1) The trader may demand reimbursement from the trader who has entered into obligation to it to supply a digital product (distribution partner) of the expenses it has incurred in its relationship with a consumer for failure to supply the digital product that was to be supplied to it by the distribution partner, such failure having been caused by the distribution partner, because the consumer exercised their right defined in section 327c (1) sentence 1. The same applies to the expenditures to be borne by the trader as per section 327l (1) if the deficiency asserted by the consumer vis-à-vis the trader was given already at the time of the supply by the distribution partner or if it consists of a violation caused by the distribution partner of the trader's obligation to provide updates as stipulated in section 327f (1).

(2) The claims to reimbursement of the expenditures defined in subsection (1) will become statute-barred after six months. The limitation period commences running,

1. in the case governed by subsection (1) sentence 1, at that point in time at which the consumer has exercised their right,
2. in the case governed by subsection (1) sentence 2, at that point in time at which the trader has satisfied the consumer's claims under section 327l (1).

(3) Section 327k (1) and (2) is to be applied accordingly, subject to the proviso that the period of time commences upon supply to the consumer.

(4) The distribution partner may not rely on an agreement concluded with the trader prior to the assertion of the claims to reimbursement of the expenditures defined in subsection (1) that deviates, to the disadvantage of the trader, from subsections (1) to (3). Sentence 1 is to be applied even if subsections (1) to (3) are circumvented by other arrangements.

(5) Section 377 of the Commercial Code (Handelsgesetzbuch) remains unaffected.

(6) The above subsections are to be applied accordingly to the claims of the distribution partner and of the other contracting parties in the distribution chain against the contracting parties respectively obliged to supply if the obligors are traders.

Section 328 **Contract for the benefit of third parties**

(1) Performance to a third party may be agreed by contract with the effect that the third party acquires the right to demand the performance directly.

(2) In the absence of a specific provision it is to be inferred from the circumstances, in particular from the purpose of the contract, whether the third party is to acquire the right, whether the right of the third party is to come into existence immediately or only based on certain prerequisites, and whether the power is to be reserved for the contracting parties to terminate or alter the right of the third party without its approval.

Section 346 **Effects of revocation**

(1) If one party to a contract contractually has reserved revocation or if it has a statutory right of revocation, then, in the case of revocation, performance received and emoluments taken are to be returned.

(2) In lieu of restitution or surrender, the obligor is to provide compensation for value, to the extent that

1. restitution or surrender is excluded by the nature of what has been obtained,
2. the obligor has used up, alienated, encumbered, processed or redesigned the object received,
3. the object received has deteriorated or has been destroyed; but deterioration that is caused by the object being used in accordance with its intended use is not taken into account.

If consideration is specified in the contract, then this is to be used as a basis when the compensation for value is calculated; if compensation for value for the benefit of use of a loan is to be paid, it may be proved that the value of the benefit of use was lower.

(3) The duty to compensate for value does not apply

1. if the defect justifying revocation only became apparent during processing or transformation of the object,
2. to the extent that the obligee is responsible for the deterioration or destruction or that the damage likewise would have occurred even if the object had remained with the obligee,
3. if in case of a statutory right of revocation the deterioration or destruction occurred with the person entitled, although the latter exercised the care they customarily exercise in their own affairs.

Any remaining enrichment is to be returned.

(4) The obligee may demand damages, in accordance with sections 280 to 283, for breach of a duty under subsection (1).

Section 348

Satisfaction of obligations in return for, and concurrently with, performance

The obligations of the parties resulting from revocation are to be satisfied in return for, and concurrently with, performance. The provisions of sections 320 and 322 apply accordingly.

Section 349

Declaration of revocation

Revocation is effected by declaration to the other party.

Section 355

Right of withdrawal in the case of consumer contracts

(1) If a consumer is given, by statute, a right of withdrawal according to this provision, then the consumer and the trader are no longer bound by their declarations of intent to conclude the contract if the consumer withdraws from the declaration of intent within the period of time specified. The withdrawal is effected by a declaration being made to the trader. The declaration must unambiguously reflect the consumer's decision to withdraw from the contract. The withdrawal does not have to provide any grounds. Dispatch of the withdrawal in good time is sufficient to comply with the time limit.

(2) The withdrawal period is fourteen days. Unless otherwise provided, it begins upon the contract having been concluded.

(3) In the case of the contract being withdrawn from, the performance received is to be returned without undue delay. Where the law has specified a maximum period within which restitution is to be made, this will commence running for the trader upon receipt of the declaration of withdrawal and, for the consumer, upon dispatch of the declaration of withdrawal. A consumer will be complying with this period by dispatching the goods in good time. In the event of withdrawal, the trader bears the risk of the return shipment of the goods.

Section 356

Right of withdrawal in the case of off-premises contracts and distance contracts

(1) The trader may provide the consumer with the opportunity to complete and transmit the model withdrawal form pursuant to schedule 2 to Article 246a section 1 (2) sentence 1 no. 1 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*), or some other unambiguous declaration of withdrawal, on the trader's website. Where the consumer avails himself or herself of this opportunity, the trader must confirm receipt of the withdrawal to the consumer without undue delay on a durable medium.

(2) The withdrawal period commences,

1. in the case of a sale of consumer goods

a) that is not governed by letters (b) to (d), as soon as the consumer or a third party named by the consumer, such third party not being a carrier, has received the

goods,

- b) in the context of which the consumer has ordered several goods as part of a single order and the goods are delivered separately, as soon as the consumer or a third party named by the consumer, such third party not being a carrier, has received the last of the goods,
 - c) in the context of which the goods are delivered in several partial shipments or items, as soon as the consumer or a third party named by the consumer, such third party not being a carrier, has received the last partial shipment or the last item,
 - d) that is directed towards the regular delivery of goods over a specified period of time, as soon as the consumer or a third party named by the consumer, such third party not being a carrier, has received the first goods,
2. in the case of a contract that has as its subject matter the supply of water, gas, electricity, district heating or digital content which is not contained in a tangible medium, without the supply having been offered for sale in a limited volume or set quantity, upon conclusion of the contract.

(3) The withdrawal period does not commence prior to the trader having informed the consumer in accordance with the requirements of Article 246a section 1 (2) sentence 1 no. 1 or of Article 246b section 2 (1) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). The right of withdrawal becomes extinct at the latest twelve months and fourteen days following the point in time set out in subsection (2) or section 355 (2) sentence 2. Sentence 2 does not apply to contracts relating to financial services.

(4) In the case of a contract for the provision of services, the right of withdrawal becomes extinct also in those cases in which the trader has completely provided the service and began with the performance of the service only after the consumer had given express consent thereto and concurrently acknowledged that they would lose the right to withdraw from the contract once the trader had fully performed the contract. In the event a contract is negotiated away from business premises, the approval of the consumer must be transmitted on a durable medium. In the case of a contract relating to the provision of financial services, the right of withdrawal becomes extinct, in derogation from sentence 1, if the contract was performed in full by both parties at the express wish of the consumer before the consumer exercises their right of withdrawal.

(5) In the case of a contract for the supply of digital content that is not contained in a tangible medium, the right of withdrawal becomes extinct also if the trader began with the performance of the contract after the consumer

1. had expressly consented to the trader beginning with the performance of the contract prior to expiry of the withdrawal period, and
2. had acknowledged that by their consent, they would lose the right to withdraw from the contract upon the performance of the contract having commenced.

Section 357

Legal consequences of the withdrawal from off-premises contracts and distance contracts, to the exception of contracts relating to financial services

- (1) The performance received is to be restituted at the latest after fourteen days.
- (2) The trader must also retribute any payments the consumer may have made for the delivery. This does not apply inasmuch as the consumer has incurred additional costs because they opted for a type of delivery other than the least expensive type of standard delivery offered by the trader.
- (3) In making the repayment, the trader must use the same means of payment that the consumer used in making the payment. Sentence 1 does not apply if the parties expressly have agreed otherwise and the consumer does not incur any costs as a result.
- (4) In the case of a sale of consumer goods, the trader may refuse to make repayment until they have received the returned goods or the consumer has provided proof of having dispatched the goods. This does not apply if the trader has offered to collect the goods.
- (5) The consumer is not obliged to arrange for the return shipment of the goods received if the trader has offered to collect the goods.
- (6) The consumer bears the direct costs of return shipment of the goods if the trader has informed the consumer pursuant to Article 246a section 1 (2) sentence 1 no. 2 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) of this obligation. Sentence 1 does not apply if the trader has declared that they are prepared to bear these costs. In the case of off-premises contracts, in the context of which the goods were delivered to the consumer's dwelling at the time the contract was concluded, the trader is obliged to collect the goods at their own costs if, by their nature, these goods cannot be returned by post.
- (7) The consumer is to provide compensation for the diminished value of the goods if
 1. the diminished value results from the handling of the goods in any other manner than that necessary to establish the nature, characteristics, and functioning of the goods, and
 2. the trader has informed the consumer pursuant to Article 246a section 1 (2) sentence 1 no. 1 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) of their right of withdrawal.
- (8) Where the consumer withdraws from a contract for the provision of services or the supply of water, gas, or electricity, without their supply having been offered for sale in a limited volume or set quantity, or for the supply of distance heating, the consumer will owe the trader compensation for the value of the performance made until the time of the withdrawal in those cases in which the consumer expressly has demanded that the trader begin with the performance prior to expiry of the withdrawal period. The claim pursuant to sentence 1 exists only in those cases in which the trader has properly informed the consumer pursuant to Article 246a section 1 (2) sentence 1 no. 1 and 3 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). For off-premises contracts, the claim pursuant to sentence 1 exists only in those cases in which the consumer has transmitted their request pursuant to sentence 1 on a durable medium. In calculating the compensation for value, the total price agreed upon is

to be used as a basis. If the total price agreed upon is excessive, the compensation for value is to be calculated on the basis of the market value of the performance made.

(9) Where the consumer withdraws from a contract for the supply of digital content that is not contained in a tangible medium, they are not to provide compensation for value.

Section 362 Extinction by performance

(1) An obligation is extinguished if the performance owed is rendered to the obligee.

(2) If performance is rendered to a third party for the purpose of performing the contract, then the provisions of section 185 apply.

Section 364 Acceptance in lieu of performance of contract

(1) The obligation expires if the obligee accepts, in lieu of performance of contract, performance other than that owed.

(2) If the obligor assumes a new obligation to the obligee for the purpose of satisfying the latter, then in case of doubt it is not to be presumed that they are assuming the obligation in lieu of performance of contract.

Section 387 Prerequisites

If two persons owe each other performance that is substantially of the same nature, each party may set off its claim against the claim of the other party as soon as it can claim the performance owed to it and effect the performance it owes.

Section 388 Declaration of set-off

Set-off is effected by declaration to the other party. The declaration is ineffective if it is made subject to a condition or a stipulation as to time.

Section 389 Effect of set-off

The effect of set-off is that the claims, to the extent that they correspond, are deemed to expire at the time when they are set against each other as being appropriate for set-off.

Section 390 No set-off against a claim subject to a defence

A claim subject to a defence may not be set off.

Section 393 No set-off against a claim in tort

Set-off is not permissible for a claim on the basis of an intentionally committed tort.

Section 398

Assignment

A claim may be transferred by the obligee to another person by contract with that person (assignment). When the contract is concluded, the new obligee takes the place of the previous obligee.

Section 399

Exclusion of assignment in case of change of content or by agreement

A claim may not be assigned if the performance cannot be made to a person other than the original obligee without a change of its contents or if the assignment is excluded by agreement with the obligor.

Section 400

Exclusion in case of unpledgeable claims

A claim may not be assigned to the extent that it is not subject to pledge.

Section 420

Divisible performance

If more than one person owes divisible performance or if more than one person are to demand divisible performance, then in case of doubt each obligor is only obliged to render an equal proportion and each obligee is only entitled to an equal proportion.

Section 421

Joint and several debtors

If more than one person owes performance in such a way that each is obliged to effect the entire performance, but the obligee is entitled to demand the performance only once (joint and several debtors), the obligee may at their discretion demand full or part performance from each of the obligors. Until the entire performance has been effected, all obligors remain obliged.

Section 433

Contractual duties typical for a purchase agreement

(1) By a purchase agreement, the seller of a thing is obliged to deliver the thing to the buyer and to procure ownership of the thing for the buyer. The seller is to procure the thing for the buyer free from material defects and defects of title.

(2) The buyer is obliged to pay the seller the agreed purchase price and to accept delivery of the thing purchased.

Section 434

Material defects

(1) The thing is free from material defects if, upon the passing of the risk, it conforms to the subjective requirements, the objective requirements and the assembly requirements set out in this provision.

(2) The thing conforms to subjective requirements if

1. it is of the nature agreed
2. it is suitable for the use on which the contract is premised, and
3. it is handed over together with the accessories agreed and the instructions agreed, including assembly and installation instructions.

The nature defined in sentence 1 no. 1 relates to, among other things, the type, quantity, quality, functionality, compatibility, interoperability and other features of the thing regarding which the parties have agreed requirements.

(3) Unless effectively agreed otherwise, the thing conforms to objective requirements if

1. it is suitable for customary use,
2. it is of a nature that is usual in things of the same kind and that the buyer may expect, taking account of
 - a) the type of the thing and
 - b) the public statements made by the seller or by some other link of the distribution chain, either themselves or on their behalf, particularly in advertisement or on labelling,
3. it corresponds to the nature of a sample or model made available to the buyer by the seller before the conclusion of the contract, and
4. it is handed over together with the accessories including packaging, assembly or installation instructions as well as other instructions the buyer may expect to receive.

The usual nature defined in sentence 1 no. 2 relates to, among other things, quantity, quality and other features of the thing, including its durability, functionality, compatibility and security. The seller is not bound by the public statements referred to in sentence 1 no. 2 (b) if the seller was not, and could not reasonably have been, aware of the public statement in question; if, by the time of conclusion of the contract, the public statement had been corrected in the same way as, or in a way comparable to how, it had been made; or if the decision to acquire the thing could not have been influenced by the public statement.

(4) Insofar as an assembly is to be performed, the thing will conform to assembly requirements if the assembly

1. has been performed correctly or
2. if, despite the assembly having been performed incorrectly, this is based neither on an incorrect assembly by the seller nor on a defect given in the instructions supplied by the seller.

(5) Delivery by the seller of a different thing is equivalent to a material defect.

Section 435 Defects of title

The thing is free of defects of title if third parties, in relation to the thing, can assert either no

rights, or only the rights taken over in the purchase agreement, against the buyer. It is equivalent to a defect of title if a right that does not exist is entered in the Land Register.

Section 437 **Rights of buyer in the case of defects**

If the thing is defective, the buyer may, provided the prerequisites set out in the following provisions are met and unless otherwise specified,

1. demand cure as defined in section 439,
2. revoke the contract on the basis of sections 440, 323 and 326 (5) or reduce the price under the terms of section 441, and
3. demand compensation of damages on the basis of sections 440, 280, 281, 283 and 311a or reimbursement of futile expenses as defined in section 284,.

Section 438 **Limitation of claims for defects**

(1) The claims cited in section 437 nos. 1 and 3 become statute-barred

1. after 30 years if the defect consists of
 - a) a right in rem of a third party on the basis of which surrender of the object of the purchase may be demanded, or of
 - b) some other right entered in the Land Register,
2. after five years
 - a) in relation to a building, and
 - b) in relation to a thing that has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building, and
3. in all other cases in two years.

(2) In the case of a plot of land the limitation period commences upon delivery of possession, in all other cases upon delivery of the thing.

(3) In derogation from subsection (1) nos. 2 and 3 and subsection (2), claims become statute-barred after the standard limitation period if the seller fraudulently concealed the defect. In the case governed by subsection (1) no. 2, however, claims are not statute-barred before the end of the period specified therein.

(4) The right of revocation designated in section 437 is subject to section 218. Notwithstanding the fact that a revocation is ineffective under section 218 (1), the buyer may refuse to pay the purchase price to the extent it would be entitled to do so on the basis of revocation. If the buyer makes use of this right, the seller may revoke the agreement.

(5) Section 218 and subsection (4) sentence 2 apply accordingly to the right to reduce the price set out in section 437.

Section 439

Cure

- (1) As cure the buyer may, at their choice, demand that the defect be remedied or that a thing free of defects be supplied.
- (2) The seller is to bear all expenses required for the purpose of cure, in particular transport, workers' travel, work and materials costs.
- (3) Where the buyer has installed the defective thing, in keeping with its nature and its purpose, into some other thing or has attached it to some other thing before the defect became apparent, the seller is obliged, in the context of curing the defect, to reimburse the buyer for the expenses required for removing the defective thing and installing or attaching the repaired thing, or the thing free of defects that has been delivered.
- (4) Without prejudice to section 275 subsections (2) and (3), the seller may refuse to provide the type of cure chosen by the buyer if this cure is possible only at disproportionate expense. In this connection, account is to be taken in particular of the value of the thing when free of defects, the significance of the defect and the question as to whether recourse could be had to the alternative type of cure without substantial detriment to the buyer. The claim of the buyer in this case is restricted to the alternative type of cure; the right of the seller to refuse the alternative type of cure as well, subject to the prerequisites set out in sentence 1, remains unaffected.
- (5) The buyer is to make available the thing to the seller for the purpose of cure.
- (6) Where the seller supplies a thing free of defects for the purpose of cure, the seller may demand the return of the defective thing in accordance with sections 346 to 348. The seller is to take back, at its cost, the thing that has been replaced.

Section 440

Special provisions on revocation and damages

Besides in the cases governed by section 281 (2) and section 323 (2), it is also not necessary to specify a period of time if the seller has refused to carry out both types of cure under section 439 (4) or if the type of cure that the buyer is entitled to receive has failed or cannot reasonably be required of the buyer. A repair is deemed to have failed after the second unsuccessful attempt, unless in particular the nature of the thing or of the defect or the other circumstances lead to a different conclusion.

Section 441

Reduction of price

- (1) Instead of revoking the agreement, the buyer may, by declaration to the seller, reduce the purchase price. The ground for exclusion under section 323 (5) sentence 2 does not apply.
- (2) If the party of the buyer or the seller consists of more than one person, the reduction may be declared only by all or to all of them.
- (3) In abating the purchase price, it is to be reduced in the ratio of the value that the defect-free thing would have had to its actual value at the time of conclusion of the contract. If required, the reduction is to be identified by way of an estimate.
- (4) If the buyer has paid more than the reduced purchase price, then the amount overpaid is to

be reimbursed by the seller. Section 346 (1) and section 347 (1) apply accordingly.

Section 442

Knowledge of the buyer

(1) The rights of the buyer due to a defect are excluded if the buyer has knowledge of the defect at the time of conclusion of the contract. If the buyer has no knowledge of a defect due to gross negligence, the buyer may assert rights in relation to this defect only if the seller fraudulently concealed the defect or gave a guarantee as to the nature of the thing.

(2) A right entered in the Land Register is to be removed by the seller even if the buyer is aware of it.

Section 443

Guarantee

(1) If the seller, the producer or some other third party enters into obligation, in addition to their statutory liability for defects, by way of making a declaration or in relevant advertising that was available prior to the purchase contract being concluded or at the time of its conclusion, such obligation being in particular to reimburse the purchase price, to exchange the thing, to repair it or to provide services in this context should the thing not be of the nature as described in the declaration or in the relevant advertisement or should it not conform to other requirements than those concerning its freedom from defects as described in the declaration or in the relevant advertisement (guarantee), then the buyer will be entitled, upon the requirements for asserting the guarantee having been met, and notwithstanding the buyer's statutory claims, to the rights under the guarantee in relation to the person who has given the guarantee (guarantor).

(2) To the extent that the guarantor gives a guarantee as to the thing being of a specified nature for a specified period (guarantee of durability), the presumption will be that a material defect that becomes apparent during the guarantee period triggers the rights under the guarantee.

Section 444

Exclusion of liability

The seller may not rely on an agreement that excludes or restricts the rights of the buyer with regard to a defect insofar as the seller fraudulently concealed the defect or gave a guarantee as to the nature of the thing.

Section 446

Passing of risk and of charges

The risk of accidental destruction and chance deterioration passes to the buyer upon delivery of the thing sold. From the time of delivery, the emoluments of the thing accrue to the buyer and the buyer bears the charges on it. If the buyer is in default of acceptance of delivery, this is equivalent to delivery.

Section 447

Passing of risk in the case of sales shipment

(1) If the seller, at the request of the buyer, ships the thing sold to another place than the place of performance, then the risk devolves to the buyer as soon as the seller has delivered the thing to the haulage contractor, forwarding agent or other person or body specified for carrying out

the shipment.

(2) Where the buyer has given a particular instruction on the method of shipping the thing and the seller, without a pressing reason, does not adhere to this instruction, the seller is liable to the buyer for the damage arising therefrom.

Section 449 **Retention of title**

(1) If the seller of a movable thing has retained title until payment of the purchase price, then in case of doubt it is to be assumed that ownership is transferred subject to the condition precedent that the purchase price is paid in full (retention of title).

(2) As a consequence of the retention of title, the seller may demand the return of the thing only if they have revoked the agreement.

(3) An agreement on retention of title is void to the extent that the transfer of ownership is made subject to the satisfaction by the buyer of third-party claims, in particular those of an enterprise associated with the seller.

Section 453 **Purchase of rights, consumer contract on the purchase of digital content**

(1) The provisions governing the purchase of things apply accordingly to the purchase of rights and other objects. The following provisions are not to be applied to a consumer contract on the sale of digital content by a trader:

1. section 433 (1) sentence 1 and section 475 (1) on the delivery of the object of the purchase and the time of performance, as well as
2. section 433 (1) sentence 2, sections 434 to 442, 475 (3) sentence 1, (4) to (6) and sections 476 and 477 on the rights in the case of defects.

The provisions of Division 3 Title 2a Subtitle 1 take the place of the provisions not to be applied in accordance with sentence 1.

(2) The seller bears the costs of creation and transfer of the right.

(3) If a right comprising the right to possession of a thing is sold, then the seller is obliged to deliver the thing to the buyer free of material defects and defects of title.

Section 474 **Purchase of consumer goods**

(1) Purchases of consumer goods are contracts by which a consumer buys goods (section 241a (1)) from a trader. A contract likewise will constitute a purchase of consumer goods where its subject matter comprises, in addition to the sale of goods, the provision of a service by the trader.

(2) The following provisions of this Subtitle apply supplementally to the purchase of consumer goods. This does not apply to second-hand goods that are sold at a publicly accessible auction (section 312g (2) no. 10) if clear and comprehensive information was made easily available to the consumer as to the provisions of the present Subtitle not applying.

Section 475

Applicable provisions

(1) Where no period of time has been determined for the respective performance to be rendered pursuant to section 433 and none can be inferred from the circumstances given, the obligee may only demand the rendering of such performance, in derogation from section 271 (1), without undue delay. In this case, the trader must deliver the goods at the latest 30 days after the contract has been concluded. The contractual parties may effect the respective performance immediately.

(2) Section 447 (1) applies subject to the proviso that the risk of accidental destruction and chance deterioration devolves to the buyer only if the buyer has instructed the haulage contractor, forwarding agent or other person or body tasked with carrying out the shipment and the trader has not previously named this person or body to the buyer.

(3) Section 439 (6) applies subject to the proviso that emoluments are not to be surrendered or to be substituted by their value. Sections 442, 445 and 447 (2) are not to be applied.

(4) The consumer may demand that the trader make advance payments towards the expenses the consumer will incur in the context of the cure pursuant to section 439 subsections (2) and (3) and that are to be borne by the trader.

(5) The trader is to effect the cure within a reasonable time limit from that point at which the consumer informed the trader of the defect, without causing any significant inconvenience to the consumer, whereby regard is to be had to the type of the goods and the purpose for which the consumer needs the goods.

(6) In the event of revocation or of compensation of damages instead of the full performance being rendered due to a defect of the goods, section 346 is to be applied subject to the proviso that the trader bears the costs of returning the goods. Section 348 is to be applied subject to the proviso that proof provided by the consumer as to the return shipment of the goods is equivalent to their return.

Section 475a

Contract for the sale of consumer goods relating to digital products

(1) Section 433 (1) sentence 2, sections 434 to 442, section 475 subsection (3) sentence 1 and subsections (4) to (6), sections 475b to 475e and sections 476 and 477 on the rights in the case of defects are not to be applied to a contract for the sale of consumer goods that has as its subject matter a tangible medium serving exclusively as a carrier of digital content. The provisions of Division 3 Title 2a Subtitle 1 take the place of the provisions not to be applied in accordance with sentence 1.

(2) In the case of a contract for the sale of consumer goods relating to a good that incorporates or is inter-connected with digital products in such a way that the absence of those digital products would not prevent the goods from performing their functions, the following provisions are not to be applied with regard to those elements of the contract that pertain to the digital products:

1. section 433 (1) sentence 1 and section 475 (1) relating to the handover of the object of the purchase and the time of performance, as well as

2. section 433 (1) sentence 2, sections 434 to 442, section 475 subsection (3) sentence 1 and subsections (4) to (6), sections 475b to 475e and sections 476 and 477 on the rights in the case of defects.

The provisions of Division 3 Title 2a Subtitle 1 take the place of the provisions not to be applied in accordance with sentence 1.

Section 475b
Material defect of a good with digital elements

(1) The stipulations of this provision apply supplementally to the purchase of a good with digital elements (section 327a (3) sentence 1), in the context of which the trader enters into obligation to supply the digital elements or to have them supplied by a third party. Section 327a (3) sentence 2 applies with regard to the question of whether the obligation of the trader comprises the supply of the digital content or of the digital services.

(2) A good with digital elements is free of material defects if, upon passing of the risk and, with regard to an obligation to provide updates, also during the period defined in subsection (3) no. 2 and subsection (4) no. 2, it conforms to the subjective requirements, the objective requirements, the assembly requirements and the installation requirements.

(3) A good with digital elements conforms to subjective requirements if

1. it conforms to the requirements set out in section 434 (2) and
2. the updates agreed in the purchase agreement for the digital elements are supplied during the period of time relevant in accordance with the contract.

(4) A good with digital elements conforms to objective requirements if

1. it conforms to the requirements set out in section 434 (3) and
2. updates are supplied to the consumer during the period that the consumer may expect based on the nature and the purpose of the good and of its digital elements, taking account of the circumstances and of the nature of the contract, that are necessary to keep the good in conformity, and if the consumer is informed of such updates.

(5) Where the consumer fails to install an update that was supplied to them in accordance with subsection (4) within a reasonable time limit, the trader will not be liable for a material defect that has been caused solely by the lack of this update if

1. the trader has informed the consumer of the update's availability and the consequences of a failure to install it and
2. the fact that the consumer has failed to install the update or has installed it incorrectly is not due to the consumer having been supplied with defective installation instructions.

(6) Insofar as an assembly or an installation is to be performed, a good with digital elements conforms to

1. the assembly requirements if it conforms to the requirements set out in section 434 (4) and

2. the installation requirements if the installation
 - a) of the digital elements was performed correctly or
 - b) if, despite the installation having been performed incorrectly, this is based neither on an incorrect installation by the trader nor on a defect given in the instructions that were handed over by the trader or the party that supplied the digital elements.

Section 475c

Material defect of a good with digital elements where the digital elements are supplied on a continuous basis

(1) The stipulations of this provision apply supplementally if, in purchasing a good with digital elements, a continuous supply is agreed for the digital elements. Section 475b (4) no. 2 applies accordingly if the parties have not specified the duration of the supply.

(2) The trader will be liable, above and beyond what has been stipulated in sections 434 and 475b, also for the digital elements conforming to the requirements of section 475b (2) during the supply period, but at a minimum for a period of time of two years from the delivery of the good.

Section 475d

Special provisions on revocation and compensation of damages

(1) In derogation from section 323 (2) and section 440, there is no need, in order to revoke a contract for a defect of a good, to set a period of time for the cure as stipulated in section 323 (1) if

1. the trader has not effected the cure despite expiry of a reasonable time limit from the point in time at which the consumer informed the trader of the defect,
2. a defect becomes apparent in spite of the trader's attempts to effect cure,
3. the defect is so serious that the immediate revocation of the contract is justified,
4. the trader has refused to effect the proper cure as defined in section 439 (1) or (2) or section 475 (5) or
5. it is obvious from the circumstances that the trader will not effect the proper cure as defined in section 439 (1) or (2) or section 475 (5).

(2) There is no need to set the period of time stipulated in section 281 (1) in the cases governed by subsection (1) for a claim to compensation of damages due to a defect of the good. Section 281 (2) and section 440 are not to be applied.

Section 475e

Special provisions on limitation

(1) In the case of a continuous supply of digital elements as defined in section 475c (1) sentence 1, claims for a defect of the digital elements will not become statute-barred before 12 months have lapsed following the end of the supply period.

(2) Claims for a violation of the obligation to provide updates as defined in section 475b (3) or

(4) will not become statute-barred before 12 months have lapsed following the end of the period in which the obligation to provide updates is given.

(3) Where a defect has become apparent during the limitation period, claims will not become statute-barred before four months have lapsed following the point in time at which the defect first became apparent.

(4) Where the consumer has handed over the good to the trader or, at the traders's behest, to a third party for purposes of effecting the cure or of satisfying claims under a guarantee, the claims being asserted for the defect will not become statute-barred before two months have lapsed following the point in time at which the repaired or replaced good was handed over to the consumer.

Section 476 Deviating agreements

(1) The trader may not rely on an agreement made prior to the trader having been notified of a defect that deviates, to the disadvantage of the consumer, from sections 433 to 435, 437, 439 to 441 and 443 and from the provisions of this Subtitle. The requirements stipulated in section 434 (3) or section 475b (4) may be deviated from by a contract made prior to the trader having been notified of a defect, if

1. it was specially made known to the consumer, prior to their making the declaration as to the conclusion of a contract, that a certain feature of the good deviates from the objective requirements and
2. this deviation within the meaning of no. 1 was expressly and separately agreed in the contract.

(2) The limitation of the claims cited in section 437 may not be eased by a legal transaction entered into prior to the trader having been notified of a defect if the agreement results in a limitation period of less than two years from the statutory commencement of limitation or, in the case of second-hand goods, of less than one year. The agreement is effective only if

1. it was specially made known to the consumer, prior to their making the declaration as to the conclusion of a contract, that the limitation period has been shortened and
2. the shortening of the limitation period was expressly and separately agreed in the contract.

(3) Notwithstanding sections 307 to 309, subsections (1) and (2) do not apply to the exclusion or restriction of the claim for damages.

Section 477 Shifting the burden of proof

(1) If, within one year after the passing of the risk, the good's lack of conformity to the requirements set out in section 434 or section 475b becomes apparent, the presumption will be that the good was already defective at the passing of the risk, unless this presumption is incompatible with the nature of the good or of the defective state. This presumption applies for a period of six months after the passing of the risk for the purchase of a live animal.

(2) Where the continuous supply of the digital elements has been agreed in the purchase contract

for goods with digital elements and where the digital elements' lack of conformity to the requirements set out in section 434 or section 475b becomes apparent in the course of the supply or within a period of two years after the passing of the risk, the presumption will be that the digital elements were deficient over the course of their supply thus far.

Section 488 **Contractual duties typical for a credit agreement**

- (1) The credit agreement obliges the lender to make available to the borrower a amount of money in the agreed amount. The borrower is obliged to pay the interest owed and, at the due date, to repay the loan made available.
- (2) The agreed interest, unless otherwise provided, is to be paid at the end of each year and, if the loan is to be repaid before the end of a year, upon repayment.
- (3) If a time is not specified for repayment of the loan, its due date is subject to the lender or the borrower giving notice of termination. The notice period is three months. If interest is not owed, the borrower also is entitled to repay without giving notice of termination.

Section 535 **Contents and primary duties of the lease agreement**

- (1) A lease agreement imposes on the lessor a duty to grant the lessee use of the leased property for the lease period. The lessor is to make available the leased property to the lessee in a condition suitable for use as contractually agreed and maintain it in this condition for the lease period. The lessor is to bear all costs to which the leased property is subject.
- (2) The lessee is obliged to pay the lessor the agreed rent.

Section 536 **Reduction of the rent for material defects and defects of title**

- (1) If the leased property at the time it is made available to the lessee for their use has a defect which removes its suitability for the contractually agreed use, or if such a defect arises during the lease period, then the lessee is exempted from paying the rent for the period during which suitability is removed. For the period of reduced suitability, the lessee need only pay reasonably reduced rent. A trivial reduction of suitability is not taken into account.
 - (1a) For the duration of three months, a reduction of suitability will not be taken into account insofar as it occurs because of a measure which serves the purpose of energy efficiency modernisation under section 555b no. 1.
- (2) Subsection (1) sentences 1 and 2 also applies if a warranted characteristic is lacking or later ceases to exist.
- (3) If the lessee is fully or partially deprived by a third-party right of the use of the leased property, then subsections (1) and (2) apply accordingly.
- (4) With regard to a lease for residential space, a deviating agreement to the disadvantage of the lessee is ineffective.

Section 536a

Claim of lessee for damages and reimbursement of expenses due to a defect

(1) If a defect within the meaning of section 536 exists at conclusion of the lease agreement, or if such a defect arises subsequently due to a circumstance for which the lessor is responsible, or if the lessor is in default in remedying a defect, then the lessee may, notwithstanding the rights under section 536, demand damages.

(2) The lessee may remedy the defect themselves and demand reimbursement of the necessary expenses if

1. the lessor is in default in remedying the defect, or
2. immediate remedy of the defect is necessary to preserve or restore the state of the leased property.

Section 536b

Lessee knows of the defect at conclusion of the contract or upon acceptance

If the lessee knows of the defect when concluding the contract, then they do not have the rights under sections 536 and 536a. If the lessee remains unaware of the defect due to gross negligence, then they have these rights only if the lessor fraudulently concealed the defect. If the lessee accepts a defective thing despite being aware of the defect, then they may only assert the rights under sections 536 and 536a if they reserved their rights at the time of acceptance.

Section 536c

Defects occurring during the lease period; notice of defect by the lessee

(1) If a defect in the leased property becomes apparent during the lease period or if action to protect the leased property from an unforeseen hazard becomes necessary, then the lessee is to report this, without undue delay, to the lessor. The same applies if a third party arrogates to themselves a right to the thing.

(2) If the lessee fails to report this, then they are liable to the lessor for damage resulting therefrom. To the extent that the lessor was prevented from providing relief due to the failure of the lessee to report it, the lessee is not entitled

1. to assert the rights specified in section 536,
2. to demand damages under section 536a (1), or
3. to give notice without specifying a reasonable period for relief under section 543 (3) sentence 1.

Section 536d

Contractual exclusion of rights of lessee with regard to defects

The lessor may not rely on an agreement by which the rights of the lessee are excluded or restricted with regard to a defect in the leased property if they fraudulently concealed the defect.

Section 540

Making available the leased property for use by third parties

(1) Without the permission of the lessor, the lessee is not entitled to make available the leased property to a third party for the latter's use, in particular not to sublet it. If the lessor refuses permission, then the lessee may terminate the lease for cause, observing the statutory period of notice, unless the person of the third party constitutes cause.

(2) If the lessee makes the property available to a third party for the latter's use, then the lessee is responsible for the culpability in the use of the property attributable to that third party even if the lessor has given permission for the property to be made available.

Section 541

Application for prohibitory injunction in the case of use in breach of contract

If the lessee persists with the use of the leased property in breach of contract despite a warning notice having been issued by the lessor, then the latter may seek a prohibitory injunction.

Section 542

End of the lease

(1) If the lease period is indefinite, then each of the contractual parties may give notice of termination in accordance with the statutory provisions.

(2) A lease entered into for a definite period of time ends at the end of that period unless it

1. has been terminated for cause in the cases permissible under law, or
2. is extended.

Section 543

Termination for cause without notice for a compelling reason

(1) Each contractual party may terminate the lease for cause without notice for a compelling reason. A compelling reason is given if the party giving notice, with all circumstances of the individual case having been taken into account, in particular fault of the contractual parties, and having weighed the interests of the parties against each other, cannot reasonably be required to continue the lease until the end of the notice period or until the lease ends in another way.

(2) A compelling reason is given in particular in cases in which

1. the lessee is not permitted in good time the use of the leased property as contractually agreed, as a whole or in part, or is deprived of such use,
2. the lessee violates the rights of the lessor to a substantial degree by substantially endangering the leased property by neglecting to exercise the care incumbent upon them or by making available, without authorisation, the leased property to a third party for the latter's use, or
3. the lessee
 - a) is in default, on two successive dates, in payment of the rent or of a portion of the rent that is not insignificant, or

- b) over a period of time spanning more than two dates is in default of payment of the rent in an amount that is as much as the amount of rent for two months.

In the case governed by sentence 1 no. 3, termination is excluded if the lessor has by then obtained satisfaction. It becomes ineffective if the lessee obtains release from their debt by set-off and declares set-off without undue delay after notice of termination is given.

(3) If the compelling reason consists of the violation of an obligation under the lease, then the notice of termination is permissible only after the expiry without result of a reasonable period specified for the purpose of obtaining relief or after a warning notice has failed to obtain a result. This does not apply if

1. a notice period or a warning notice obviously shows no chance of succeeding,
2. immediate termination is justified, having weighed the interests of both parties against each other, for special reasons or
3. the lessee is in default in payment of rent within the meaning of subsection (2) no. 3.

(4) Sections 536b and 536d are to be applied accordingly to the right to notice of termination to which the lessee is entitled under subsection (2) no. 1. Where it is in dispute whether the lessor granted use of the leased property in good time or provided relief prior to expiry of the period specified for this purpose, the lessor bears the burden of proof.

Section 546 Duty of lessee to return

- (1) The lessee is obliged to return the leased property after termination of the lease.
- (2) If the lessee has made the leased property available to a third party for the latter to use, the lessor may also demand return of the leased property from the third party after termination of the lease.

Section 546a Compensation of the lessor in the case of late return

- (1) If the lessee fails to return the leased property after termination of the lease, then the lessor may for the duration of retention demand as compensation the agreed rent or the rent that is customarily paid for comparable properties in the locality.
- (2) The assertion of further damage is not excluded.

Section 549 Provisions applicable to leases of residential space

- (1) Sections 535 to 548 apply to leases relating to residential space, to the extent that sections 549 to 577a do not lead to a different conclusion.
- (2) The provisions regarding the rent amount at commencement of the lease in areas in which the housing market is under pressure (sections 556d to 556g), relating to rent increases (sections 557 to 561) and to lessee protection upon termination of the lease as well as when title to residential premises is created (section 568 (2), sections 573, 573a and 573d (1), sections 574 to 575, 575a (1) and sections 577 and 577a) do not apply to leases of

1. residential space that is leased only for temporary use,
2. residential space that is part of the dwelling inhabited by the lessor themselves and that largely is to be furnished with furniture and fixtures by the lessor, provided that the residential space has not been made available for permanent use to the lessee with their family or with persons with whom the lessee maintains a joint household set up on a long-term basis,
3. residential space that a legal person under public law or a recognised welfare organisation under private sponsorship has leased in order to make it available to persons in urgent need of accommodation if, when the lease was concluded, said legal person drew the attention of the lessee to the intended purpose of the residential space and to its exemption from the provisions referred to above.

(3) Sections 556d to 561 and sections 573, 573a and 573d (1) and sections 575, 575a (1) and sections 577 and 577a do not apply to residential space in a student hostel or a hostel for young people.

Section 550 **Form of the lease agreement**

If a lease agreement for a longer period of time than one year is not concluded in written form, then it is valid for an indefinite period of time. However, termination is permissible only at the earliest at the end of one year after the residential space has been made available for use.

Section 553 **Making residential space available for use by third parties**

(1) If the lessee, after entering into the lease agreement, acquires a legitimate interest in making available the residential space to a third party for the latter's use, then the lessee may demand permission to do so from the lessor. This does not apply if the person of the third party constitutes compelling cause, if the residential space would be overcrowded or if the lessor cannot reasonably be required for other reasons to permit third-party use.

(2) If the lessor reasonably can be required to permit third-party use only in return for a reasonable increase of the rent, then they may make permission dependent upon the lessee agreeing to such an increase in rent.

(3) A deviating agreement to the disadvantage of the lessee is ineffective.

Form and contents of the notice of termination

(1) The notice of termination of the lease requires the written form.

(2) As a rule, the lesser is to draw the attention of the lessee, in good time, to the possibility of an objection and the requirements as to form and the period of time governing the objection stipulated in sections 574 to 574b.

Section 569 **Termination for cause without notice for a compelling reason**

(1) A compelling reason within the meaning of section 543 (1) exists for the lessee also if the leased residential space is in such a condition that its use constitutes a significant health hazard.

This also applies if the lessee knew of the hazardous nature at conclusion of the contract or waived their rights arising from this nature.

(2) A compelling reason within the meaning of section 543 (1) furthermore exists if one contractual party permanently disturbs the domestic peace in such a way that the party giving notice, having taken all circumstances of the specific case into account, in particular a fault of the contractual parties, and having weighed the interests of both parties against each other, cannot reasonably be required to continue the lease until the end of the notice period or until the lease is terminated in some other way.

(2a) A compelling reason within the meaning of section 543 (1) furthermore is deemed to exist if the lessee is in arrears in providing security under section 551 in the amount of a sum corresponding to twice the monthly rent. Operating costs to be shown as a flat-rate or advance payment are not to be taken into account in the calculation of the monthly rent in accordance with sentence 1. A grace period or a warning notice in accordance with section 543 (3) sentence 1 is not required. Subsection (3) no. 2 sentence 1 as well as section 543 (2) sentence 2 are to be applied accordingly.

(3) By way of supplementing section 543 (2) sentence 1 no. 3, the following applies:

1. In the case governed by section 543 (2) sentence 1 no. 3 (a), the part of the rent in arrears may be considered as not insignificant only if it exceeds the rent for one month. This does not apply if the residential space is leased only for temporary use.
2. The notice of termination also becomes ineffective if, at the latest by the end of two months after the eviction claim has become pending, the lessor is satisfied or a public authority agrees to satisfy the lessor with regard to the rent due and the compensation due under section 546a (1). This does not apply if, at a time no longer than two years earlier, the notice of termination was preceded by a notice of termination that became ineffective under sentence 1.
3. If the lessee has been finally and bindingly sentenced to pay an increased rent under sections 558 to 560, then the lessor may not terminate the lease due to the lessee's default in payment before the end of two months after the final and binding conviction unless the prerequisites for termination for cause without notice already have been met for the rent owed previously.

(4) The compelling reason leading to termination is to be stated in the notice of termination.

(5) An agreement deviating from subsections (1) to (3) of this provision or from section 543 to the disadvantage of the lessee is ineffective. In addition, an agreement is also ineffective under which the lessor is to be entitled to terminate the lease for cause without notice for other reasons than those permitted by law.

Section 573

Notice of termination by the lessor in accordance with usual procedure

(1) The lessor may only give notice if they have a legitimate interest in the termination of the lease. Notice of termination for the purpose of increasing the rent is excluded.

(2) A legitimate interest of the lessor in the termination of the lease exists in particular in cases where

1. the lessee culpably has violated their contractual duties to a greater than insignificant degree,
2. the lessor needs the premises as a dwelling for themselves, their relatives or members of their household, or
3. the lessor, by continuing the lease, would be prevented from making appropriate economic use of the plot of land and as a result would suffer substantial disadvantages; the possibility of attaining a higher rent by leasing the residential space to others is not an option to be considered in this context; the lessor likewise may not invoke the fact that they wish to alienate the residential premises in connection with the intended creation of title to the residential premises, or in connection with a creation of title to the residential premises that was effected after the leased residential space was made available to the lessee for the latter's use.

(3) The reasons for a legitimate interest of the lessor are to be stated in the notice of termination. Other reasons are taken into account only to the extent that they arose subsequently.

(4) A deviating agreement to the disadvantage of the lessee is ineffective.

Section 573c

Periods of time to be observed in giving notice of termination in accordance with usual procedure

(1) Notice of termination is permissible at the latest on the third working day of a calendar month with effect for the end of the second month thereafter. The notice period for the lessor is extended, by three months in each case, five and eight years after the residential space has been made available to the lessee for the latter's use.

(2) For residential space that is leased only for temporary use, a shorter notice period may be agreed.

(3) For residential space under section 549 (2) no. 2, notice of termination is permissible at the latest on the fifteenth day of a month with effect for the end of that month.

(4) An agreement deviating from subsections (1) or (3) to the disadvantage of the lessee is ineffective.

Section 598

Contractual duties typical for the case of a gratuitous loan

By the agreement for a gratuitous loan, the lender of a thing is obliged to permit the borrower to use the thing at no charge.

Section 611

Contractual duties typical for a service contract

(1) By means of a service contract, a person who promises services is obliged to perform the services promised, and the other party is obliged to pay the agreed remuneration.

(2) Service contracts may have as their subject matter any type of services.

Section 611a
Employment contract

(1) By the employment contract, the employee is obliged to perform work in the service of another, such work being tied to instructions and determined by others, and to do so in a relationship of personal dependency. The right to issue instructions may concern the substance, implementation, time and place at which the activities are pursued. Anyone who is not able to essentially determine their activities freely and to determine the times at which they work is tied to instructions. In this context, the degree of personal dependency will be subject also to the specific nature of the activity concerned. In determining whether or not an employment contract exists, all circumstances are to be given overall consideration. Where the factual implementation of the contractual relationship shows that the relationship is an employment relationship, the designation used in the contract is irrelevant.

(2) The employer is obliged to pay the remuneration agreed upon.

Section 612
Remuneration

(1) Remuneration is deemed to have been tacitly agreed if in the circumstances it is to be expected that the service is rendered only for remuneration.

(2) If the amount of remuneration is not specified, then if a tariff exists, the tariff remuneration is deemed to be agreed; if no tariff exists, the usual remuneration is deemed to be agreed.

(3) (repealed)

Section 622
Notice periods in the case of employment relationships

(1) The employment relationship of a wage-earner or a salary-earner (employee) may be terminated observing a notice period of four weeks with effect for the fifteenth day of a month or with effect for the end of a calendar month.

(2) For notice of termination by the employer, the period of notice is as follows if the employment relationship in the business or the enterprise

1. has lasted for two years: one month with effect for the end of a calendar month,
2. has lasted for five years: two months with effect for the end of a calendar month,
3. has lasted for eight years: three months with effect for the end of a calendar month,
4. has lasted for ten years: four months with effect for the end of a calendar month,
5. has lasted for twelve years: five months with effect for the end of a calendar month,
6. has lasted for fifteen years: six months with effect for the end of a calendar month,
7. has lasted for twenty years: seven months with effect for the end of a calendar month.

(3) During an agreed probationary period, but at the longest for the duration of six months, the employment relationship may be terminated observing a notice period of two weeks.

(4) Provisions in derogation from subsections (1) to (3) may be agreed in collective agreements. Within the scope of applicability of such a collective agreement, the different collective agreement provisions between employers and employees who are not under collective bargaining coverage apply if the application of collective agreements has been agreed between them.

(5) In an individual contract, shorter notice periods than those cited in subsection (1) may be agreed only

1. if an employee is employed to help out on a temporary basis; this does not apply if the employment relationship is extended beyond a period of three months;
2. if the employer as a rule employs not more than 20 employees with the exception of those employed for their own training and the notice period does not fall short of four weeks.

In determining the number of employees employed, part-time employees with regular weekly working hours of not more than 20 hours are counted as 0.5 employees. While those working fewer than 30 weekly working hours are counted as 0.75 employees. The agreement in an individual contract of longer notice periods than those stated in subsections (1) to (3) remains unaffected hereby.

(6) For notice of termination of employment by the employee, no periods of notice may be agreed that are longer than those agreed for notice of termination by the employer.

Section 623

Written form of termination

The termination of employment by notice of termination or separation agreement requires the written form to be effective; electronic form is excluded.

Section 624

Notice period in the case of contracts lasting longer than five years

If the service relationship is entered into for the lifetime of a person or for a longer period of time than five years, then it may be terminated by the person obliged at the end of five years. The notice period is six months.

Section 626

Termination without notice for a compelling reason

(1) The service relationship may be terminated by either party to the contract for a compelling reason without observing a period of notice if facts are given on the basis of which, having considered all circumstances of the individual case and weighed the interests of both parties to the contract against each other, the party giving notice cannot reasonably be required to continue the service relationship until the end of the notice period or the agreed end of the service relationship.

(2) Notice of termination may only be given within two weeks. The period of time commences upon the point in time at which the person entitled to give notice obtains knowledge of the facts relevant for the notice of termination. On demand, the party giving notice must notify the other party, without undue delay in writing, of the reason for terminating the service relationship.

Section 627

Termination without notice in the case of a position of trust

(1) In a service relationship that is not an employment relationship within the meaning of section 622, notice of termination is permissible, even without the prerequisite designated in section 626 being met, if the person obliged to perform services, without being in a permanent service relationship with fixed earnings, is to perform services of a higher nature with which people are customarily entrusted on the basis of special trust.

(2) The person obliged to perform services may only give notice in such a manner that the person entitled to services is able to obtain the services elsewhere, unless there is a compelling reason for untimely notice of termination. If they give notice in untimely fashion without such cause, then they are to compensate the person entitled to services for the damage arising therefrom.

Section 631

Contractual duties typical for a contract to produce a work

(1) By a contract to produce a work, a contractor is obliged to produce the promised work and the customer is obliged to pay the agreed remuneration.

(2) The subject matter of a contract to produce a work may be either the production or alteration of a thing or another result to be achieved by work or by a service.

Section 632

Remuneration

(1) Remuneration for work is deemed to be tacitly agreed if the production of the work, in the circumstances, is to be expected only in return for remuneration.

(2) If the amount of remuneration is not specified, then if a tariff exists, the tariff remuneration is deemed to be agreed; if no tariff exists, the usual remuneration is deemed to be agreed.

(3) In case of doubt, remuneration is not to be paid for a cost estimate.

Section 650

Contract for work and materials; consumer contract on the production of digital products

(1) The provisions governing purchase are applicable to a contract dealing with the supply of movable things to be produced or manufactured. [...]

Section 705

Legal nature of the partnership

(1) The partnership is established through the conclusion of a partnership agreement, in which the partners undertake to promote the achievement of a common purpose in the manner determined by the agreement.

(2) The partnership can either acquire rights itself and enter into liabilities if it is to participate in legal transactions according to the common will of the shareholders (incorporated partnership), or it can serve the shareholders to structure their legal relationship with one another (unincorporated partnership).

(3) If the object of the partnership is the operation of an enterprise under a joint name, it is presumed that the partnership participates in legal transactions in accordance with the common will of the partners.

Section 715 Management authority

(1) All shareholders are entitled and obliged to manage the partnership's business.

(2) The authority to manage business extends to all transactions that the partnership's participation in legal transactions usually entails. In order to carry out transactions that go beyond this, a resolution from all shareholders is required.

(3) All partners are entitled to manage the business in such a way that they are only entitled to act together, unless the postponement of a transaction poses a risk to the partnership or the partnership's assets. In case of doubt, this applies accordingly if, according to the partnership agreement, management is vested in several partners.

(4) If, according to the partnership agreement, management is vested in all or several partners in such a way that each is entitled to act alone, any other partner authorized to manage the business can object to the transaction being carried out. In the event of an objection, the transaction must be stopped.

(5) The authority to manage the business can be completely or partially withdrawn from a partner by resolution of the other partners if there is good cause. An important reason is, in particular, a gross breach of duty by the partner or the partner's inability to conduct business properly.

(6) The shareholder, for his part, can terminate the management in whole or in part if there is good cause. Section 671 (2) and (3) must be applied accordingly.

Section § 720 Representation of the company

(1) All partners are jointly authorized to represent the partnership, unless the partnership agreement stipulates otherwise.

(2) The shareholders authorized to represent the partnership as a whole in accordance with (1) may authorize individual members to carry out certain transactions or certain types of transactions.

(3) The shareholders' power of representation extends to all of the partnership's transactions. A restriction on the scope of the power of representation is ineffective towards third parties. This applies in particular to the restriction that the representation only extends to certain transactions or types of transactions or that it should only take place under certain circumstances or for a certain time or at individual locations.

(4) The power of representation may be withdrawn from a partner in whole or in part in accordance with Section 715 (5).

(5) If a declaration of intent is to be made to the partnership, it is sufficient to submit it to an authorized representative.

Section 812
Claim for restitution

(1) A person who obtains something as a result of the performance of another person or otherwise at that person's expense without legal grounds for doing so is under a duty to retribute to that person what has been obtained. This duty also exists if the legal grounds later cease to exist or if the result intended to be achieved by an act of performance in accordance with the substance of the legal transaction does not materialise.

(2) Performance also includes the acknowledgement of the existence or non-existence of an obligation.

Section 814
Knowledge that debt is not owed

Restitution of performance rendered for the purpose of performing an obligation may not be demanded if the person who rendered the performance knew that they were not obliged to do so or if the performance complied with a moral duty or consideration of decency.

Section 816
Disposition by an unauthorised person

(1) If an unauthorised person disposes over an object and the disposition is effective in relation to the authorised person, then they are obliged to retribute to the authorised person the benefit obtained by the disposition. If the disposition is gratuitous, then the same duty applies to a person who as a result of the disposition directly gains a legal advantage.

(2) If performance is rendered to an unauthorised person that is effective in relation to the authorised person, then the unauthorised person is under a duty to retribute the performance.

Section 817
Breach of law or act offending common decency

If the purpose of performance was determined in such a way that the recipient, in accepting it, was violating a statutory prohibition or offending common decency, then the recipient is obliged to retribute the performance. A claim to return is excluded if the person who rendered performance likewise was at fault for such a breach, unless the performance consisted in entering into an obligation; restitution may not be demanded of any performance rendered in performing such an obligation.

Section 818
Scope of the claim to enrichment

(1) The duty to retribute extends to emoluments taken as well as to whatever the recipient acquires by reason of a right acquired or as compensation for destruction, damage or deprivation of the object obtained.

(2) If restitution is not possible due to the nature of the benefit obtained, or if the recipient is incapable for another reason of restituting the benefit obtained, then the recipient is to provide compensation for value.

(3) The obligation to retribute the benefit obtained or to reimburse the value is excluded to the extent that the recipient is no longer enriched.

(4) From the time onwards at which the action is pending, the recipient is liable under the general provisions of law.

Section 819

Increased liability in case of knowledge and in cases of breaches of law or acts offending common decency

(1) If the recipient, at the time of receipt, knows of the defect in the legal basis or if they learn of it later, then they are obliged to reconstitute the benefit from the moment of receipt or of obtaining knowledge of the defect as if the claim for restitution had been pending from this time on.

(2) If the recipient, in accepting the performance, violates a statutory prohibition or offends common decency, then they are under the same obligation from receipt of performance onwards.

Section 821

Enrichment defence

A person who enters into an obligation without legal grounds to do so also may refuse fulfilment if the claim to release from the obligation has become statute-barred.

Section 823

Liability in damages

(1) A person who, intentionally or negligently, unlawfully injures the life, limb, health, freedom, property or some other right of another person is liable to provide compensation to the other party for the damage arising therefrom.

(2) The same duty is incumbent on a person who commits a breach of a statute that is intended to protect another person. If, according to the contents of the statute, it is possible to violate it also without fault, then liability to compensation only exists in the case of fault.

Section 826

Intentional damage inflicted in a manner offending common decency

A person who, in a manner offending common decency, intentionally inflicts damage on another person is liable to the other person to provide compensation for the damage.

Section 828

Minors

(1) A person who has not reached the age of seven is not responsible for damage caused to another person.

(2) A person who has reached the age of seven but not the age of 10 is not responsible for damage that they inflict on another party in an accident involving a motor vehicle, a railway or a suspension railway. This does not apply if they intentionally brought about the injury.

(3) A person who has not yet attained the age of 18 is not responsible, to the extent that their responsibility is not excluded under subsection (1) or (2), for damage they inflict on another person if, when committing the damaging act, they do not have the insight required to recognise their responsibility.

Section 830
Joint tortfeasors and persons involved

(1) If more than one person has caused damage by a jointly committed tort, then each of them is responsible for the damage. The same applies if it cannot be established which of several persons involved caused the damage by their act.

(2) Instigators and accessories are equivalent to joint tortfeasors.

Section 831
Liability for vicarious agents

(1) A person who deploys another person to perform a task is liable to provide compensation for the damage that the other unlawfully inflicts on a third party when carrying out the task. Liability in damages does not apply if the principal exercises the care required in business dealings when selecting the person deployed and, to the extent that they are to procure devices or equipment or to manage the business activity, in such procurement or management, or if the damage would have occurred even if this care had been exercised.

(2) The same responsibility is incumbent a person who assumes the performance of one of the transactions specified in subsection (1) sentence 2 for the principal by contract.

Section 832
Liability of a person with a duty of supervision

(1) A person who is obliged by operation of law to supervise a person requiring supervision because they are a minor or because of their mental or physical condition is liable to provide compensation for the damage that this person unlawfully causes to a third party. Liability in damages does not apply if they comply with their duty to supervise or if the damage would have been caused even in the case of proper conduct of supervision.

(2) The same responsibility applies to any person who assumes the task of supervision by contract.

Book 3

Section 854
Acquisition of possession

(1) Possession of a thing is acquired by obtaining actual control of the thing.

(2) Agreement between the previous possessor and the acquirer is sufficient for acquisition if the acquirer is in a position to exercise control over the thing.

Section 859
Self-help by the possessor

(1) The possessor may use force to defend themselves against prohibited interference.

(2) If a movable thing is taken away from the possessor by prohibited interference, the possessor may use force to remove it from the interferer who is caught in the act or pursued.

(3) If the possessor of a plot of land is deprived of possession by prohibited interference, the

possessor may recover possession immediately after the deprivation of possession by removing the interferer.

(4) The possessor has the same rights against a person who under section 858 (2) must allow the defectiveness of the possession to apply against them.

Section 873

Acquisition by agreement and registration

(1) The transfer of the ownership of a plot of land, the encumbrance of a plot of land with a right and the transfer or encumbrance of such a right require agreement between the person entitled and the other person on the occurrence of the change of rights and the entry of the change of rights in the Land Register, unless otherwise provided by law.

(2) Before the registration, the parties are bound by the agreement only if the declarations are recorded by a notary, or made before the Land Registry, or submitted to the Land Registry, or if the person entitled has handed over to the other person an approval of registration that satisfies the provisions of the Land Register Code (*Grundbuchordnung*).

Section 892

Presumption of legal force of the contents of the Land Register

(1) To the benefit of the person who acquires a right in a plot of land or a right in such a right by legal transaction, the contents of the Land Register are presumed to be correct, unless an objection to the accuracy is registered or the inaccuracy is known to the acquirer. Where the person entitled is restricted to the benefit of a particular person in their disposition over a right entered in the Land Register, the restriction is effective in relation to the acquirer only if it is apparent from the Land Register or known to the acquirer.

(2) Where an entry in the Land Register is required for the acquisition of the right, the knowledge of the acquirer at the time when the application for entry is made or, if the agreement required under section 873 is reached only later, the time of agreement is the determining point of time.

Section 903

Powers of the owner

The owner of a thing may, to the extent that a statute or third-party rights does not conflict with this, deal with the thing at their discretion and exclude others from exercising any influence whatsoever. In exercising their powers, the owner of an animal is to take into account the special provisions for the protection of animals.

Section 904

Necessity

The owner of a thing is not entitled to prohibit the influence of another person on the thing if the influence is necessary to avert a present danger and the imminent damage is disproportionately great in relation to the damage the owner stands to suffer as a result of the influence. The owner may require compensation for the damage they suffer.

Section 925
Declaration of conveyance

(1) The agreement between the disposer and the acquirer (declaration of conveyance) necessary for the transfer of ownership of a plot of land under section 873 must be declared in the presence of both parties before a competent agency. Any notary is competent to take receipt of the declaration of conveyance, notwithstanding the competence of other agencies. A declaration of conveyance also may be made in an in-court settlement or in an insolvency plan or restructuring plan has been finally and bindingly confirmed.

(2) A declaration of conveyance that is made subject to a condition or a stipulation as to time is ineffective.

Section 929
Agreement and delivery

The transfer of the ownership of a movable thing requires the owner to deliver the thing to the acquirer and both to agree that ownership is to pass. If the acquirer is in possession of the thing, then agreement on the transfer of the ownership suffices.

Section 930
Constructive delivery

If the owner is in possession of the thing, the delivery may be replaced by a legal relationship being agreed between the owner and the acquirer by which the acquirer obtains indirect possession.

Section 931
Assignment of claim to surrender

If a third party is in possession of the thing, delivery may be replaced by the owner assigning to the acquirer the claim to surrender of the thing.

Section 932
Good faith acquisition from a person not entitled

(1) As a result of an disposal carried out under section 929, the acquirer becomes the owner even if the thing does not belong to the disposer, unless the acquirer is not in good faith at the time when under these provisions they would acquire ownership. In the case governed by section 929 sentence 2 however, this applies only if the acquirer had obtained possession from the disposer.

(2) The acquirer is not in good faith if the acquirer is aware, or is unaware as a result of gross negligence, that the thing does not belong to the disposer.

Section 935
No good faith acquisition of lost things

(1) The acquisition of ownership under sections 932 to 934 does not occur if the thing was stolen from the owner, is missing or has been lost in any other way. The same applies, where the owner was only the indirect possessor, if the possessor had lost the thing.

(2) These provisions do not apply to money or bearer instruments or to things that are disposed

by way of public auction or in an auction pursuant to section 979 (1a).

Section 985
Claim for restitution

The owner may require the possessor to return the thing.

Section 986
Objections of the possessor

(1) The possessor may refuse to return the thing if the possessor or the indirect possessor from whom the possessor derives the right of possession is entitled to possession in relation to the owner. If the indirect possessor is not authorised in relation to the owner to make possession available to the possessor, then the owner may require the possessor to return the thing to the indirect possessor or, if the indirect possessor cannot or does not wish to take possession again, to the owner themselves.

(2) The possessor of a thing that has been disposed under section 931 by assignment of the claim for restitution may raise against the new owner the objections that they are entitled to use against the claim assigned.

Section 1004
Claim for removal and injunction

(1) If the ownership is interfered with by means other than removal or retention of possession, the owner may demand that the disturber remove the interference. If there is the concern that further interferences will ensue, the owner may seek a prohibitory injunction.

(2) The claim is excluded if the owner is obliged to tolerate the interference.

Section 1006
Presumption of ownership for possessor

(1) It is presumed to the benefit of the possessor of a movable thing that they are the owner of the thing. However, this does not apply in relation to a former possessor from whom the thing was stolen or who lost it or whose possession of it ended in another way, unless the thing is money or bearer instruments.

(2) It is presumed to the benefit of a former possessor that during the period of their possession they were the owner.

(3) In the case of indirect possession, the presumption is to the benefit of the indirect possessor.

Book 4

Section 1626
Parental custody, principles

(1) The parents have the duty and the right to care for the minor child (parental custody). Parental custody includes the care for the person of the child (care for the person of the child) and the assets of the child (care for the assets of the child).

(2) In the care for and child-rearing of the child, the parents take account of the growing ability

and the growing need of the child for independent responsible action. They discuss questions of parental custody with the child to the extent that, in accordance with the stage of development of the child, it is advisable, and they seek agreement.

(3) The best interests of the child as a general rule include contact with both parents. The same applies to contact with other persons to whom the child has ties, if maintaining these ties is beneficial for its development.

Section 1629 **Representation of the child**

(1) Parental custody includes the representation of the child. The parents represent the child jointly; where a declaration of intent is to be made to the child, it is sufficient if it is made to one parent. One parent represents the child alone, to the extent that they exercise parental custody alone or the decision has been transferred to them under section 1628. In the case of imminent danger, each parent is entitled to undertake all legal acts that are necessary for the best interests of the child; the other parent is to be informed without undue delay.

(2) The father and the mother may not represent the child to the extent that under section 1795 a guardian is excluded from the representation of the child. If the parental custody for a child is held by the parents jointly, then the parent in whose charge the child is may assert maintenance claims of the child against the other parent. The family court may deprive the father and the mother under section 1796 of the representation; this does not apply to the determination of paternity.

(2a) The father and the mother may not represent the child in court proceedings under section 1598a (2).

(3) If the parents of the child are married to each other or if they have entered into a life partnership, then one parent may assert maintenance claims of the child against the other parent only in their own name, for as long as.

1. the parents live apart, or
2. a court dispute concerning the marriage or the life partnership within the sense of section 269 (1), no. 1 or 2, of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*) is pending at court between them.

A court decision obtained by one parent and a court settlement entered into between the parents also take effect for and against the child.

Book 5

Section 1922 **Universal succession**

(1) Upon the death of a person (passing of an inheritance), that person's assets (inheritance) devolve as a whole to one or more than one other persons (heirs).

(2) The share of a co-heir (share of the inheritance) is governed by the provisions relating to inheritance.

V. GERMAN COMMERCIAL CODE (HGB)

Section 1

(1) A merchant within the meaning of this Code is a person who carries on a commercial business.

(2) A commercial business is any commercial enterprise unless, by reason of its nature or size, the enterprise does not require a commercially organised business operation.

Section 2

A commercial entity whose commercial enterprise is not deemed to be a commercial business pursuant to Section 1 subsection (2) shall be deemed to be a commercial business within the meaning of this Code if the business name of the enterprise is registered in the Commercial Register. The entrepreneur is entitled, but not obliged, to effect registration pursuant to the provisions in force for the registration of commercial business names. If such registration has been effected, the business name can also be deleted upon application of the entrepreneur, unless the requirement laid down in Section 1 subsection (2) has been fulfilled in the meantime.

Section 3

(1) The provisions of Section 1 shall not apply to agricultural or forestry operations.

(2) Section 2 shall apply to agricultural or forestry enterprises which require a commercially organised business operation on account of their nature and size, subject to the proviso that, after registration in the Commercial Register, deletion of the business name shall be effected only pursuant to the general provisions which apply to the deletion of commercial business names.

(3) If an agricultural or forestry operation has a cognate enterprise constituting only a business ancillary to the agricultural or forestry enterprise, the provisions of subsections (1) and (2) shall apply *mutatis mutandis* to the enterprise operated as an ancillary business.

Section 5

If a business name is registered in the Commercial Register, it cannot be asserted against a person invoking such registration that the business conducted under the business name concerned is not a commercial business.

Section 6

(1) The provisions applicable to merchants shall also apply to commercial companies and partnerships.

(2) The rights and duties of an association on which the law confers merchant status irrespective of the purpose of the enterprise shall remain unaffected, even if the requirements of Section 1 subsection (2) are not fulfilled.

Section 21

Where the name of the business owner, partner or shareholder whose name is included in the business name is changed without there being a change in the identity of the respective person,

the existing business name may continue to be used.

Section 48

(1) The general commercial power of representation can be granted only by the owner of the commercial business or by his legal representative and only by means of an express declaration.

(2) The general commercial power of representation can be conferred on several persons jointly (joint general commercial power of representation).

Section 49 (Prokura)

(1) The general commercial power of representation (Prokura) shall confer authority to enter into all kinds of judicial and extrajudicial transactions and legal acts involved in the operation of a commercial business.

(2) The holder of a general commercial power of representation shall have authority to dispose of and encumber real property only if such authority has been specifically conferred on him.

Section 50

(1) A limitation on the scope of the general commercial power of representation shall be ineffective vis-à-vis third parties.

(2) This shall apply especially to a limitation whereby the general commercial power of representation is to be exercised only for particular transactions or particular kinds of transactions or only under certain circumstances or for a certain period of time or at specific places.

(3) A limitation of the general commercial power of representation to the operation of one of several establishments of the business owner shall be effective vis-à-vis third parties only if the establishments are operated under different business names. A business name shall also be different within the meaning of this provision if, for a branch office, an addition is appended to its business name to indicate that it is the business name of the branch office.

Section 56

A person employed in a shop or in a warehouse open to the public shall be deemed to have authority to handle any sales transactions or actions of acceptance customary in such a shop or warehouse

Section 105

(1) A company whose purpose is the operation of a commercial enterprise under a common name is a general partnership if none of the partners has limited liability towards the company's creditors.

(2) The general partnership may acquire rights and incur liabilities.

(3) Unless otherwise provided for in this section, the provisions of the Civil Code relating to companies shall apply mutatis mutandis to general partnerships.

Section 116

- (1) All shareholders are entitled and obliged to manage the general partnership's business.
- (2) The authority to manage business extends to all transactions that are involved in the normal operation of the general partnership's commercial business; To carry out transactions that go beyond this, a resolution from all shareholders is required. The appointment of an authorized representative requires the consent of all partners authorized to manage the general partnership, unless the postponement poses a risk to the general partnership or its assets. The power of attorney can be revoked by any of the partners authorized to grant it or to participate in granting it.
- (3) Subject to paragraph 4, management is the responsibility of all shareholders in such a way that each of them is entitled to act alone. In case of doubt, this applies accordingly if, according to the partnership agreement, management is vested in several partners. If a partner authorized to manage the transaction objects to the transaction being carried out, this must not be done.
- (4) If, according to the partnership agreement, management is vested in all or several partners in such a way that they are only authorized to act jointly, the consent of all partners authorized to manage the business is required for every transaction, unless the postponement poses a risk to the general partnership or its assets are connected.
- (5) The authority to manage the business can be revoked in whole or in part by a court decision at the request of the other partners if there is good cause. An important reason is, in particular, a gross breach of duty by the partner or the partner's inability to conduct business properly.
- (6) The shareholder, for his part, can terminate the management in whole or in part if there is good cause. Section 671 paragraphs 2 and 3 of the Civil Code must be applied accordingly.

Section 123

- (1) In relation to third parties, the general partnership comes into being as soon as it is entered in the commercial register. Regardless of this, the general partnership comes into being when it takes part in legal transactions with the consent of all shareholders, unless otherwise stated in Section 107 (1).
- (2) An agreement that the general partnership should only come into being at a later date is invalid towards third parties.

Section 124

- (1) Every partner is authorized to represent the general partnership unless he is excluded from representation by the partnership agreement.
- (2) It can be agreed in the partnership agreement that all or several partners should only be authorized to represent the general partnership together. The shareholders authorized to represent the general partnership as a whole can authorize individual members to carry out certain transactions or certain types of transactions.
- (3) It can be agreed in the partnership agreement that the partners, unless several are acting together, should only be entitled to represent the general partnership together with an authorized representative. (2) sentence 2 and (6) apply accordingly in this case.

(4) The shareholders' power of representation extends to all of the general partnership's transactions, including the sale and encumbrance of real estate as well as the granting and revocation of power of attorney. A restriction on the scope of the power of representation is ineffective towards third parties. This applies in particular to the restriction that the representation only extends to certain transactions or types of transactions or that it should only take place under certain circumstances or for a certain time or at individual locations. With regard to the restriction to the operation of one of several branches of the general partnership, Section 50 (3) applies accordingly.

(5) A partner's power of representation may be wholly or partially withdrawn in accordance with Section 116 (5), unless otherwise agreed in the partnership agreement.

(6) If a declaration of intent is to be made to the general partnership, it is sufficient to submit it to an authorized representative.

Section 126

The shareholders are personally liable to the creditors as joint and several debtors for the general partnership's liabilities. Any agreement to the contrary is invalid towards third parties.

Section 161

(1) A partnership whose purpose is to operate a commercial business under a joint name is a partially limited partnership if one or some of the partners' liability to the company's creditors is limited to a certain amount (liable amount) (limited partners), while for the other parts of the partners there is no limitation of liability (personally liable partners).

(2) Unless otherwise prescribed in this section, the provisions applicable to the general partnership apply to the partially limited partnership accordingly.

Section 164

The limited partners are excluded from management authority; Section 116 (2) sentence 1 remains unaffected.

Section 170

(1) The limited partner as such is not authorized to represent the partially limited partnership.

(2) If the only personally liable partner of the company is a corporation in which the partially limited partnership holds all shares, the rights at the shareholders' meeting of the corporation are exercised by the limited partners, unless otherwise agreed.

Section 171

(1) The limited partner is directly liable to the partially limited partnership's creditors up to the amount of his liability; Liability is excluded as long as the agreed deposit has been made.

(2) If insolvency proceedings have been opened over the partially limited partnership's assets, the right to which the company's creditors are entitled in accordance with (1) will be exercised by the insolvency administrator or the administrator for the duration of the proceedings.

Section 343

(1) Commercial transactions are all transactions of a merchant that relate to the operation of the merchant's commercial business.

(2) (repealed)

Section 344

(1) Legal transactions undertaken by a merchant are considered, in cases of doubt, to be related to the operation of the merchant's commercial business.

(2) Promissory notes signed by a merchant are considered to have been signed in the course of the operation of the merchant's commercial business, provided the contrary is not evident from the instrument.

Section 362

(1) Where a merchant, whose commercial undertaking involves the merchant's serving as an agent for others, receives an offer of contract from someone with whom the merchant has a business relationship concerning such agency services, the merchant will be obliged to reply without undue delay; the merchant's silence will be considered to constitute acceptance of the offer of contract. The same applies if a merchant receives an offer of contract concerning agency services from someone to whom the merchant has proposed to provide services as agent.

(2) Even if the merchant rejects the offer of contract, the merchant is to provisionally protect from damage, at the offeror's expense, the goods sent to the merchant insofar as the merchant is covered for such expenses and insofar as this can be done without detriment to the merchant.

Section 377

(1) Where the purchase is a commercial transaction for both parties, the buyer is to inspect the goods promptly after delivery by the seller, insofar as this is practicable in the ordinary course of business, and is to notify the seller without undue delay if a defect becomes apparent.

(2) If the buyer fails to notify the seller, then the goods are considered to have been approved, unless the defect is one which was not apparent on inspection.

(3) Where such a defect becomes apparent later, notification must be made promptly as soon as the discovery is made; otherwise the goods are considered to be approved also considering such defect.

(4) Timely dispatch of the notification suffices to preserve the buyer's rights.

(5) If the seller has fraudulently concealed the defect, then the seller cannot rely on these provisions.

VI. LIMITED LIABILITIES ACT (GmbHG)

Section 1

Purpose; number of founders

Limited liability companies may be formed by one person or several persons in accordance with the provisions of this Act for any purpose permitted by law.

Section 2

Form of articles of association

(1) Articles of association require notarial form. They must be signed by all the shareholders.

(1a) A company may be formed under a simplified procedure if it has no more than three shareholders and one director. The Model Protocol provided in Annex 1 must be used to form a limited liability company under the simplified procedure. No further provisions which derogate from the law may be laid down. The Model Protocol also serves as the list of shareholders. In all other respects, the provisions of this Act concerning the articles of association apply accordingly to the Model Protocol.

(2) The articles of association may be signed by authorised representatives only on the basis of a power of attorney established or authenticated by a notary. Notarial recording of the power of attorney may also be effected via video link in accordance with sections 16a to 16e of the Notarial Recording Act (*Beurkundungsgesetz*).

(3) Where a company is formed without any contributions in kind, notarial recording of the articles of association may also be effected via video link in accordance with sections 16a to 16e of the Notarial Recording Act. In such cases, in derogation from subsection (1) sentence 2, the qualified electronic signatures of the directors participating in the notarial recording via video link are sufficient to effect signature. Other declarations of intent which do not require notarial recording may be effected via video link in accordance with sections 16a to 16e of the Notarial Recording Act; they must be included in the electronic record made as required by sentence 1. Sentence 3 applies accordingly to resolutions passed by unanimous vote. A company may also be formed via video link under the simplified procedure as referred to in subsection (1a) or using the Model Protocols provided in Annex 2. Subsection (1a) sentences 3 to 5 applies accordingly when using the Model Protocols provided in Annex 2.

Section 3

Content of articles of association

(1) The articles of association must stipulate the following:

1. the company's business name and the place of its registered office,
2. the purpose of the enterprise,
3. the amount of the share capital,
4. the number and nominal values of the shares to which each shareholder subscribes against payment of the capital contribution into the share capital ('original capital share').

(2) If the enterprise is to be formed for a specific term or if other obligations vis-à-vis the company are to be imposed on the shareholders in addition to payment of a capital contribution, these provisions must also be included in the articles of association.

Section 4 Business name

The business name must include the designation '*Gesellschaft mit beschränkter Haftung*' (Limited Liability Company) or a readily comprehensible abbreviation of this designation even if it is continued in accordance with section 22 of the Commercial Code (*Handelsgesetzbuch*) or other statutory provisions. If the company exclusively and directly pursues tax-privileged purposes under sections 51 to 68 of the Fiscal Code (*Abgabenordnung*), the abbreviation '*gGmbH*' may be used.

Section 4a Registered office

The place of the company's registered office is that place in Germany as specified in the articles of association.

Section 5 Share capital; share

(1) The company's share capital must amount to no less than 25,000 euros.

(2) The nominal value of each share must be a full euro amount. A shareholder may subscribe to several shares upon formation of the company.

(3) The amount of the nominal values of the individual shares may be variously determined. The sum total of the nominal values of all the shares must equal the amount of the share capital.

(4) If contributions in kind are to be made, the object of the contribution in kind and the nominal value of the share to which the contribution in kind refers must be specified in the articles of association. The shareholders are required to set forth in a report on company formation on the basis of contributions in kind the material circumstances which establish the appropriateness of the payments for contributions in kind and, where an enterprise is transferred to the company, to state the annual results of the two previous financial years.

Section 5a Entrepreneurial company

(1) The business name of a company formed with a share capital which falls short of the minimum share capital as referred to in section 5 (1) must, in derogation from section 4, bear the designation '*Unternehmergeellschaft (haftungsbeschränkt)*' (Entrepreneurial Company (Limited Liability)), or '*UG (haftungsbeschränkt)*' for short.

(2) In derogation from section 7 (2), the application to register the company may not be filed until the full amount of the share capital has been deposited. Contributions in kind are not possible.

(3) The balance sheet in the annual financial statements to be prepared in accordance with sections 242 and 264 of the Commercial Code must include statutory reserves comprising one quarter of the annual surplus minus any losses carried forward from the previous year. The

reserves may be used only

1. for the purposes set out in section 57c;
2. to compensate for an annual deficit, insofar as it is not covered by profits carried forward from the previous year;
3. to compensate for losses carried forward from the previous year, insofar as they are not covered by an annual surplus.

(4) In derogation from section 49 (3), a meeting of shareholders must be convened without delay where there is a threat of illiquidity.

(5) If the company increases its share capital so that it then equals or exceeds the amount of the minimum share capital as referred to in section 5 (1), then subsections (1) to (4) no longer apply; the business name as referred to in subsection (1) may be retained.

Section 6 Directors

(1) The company must have one or more directors.

(2) Only a natural person of full legal capacity may be a director. Anyone who

1. as a person under custodianship is fully or partially subject to a reservation of consent (section 1825 of the Civil Code (*Bürgerliches Gesetzbuch*)) in the management of their assets,
2. on the basis of a court judgment or an enforceable decision issued by an administrative authority is not permitted to exercise a profession, a branch of a profession, a trade or a branch of a trade, insofar as the purpose of the enterprise fully or partially corresponds to the subject of the prohibition,
3. has been convicted for one or more wilfully committed criminal offences
 - a) of failing to file a request to open insolvency proceedings ('delay in filing for insolvency'),
 - b) referred to in sections 283 to 283d of the Criminal Code (*Strafgesetzbuch*) ('offences in the state of insolvency'),
 - c) for making false statements in accordance with section 82 of this Act or section 399 of the Stock Corporation Act (*Aktiengesetz*),
 - d) for false presentation as referred to in section 400 of the Stock Corporation Act, section 331 of the Commercial Code, section 346 of the Transformation Act (*Umwandlungsgesetz*) or section 17 of the Disclosure Act (*Publizitätsgesetz*), or
 - e) a term of imprisonment of no less than one year in accordance with sections 263 to 264a or sections 265b to 266a of the Criminal Code

may not be appointed as director; this debarment applies for a period of five years after the judgment becomes final, which period excludes the period in which the offender was

detained in an institution upon an official order.

Sentence 2 no. 2 applies accordingly where the person is subject to a comparable ban in another Member State of the European Union or another Contracting Party of the Agreement on the European Economic Area. Sentence 2 no. 3 applies accordingly in the event of a conviction abroad for an offence comparable to those referred to in sentence 2 no. 3.

(3) Shareholders or other persons may be appointed as directors. The appointment is made either in the articles of association or in accordance with the provisions of Division 3.

(4) If the articles of association provide that all the shareholders are to be entitled to form the management, only those persons are deemed to be appointed as directors who are part of the company when this provision is laid down.

(5) Shareholders who intentionally or gross negligently leave a person who may not act as director to manage the company's business are held jointly and severally liable to the company for that damage which arises on account of the fact that this person violates the obligations which he or she is under vis-à-vis the company.

Section 7

Registration of company

(1) An application to enter the company in the Commercial Register must be filed with that court in whose district the company has its registered office.

(2) The application for registration may be made only after one quarter of the nominal value of each share has been deposited, unless contributions in kind have been agreed. In total, at least as much of the share capital must have been deposited so that the total amount of the contributions in cash paid in, plus the total nominal capital of the shares for which contributions in kind are to be paid, equals half of the minimum share capital as per section 5 (1).

(3) The contributions in kind are to be effected to the company, before the application for entry in the Commercial Register is filed, in such a manner that they are finally at the free disposal of the directors.

Section 8

Content of application for registration

(1) The following must be enclosed with the application for registration:

1. the articles of association and, in the case referred to in section 2 (2), the powers of attorney of those representatives who have signed the articles of association, or a certified copy of these documents,
2. the directors' legitimation, unless their appointment has been laid down in the articles of association,
3. a list of shareholders which meets the requirements of section 40 and which has been signed by those applying for registration or bears the qualified electronic signatures of those applying for registration,
4. in the case referred to in section 5 (4), the agreements on which the determinations are based or which were concluded in respect of their execution, and the report on company

formation on the basis of contributions in kind,

5. if contributions in kind have been agreed, the documents certifying that the value of the contributions in kind equals the nominal value of the shares subscribed to thereby.

6. (repealed)

(2) The application for registration must include the assurance that the payments against the shares referred to in section 7 (2) and (3) have been effected and that the object of the payments is finally at the free disposal of the directors. Where there are considerable doubts as to the veracity of the assurance, the court may require submission of proof such as, in particular, the production of deposit slips issued by a financial institution or payment service provider established in the European Union.

(3) The directors must give their assurance in the application for registration that there are no circumstances which preclude their appointment in accordance with section 6 (2) sentence 2 nos. 2 and 3 and sentences 3 and 4 and that they have been instructed about their unlimited duty to disclose information to the court. The instruction as referred to in section 53 (2) of the Federal Central Criminal Register Act (*Bundeszentralregistergesetz*) may be given in writing; it may also be given by a notary or a notary appointed abroad, by a representative of a comparable legal advisory profession or a consular official.

(4) The application for registration must also indicate the following:

1. a domestic business address,
2. the nature and extent of the directors' powers of representation.

(5) Section 12 (2) of the Commercial Code applies accordingly to the submission of documents in accordance with this Act.

Section 9

Over-valuation of contributions in kind

(1) If, at the point in time at which the application for entry of the company in the Commercial Register is filed, the value of a contribution in kind does not equal the nominal value of the share subscribed to thereby, the shareholder is to pay a contribution in cash in the amount of the shortfall. Other claims remain unaffected.

(2) The company's claim under subsection (1) sentence 1 becomes statute-barred 10 years after the company is entered in the Commercial Register.

Section 9a

Claims for compensation on part of company

(1) Where false statements are made for the purpose of forming the company, the shareholders and directors of the company, as joint and several debtors, are to make the payments which have not been made, to compensate for remuneration which has not been included in the expenses for formation, and to pay compensation for any other damage arising.

(2) Where the company suffers damage owing to an intentional or grossly negligent act by shareholders on account of capital contributions or expenses for formation, the shareholders are all liable to compensate that damage as joint and several debtors.

(3) Shareholders or directors are exempted from these obligations if they were neither aware of the facts establishing the obligation to pay compensation nor needed to be aware thereof when applying the due care of a prudent businessperson.

(4) In addition to the shareholders, those persons for whose account the shareholders have subscribed to shares are also responsible in the same manner. They cannot rely on their own ignorance on account of such circumstances of which a shareholder acting for their account was aware or of which he or she needed to be aware when applying the due care of a prudent businessperson.

Section 9b **Waiver of claims for compensation**

(1) The company's waiver of claims for compensation under section 9a or the company's settlement in regard to such claims is ineffective insofar as the compensation is necessary to satisfy the company's creditors. This does not apply where the person liable to pay compensation is insolvent and reaches a settlement with his or her creditors to avert the insolvency proceedings or if the liability to pay compensation has been regulated in an insolvency plan.

(2) The company's claims for compensation under section 9a become statute-barred after five years. The period of limitation begins to run upon the company being entered in the Commercial Register or, if the act creating the liability to pay compensation was committed at a later point in time, upon performance of that act.

Section 9c **Refusal to register company**

(1) If the company has not been properly formed and registered, the court is to refuse to make the entry in the Commercial Register. This also applies where contributions in kind have been over-valued to a not insignificant degree.

(2) The court may refuse to make the entry in accordance with subsection (1) only on account of a defective or void provision or in the absence of a provision in the articles of association insofar as that provision, its absence or its nullity

1. concerns facts or legal relations which must be specified in the articles of association in accordance with section 3 (1) or on account of other mandatory statutory provisions, or which must be entered in the Commercial Register or must be publicly noticed by the court,
2. violate provisions which exclusively or predominantly exist to protect the company's creditors or which are otherwise in the public interest, or
3. result in the articles of association becoming null and void.

Section 11 **Legal status prior to entry**

(1) A limited liability company does not exist as such until the company has been entered in the Commercial Register at the place of its registered office.

(2) Where acts are performed in the company's name before the entry is made, the persons

acting are personally as well as jointly and severally liable.

Section 13

Legal person; commercial company

(1) A limited liability company as such has independent rights and obligations; it may acquire ownership of and other rights in real property, and may sue and be sued in court.

(2) The company assets alone serve to discharge the company's obligations vis-à-vis its creditors.

(3) The company is deemed to be a commercial company within the meaning of the Commercial Code.

Section 15

Transfer of shares

(1) Shares are alienable and inheritable.

(2) Where shareholders purchase further shares in addition to their original share, these remain legally independent.

(3) An agreement concluded in notarial form is required for the transfer of shares by shareholders.

(4) An agreement establishing a shareholder's obligation to transfer a share likewise requires notarial form. However, an agreement concluded without such notarial form becomes valid once the transfer agreement is concluded pursuant to subsection (3).

(5) The articles of association may stipulate that the transfer of shares be made dependent on further conditions, in particular the company's consent.

Section 30

Capital maintenance

(1) Those assets which the company requires to maintain its share capital may not be paid out to the shareholders. Sentence 1 does not apply to payments made upon the existence of a control or profit transfer agreement (section 291 of the Stock Corporation Act) or to payments which are covered by a full claim to counterperformance or restitution against a shareholder. Sentence 1 also does not apply to the repayment of a shareholder loan and payments against claims arising from legal acts which correspond economically to a shareholder loan.

(2) If they are not needed to cover a loss in share capital, any paid in additional contributions may be repaid to the shareholders. The repayment may not be made before three months have elapsed since the decision to make the repayment was made known in accordance with section 12. In the case referred to in section 28 (2), repayment of additional contributions is inadmissible before the share capital has been deposited in full. Repaid additional contributions are deemed not to have been collected.

Section 35

Representation of company

(1) The company is represented in and out of court by the directors. If a company has no

director, the company is represented by the shareholders whenever declarations of intent are made or documents are served on it.

(2) Where several directors have been appointed, they are only all jointly entitled to represent the company, unless otherwise provided in the articles of association. Where a declaration of intent is to be made to the company, it is sufficient for it to be made to one representative of the company in accordance with subsection (1). Declarations of intent may be made to and documents addressed to the company may be served on the representatives of the company referred to in subsection (1) under the address entered in the Commercial Register. Notwithstanding this, the declarations may also be made to and documents may also be served under the registered address to persons authorised in accordance with section 10 (2) sentence 2.

(3) Where all the company's shares are held by one shareholder or, in addition, by the company and that shareholder is at the same time the sole director, section 181 of the Civil Code applies to that shareholder's legal transactions with the company. Legal transactions between the shareholder and the company which that shareholder represents are, even if he or she is not the sole director, to be documented without delay following their performance.

Section 37 **Restrictions on power of representation**

(1) The directors are obligated vis-à-vis the company to observe those restrictions which have been set out in the articles of association as regards the extent of their power to represent the company or, unless otherwise provided therein, by resolutions passed by the shareholders.

(2) A restriction of the directors' power to represent the company has no legal effect in respect of third persons. This in particular applies to those cases in which the representation is restricted to certain business or types of business only or only under certain circumstances or for a certain period of time or in specific places, or where the consent of the shareholders or a company organ is required for the conduct of specific business.

Section 43 **Directors' liability**

(1) The directors are required to conduct the company's affairs with the due care of a prudent businessperson.

(2) Directors who breach the duties incumbent upon them are jointly and severally liable to the company for any damage arising.

(3) In particular, they are liable to compensate where payments have been made in contravention of section 30 from those company assets which are required to maintain the share capital or the company's own shares have been purchased in contravention of the provisions of section 33. The provisions of section 9b (1) apply accordingly to a claim for compensation. Where compensation has to be paid to satisfy the company's creditors, the directors' obligation is not abrogated on account of the fact that they acted in compliance with a resolution passed by the shareholders.

(4) Claims based on the aforementioned provisions become statute-barred after five years.

Section 46

Duties of shareholders

The following are subject to the shareholders' disposition:

1. the approval of the annual financial statements and the appropriation of earnings;
 - 1a. decisions concerning the disclosure of separate financial statements in accordance with international accounting standards (section 325 (2a) of the Commercial Code) and concerning the approval of the financial statements prepared by the directors;
 - 1b. the approval of consolidated financial statements prepared by the directors;
2. the calling in of capital contributions;
3. the repayment of additional contributions;
4. the division of, grouping and collection of shares;
5. the appointment and dismissal of the directors, as well as their discharge;
6. the regulation of audits and oversight of the management;
7. the appointment of those vested with the general commercial power of representation and those vested with the commercial power of attorney for the entire business establishment;
8. the assertion of claims for compensation to which the company is entitled as a result of formation or management vis-à-vis directors or shareholders, as well as the representation of the company in proceedings being conducted against the directors.

Section 51

Form of convocation

- (1) The meeting is convened by invitation sent to the shareholders by registered letter. The invitation is to be sent at least one week in advance.
- (2) The purpose of the meeting is, as a rule, always to be made known upon convocation.
- (3) If the meeting has not been properly convened, resolutions may be passed only if all the shareholders are present.
- (4) The same applies in respect of resolutions concerning matters which have not been announced at least three days prior to the meeting in the manner prescribed for the convocation of meetings.

VII. GERMAN STOCK CORPORATION ACT (AktG)

Section 1 Nature of the stock corporation

- (1) The stock corporation is a company having a legal personality of its own. Solely the company's assets are liable to the creditors of the company for its obligations.
- (2) The share capital of the stock corporation is divided up into shares of stock.

Section 3 Merchant status conferred by law. Stock exchange listing

- (1) The stock corporation is deemed a trading company even if the purpose of the enterprise does not consist of carrying on a trade.
- (2) Listed companies within the meaning of the present Act are companies whose shares of stock are admitted to trading on a market that is regulated and monitored by officially recognised bodies, that takes place on a regular basis, and that is indirectly or directly accessible to the general public.

Section 4 Business name

The business name of the stock corporation must include the designation "*Aktiengesellschaft*" (stock corporation), or a generally understandable abbreviation of this designation, regardless of whether or not the business name continues to be used pursuant to section 22 of the Commercial Code (*Handelsgesetzbuch* – HGB) or pursuant to any other statutory provisions.

Section 5 Seat

The company's seat is that location within Germany that has been determined as such in the by-laws.

Section 6 Share capital

The nominal amount of the share capital must be denominated in euros.

Section 7 Minimum nominal amount of the share capital

The minimum nominal amount of the share capital is fifty thousand euros.

Section 53a Equal treatment of stockholders

Subject to the same pre-requisites being given, stockholders are to be treated equally.

Section 54

Principal obligation of stockholders

- (1) The obligation of the stockholders to make contributions is limited by the issue price of the shares of stock.
- (2) Unless the by-laws specify contributions in kind, the stockholders are to pay in the issue price of the shares of stock.
- (3) The amount called in prior to application for entry of the company in the register may only be paid in in legal tender or by crediting the amount to an account maintained by the company or the management board, with a credit institution or an enterprise pursuing activities governed by section 53 (1) sentence 1 or section 53b (1) sentence 1 or (7) of the Banking Act (Kreditwesengesetz – KWG), such that it is available to be disposed over by the management board at its discretion. Receivables of the management board resulting from these payments towards the contributions are considered receivables of the company.
- (4) The company's claim to having the contributions made will become statute-barred 10 years after it has arisen. Where insolvency proceedings are opened for the company's assets, the prescription will not commence prior to the expiry of six months after the time at which said proceedings were opened.

Section 76

Management of the stock corporation

- (1) The management board is to manage the affairs of the company on its own responsibility.
- (2) The management board may consist of one or several persons. In the case of companies having a share capital of more than three million euros, the management board is to be comprised of at least two persons unless the by-laws stipulate that it is to consist of one person. The provisions governing the appointment of a member of the board responsible for human resources and social welfare matters (*Arbeitsdirektor*) remain unaffected.

[...]

Section 77

Management

- (1) Where the management board consists of several persons, any and all members of the management board have authority to manage the affairs of the company only jointly. The by-laws or the rules of procedure of the management board may make determinations in derogation herefrom; however, they may not stipulate that, in the case of differences of opinion in the management board, one or several members of the management board may take a decision overriding the view held by the majority of its members.
- (2) Unless the by-laws stipulate that it is incumbent on the supervisory board to establish rules of procedure, or the supervisory board so establishes rules of procedure for the management board, the management board may itself establish its rules of procedure. The by-laws may bindingly provide for individual aspects of the rules of procedure. Resolutions adopted by the management board regarding the rules of procedure must be adopted unanimously.

Section 78 Representation

(1) The management board represents the company before the courts and outside of court. Where a company does not have a management board (lack of management), the company is represented by the supervisory board for the case that declarations of intent are made to it or documents served on it.

(2) Where the management board consists of several persons, any and all members of the management board have authority to represent the company only jointly, unless the by-laws stipulate otherwise. Where a declaration of intent is to be made to the company, it suffices for such declaration to be made to a member of the management board or, in the case governed by subsection (1) sentence 2, to a member of the supervisory board. Declarations of intent to the company may be made to, and documents for the company may be served on, the company's representatives set out in subsection (1) at the address entered in the Commercial Register. Notwithstanding the above, the declarations may be made, and the documents served, also at the registered address of the person authorised to receive service of documents pursuant to section 39 (1) sentence 2.

[...]

Section 84 Appointment of members of the management board and removal from office

(1) The supervisory board appoints members of the management board for a maximum term of five years. A re-appointment or extension of the term of office, in each case for a maximum of five years, is permissible. This will require a new resolution to be adopted by the supervisory board, which may be so adopted at the earliest one year prior to expiry of the current term of office. Solely for appointments for a term shorter than five years may an extension of the term of office be provided for without a new resolution being adopted by the supervisory board, the pre-requisite being that this does not result in a total term of office longer than five years. This applies accordingly to the employment agreement; however, the employment agreement may provide that it is to continue in force until the expiry of the term should the term of office be extended.

(2) Where several persons are appointed as members of the management board, the supervisory board may designate one member as chairperson of the management board.

Section 93 Duty of the members of the management board to exercise skill and care; liability and responsibilities

(1) In managing the affairs of the company, the members of the management board are to exercise the due care of a prudent manager faithfully complying with the relevant duties. No dereliction of duties will be given in those instances in which the member of the management board, in taking an entrepreneurial decision, was within their rights to reasonably assume that they were acting on the basis of adequate information and in the best interests of the company. The members of the management board are to respect the secrecy of any confidential information and secrets of the company, particularly trade secrets or business secrets, of which they have become aware in the context of their activities in the management board.

(2) Members of the management board acting in dereliction of their duties are liable as joint

and several debtors to compensate the company for any damage resulting from their actions. Where it is in dispute whether or not they exercised the due care of a prudent manager faithfully complying with the relevant duties, the onus of proof is upon them. Where the company has taken out insurance to protect a member of the management board against risks arising from their professional activities for the company, the insurance policy is to provide for a deductible of at least 10 per cent of the damage, up to a minimum of 150 per cent of the annual fixed remuneration of the member of the management board.

(3) The members of the management board are under obligation to provide compensation particularly in those instances in which, in contravention of the present Act,

1. contributions are restituted to the stockholders,
2. stockholders are paid interest or participate in the profits,
3. treasury shares of stock in the company or in some other company have been subscribed to, purchased, accepted in pledge or redeemed,
4. shares of stock are issued prior to their issue price having been fully paid in,
5. the company's assets are distributed,
6. (repealed),
7. remuneration is granted to members of the supervisory board,
8. loans are granted,
9. shares of a new issue are issued in the context of the conditional capital increase and this is done outside of the purpose specified therefor or prior to the equivalent value having been fully paid.

(4) The duty to provide compensation does not arise in relation to the company where the action taken is based on a lawful resolution adopted by the general meeting. The fact that the supervisory board has endorsed the action does not preclude the duty to provide compensation. The company may waive its claims to compensation, or conclude a compromise regarding these claims, only once three years have lapsed since the arising of the claim, and only in those cases in which the general meeting approves this being done and no minority, the aggregate of whose shares is at least equivalent to one tenth of the share capital, raises an objection and has it recorded in the minutes. The limitation in time does not apply where the party obligated to provide compensation is unable to pay their debts as they become due and concludes a compromise with their creditors in order to avert insolvency proceedings or if the compensation duty is provided for in an insolvency plan.

(5) The company's claim to compensation may also be asserted by its creditors insofar as they cannot obtain satisfaction from the company. However, this applies, in cases other than those governed by subsection (3), only in those instances in which members of the management board have grossly violated their duty to exercise the due care of a prudent manager faithfully complying with the relevant duties; subsection (2) sentence 2 applies accordingly. The duty to provide compensation will not be cancelled in relation to the creditors by a waiver by the company or by its concluding a compromise, nor will the fact that the action is based on a resolution adopted by the general meeting cancel this obligation. Where insolvency proceedings

have been opened for the company's assets, the insolvency administrator or the insolvency monitor is to exercise the right of the company's creditors against the members of the management board for the duration of said proceedings.

(6) The claims governed by the present provisions will become statute-barred, in the case of companies that were listed on a stock exchange at the time at which the dereliction of duties occurred, after 10 years; in the case of other companies after 5 years.

Section 100

Personal pre-requisites to be fulfilled by members of the supervisory board

(1) Solely a natural person having legal capacity without any restrictions may be a member of the supervisory board. A person who, as a person under custodianship as concerns matters of their property, is subject wholly or in part to a reservation of consent (section 1825 of the Civil Code), is prohibited from being a member of the supervisory board.

(2) No-one may be a member of the supervisory board who

1. is already a member of the supervisory boards of 10 trading companies obligated by law to form a supervisory board;
2. is a legal representative of an enterprise controlled by the company;
3. is a legal representative of some other share capital company, the supervisory board of which counts a member of the management board of the company among its members; or
4. was a member of the management board of the same listed company in the course of the past two years unless they are elected upon having been nominated by stockholders holding more than 25 per cent of the voting rights in the company.

A number of up to five of the seats on the supervisory board are not to be included in computing the maximum number pursuant to sentence 1 no. 1 that a legal representative (in the case of a sole trader: the business owner) of the controlling enterprise of a group of enterprises holds in the trading companies forming part of the group that are under obligation to form a supervisory board. The memberships in supervisory boards within the meaning of no. 1, in which the member in question has been elected chairperson, are to be counted double in establishing the maximum number pursuant to sentence 1 no. 1.

(3) The other personal pre-requisites to be fulfilled by the members of the supervisory board representing the employees as well as the further members are governed by the Employee Co-Determination Act, the Act on Employee Co-Determination in the Iron- and Steel-Producing Industry, the Supplementary Co-determination Act, the Act on One-Third Employee Representation in the Supervisory Board, the Act on Employee Co-Determination in the Case of a Cross-Border Merger, and the Act on Employee Co-Determination in the Case of a Cross-Border Change of the Legal Form or of a Cross-Border Division.

(4) The by-laws may demand the fulfilment of personal pre-requisites only by those members of the supervisory board who are elected by the general meeting without the latter being bound by nominations, or who are delegated to the supervisory board by reason of the by-laws.

(5) In the case of companies that are public interest entities as defined in section 364d sentence

2 of the Commercial Code, at least one member of the supervisory board must have expertise in the field of accounting and at least one further supervisory board member must have expertise in the field of auditing accounts; the members of the supervisory board as a whole must be familiar with the sector in which the company pursues its activities.

Section 101

Appointment of members to the supervisory board

(1) The members of the supervisory board are elected by the general meeting unless they are to be delegated to the supervisory board or are to be elected as supervisory board members representing the employees pursuant to the Employee Co-Determination Act, the Supplementary Co-determination Act, the Act on One-Third Employee Representation in the Supervisory Board, the Act on Employee Co-Determination in the Case of a Cross-Border Merger or the Act on Employee Co-Determination in the Case of a Cross-Border Change of the Legal Form or of a Cross-Border Division. The general meeting is bound by nominations exclusively pursuant to sections 6 and 8 of the Act on Employee Co-Determination in the Iron- and Steel-Producing Industry.

(2) Solely the by-laws may establish a right to delegate members to the supervisory board, and this only for certain stockholders or for the respective holders of certain shares of stock. The delegation right may be conferred upon the holders of certain shares of stock only if the shares of stock are registered in the names of their holders and their transfer is bound to the consent of the company. The shares of stock held by the parties entitled to delegate representatives are not considered a special class of stock. The delegation rights may be conferred, in the aggregate, for at most a third of the number of supervisory board members representing the stockholders as stipulated by the law or in the by-laws.

(3) No deputies of members of the supervisory board may be appointed. However, a substitute member may be appointed for each member of the supervisory board, to the exception of the further member elected at the nomination of the remaining members of the supervisory board pursuant to the Act on Employee Co-Determination in the Iron- and Steel-Producing Industry or the Supplementary Co-determination Act; this substitute member will become a member of the supervisory board if the member of the supervisory board ceases to hold such office prior to expiry of their term of office. The substitute member may be appointed only concurrently with the member of the supervisory board. The provisions applying to the supervisory board member are to be applied to the appointment of the substitute member, as well as to cases in which the appointment is null and void or an action for avoidance is brought.

Section 111

Tasks and rights of the supervisory board

(1) The supervisory board is to supervise the management board.

(2) The supervisory board may inspect and audit the books and records of the company as well as its assets, particularly the company's cash and the inventory of securities and goods. It may also instruct individual members to perform these tasks, or may commission special experts for certain tasks. The supervisory board instructs the statutory auditor to audit the annual financial statements and the consolidated financial statements pursuant to section 290 of the Commercial Code. Moreover, the supervisory board may instruct that an external audit be performed of the substance of the non-financial statement or of the separate non-financial report (section 289b of the Commercial Code), or of the consolidated non-financial statement or the separate consolidated non-financial report (section 315b of the Commercial Code).

(3) The supervisory board is to convene a general meeting where this is required by the company's best interests. It suffices for the corresponding resolution to be adopted by a simple majority.

(4) The measures to be taken by the management may not be transferred to the supervisory board. However, it is to be determined in the by-laws or by the supervisory board that certain types of business transactions may be implemented only with the supervisory board's consent. Where the supervisory board refuses to grant such consent, the management board may demand that the general meeting adopt a resolution concerning such consent. The resolution by which the general meeting grants its consent requires a majority of at least three quarters of the votes cast. The by-laws may neither stipulate a greater majority ratio, nor may they impose further requirements.

(5) The supervisory boards of listed companies or companies that are subject to co-determination rights stipulate target values for the share of women sitting on the supervisory board and the management board. The target values must describe the share of women targeted for the body respectively concerned and must correspond, where percentages are cited, to full numbers of persons. Where the supervisory board stipulates the target value "zero" for the share of women sitting on the supervisory board or management board, it is to provide a clear and understandable reasoning for this resolution. The reasoning must present the details of the deliberations on which the decision is based. Where the share of women is lower than 30 per cent at the time the target values are laid down, the target values stipulated no longer may be lower than the share respectively attained. Concurrently, time limits are to be set within which the target values are to be attained. In each case, the time limits may not be longer than five years. If the requirement as to the minimum ratio pursuant to section 96 (2) or (3) already applies to the supervisory board, the stipulations are to be made solely for the management board. If the requirement as to gender participation stipulated by section 76 (3a) applies to the management board, then the duty to set a target value for the management board likewise will lapse.

(6) The members of the supervisory board may not have others perform the tasks incumbent on them.

Section 112

Representation of the company in relation to members of the management board

The supervisory board represents the company in relation to members of the management board in court and outside of court. Section 78 (2) sentence 2 applies accordingly.

Section 118

General provisions

(1) Unless stipulated otherwise by the law, the stockholders exercise their rights in matters pertaining to the company at the general meeting. The by-laws may provide, or may grant authority to the management board to provide, that the stockholders may participate in the general meeting also without being present at the place at which it is being held and without an authorised representative, and that they may exercise the entirety or some of their rights, as a whole or in part, by way of electronic communication. Where the voting right is exercised by electronic means, the company is to confirm by electronic means the receipt of the vote cast electronically to the party casting the vote in accordance with the requirements stipulated under Article 7 (1) and Article 9 (5) sub-paragraph (1) of Commission Implementing Regulation (EU) 2018/1212. Insofar as the confirmation is issued to an intermediary, the intermediary is to

transmit the confirmation to the stockholder without undue delay. Section 67a (2) sentence 1 and subsection (3) applies accordingly.

(2) The by-laws may provide, or may grant authority to the management board to provide, that stockholders may cast their votes also without participating in the meeting, in writing or by way of electronic communication (absentee ballot). Subsection (1) sentence 3 to 5 applies accordingly.

(3) The members of the management board and of the supervisory board as a rule are to attend the general meeting. However, the by-laws may provide for certain cases in which the members of the supervisory board may participate by means of video and audio transmission.

(4) The by-laws or the rules of procedure pursuant to section 129 (1) may provide, or may grant authority to the management board or the person chairing the meeting to provide, that the general meeting may be broadcast by means of video and audio transmission.

Section 119 **Rights of the general meeting**

(1) The general meeting adopts resolutions in the cases expressly determined by law and in the by-laws, particularly as regards the following:

the appointment of members of the supervisory board, unless they are to be delegated to the supervisory board or are to be elected as members of the supervisory board representing the employees pursuant to the Employee Co-Determination Act, the Supplementary Co-determination Act, the Act on One-Third Employee Representation in the Supervisory Board, the Act on Employee Co-Determination in the Case of a Cross-Border Merger, or the Act on Employee Co-Determination in the Case of a Cross-Border Change of the Legal Form or of a Cross-Border Division;

1. the appropriation of the net income;
2. the remuneration system and the remuneration report for members of the listed company's management board and supervisory board;
3. the approval of the actions taken by the members of the management board and of the supervisory board and the granting of discharge to them;
4. the appointment of the statutory auditor;
5. amendments of the by-laws;
6. measures serving the procurement of capital and the reduction of capital;
7. the appointment of auditors who are to audit actions taken and events occurring in the course of the company's formation or of the management of its affairs;
8. the dissolution of the company.

(2) The general meeting may take a decision regarding matters of the management of the company's affairs only if the management board so demands.

Section 131

Stockholder's right to seek information

(1) The management board is to inform each stockholder at the general meeting, upon a corresponding demand being made, concerning matters pertaining to the company insofar as this is required in order to appropriately adjudge the item of business set out in the agenda. The duty to provide information also extends to include the legal and business relations of the company with an affiliated enterprise. Where a company avails itself of the eased requirements pursuant to section 266 (1) sentence 3, section 276 or section 288 of the Commercial Code, each stockholder may request that, at the general meeting deliberating on the annual financial statements, the annual financial statements be made available to them in the form that they would be in without these eased requirements. The duty of the management board of a parent undertaking to provide information (section 290 (1) and (2) of the Commercial Code) at the general meeting to which the consolidated financial statements and the consolidated management report are submitted also extends to cover the situation of the group and the enterprises included in the consolidated financial statements.

(1a) In the case of the virtual general meeting, subsection (1) sentence 1 is to be applied subject to the proviso that the management board may stipulate that questions by the stockholders are to be submitted by way of electronic communication no later than three days prior to the general meeting. Section 121 (7) applies to the calculation of the time limit. Questions not submitted in due time need not be considered.

(1b) The scope in which questions may be submitted may reasonably be restricted in the invitation convening the general meeting. The right to submit questions may be restricted to stockholders duly registered for the meeting.

(1c) The company is to make accessible to all stockholders, prior to the general meeting, the questions duly submitted and is to provide answers to such questions no later than by one day prior to the meeting; section 121 (7) applies to the calculation of the time limit. In the case of listed companies, the questions are to be made accessible and the answers are to be provided via the company's website. Section 126 (2) sentence 1 no. 1, 3 and 6 applies accordingly to the accessibility of the questions. If the answers have been continuously accessible one day prior to commencement of the general meeting and while the meeting is ongoing, the management board may refuse, at the meeting, to provide information regarding those questions.

(1d) Each stockholder participating in the general meeting by electronic means is to be granted a right, by way of electronic communication, to ask follow-up questions regarding all of the answers provided by the management board before the meeting and while it is ongoing. Subsection (2) sentence 2 applies also to the right to ask follow-up questions.

(1e) Moreover, each stockholder participating in the general meeting by electronic means is to be granted the right, by way of electronic communication, to ask questions regarding facts and circumstances that have come about only after the time limit defined in subsection (1a) sentence 1 has expired. Subsection 2 sentence 2 applies also to this right to ask questions.

(1f) The person chairing the meeting may establish that the right to seek information under subsection (1), the right to ask follow-up questions under subsection (1d) and the right to ask questions under subsection (1e) may be exercised at the general meeting exclusively by means of video communication technology.

(2) The information provided is to comply with the principles of conscientious and faithful

accounting. The by-laws or the rules of procedure pursuant to section 129 may grant authority to the person chairing the meeting to impose reasonable time limits on the stockholder's right to ask questions and to speak, and may also allow them to make further determinations concerning the details in this regard.

(3) The management board may refuse to provide information:

1. inasmuch as the provision of the information, when assessed applying prudent business judgment, is suited to cause a greater than insignificant disadvantage to the company or an affiliated enterprise;
2. inasmuch as it refers to carrying values for tax purposes or the amount of individual taxes;
3. regarding the difference between the value at which objects were stated in the annual balance sheet and a higher value of such objects, unless the general meeting approves and establishes the annual financial statements;
4. regarding the accounting and valuation methods insofar as it suffices to cite these methods in the notes in order to accurately represent the company's assets, financial position and revenue situation in keeping with its actual circumstances within the meaning of section 264 (2) of the Commercial Code; this does not apply if the general meeting approves and establishes the annual financial statements;
5. inasmuch as the management board would be liable to punishment under law were it to provide the information;
6. inasmuch as, in the case of a credit institution, a financial services provider or a securities institution, no information need be provided regarding the accounting and valuation methods applied, nor regarding the netting performed in the annual financial statements, management report, consolidated financial statements or consolidated management report;
7. inasmuch as such information is continuously accessible on the company's website for a minimum of seven days prior to commencement of the general meeting, and also in its course.
8. Any refusal to provide information for other than the grounds set out above is not permissible.

(4) Where information has been provided to a stockholder because of their capacity as such, and this was done outside of the general meeting, it is to be provided to every other stockholder making a corresponding demand at the general meeting, even if such information is not required in order to appropriately adjudge the item of business set out in the agenda. In the case of the virtual general meeting, it is to be warranted that each stockholder participating in the general meeting by electronic means is able to transmit their demand under sentence 1 by way of electronic communication. The management board may not refuse to provide the information in accordance with subsection (3) sentence 1 nos. 1 to 4. Sentences 1 to 3 do not apply if a subsidiary undertaking (section 290 (1) and (2) of the Commercial Code), a joint venture (section 310 (1) of the Commercial Code) or an associated enterprise (section 311 (1) of the Commercial Code) issues the information to a parent undertaking (section 290 (1) and (2) of the Commercial Code) for purposes of including the company in the consolidated financial

statements of the parent undertaking and the information is required for this purpose.

(5) Where a stockholder is denied the information sought, the stockholder may demand that their question and the grounds for refusing to provide the information be included in the minutes of the meeting. In the case of the virtual general meeting, it is to be warranted that each stockholder participating in the meeting by electronic means is able to transmit their demand under sentence 1 by way of electronic communication.

VIII. ROME I (REGULATION (EC) NO 593/2008)

Article 1

1. This Regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters. It shall not apply, in particular, to revenue, customs or administrative matters.

2. The following shall be excluded from the scope of this Regulation:

- (a) questions involving the status or legal capacity of natural persons, without prejudice to Article 13;
- (b) obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects, including maintenance obligations;
- (c) obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession;
- (d) obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;
- (e) arbitration agreements and agreements on the choice of court;
- (f) questions governed by the law of companies and other bodies, corporate or unincorporated, such as the creation, by registration or otherwise, legal capacity, internal organisations or winding-up of companies and other bodies, corporate or unincorporated, and the personal liability of officers and members as such for the obligations of the company or body;
- (g) the question whether an agent is able to bind a principal, or an organ to bind a company or other body corporate or unincorporated, in relation to a third party;
- (h) the constitution of trusts and the relationship between settlors, trustees and beneficiaries;
- (i) obligations arising out of dealings prior to the conclusion of a contract;
- (j) insurance contracts arising out of operations carried out by organisations other than undertakings referred to in Article 2 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (14) the object of which is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or to a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, or of sickness related to work or accidents at work.

3. This Regulation shall not apply to evidence and procedure, without prejudice to Article 18.

4. In this Regulation, the term ‘Member State’ shall mean Member States to which this Regulation applies. However, in Article 3(4) and Article 7 the term shall mean all the Member States.

Article 2

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

Article 3

1. A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.

2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice made under this Article or of other provisions of this Regulation. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity under Article 11 or adversely affect the rights of third parties.

3. Where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.

4. Where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.

5. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 10, 11 and 13.

Article 4

Applicable law in the absence of choice

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:

- (a) a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence;
- (b) a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence;
- (c) a contract relating to a right in rem in immovable property or to a tenancy of immovable property shall be governed by the law of the country where the property is situated;
- (d) notwithstanding point (c), a tenancy of immovable property concluded for temporary private use for a period of no more than six consecutive months shall be governed by the law of the country where the landlord has his habitual residence, provided that the tenant is a natural person and has his habitual residence in the same country;

- (e) a franchise contract shall be governed by the law of the country where the franchisee has his habitual residence;
- (f) a distribution contract shall be governed by the law of the country where the distributor has his habitual residence;
- (g) a contract for the sale of goods by auction shall be governed by the law of the country where the auction takes place, if such a place can be determined;
- (h) a contract concluded within a multilateral system which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments, as defined by Article 4(1), point (17) of Directive 2004/39/EC, in accordance with non-discretionary rules and governed by a single law, shall be governed by that law.

2. Where the contract is not covered by paragraph 1 or where the elements of the contract would be covered by more than one of points (a) to (h) of paragraph 1, the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence.

3. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply

4. Where the law applicable cannot be determined pursuant to paragraphs 1 or 2, the contract shall be governed by the law of the country with which it is most closely connected.

Article 5

1. To the extent that the law applicable to a contract for the carriage of goods has not been chosen in accordance with Article 3, the law applicable shall be the law of the country of habitual residence of the carrier, provided that the place of receipt or the place of delivery or the habitual residence of the consignor is also situated in that country. If those requirements are not met, the law of the country where the place of delivery as agreed by the parties is situated shall apply.

2. To the extent that the law applicable to a contract for the carriage of passengers has not been chosen by the parties in accordance with the second subparagraph, the law applicable shall be the law of the country where the passenger has his habitual residence, provided that either the place of departure or the place of destination is situated in that country. If these requirements are not met, the law of the country where the carrier has his habitual residence shall apply. The parties may choose as the law applicable to a contract for the carriage of passengers in accordance with Article 3 only the law of the country where:

- (a) the passenger has his habitual residence; or
- (b) the carrier has his habitual residence; or
- (c) the carrier has his place of central administration; or
- (d) the place of departure is situated; or
- (e) the place of destination is situated.

3. Where it is clear from all the circumstances of the case that the contract, in the absence of a choice of law, is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.

Article 6

1. Without prejudice to Articles 5 and 7, a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another person acting in the exercise of his trade or profession (the professional) shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:

- (a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or
- (b) by any means, directs such activities to that country or to several countries including that country, and the contract falls within the scope of such activities.

2. Notwithstanding paragraph 1, the parties may choose the law applicable to a contract which fulfils the requirements of paragraph 1, in accordance with Article 3. Such a choice may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1.

3. If the requirements in points (a) or (b) of paragraph 1 are not fulfilled, the law applicable to a contract between a consumer and a professional shall be determined pursuant to Articles 3 and 4.

4. Paragraphs 1 and 2 shall not apply to:

- (a) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence;
- (b) a contract of carriage other than a contract relating to package travel within the meaning of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours;
- (c) a contract relating to a right in rem in immovable property or a tenancy of immovable property other than a contract relating to the right to use immovable properties on a timeshare basis within the meaning of Directive 94/47/EC;
- (d) rights and obligations which constitute a financial instrument and rights and obligations constituting the terms and conditions governing the issuance or offer to the public and public take-over bids of transferable securities, and the subscription and redemption of units in collective investment undertakings in so far as these activities do not constitute provision of a financial service;
- (e) a contract concluded within the type of system falling within the scope of Article 4(1)(h).

Article 7

1. This Article shall apply to contracts referred to in paragraph 2, whether or not the risk covered

is situated in a Member State, and to all other insurance contracts covering risks situated inside the territory of the Member States. It shall not apply to reinsurance contracts.

2. An insurance contract covering a large risk as defined in Article 5(d) of the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance shall be governed by the law chosen by the parties in accordance with Article 3 of this Regulation. To the extent that the applicable law has not been chosen by the parties, the insurance contract shall be governed by the law of the country where the insurer has his habitual residence. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, the law of that other country shall apply.

3. In the case of an insurance contract other than a contract falling within paragraph 2, only the following laws may be chosen by the parties in accordance with Article 3:

- (a) the law of any Member State where the risk is situated at the time of conclusion of the contract;
- (b) the law of the country where the policy holder has his habitual residence;
- (c) in the case of life assurance, the law of the Member State of which the policy holder is a national;
- (d) for insurance contracts covering risks limited to events occurring in one Member State other than the Member State where the risk is situated, the law of that Member State;
- (e) where the policy holder of a contract falling under this paragraph pursues a commercial or industrial activity or a liberal profession and the insurance contract covers two or more risks which relate to those activities and are situated in different Member States, the law of any of the Member States concerned or the law of the country of habitual residence of the policy holder. Where, in the cases set out in points (a), (b) or (e), the Member States referred to grant greater freedom of choice of the law applicable to the insurance contract, the parties may take advantage of that freedom. To the extent that the law applicable has not been chosen by the parties in accordance with this paragraph, such a contract shall be governed by the law of the Member State in which the risk is situated at the time of conclusion of the contract.

4. The following additional rules shall apply to insurance contracts covering risks for which a Member State imposes an obligation to take out insurance: (a) the insurance contract shall not satisfy the obligation to take out insurance unless it complies with the specific provisions relating to that insurance laid down by the Member State that imposes the obligation. Where the law of the Member State in which the risk is situated and the law of the Member State imposing the obligation to take out insurance contradict each other, the latter shall prevail; (b) by way of derogation from paragraphs 2 and 3, a Member State may lay down that the insurance contract shall be governed by the law of the Member State that imposes the obligation to take out insurance.

5. For the purposes of paragraph 3, third subparagraph, and paragraph 4, where the contract covers risks situated in more than one Member State, the contract shall be considered as constituting several contracts each relating to only one Member State.

6. For the purposes of this Article, the country in which the risk is situated shall be determined in accordance with Article 2(d) of the Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and, in the case of life assurance, the country in which the risk is situated shall be the country of the commitment within the meaning of Article 1(1)(g) of Directive 2002/83/EC.

Article 8

1. An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.

2. To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.

3. Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.

4. Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply.

Article 9

1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organization, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.

3. Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

Article 19

1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration. The habitual residence of a natural person acting in the course of his business activity shall be his principal place of business.

2. Where the contract is concluded in the course of the operations of a branch, agency or any other establishment, or if, under the contract, performance is the responsibility of such a branch, agency or establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

3. For the purposes of determining the habitual residence, the relevant point in time shall be the time of the conclusion of the contract.

Article 21

The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (ordre public) of the forum.

Article 28

This Regulation shall apply to contracts concluded after 17 December 2009.

Article 29

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union. It shall apply from 17 December 2009 except for Article 26 which shall apply from 17 June 2009.

IX. ROME II (REGULATION (EC) NO 864/2007)

Article 1

This Regulation shall apply, in situations involving a conflict of laws, to non-contractual obligations in civil and commercial matters. It shall not apply, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

1. The following shall be excluded from the scope of this Regulation:

- (a) non-contractual obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects including maintenance obligations;
- (b) non-contractual obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession;
- (c) non-contractual obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;
- (d) non-contractual obligations arising out of the law of companies and other bodies corporate or unincorporated regarding matters such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies corporate or unincorporated, the personal liability of officers and members as such for the obligations of the company or body and the personal liability of auditors to a company or to its members in the statutory audits of accounting documents;
- (e) non-contractual obligations arising out of the relations between the settlors, trustees and beneficiaries of a trust created voluntarily;
- (f) non-contractual obligations arising out of nuclear damage;
- (g) non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

2. This Regulation shall not apply to evidence and procedure, without prejudice to Articles 21 and 22.

3. For the purposes of this Regulation, 'Member State' shall mean any Member State other than Denmark.

Article 2

1. For the purposes of this Regulation, damage shall cover any consequence arising out of tort/delict, unjust enrichment, *negotiorum gestio* or *culpa in contrahendo*.

2. This Regulation shall apply also to non-contractual obligations that are likely to arise.

3. Any reference in this Regulation to:

(a) an event giving rise to damage shall include events giving rise to damage that are likely to occur; and

(b) damage shall include damage that is likely to occur.

Article 3

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

Article

4

General rule

1. Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.

2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.

3. ¹Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. ²A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

Article 5

1. Without prejudice to Article 4(2), the law applicable to a non-contractual obligation arising out of damage caused by a product shall be:

- (a) the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country; or, failing that,
- (b) the law of the country in which the product was acquired, if the product was marketed in that country; or, failing that,
- (c) the law of the country in which the damage occurred, if the product was marketed in that country.

However, the law applicable shall be the law of the country in which the person claimed to be liable is habitually resident if he or she could not reasonably foresee the marketing of the product, or a product of the same type, in the country the law of which is applicable under (a), (b) or (c).

2. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraph 1, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

Article 6

1. The law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected.
2. Where an act of unfair competition affects exclusively the interests of a specific competitor, Article 4 shall apply.
- 3.(a)The law applicable to a non-contractual obligation arising out of a restriction of competition shall be the law of the country where the market is, or is likely to be, affected.
(b)When the market is, or is likely to be, affected in more than one country, the person seeking compensation for damage who sues in the court of the domicile of the defendant, may instead choose to base his or her claim on the law of the court seised, provided that the market in that Member State is amongst those directly and substantially affected by the restriction of competition out of which the non-contractual obligation on which the claim is based arises; where the claimant sues, in accordance with the applicable rules on jurisdiction, more than one defendant in that court, he or she can only choose to base his or her claim on the law of that court if the restriction of competition on which the claim against each of these defendants relies directly and substantially affects also the market in the Member State of that court.
4. The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.

Article 8

1. The law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed.
2. In the case of a non-contractual obligation arising from an infringement of a unitary Community intellectual property right, the law applicable shall, for any question that is not governed by the relevant Community instrument, be the law of the country in which the act of infringement was committed.
3. The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.

Article 14

1. The parties may agree to submit non-contractual obligations to the law of their choice:
 - (a) by an agreement entered into after the event giving rise to the damage occurred; or
 - (b) where all the parties are pursuing a commercial activity, also by an agreement freely negotiated before the event giving rise to the damage occurred. The choice shall be expressed or demonstrated with reasonable certainty by the circumstances of the case and shall not prejudice the rights of third parties.
2. Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.

3. Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in one or more of the Member States, the parties' choice of the law applicable other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.

Article 15

The law applicable to non-contractual obligations under this Regulation shall govern in particular:

- (a) the basis and extent of liability, including the determination of persons who may be held liable for acts performed by them;
- (b) the grounds for exemption from liability, any limitation of liability and any division of liability;
- (c) the existence, the nature and the assessment of damage or the remedy claimed;
- (d) within the limits of powers conferred on the court by its procedural law, the measures which a court may take to prevent or terminate injury or damage or to ensure the provision of compensation;
- (e) the question whether a right to claim damages or a remedy may be transferred, including by inheritance;
- (f) persons entitled to compensation for damage sustained personally; (g) liability for the acts of another person;
- (h) the manner in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement, interruption and suspension of a period of prescription or limitation.

Article 16

Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation.

Article 23

1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration. Where the event giving rise to the damage occurs, or the damage arises, in the course of operation of a branch, agency or any other establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

2. For the purposes of this Regulation, the habitual residence of a natural person acting in the course of his or her business activity shall be his or her principal place of business.

Article 26

The application of a provision of the law of any country specified by this Regulation may be

refused only if such application is manifestly incompatible with the public policy (ordre public) of the forum.

Article 31

This Regulation shall apply to events giving rise to damage which occur after its entry into force.

Article 32

This Regulation shall apply from 11 January 2009, except for Article 29, which shall apply from 11 July 2008. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community

X. REGULATION (EC) NO 1215/2012 **(BRUSSELS IBIS)**

Article 1

1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

2. This Regulation shall not apply to:

- (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;
- (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- (c) social security;
- (d) arbitration;
- (e) maintenance obligations arising from a family relationship, parentage, marriage or affinity;
- (f) wills and succession, including maintenance obligations arising by reason of death.

Article 4

1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that Member State.

Article 5

1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.

2. In particular, the rules of national jurisdiction of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1) shall not be applicable as against the persons referred to in paragraph 1.

Article 6

1. If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State.

2. As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that Member State of the rules of jurisdiction there in force, and in particular those of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1), in the same way as nationals of that Member State.

Article 7

A person domiciled in a Member State may be sued in another Member State:

(1)(a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be: —in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered, —in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

(c) if point (b) does not apply then point (a) applies;

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

(3) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;

(4) as regards a civil claim for the recovery, based on ownership, of a cultural object as defined in point 1 of Article 1 of Directive 93/7/EEC initiated by the person claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seised;

(5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated;

(6) as regards a dispute brought against a settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled;

(7) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

(a) has been arrested to secure such payment; or

(b) could have been so arrested, but bail or other security has been given; provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Article 8

A person domiciled in a Member State may also be sued: (1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

(2) as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

(3) on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending; (4) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the Member State in which the property is situated.

Article 9

Where by virtue of this Regulation a court of a Member State has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that Member State, shall also have jurisdiction over claims for limitation of such liability.

Article 17

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:

- (a) it is a contract for the sale of goods on instalment credit terms; it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (b) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.

2. Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 18

1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

3. This Article shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 19

The provisions of this Section may be departed from only by an agreement:

- (1) which is entered into after the dispute has arisen;
- (2) which allows the consumer to bring proceedings in courts other than those indicated in this Section; or
- (3) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.

Article 20

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 6, point 5 of Article 7 and, in the case of proceedings brought against an employer, point 1 of Article 8.

2. Where an employee enters into an individual contract of employment with an employer who

is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 21

1. An employer domiciled in a Member State may be sued:

(a) in the courts of the Member State in which he is domiciled; or

(b) in another Member State:

(i) in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so; or

(ii) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

2. An employer not domiciled in a Member State may be sued in a court of a Member State in accordance with point (b) of paragraph 1.

Article 22

1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.

2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 23

The provisions of this Section may be departed from only by an agreement:

(1) which is entered into after the dispute has arisen; Or

(2) which allows the employee to bring proceedings in courts other than those indicated in this Section.

Article 24

The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

(1) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated. However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;

(2) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;

(3) in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;

(4) in proceedings concerned with the registration or validity of patents, trademarks, designs,

or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of an instrument of the Union or an international convention deemed to have taken place. Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction in proceedings concerned with the registration or validity of any European patent granted for that Member State;

(5) in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

Article 62

1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law.
2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

Article 63

1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:

- (a) statutory seat;
 - (b) central administration; or (c) principal place of business.
2. For the purposes of Ireland, Cyprus and the United Kingdom, 'statutory seat' means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.
3. In order to determine whether a trust is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law.

Article 81

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 10 January 2015, with the exception of Articles 75 and 76, which shall apply from 10 January 2014

**XI. GENERAL DATA PROTECTION REGULATION
(GDPR)
REGULATION (EC) NO 679/2016**

Article 1

Subject-matter and objectives

1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.
2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.
3. The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.

Article 2

Material scope

1. This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.
2. This Regulation does not apply to the processing of personal data:
 - (a) in the course of an activity which falls outside the scope of Union law;
 - (b) by the Member States when carrying out activities which fall within the scope of Chapter 2 of Title V of the TEU;
 - (c) by a natural person in the course of a purely personal or household activity;
 - (d) by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.
3. For the processing of personal data by the Union institutions, bodies, offices and agencies, Regulation (EC) No 45/2001 applies. 2Regulation (EC) No 45/2001 and other Union legal acts applicable to such processing of personal data shall be adapted to the principles and rules of this Regulation in accordance with Article 98.
4. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive.

Article 3

Territorial scope

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.

2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:

(a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or

(b) the monitoring of their behaviour as far as their behaviour takes place within the Union.

3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where Member State law applies by virtue of public international law.

Article 4 **Definitions**

For the purposes of this Regulation:

(1) ‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

(2) ‘processing’ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

(3) ‘restriction of processing’ means the marking of stored personal data with the aim of limiting their processing in the future;

(4) ‘profiling’ means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;

(5) ‘pseudonymisation’ means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;

(6) ‘filing system’ means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;

(7) ‘controller’ means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union

or Member State law;

(8) ‘processor’ means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;

(9) ‘recipient’ means a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not. However, public authorities which may receive personal data in the framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing;

(10) ‘third party’ means a natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, under the direct authority of the controller or processor, are authorised to process personal data;

(11) ‘consent’ of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her;

(12) ‘personal data breach’ means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

(13) ‘genetic data’ means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;

(14) ‘biometric data’ means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;

(15) ‘data concerning health’ means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status;

(16) ‘main establishment’ means:

- (a) as regards a controller with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union and the latter establishment has the power to have such decisions implemented, in which case the establishment having taken such decisions is to be considered to be the main establishment;
- (b) as regards a processor with establishments in more than one Member State, the place of its central administration in the Union, or, if the processor has no central administration in the Union, the establishment of the processor in the Union where the main processing activities in the context of the activities of an establishment of the processor take place to the extent that the processor is subject to specific obligations under this Regulation;

(17) ‘representative’ means a natural or legal person established in the Union who, designated by the controller or processor in writing pursuant to Article 27, represents the controller or processor with regard to their respective obligations under this Regulation;

(18) ‘enterprise’ means a natural or legal person engaged in an economic activity, irrespective of its legal form, including partnerships or associations regularly engaged in an economic activity;

(19) ‘group of undertakings’ means a controlling undertaking and its controlled undertakings;

(20) ‘binding corporate rules’ means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings, or group of enterprises engaged in a joint economic activity;

(21) ‘supervisory authority’ means an independent public authority which is established by a Member State pursuant to Article 51;

(22) ‘supervisory authority concerned’ means a supervisory authority which is concerned by the processing of personal data because:

(a) the controller or processor is established on the territory of the Member State of that supervisory authority;

(b) data subjects residing in the Member State of that supervisory authority are substantially affected or likely to be substantially affected by the processing; or

(c) a complaint has been lodged with that supervisory authority;

(23) ‘cross-border processing’ means either:

(a) processing of personal data which takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State; or

(b) processing of personal data which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to substantially affect data subjects in more than one Member State.

(24) ‘relevant and reasoned objection’ means an objection to a draft decision as to whether there is an infringement of this Regulation, or whether envisaged action in relation to the controller or processor complies with this Regulation, which clearly demonstrates the significance of the risks posed by the draft decision as regards the fundamental rights and freedoms of data subjects and, where applicable, the free flow of personal data within the Union;

(25) ‘information society service’ means a service as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council (1);

(26) ‘international organisation’ means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries.

Article 5 Principles

Principles relating to processing of personal data

1. Personal data shall be:

- (a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');
- (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ('purpose limitation');
- (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');
- (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');
- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation');
- (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability').

Article 6 Lawfulness of processing

1. Processing shall be lawful only if and to the extent that at least one of the following applies:

- (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) processing is necessary for compliance with a legal obligation to which the controller is subject;

- (d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
- (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.

2. Member States may maintain or introduce more specific provisions to adapt the application of the rules of this Regulation with regard to processing for compliance with points (c) and (e) of paragraph 1 by determining more precisely specific requirements for the processing and other measures to ensure lawful and fair processing including for other specific processing situations as provided for in Chapter IX.

3. The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by:

- (a) Union law; or
- (b) Member State law to which the controller is subject.

The purpose of the processing shall be determined in that legal basis or, as regards the processing referred to in point (e) of paragraph 1, shall be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. That legal basis may contain specific provisions to adapt the application of rules of this Regulation, inter alia: the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing such as those for other specific processing situations as provided for in Chapter IX. The Union or the Member State law shall meet an objective of public interest and be proportionate to the legitimate aim pursued.

4. Where the processing for a purpose other than that for which the personal data have been collected is not based on the data subject's consent or on a Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 23(1), the controller shall, in order to ascertain whether processing for another purpose is compatible with the purpose for which the personal data are initially collected, take into account, inter alia:

- (a) any link between the purposes for which the personal data have been collected and the purposes of the intended further processing;
- (b) the context in which the personal data have been collected, in particular regarding the relationship between data subjects and the controller;
- (c) the nature of the personal data, in particular whether special categories of personal data

are processed, pursuant to Article 9, or whether personal data related to criminal convictions and offences are processed, pursuant to Article 10;

- (d) the possible consequences of the intended further processing for data subjects;
- (e) the existence of appropriate safeguards, which may include encryption or pseudonymisation.

Article 7 **Conditions for consent**

1. Where processing is based on consent, the controller shall be able to demonstrate that the data subject has consented to processing of his or her personal data.
2. If the data subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language. Any part of such a declaration which constitutes an infringement of this Regulation shall not be binding.
3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. Prior to giving consent, the data subject shall be informed thereof. It shall be as easy to withdraw as to give consent.
4. When assessing whether consent is freely given, utmost account shall be taken of whether, inter alia, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.

Article 9

Processing of special categories of personal data

1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.
2. Paragraph 1 shall not apply if one of the following applies:
 - (a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;
 - (b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;
 - (c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving

consent;

- (d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;
- (e) processing relates to personal data which are manifestly made public by the data subject;
- (f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;
- (g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;
- (h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;
- (i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;
- (j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

3. Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.

4. Member States may maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health.

Article 10

Processing of personal data relating to criminal convictions and offences

Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6 (1) shall be carried out only under the control of official authority or when the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.

Article 16 **Right to rectification**

The data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement.

Article 17 **Right to erasure ('right to be forgotten')**

1. The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:

(a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;

(b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;

(c) the data subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);

(d) the personal data have been unlawfully processed;

(e) the personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the controller is subject;

(f) the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).

2. Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.

3. Paragraphs 1 and 2 shall not apply to the extent that processing is necessary:

(a) for exercising the right of freedom of expression and information;

- (b) for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- (c) for reasons of public interest in the area of public health in accordance with points (h) and (i) of Article 9(2) as well as Article 9(3);
- (d) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing; or (e) for the establishment, exercise or defence of legal claims.

Article 18 Right to restriction of processing

1. The data subject shall have the right to obtain from the controller restriction of processing where one of the following applies:

- (a) the accuracy of the personal data is contested by the data subject, for a period enabling the controller to verify the accuracy of the personal data;
- (b) the processing is unlawful and the data subject opposes the erasure of the personal data and requests the restriction of their use instead;
- (c) the controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims;
- (d) the data subject has objected to processing pursuant to Article 21(1) pending the verification whether the legitimate grounds of the controller override those of the data subject.

2. Where processing has been restricted under paragraph 1, such personal data shall, with the exception of storage, only be processed with the data subject's consent or for the establishment, exercise or defence of legal claims or for the protection of the rights of another natural or legal person or for reasons of important public interest of the Union or of a Member State.

3. A data subject who has obtained restriction of processing pursuant to paragraph 1 shall be informed by the controller before the restriction of processing is lifted.

Article 19

Notification obligation regarding rectification or erasure of personal data or restriction of Processing

The controller shall communicate any rectification or erasure of personal data or restriction of processing carried out in accordance with Article 16, Article 17(1) and Article 18 to each recipient to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort. The controller shall inform the data subject about those recipients if the data subject requests it.

Article 20
Right to data portability

1. The data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from the controller to which the personal data have been provided, where:

- (a) the processing is based on consent pursuant to point (a) of Article 6(1) or point (a) of Article 9 (2) or on a contract pursuant to point (b) of Article 6(1); and
- (b) the processing is carried out by automated means.

2. In exercising his or her right to data portability pursuant to paragraph 1, the data subject shall have the right to have the personal data transmitted directly from one controller to another, where technically feasible.

3. The exercise of the right referred to in paragraph 1 of this Article shall be without prejudice to Article 17. That right shall not apply to processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

4. The right referred to in paragraph 1 shall not adversely affect the rights and freedoms of others.

Article 99
Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. It shall apply from 25 May 2018.

This Regulation shall be binding in its entirety and directly applicable in all Member States.