Table of Contents

Foreword	IX
Our Sponsors	XIII
Preface to this volume .	XV
Text of Articles	
English Personal Security	3
Danish Personlige Sikkerheder	13
Dutch Persoonlijke zekerheden	23
French Sûretés personnelles	34
German Persönliche Sicherheiten	45
Italian Garanzie personali	56
Spanish Garantías personales	66
Principles of European Law on Personal Security Text with Comments and Notes	77
Introduction	79
A. General Remarks B. Relation to General Contract Law (PECL)	79 82

	pter 1: nmon Rules	0.7
COII	IIIIOII Rules	87
Artic	ele 1:101: Definitions	87
Com	ments	
A.	Personal Security – Litt. (a) and (b)	88
B.	Dependent Personal Security – Lit. (a)	89
C.	Independent Personal Security – Lit. (b)	94
	Security Provider – Lit. (c)	96
E.	Debtor – Lit. (d)	96
	Co-Debtorship for Security Purposes – Lit. (e)	96
	Global Security – Lit. (f)	98
	Consumer – Lit. (g)	99
I.	Proprietary Security – Lit. (h)	100
Natio	onal Notes	
I.	Personal Security	101
II.	Dependent Personal Security - Lit. (a)	102
III.	Independent Personal Security - Lit. (b)	104
IV.	Content of the Security Provider's Obligation – Litt. (a) and (b)	107
V.	Security Provider – Lit. (c)	109
VI.	Debtor – Lit. (d)	111
VII.	Co-Debtorship for Security Purposes – Lit. (e)	112
VIII.	Global Security – Lit. (f)	113
IX.	Consumer – Lit. (g)	115
X.	Proprietary Security – Lit. (h)	122
Artic	le 1:102: Scope	123
Com	ments	
A.	Types of Personal Security Covered	123
B.	Personal Security and Insurance	126
C.	Personal Security and Negotiable Instruments	126
D.	Aspects of Public Law	127
Natio	nal Notes	
I.	Typical Personal Securities	128
	Atypical Personal Securities	129
III.	Credit Insurance and Guarantee Insurance – Para (2)	132
IV.	The Aval – Para (3)	134

Article 1:103: Freedom of Contract	135
Comments	135
National Notes	
I. Freedom of Contract	136
II. Specific Mandatory Rules	137
III. General Mandatory Rules	137
Article 1:104: Creditor's Acceptance	137
Comments	138
National Notes	139
I. Personal Security as Contract	140
II. Beginning of Security Provider's Obligation	142
III. Personal Security as Unilateral Contract or Promise	143
Article 1:105: Interpretation	144
mucie 1.105. Interpretation	177
Comments	144
National Notes	144
I. The Principle	145
II. Exception	147
Article 1:106: Co-Debtorship for Security Purposes	147
Comments A. General Remarks	148
B. Criteria for Security Purpose	149
C. Co-Debtorship and Personal Security Combined	150
D. Applicable Rules	150
National Notes	151
I. General	152
II. Initial Co-Debtorship	152
III. Subsequent Cumulative Assumption of Another Person's Debt	153
IV. Criteria for Security Purpose	155
V. Co-Debtorship for Security Purposes: Prerequisites and Effects	158
VI. Additional Rules on Plurality of Debtors	162

Artic	cle 1:107: Several Security Providers: Solidary Liability Towards Creditor	162
Com	ments	
A.	Context and Scope	162
B.	Several Providers of Personal Security	163
C.	Personal and Proprietary Security Provider(s)	164
Natio	onal Notes	164
I.	Types of Liability in Case of Plurality of Providers of Personal Security	165
II.	Application to Co-Debtors for Security Purposes	168
III.	Personal and Proprietary Security	168
IV.	Ranking of the Creditor's Claims against Different Providers of Security	169
Artic	cle 1:108: Several Security Providers: Internal Recourse	170
Com	ments	
A.	Recourse Between Several Security Providers	171
В.	Shares of Security Providers (para (2) lit. (a))	172
C.	Definition of the Maximum Risk for Personal Security (para (2) lit. (b))	173
	Definition of the Maximum Risk for Proprietary Security (para (2) lit. (c))	173
E.	Limitation of the Maximum Risk (para (2) lit. (d))	174
F.	Special Limitation (para (2) lit. (e))	174
G.	Exceptions Exceptions	175
Matic	onal Notes	175
I.	Generalia	176
	Internal Recourse	170
III.	The Measure of Internal Recourse	180
IV.	Type of Liability	182
1 V.	Type of Diability	102
Artic	cle 1:109: Several Security Providers: Recourse Against Debtor	182
Com	mants	
1.2	ments Diabto of Society Dravidor often Evrocume to Internal Decourse	102
A. B.	Rights of Security Provider after Exposure to Internal Recourse Other Security Providers' Entitlement to Benefits	183
	Recovered from the Debtor	185
C.	Exception	187
	onal Notes	
I.	General	187
II.	Entitlement of Other Security Providers to Rights against the Debtor Entitlement of Other Security Providers to Benefits Received from	188
	the Debtor or Third Parties	188
IV.	Consequences of Conduct Disadvantageous to Other Security Providers	189

Artic	cle 1:110: Subsidiary Application of Rules on Solidary Debtors	189
Com	ments	
A.	General	189
	Plurality of Security Providers	190
C.	Co-Debtorship between Debtor(s) and Security Provider(s)	191
Nati	onal Notes	193
Cl		1
	pter 2: endent Personal Security (Suretyship Guarantees)	195
Arti	cle 2:101: Presumption for Dependent Personal Security	195
Com	iments	
A.	Definition and Central Role	195
	General Presumption	195
	Binding Comfort Letter	196
D.	Consumers as Security Providers – General Remarks	196
Nati	onal Notes	
I.	Ordinary Dependent Security	197
II.	Binding Comfort Letters	198
Arti	cle 2:102: Terms and Extent of the Security Provider's Obligations	198
Com	nments	
A.	The Principle of Dependency	199
B.	Main Rule – Para (1)	199
	Exceptions – Para (2)	200
	Amount of Security	201
	Further Incidents of Dependency	201
F.	Consumers as Security Providers	202
Nati	onal Notes	203
I.		204
II.	Extent of the Security Obligation	207
III.	Exception Upon Discharge of Debtor in Insolvency Proceedings	
	and Comparable Events	208
IV.	Agreement Aggravating the Secured Obligation	210

Artic	cle 2:103: Debtor's Defences Available to the Security Provider	212
Com	ments	
A.	General Remark	213
B.	The Principle – Para (1)	213
C.	Right to Withhold Performance - Para (2)	214
D.	Debtor's Lack of Capacity - Para (3)	214
E.	Debtor's Unexercised Rights of Avoidance - Para (4)	215
F.	Unexercised Rights of Set-Off – Para (5)	215
G.	Effectuation	215
H.	Consumer as Security Provider	216
Natio	onal Notes	217
I.	General Principle: Extension of Debtor's Defences to the Provider	
	of Dependent Personal Security	218
II.	General Defences	218
III.	Specific Defences	222
IV.	Conditions for Invoking these Defences	225
V.	Consequences of Not Raising these Defences	226
VI.	Defences Unavailable to the Provider of Dependent Security	226
Artic	cle 2:104: Coverage of Security	227
Com	ments	227
A.	Survey	228
В.	Principal, Ancillaries and Sums Due Upon Default	228
C.	Costs and Expenses of Legal Proceedings and Executions	229
D.	Maximum Limit	229
E.	Exclusions and Extensions	229
F.	Exclusion of Non-Personal and Non-Contractual Secured Obligations	
	from Global Security	229
G.	Consumer as Security Provider	230
Natio	onal Notes	230
I.	Ancillary Obligations – General Rules	231
II.	Various Heads	232
III.	Global Security – Para (3)	237
Artic	cle 2:105: Solidary Liability of Security Provider	237
Com	ments	
A.	The Principle: Solidary Liability	237
B.	Security on First Demand	238
C	Consumer as Security Provider	238

Natio	onal Notes	238
I.	Solidary Liability as the General Rule	239
II.	Solidary Liability for Commercial Providers of Security	239
III.	Subsidiary Liability by Agreement	240
IV.	Subsidiary Liability as the Rule	240
Artic	cle 2:106: Subsidiary Liability of Security Provider	240
Com	ments	1
Α.	Subsidiary Liability as Exception – Para (1)	241
B.	Effects of Subsidiary Liability – Para (2)	241
C.	Exceptions – Para (3)	242
D.	Default Security	243
E.	Consumer as Security Provider	243
Natio	onal Notes	
I.	Subsidiary Liability of Security Provider as General Rule	244
II.	Solidary Liability by Agreement	244
III.	Subsidiary Liability – Details	245
Artic	cle 2:107: Creditor's Obligations of Notification	250
Com	ments	
A.	Information on Debtor's Default – Para (1)	250
В.	Information by Creditor of Global Security – Para (2)	251
	Exception for Informed Provider of Dependent Security – Para (3)	251
D.	Sanction – Para (4)	251
	Consumer as Security Provider	252
Matic	onal Notes	
I.	General Attitude on Duties of Information	252
	Information on Debtor's Default or Inability to Pay – cf. Para (1)	254
	Duty of Information in Case of Global Guarantee – cf. Para (2)	256
IV.	Exception to the Duty of Information – cf. Para (3)	258
1 V.	Exception to the Duty of Information — ci. 1 ara (3)	230
7\	1 2 100 T' I' 'I C D . I L C . 'I	250
Artic	cle 2:108: Time Limit for Resort to Security	258
Com	ments	
A.	General Remarks	259
B.	Types of Time Limits	260
C.	Time Limit for Resort to Security	261
D.	Consequences of Expiration of Time Limit for Resort to Security	261
E.	Continuation of Liability in Case of Solidary Liability	262

F. G.	Continuation of Liability in Case of Subsidiary Liability Maturity of Secured Obligations Close to Expiration of Time Limit –	262
	Para (3)	263
H.	Time Limit Restricting Scope of Security	264
I.	Consumer as Security Provider	265
Nati	onal Notes	265
I.	In General	266
II.	Dependent Securities with a Time Limit for the Resort to Security	266
Arti	cle 2:109: Limiting Security Without Time Limit	270
Com	nments	
A.	General Remarks	270
B.	Security without Agreed Time Limit	271
C.	Limitation by Giving Notice	271
D.	Effect of Limitation of Security – Para (2)	271
E.	Exceptions – Para (1) Second Sentence	272
F.	Consumer as Security Provider	273
Nati	onal Notes	
I.	Limiting Security without Time Limit for Secured Obligations	273
II.	Amount of the Security upon Termination	277
Arti	cle 2:110: Creditor's Liability	278
Com	nments	
	Basic Idea	278
В.	Details	279
C.	Application to Recourse Claims	280
	Consumer as Security Provider	280
Nati	onal Notes	280
I.	Damages or Discharge	281
II.	General Scope of Creditor's Duties	281
III.	Delayed Collection of Secured Claim	282
IV.	Release of Co-Providers of Security	284
V.	Loss and Deterioration of Proprietary Security Rights Held by Creditor	284
Arti	cle 2:111: Debtor's Relief for the Security Provider	287
Con	nments	
A.	The Principle	287
В.	Conditions	288

C.	Form of Relief	288
D.	Consumer as Security Provider	288
	onal Notes Saguritar Provider's Anticinated Pagauras	200
I.	Security Provider's Anticipated Recourse	289 289
II.	Reasons	
III.	Conditions	290
IV.	Consequences	293
		1
Arti	cle 2:112: Security Provider's Obligations Before Performance	295
Com	nments	
A.	Basic Idea – Para (1)	295
B.	Sanctions – Para (2)	295
C.	Preservation of Rights as Against Creditor – Para (3)	296
D.	Consumer as Security Provider	296
Nati	onal Notes	
I.	Legal Basis	297
II.	Duty of the Dependent Security Provider to Notify the Debtor	298
III.	Security Provider's Rights Against Creditor - cf. Para (3)	300
IV.	General Duty of Information	301
V.	Duty of the Provider of Dependent Security	
	to Invoke Defences	301
VI.	Waiver of Rights	302
Arti	cle 2:113: Security Provider's Rights After Performance	302
Com	nments	
A.	Survey	303
	Two Claims – Para (1)	303
	Debtor's Exceptions	304
D.	Exclusion of Claims	304
E.	Part Performance by Security Provider – Para (2)	305
F.	Subrogation Into Security Rights – Para (3)	305
G.	Reimbursement from Incapable Debtor – Para (4)	305
H.	Consumer as Security Provider	306
Nati	onal Notes	307
I.		308
II.	Debtor's Exceptions	314
III.	Exclusion of Claims	315
IV.	Part Performance by Security Provider	315
V.	Subrogation Into Security Rights	317
VI.	Reimbursement from Incapable Debtor	318

	pter 3: ependent Personal Security (Indemnities/Independent Guarantees)	319
mae	ependent Personal Security (maeniniles/independent adarantees)	319
Intro	oduction	
1.	The Institution	319
2.	Terminology	319
3.	National Laws	320
4.	International Instruments	321
Arti	cle 3:101: Scope	322
Con	nments	
	General Remark	322
В.	Definition	323
C.	General Reference to Underlying Obligation Innocuous	323
D.	Standby Letters of Credit	323
E.	Independent Security of a Consumer	324
Nati	onal Notes	
I.	Legal Sources	324
II.	Qualification of Instrument as "Independent Security"	325
III.	Autonomous Undertaking	327
IV.	Reference to Underlying Obligation	327
V.	Types of Secured Obligations	328
VI.	Letters of Credit and Stand-by Letters of Credit	328
Arti	cle 3:102: Security Provider's Obligations Before Performance	330
Con	nments	
A.	Introductory	330
B.	Requirements for Creditor's Demand	331
C.	Examination of Creditor's Demand	331
D.	Creditor's Demand "Extend or Pay"	332
E.	Duty of Information towards Debtor	332
F.	Security Provider's Personal Objections and Defences	332
	Duty of Information on Refusal of Performance	333
H.	Remedies for Security Provider's Omissions	333
I.	Cross-References	333
	ional Notes	333
I.	Form of the Demand	334
	Terms of the Demand	334
III.	Time for Examination of the Demand	335
IV.	Personal Securities with Time Limit and Creditor's Demand	
	"Extend or Pav"	336

V.	Consequences of Non-Compliance with Demand	337
VI.	Security Provider's Duty to Inform Debtor	337
	Objections and Defences of the Security Provider as Against the Creditor	338
	Security Provider's Duty of Information upon Refusal of Payment	339
V 111.	occurry riovider of Daty of Information aport rectaour of rayment	
Artic	le 3:103: Independent Personal Security on First Demand	339
Com	ments	339
A.	The Special Feature of a First Demand Security	340
B.	Applicable Rules	340
C.	Restriction of Security Provider's Defences	340
D.	Conditions for Creditor's Entitlement	340
E.	Cross-References	341
Natio	onal Notes Introduction	341
II.	Creditor's Confirmation of Entitlement	342
	Restriction of Security Provider's Objections	343
111.	restriction of occurry riovider's Objections	373
Artic	le 3:104: Manifestly Abusive or Fraudulent Demand	344
Com	ments	
	The Issue	344
В.	Security Provider's Position towards Creditor	345
C.	Security Provider's Position towards Debtor	346
	Debtor's Preventive Remedies	346
Natio	onal Notes	
I.	Protection against Abuse or Fraud	347
II.	"Manifestly" Abusive or Fraudulent Demand and Evidence	349
Artic	ele 3:105: Security Provider's Right to Reclaim	352
	ments	352
	The Issue	353
В.	Terms of Demand Not Fulfilled	354
C.	Security Provider's Defence or Counterclaim	354
D.	Terms of Demand Subsequently Disappeared	354
E.	Manifestly Abusive or Fraudulent Demand	355
F.	Consequences Governed by Rules on Unjust Enrichment	355
Matic	onal Notes	
T	Restitution if Independent Security is Invalid	356
1.	restruction in macpendent occurry is invalid	550

II.	Restitution upon Non-Compliance with Terms of Independent Security –	
	Para (1) Lit. (a)	356
III.	Restitution upon Non-Compliance with Terms of Underlying Relationship	357
IV.	Restitution upon Manifestly Abusive Demand – Para (1) Lit. (b)	357
V.	Bases of Security Provider's Claim	358
VI.	Cross-Reference	360
Artic	le 3:106: Security With or Without Time Limits	360
Comi	ments	
	General Remarks	360
В.	Security with Time Limit for Resort to Security – Para (1)	361
	Security without Time Limit – Para (2)	362
N I		2.62
Natio	onal Notes Independent Securities with a Time Limit for Resort to Security	362 363
	Independent Securities with a Time Limit for resort to Security Independent Securities without a Time Limit	365
11.	macpendent occurres without a time binne	303
Artic	le 3:107: Transfer of Security	365
	ments	365
	The Issues	366
	Transferability of Proceeds	366
C.	Transferability of the Demand for Performance	366
Natio	onal Notes	367
I.	Assignability of Proceeds	368
II.	Assignment of the Security Right	368
III.	Assignment of the Secured Obligation	370
IV.	Combined Assignment of Security Right and Secured Obligation	370
Artic	le 3:108: Security Provider's Rights after Performance	371
Com	ments ·	
	'General Remarks	371
B.	Security Provider's Claim for Reimbursement	372
C.	Subrogation to the Creditor's Rights against the Debtor	372
D.	Subrogation to the Creditor's Personal and Proprietary Security Rights	373
	Creditor's Priority in Case of Part Performance	373
Natio	onal Notes:	
I.	Introduction	373
45.0	Reimbursement	374
III.	Subrogation to Creditor's Personal Rights against the Debtor	375

IV.	Subrogation to Security Rights Held by the Creditor	376
V.	Part Performance: Priority of Creditor's Remaining Rights – Art. 2:113 (2)	377
VI.	Application to Documentary Credits	377
	oter 4:	270
Spec	cial Rules for Personal Security of Consumers	379
Intro	duction	1
1.	The Issue	379
2.	General Protective Rules in the Principles of European Contract Law	379
3.	Specific Protective Rules for Personal Security by Consumers	380
4.	Terminology	380
Artic	cle 4:101: Scope of Application	381
	ments	
	General Remarks	381
	Assumption of Personal Security	381
	Restrictions of the Personal Scope of Application Mandatory Provision	382 383
D.	Manuatory 1 tovision	303
Natio	onal Notes	
I.	Scope of Consumer Protection Provisions in the Member States	383
II.	Application of General Rules and Principles of Law	386
III.	Non-Applicability of Consumer Protection Provisions	
	in Specific Circumstances	389
Artic	cle 4:102: Applicable Rules	391
Com	ments	
A.	Introduction	391
B.	Applicable Rules	391
C.	Mandatory Character of Chapter 4	392
Natio	onal Notes	
I.	Mandatory Character of Consumer Protection Legislation	393
II.	Sanctions in Case of Deviation to the Disadvantage of	
	the Consumer Security Provider or Consumer in General	396
III.	Deviations to the Benefit of the Consumer Security Provider	
	or Consumer in General	398

Article 4:103: Creditor's Precontractual Obligation of Information		
Com	ments	
A.	Need for Protection	399
В.	Information and Advice for the Security Provider	400
C.	Sanctions	402
D.	Mandatory Provision	402
Nati	onal Notes	
I. II.	Different Bases of Creditor's Precontractual Duties of Information Specific Rules on Creditor's Precontractual Duties of Information	403
	Towards Consumer Security Providers	404
III.	Creditor's Precontractual Duties of Information Based Upon	
	General Principles	406
IV.	Lack of Precontractual Information by Creditor Causing Error	
	of Security Provider	410
V.	Sanctions	411
Arti	cle 4:104: Door-to-Door Security Transactions	412
Com	iments	
A.	Scope of Application	412
В.	Mandatory Provision	413
Nati	onal Notes	
I.	General	413
II.	Application of the Doorstep Transactions Rules to Security Contracts	414
III.	Personal Criteria	414
Arti	cle 4:105: Form	415
	nments	415
	General Rule and Exception	416
	Kinds of Personal Security	416
	All Terms to be in Writing	416
	Signature	417
E.	Mandatory Provision	417
	onal Notes	
I.	Dependent Securities	417
II.	Independent Securities	422
III.	Co-Debtorship for Security Purposes	422
IV.	Binding Comfort Letters	423

Artic	le 4:106: Nature of Security Provider's Liability	423
Com	ments	423
A.	General Remarks	424
B.	Security without a Maximum Amount	424
C.	Subsidiary Liability	424
D.	No Independent Security	425
E.	Application to Co-Debtorship for Security Purposes	425
Natio	onal Notes	
I.	Limitation of Security without Maximum Amount – Lit. (a)	426
II.	Subsidiary Liability of the Consumer Security Provider – Lit (b)	426
III.	Independent Securities or Co-Debtorship Assumed by Consumers –	
111.	Lit. (c)	427
		, _ ,
Artic	le 4:107: Creditors' Obligations of Annual Information	428
Com	ments	428
Α.	Basic Idea	429
-550	Debtor's Consent	429
C.	Scope of Items to Be Disclosed	429
D.	Exception	430
E.	Sanction	430
F.	Mandatory Rule	430
G.	Application to Co-Debtorship for Security Purposes	430
Matic	onal Notes	430
I.	Generalia	431
II.	Duty to Inform the Security Provider without Default by Debtor	431
III.	No Duty to Inform the Security Provider without Default by Debtor	433
111.	140 Duty to illionin the Security Provider without Default by Debtor	433
7 -+:	do 1.100. Limiting Cocurity With Time Limit	422
HILIC	cle 4:108: Limiting Security With Time Limit	433
Com	ments	
A.	General Idea	434
В.	Scope of Application	434
C.	Limitation of Security by Consumer Security Provider	435
D.	Effects of Limitation	436
Natio	onal Notes	
I.	Member States with Specific Rules on Limitation of Securities	
	by Consumer Security Providers	436
II.	Member States without Specific Rules on Limitation of Securities	
	by Consumer Security Providers	437
		200

Table of Contents

Annexes

Abbreviations	441
Bibliography	449
Table of Principles of European Contract Law (PECL)	469
Table of Codes and Statutes	472
Table of Non-Binding Instruments	511
Table of Cases	513
Index	537