Table of Contents

Foreword	IX
Our Sponsors	XIII
Preface to this volume	XV
Text of Articles	
English Benevolent Intervention in Another's Affairs	3
Danish Godgørende indgriben i en andens anliggender	6
Dutch Zaakwaarneming	9
Estonian Käsundita Asjaajamine	12
Finnish Asiainhuolto	15
French Gestion d'affaires d'autrui	18
German Besorgung fremder Angelegenheiten	21
Greek Διοίκηση αλλοτρίων	24
Hungarian Megbízás nélküli ügyvitel	27
Italian Gestione d'Affari Altrui	30

Latvia	n dota lietvedība	33
Lithua Kito A	nian Asmens ReikalŲ Tvarkymas to Asmens Interesais	36
Portug	guese o de Assuntos Alheios	39
Slover	nian vodstvo Tujih Zadev	42
Spanis	sh ón De Asuntos Ajenos	45
Swedi	ish ter Utan Uppdrag	48
Bene	ciples of European Law on evolent Intervention in Another's Affairs	
Introd	luction	
 1. 2. 3. 4. 5. 6. 7. 8. 9. 	General Legal obligations complementary to contract law and tort law Traditional Latin nomenclature An English term for negotiorum gestio Problems of traditional terminology in the other languages of the EU The concept of benevolent intervention in another's affairs The spread of the concept of negotiorum gestio in the continental jurisdictions of the EU Scotland and Scandinavia England and Ireland Negotiorum gestio and the doctrine of quasi-contracts Quasi-contracts and the Common Law	53 53 54 54 54 55 55 55 56
	The Sources of Law on Benevolent Intervention in Another's Affairs (negotiorum gestio) in the Codified Systems of the EU	
11.	The sources in overview The location of negotiorum gestio within the overall private law system	56 56
	The essential content of the rules	57
	Fixing the scope of application (definition)	57
	Provisions on the persons brought together in the legal relationship	58
	Indirect clarifications	58
17.	Clarification of the intervener's duties	59

18.	Duty of care	59
19.	Duty to continue the intervention	59
20.	Informing the principal	59
21.	Giving an account and surrender of proceeds	59
22.	Clarification of the intervener's rights	60
23.	Reimbursement of expenditure	60
24.	Further claims which are expressly governed	60
25.	Intervener's power of representation	61
C.	Provisions in the Codifications concerning (i) Benevolent, but Officious	
	Intervention and (ii) Management of Another's Affairs for One's Own Benefit	
26.	Restriction of the law on negotiorum gestio to justified management	
	of another's affairs	61
	Inclusion of unjustified management of another's affairs	62
	Arrogated management of another's affairs	62
29.	Management of another's affair in the mistaken belief it is one's own	63
	'Applied' Negotiorum Gestio	
	General	64
	Manifestations	64
	Family and inheritance law	64
	Property law	65
	Right of recourse	65
	Contract law	66
	Further examples	67
	Convention d'assistance	67
38.	Emergency medical treatment	68
E.	The Range of Activities within the Scope of the Law on negotiorum gestio	
39.		68
	Juridical acts and mere conduct	69
	Conduct for the protection of a person	69
	Acts contrary to law or bonos mores	70
43.	Long-term measures and omissions	70
F.	The Position of the Law of Benevolent Intervention within the Legal System	
44.	The subsidiarity of the law of benevolent intervention: general	70
	The relationship to contract law	71
46.	The relationship to tort law	71
47.	The relationship to the law of unjustified enrichment	72
G.	The Practical Relevance of the Law of Benevolent Intervention in the	
	Codified Systems of Continental Europe	
	Different starting points	73
	Empirical material	73
50.	Social relevance	73

H.	Scotland	
	Negotiorum gestio a recognised institution	73
	Agency of necessity	74
J = -		
1.	Scandinavia	
	General	74
	Specific basis and reasoning by analogy	74
	Commercial Code Ch. 18 § 10 and Scandinavian consumer	
	protection statutes	75
56.	Further examples of rules which may serve as a basis for analogy	75
	Power of representation between spouses	77
•		
J.	England and Ireland	
58.	The lack of a discrete concept of a legal relationship arising from	
	benevolent intervention in another's affair	77
59.	Exceptions from the general rule that expenses incurred for	
	the interest of another are not compensable if there is no	
	underlying duty to perform	78
60.	Statute law	78
	Trust law	78
	The instruments of Common Law	78
	Gratuitous agents	79
	The duties of an agent	79
	Agency by agreement and agency by ratification	80
	Agency of necessity	80
	Necessity	81
	Restriction of the scope of application to specific categories of cases	82
	Matters of carriage	82
	Excess of authority	83
	Bailment	84
	The legal position of the bailee	85
	Unjustified enrichment	86
	Quantum meruit	86
	Relation to the law of negotiorum gestio	86
	Money paid to the defendant's use	87
K.	International law and European law	
77.	Admiralty law	88
78.	Salvage	88
79.	General average	88
80.	European Community law	89
L.	The Basic Tenor of the Following Principles	
	A unitary approach	89
	Necessary amendments of contract and unjustified	
•	enrichment law	90
83.	Incentive to act out of neighbourly solidarity	90

84.	European Community law	90
85.	No resuscitation of the law of quasi-contracts	91
86.	Exclusion of public law	92
87.	Public insurance schemes	92
88.	Right of recourse and reduction of claim	93
89.	Limitation to justified interventions in another's affairs	94
90.	The priority of contract law	94
	Relationship to unjustified enrichment law and tort law	94
92.	Contribution between joint debtors; property law	95
93.	Agency rules of PECL and intervener's authority under Article 3:106	95
94.	The requisite balance between the interests of the gestor and	
	the protection of the principal from officious intermeddling	95
95.	The structure of these Principles	96
96.	Acts within the purview of negotiorum gestio	96
97.	Required subjective elements	96
98.	Required objective elements	97
99.	The affair 'of another'	97
100.	Duties of the intervener	98
101.	Rights of the intervener	99
102.	Articles 3:104 and 3:105	99
103.	Authority of the intervener	99
104.	Burden of proof	99
105.	Applied negotiorum gestio	99
Chap	oter 1: Scope of Application	
7\ -4:-	la 1.101. Interventian to Denefit Anathan	
Artic	cle 1:101: Intervention to Benefit Another	
Com	ments	
COIII	ITICITES	
A.	General	
	Terminology	101
	Requirements of negotiorum gestio	101
3.	Protection of the principal against officious intermeddling in his affairs	102
	Special forms of the law of negotiorum gestio are not within this regime	102
5.		103
	Burden of proof	103
7	Proof	103
		103
B.	The Activities Covered	
	'Acting' for another	104
	Acts to protect another's person are included	104
	One-off activities and long-term undertakings	104
11.	Omissions	104
	Actions contrary to law or public policy	105

13.	Emergency situations	105
14.	Disallowed interventions	105
15.	Acts of a personal nature excluded	106
16.	Conducting litigation as a benevolent intervener	106
C.	The Intention Predominantly to Benefit Another (Para (1))	
17.	Meaning of 'benefiting'	107
18.	The success of the venture is not essential	107
19.	Benefiting another, not intending to pursue one's own interests	107
20.	No possibility of approval for acts undertaken for own benefit	108
21.	'Predominant' intention of benefiting another	108
22.	Acting in pursuance of a void contract	110
	Similar cases	110
24.	Collateral advancement of a subordinate personal interest can affect	
	the quantum of the intervener's claim	110
25.		111
	Multiple interveners	111
	PECL Part III, Chapter 10	112
	Identifying the principal	112
29.		112
	Where the principal is unknown to the intervener	113
	Mistake about the person benefited	113
	Indirect beneficiaries are not principals within the sense of Article 1:101	114
<i>33.</i>	Multiple principals	115
D.	A Reasonable Ground (Para (1)(a))	
34.	General	115
35.	Defective and deficient performance of the intervention	115
36.	No requirement of pre-existing legal relationship	116
37.	A 'reasonable' ground	116
38.	Some guidance in the following rules	117
E.	Want of Respect for the Principal's Wishes (Para (2))	
39.	Reasonable ground to act absent	117
40.	Where the wishes of the principal are not binding	117
41.	Overriding public interest	118
42.	Priority of the principal's free determination of their will	118
43.	Para (2) limb (a)	118
44.	The intervener is unable to contact the principal	119
45.	Positive steps required	119
	Reasonable opportunity to discover the principal's wishes	119
47.	Contacting the principal can in itself amount to a justified	
4.0	negotiorum gestio	120
48.	Negotiorum gestio or contract?	120
49.	Para (2) limb (b)	120
50.		121
51.	Negligent failure to appreciate the principal's wishes	121

52. 53.	Standard of care Acting in ignorance of the principal's wishes, but without negligent failure to heed them	121
	Approval by the Principal (Para (1)(b)) Significance and consequences of an approval by the principal Legal nature of the approval	122 122
56. 57.	An important case Approval without such undue delay as would adversely affect the intervener	123
	Approval and contract	123
	Approval does not, as a rule, create a contract All other requirements of para (1) remain unaffected	123 124
Note:	Prevalence and Notion of the Law of Negotiorum Gestio in General	124
-	The Activities Covered	128
III.	Act on 'Another's Behalf' and the Intention to Benefit Another The Preponderance of the Intention to Benefit Another; Simultaneous	134
y 7	Pursuit of One's Own Interests	139
	In Particular: Performance on the Basis of a Void Contract for Services	144
	The Principal The Concept of Reasonable Ground an its Equivalents	147 152
	In Particular: the Duty to Ascertain the Principal's Wishes	158
	Ratification by the Principal	163
	Burden of Proof	170
Artic	le 1:102: Intervention to Perform Another's Duty	
Com	ments	
A. 1	General Scope and purpose	173
	Duties during intervention	173
	Need for a rule within the framework of negotiorum gestio	173
B. ∡	Intervention Urgently Required in Overriding Public Interest Overriding public interest	174
	Performing another's maintenance obligations	174
	Performance must be due	174
	Performance must be urgently required	175
C. 8.	Third Party to be Regarded as Principal An exception to Article 1:101(1)	176
		,, 0

D. 9.	Article 1:101(2) Inapplicable Public interest overriding the contrary wishes of the principal	176
Note		
1.	General Requirements of a Lawful Management of Another's Affairs	177
II.	Contrary to the Principal's Wishes Specific Cases Subject to Particular Rules (Maintenance, Funeral Costs)	181
Artic	cle 1:103: Exclusions	
Com	ments	
A.	The Negative Requirements for the Applicability of	
4	the Law of negotiorum gestio	
1.	Fundamentals Deignitry of an acial attative any magine as	186
2.	Priority of special statutory regimes	186
B.	Authority and Duty (limb (a))	
3.	The principle	187
4.	Precise identification of the duty	187
5.	Acting under a contractual obligation towards the principal	187
6.	Existence of a contract	188
7.	Acting in pursuance of a void contract	188
8.	Acting in breach of contract	189
9.	The priority of contract law rules of a quasi-negotiorum gestio nature	189
10.	Acting under another duty towards the principal	189
	Moral duties	190
12.	The duty to render assistance under criminal law	190
C.	Acting under another Authority (limb (b))	
13.	General	190
	Examples in private law	191
	Authority to act under public law	191
16.	"independently of the principal's consent"	192
D.	Performing a Duty Towards a Third Party (limb (c))	
17.	Significance	192
18.	Scope of application	193
19.	Demarcation	193
20.	Precise analysis of the contractual duty	194
21.	No limitation to contractual duties	194
Note		
I.	The Precedence of Contract Law	195
	Contributions Between Joint Debtors	199
III.	Statutory Duties to Provide Help	201

IV. V.	Other Powers of Intervention Acts Done to Discharge an Obligation to a Third Party	204
Chap	oter 2: Duties of Intervener	
Artic	le 2:101: Duties during Intervention	
Com	ments	
A.	The Duties of the Intervener in Overview	
1.	Contents of the second Chapter	211
2.	Duties during intervention	211
3.	Duties after intervention	211
4.	The second Chapter's scope of application	212
В.	The General Duty to Act with Reasonable Care (Para (1) (a))	
5.	General	212
6.	Standard of care of professionals	212
7.	Emergency measures	212
C.	Compliance with the Principal's Wishes (limb (b))	
8.	Specification of the general duty of care	213
9.	Special information available to the intervener	213
	The exception in Article 1:102	213
D.	The Duty to Inform (limb (c))	
		214
	"during the intervention"	214
13.		214
	Providing the information itself amounts to a negotiorum gestio	214
	Content of the information required	215
	Consent and contract	215
_	The Date and the Discounting of the Commence of the Albert	
L.	The Duty not to Discontinue an Act after Commencement without Good Reason (Para (2))	
17.	General	215
18.	Good reasons to discontinue the intervention	215
	Achievement of the desired object	216
	The principal can reasonably be expected to take over	216
	Actual or presumed contrary wishes of the principal	216
	Unreasonableness	216
23.	Uselessness	217
24.	Termination of the benevolent intervention without good reason	217
Note		
I.	The General Duty to Take Reasonable Care	218
2.	The Concidency to raise readonable Care	210

Table of Contents

II.	The Duty to Orientate the Exercise of Care According to	
	the Principal's Wishes	220
III.	The Duty to Inform	223
IV.	The Duty to Continue the Intervention	225
Artic	le 2:102: Duties after Intervention	
Com	ments	1
A.	General	
1.	Three duties after intervention	229
	"After intervening"	229
	"Without undue delay" Duties and rights	230 230
В.	The Duties to Penert and to Account	
	The Duties to Report and to Account The duty to report	230
	The duty to report The duty to report	230
	The Duty to Deliver Up	
7.	The most important economic duty of the intervener	231
	Content and extent of the duty to surrender	231
9.	Interest	232
D.	Protection of Interveners without Full Legal Capacity	
10.	Para (2)	232
11.	Lack of full legal capacity	233
Note	es s	
I.	Duty to Inform and to Render an Account	233
	The Duty to Surrender	235
	In Particular: The Duty to Pay Interest on Monies Received	237
IV.	Intervener without Full Legal Capacity	240
Artic	cle 2:103: Reparation for Damage Caused by Breach of Duty	
Com	ments	
A. 1.	Liability to make Reparation for Breach of Duty The duty to make reparation under the law of benevolent intervention	
	in another's affairs	242
2.	Reparation	243
3.	Damage	243

B.	General Limits to Liability for Defective Execution of a Benevolent Intervention (Para (1))	
4.	Causation	243
•	Three situations	243
6.	Liability for the realisation of a risk created by the gestor	243
	Liability for the realisation of a risk increased by the gestor	244
8.	The gestor intentionally perpetuated the risk	244
9.	Intention	245
C.	Liability for Others; Multiple Gestors	
	No general liability for other gestors	245
11.	No joint liability of multiple interveners as a general rule	245
D.	Reduction of Liability (Para (2))	
12.	General	245
13.	The fairness test	246
E.	Gestors without Full Legal Capacity (Para (3))	
14.	General liability under the law of tort also required	246
Note	es s	
I.	The Basis of the Claim for Damages	247
II.	Liability for Others; Multiple Gestors	249
III.	Reduction of Liability	251
IV.	Intervener without Full Legal Capacity	254
Cha	pter 3: Rights and Authority of Intervener	
Artic	cle 3:101: Right to Indemnification or Reimbursement	
Com	ments	
7	Tour Come Flores of manufication and in	
A.	Two Core Elements of negotiorum gestio	257
	Chapter 3 in overview Reimbursement and indemnification	257
2.	Remibulsement and muchimication	251
B.	The Claim for Indemnification	
	Indemnification	258
4.	Mode of indemnification	258
C.	The Claim for Reimbursement	
5.	Reimbursement	258
D.	General Requirements Applicable to Both Claims	
	The intervention must be reasonable but need not be successful	258
7.	No restriction to situations of emergency	259

Table of Contents

8.	Reasonable expenditure	259
9.	Interest on expenditure	259
10.	Expenditure, whether of money of other assets	260
11.	Services	261
12.	Loss of income	261
Note	2S Z	261
I.	The Right to Indemnification	261
II.	The Claim for Reimbursement	264
Arti	cle 3:102: Right to Remuneration	
Com	nments	
Α.	Remuneration of Professionals (Para (1))	
1.	Should there be a right to remuneration?	268
	Underlying policy considerations of the rule	268
	Remuneration only for professionals	269
	The main policy consideration	269
	"undertaken in the course of the intervener's profession or trade"	269
	Non-profit organisations	270
1.	Reasonableness	270
B.	Quantum of Remuneration (Para (2))	
	The usual price " (270
9.	"so far as reasonable"	270
Note		
	The Foundation of the Claim to Remuneration	271
11.	Quantum of Remuneration	275
Arti	cle 3:103: Right to Reparation	
Con	nments	
Α.	The Claim to Reparation for Concomitant Damage	
1.	Policy considerations	276
2.	Need for regulation	276
3.	Consideration of the principal's interests	276
4.	Relationship to tort law	277
В.	The Individual Requirements of the Claim	
	A strict liability outside the law of tort	277
_	Reparable damage	277
7.	Damage suffered by third parties in consequence of the intervener's death	278

8.	General limits of the principal's liability	278
9.	Protection against danger	278
10.	Questions of causation	278
7	Damage suffered in acting	278
	Created or significantly increased risk (limb (a))	279
13.	Reasonable proportion between the danger to the principal and	
10,	the risk incurred by the gestor (limb (b))	279
14.	"so far as foreseeable"	280
•	Intervener's contributory fault	280
Note	es	280
Arti	cle 3:104: Reduction or Exclusion of Intervener's Rights	
Com	nments	
A.	Acting with animus donandi and Related Cases (Para (1))	
1.	Legal certainty	284
	No waiver of rights	286
	The other rules of the law of benevolent intervention	
	remain applicable	285
4.	The scope of para (1)	285
В.	Reduction of Liability on Grounds of Equity (Para (2))	
5.	General	286
6.	Scope	286
7.	Reasons to reduce or exclude the principal's liability	286
8.	Joint danger	286
9.	The principal's economic capacity	286
10.	The intervener can reasonably obtain redress from another	287
11.	Rights against an insurer	287
12.	Burden of proof	288
Not	es	
I.	Acting with animus donandi	288
II.	Reduction of Liability on Grounds of Equity	292
Arti	cle 3:105: Obligation of Third Party to Indemnify or Reimburse the Principal	
Con	nments	
1.	Purpose of the rule	294
2.	Rights in negotiorum gestio and in tort law	295
3.	Tortfeasor and gestor	295
Not	es	295

Article 3:106: Authority of Intervener to Act in the Name of the Principal

Comments

1. Three different situations	297
2. Conclusion of a contract in the gestor's own name	297
3. Engagement of third parties without conclusion of a contract	297
4. Conclusion of a contract in the principal's name	298
B. The Intervener's Power of Representation	
5. Considerations of legal policy	298
6. Relation to the PECL rules on representative authority	298
7. Transactions covered	299
8. "in so far as this is reasonable to benefit the principal"	299
C. Unilateral Acts (Para (2))	
9. Third party protection	299
Notes	
Annexes	
Abbreviations	
Tables of Codes and Statutes	
Table of UK and Irish Cases	
Table of Treaties and Enactments of the European Union	
Principles of European Contract Law (PECL)	
Table of Literature Cited in Abbreviated Form	
Index	