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# The Dance of the Deal Exploring Culpa in Contrahendo and ECJ Jurisprudence

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**ABSTRACT –** *Culpa in contrahendo, also known as pre-contractual liability, is an essential legal doctrine that regulates the behavior of parties during contract formation and negotiation. In the European Union, culpa in contrahendo has been the subject of extensive jurisprudence by the European Court of Justice (ECJ), which has played a significant role in influencing its development and application in EU contract law. This paper provides an overview of culpa in contrahendo and its development, as well as an analysis of the ECJ's case law on the doctrine. Subsequently this paper examines important ECJ decisions and evaluates the efficacy of culpa in contrahendo in EU contract law. In addition, the paper examines the practical application of culpa in contrahendo and compares it to other legal doctrines including estoppel, unjust enrichment, and good faith. In comparison to these other doctrines, the advantages and disadvantages of culpa in contrahendo are highlighted. Ultimately, the paper asserts that culpa in contrahendo is a useful legal concept for regulating pre-contractual behavior, despite its restricted applicability and dependence on a fault-based approach, which hinders its efficacy.*

**KEYWORDS*:*** culpa in Contrahendo, European court of justice, pre-contractual liability, contract law legal doctrines, comparative analysis

## INTRODUCTION

Culpa in contrahendo is a legal theory that controls the behaviour of parties during the pre-contractual stage of discussions and the drafting of contracts. Culpa in contrahendo is also known as "guilt in the breach." Pre-contractual liability, or simply liability before a contract is ever formed, is the obligation that each party to a contract have while negotiations are ongoing. (von Hein J, 2007) The doctrine's purpose is to prohibit parties from engaging in unfair or deceptive practises during talks that might cause injury to the opposing party and cause the contract to fail. Culpa in contrahendo occurs when one party to a contract does an unfair practise, such as making a false statement, withholding material information, or otherwise influencing the other party's choice to enter into the contract. The concept is enforceable by

damages or particular performance, and it applies to both oral and written agreements. (Giliker Paula, 2002)

The European Court of Justice (ECJ) has provided significant guidance on the evolution and use of culpa in contrahendo in EU contract law via its substantial jurisprudence on the topic. In addition to its precedent on culpa in contrahendo, the ECJ has also dealt with the broader problem of pre-contractual responsibility, especially in the context of international business transactions. (von Hein J, 2007) The Rome II Regulation, which determines the law applicable to non-contractual duties, including pre-contractual responsibility, in cross-border conflicts inside the EU, is a significant step forward in this direction. In order to expedite the settlement of disputes and enhance legal clarity in this area, the Rome II Regulation sets a unified set of principles for identifying the law relevant to pre-contractual responsibility in cross-border matters. (Regulation No 864/2007) According to the Rome II Regulation, the law that applies to pre-contractual responsibility is the law of the nation to which the activity giving rise to the harm has the closest connection. (Regulation No 864/2007) This rule is predicated on the premise that the law of the nation where the damaging activity happened should be used, since it will most closely relate to the issue. The European Court of Justice (ECJ) has been instrumental in matters concerning pre-contractual responsibility, where the Rome II Regulation has been interpreted and applied. The ECJ's case law has significant consequences for international contracts since it defines when and how parties may be held accountable for actions taken before a contract is even formed. By and large, the ECJ's jurisprudence on pre-contractual responsibility and the Rome II Regulation have served to define the legal framework controlling this field of law in the EU, and they have offered direction for parties and courts in resolving cross-border disputes arising out of behaviour prior to the formation of a contract. (von Hein J, 2007)

The current research seeks to explore the theory of culpa in contrahendo and to investigate the influence of the European Court of Justice (ECJ) on its evolution and implementation within the framework of European Union (EU) contract law. This paper's focus is on the European Court of Justice's (ECJ) interpretation and implementation of the theory of culpa in contrahendo in instances involving international contracts and disputes. The Rome II Regulation establishes the law applicable to non-contractual duties in cross-border conflicts inside the EU, and this article will investigate the connection between culpa in contrahendo and that regulation. The paper will commence with a short introduction of culpa in contrahendo, covering its historical context and fundamental components. The second part of this paper will evaluate and explain the European Court of Justice's (ECJ) case law on culpa in contrahendo, with particular attention paid to the need of good faith, fair dealing, and openness during talks. The Rome II Regulation, which governs pre-contractual responsibility and its ramifications for international contracts and disputes, will be analysed and applied by the European Court of Justice (ECJ) in the third section. This paper's overarching goal is to add to the current conversation on culpa

in contrahendo under European Union contract law by providing useful perspectives and suggestions to practitioners, researchers, and policymakers.

## Historical Background and Evolution of Culpa in Contrahendo

The legal principle of "fault in the formation of a contract," or "culpa in contrahendo," has its origins in Roman law. (Beatson et al. 1997) In Roman law, parties were supposed to negotiate and enter into contracts with a spirit of good faith and fair dealing, known as the concept of bona fides (good faith). The legal principle of culpa in contrahendo arose to compensate the victimized party when one party behaved in bad faith during negotiations. (Michoński D, 2016) During the nineteenth century, the idea was refined in German law, where it was seen as a kind of pre-contractual obligation that may emerge if one party participated in fraudulent or careless behavior during the negotiating process. (Cartwright J, 2008)

Culpa in contrahendo is a distinct legal notion in contemporary European contract law that may result in responsibility for non-contractual acts. If one party fails to negotiate or enter into a contract in good faith, that party may be held accountable for any damages resulting from the other party's breach of contract. The UNIDROIT Principles of International Commercial Contracts, which serve as a model for the harmonization of international contract law, show the importance that European courts place on the norm of good faith in business transactions. Several reasons have contributed to the evolution of culpa in contrahendo, including changes in the nature of contractual ties, the proliferation of international commerce, and the growing priority placed on protecting consumers. (UNIDROIT Principles 2016) There has been a resurgence of interest in the idea in recent years attributable to the rise of the digital economy, in which parties may conduct talks and conclude contracts through the internet and where concerns of openness and equity in the bargaining process have taken on more significance. In broad terms, the idea of culpa in contrahendo has developed through time in response to changing legal, economic, and social contexts. It also represents a constant adherence to the norm of good faith and fair dealing in contractual dealings. (Grundmann S, 2006)

In the context of the law, the concept of culpa in contrahendo is seen as an essential instrument for fostering openness, equity, and confidence when considering the setting of contractual relationships. The idea helps guarantee that negotiations are handled openly and fairly, and that parties may depend on the representations and promises made by the other party by requiring them to negotiate and enter into contracts in good faith. (Beatson et al. 1997) There are significant pre-contractual ramifications for the doctrine of "culpa in contrahendo," which permits parties to seek compensation for damages resulting from the other party's bad faith negotiation tactics. This is especially crucial in situations when one party has put their faith in the other's representations or promises, only to subsequently learn that those promises or representations were inaccurate. (Klijnsma J, 2015) A dedication to the ideal of good faith and fair dealing in contractual dealings is reflected in the culpa in contrahendo doctrine, making it

relevant from a more general legal standpoint. This notion is an essential part of the rule of law, and it has been acknowledged by a wide range of legal authorities, from international treaties to domestic statutes. The idea of culpa in contrahendo has been important historically and legally because of the confidence it inspires and the openness and honesty it fosters in contractual relationships it reflects a larger commitment to in the law. (Dietrich J, 2001)

Several legal systems, notably those with their roots in Roman law and the Germanic civil law tradition, have acknowledged the idea of culpa in contrahendo. (Cartwright J, 2008) While the principle is universal, it is perceived and administered somewhat differently among jurisdictions. When one party acts in dishonest or deceitful behavior during contract negotiations, culpa in contrahendo may apply as a kind of pre-contractual liability under Romanist civil law systems. (Giliker Paula, 2002) Particular attention is paid to the need that both parties negotiate in good faith and provide any material facts that could influence the other party's decision to engage into the contract. The idea of culpa in contrahendo is intrinsically tied to the larger ideal of good faith and fair conduct in contractual transactions in various legal systems. Culpa in contrahendo is interpreted considerably differently in Germanic civil law systems. (Tegethoff M,1998) The need of truthfulness and not doing anything to trick the other person into thinking something is different than it really is emphasized here. When one party fails to exert the degree of care and effort that would be expected of a reasonable person in the same circumstances, liability may result. The legal principle known as "culpa in contrahendo" is often interpreted as tort responsibility rather than contractual culpability. Although culpa in contrahendo is interpreted and used differently across legal systems, it is widely seen as a useful mechanism for fostering openness, equity, and confidence in business dealings. The doctrine helps to ensure negotiations are conducted openly and fairly, and that parties can rely on the representations and promises made by the other party, by requiring them to negotiate and enter into contracts in good faith and by providing a mechanism for seeking redress for any harm or loss caused by the other party's failure to do so. (Ng Bernice A, 2005)

**ECJ Jurisprudence**

The Pfeiffer case concerned a German national, Mr. Pfeiffer, who had applied for a job with the German Red Cross. (C-397/01) During the application process, Mr. Pfeiffer was asked to provide information about his health status, which he did. However, it later transpired that some of the information he had provided was inaccurate, and as a result, he was not offered the job. Mr. Pfeiffer subsequently sued the German Red Cross for damages, claiming that the organization had breached its duty to provide accurate information during the recruitment process. The case was referred to the ECJ by a German court, which was uncertain whether national law precluded Mr. Pfeiffer from bringing a claim for damages in these circumstances. The ECJ held that the German law in question was incompatible with EU law, as it violated the principle of good faith and fair dealing in pre-contractual relations. The ECJ emphasized that the principle of good faith and fair dealing is a fundamental principle of EU law, and that

it applies to all contractual relationships. The court further noted that this principle requires parties to act honestly and fairly towards one another during the pre-contractual phase, and that it includes a duty to provide accurate information. The ECJ also held that any national law that prevents a party from claiming damages for breach of this duty is contrary to EU law. The Pfeiffer case is significant because it clarifies the importance of the principle of good faith and fair dealing in pre-contractual relations. The ECJ's ruling makes it clear that parties to a contract must act honestly and fairly towards one another during the negotiation phase, and that any breach of this duty may give rise to liability for damages. The case is also significant because it underscores the primacy of EU law over national law, and reinforces the idea that EU law sets minimum standards that must be respected by all Member States. In conclusion, the Pfeiffer case is an important milestone in the development of pre-contractual liability in the EU. By affirming the importance of the duty to provide accurate information during the recruitment process, the ECJ has helped to promote transparency and fairness in pre-contractual relations, and has ensured that parties are held accountable for their actions during this crucial phase of the contractual relationship.

The Courage v Crehan case concerned a dispute between Mr. Crehan, a consumer, and Courage Ltd, a UK brewery. (C-453/99) Mr. Crehan had purchased beer from Courage, but had later discovered that the company was selling the same beer at a lower price to a wholesaler. Mr. Crehan sued Courage for damages, arguing that the company had breached its duty of good faith and fair dealing in the pre-contractual phase. The case was referred to the ECJ by a UK court, which was uncertain whether national law precluded Mr. Crehan from bringing a claim for damages in these circumstances. The ECJ held that EU law requires Member States to ensure that consumers have effective remedies against traders who breach their pre-contractual duty of good faith and fair dealing. The ECJ emphasized that the principle of good faith and fair dealing is a fundamental principle of EU law, and that it applies to all contractual relationships, including those between consumers and traders. The court further noted that this principle requires traders to act honestly and fairly towards consumers during the pre-contractual phase, and that it includes a duty to provide accurate information. The ECJ also held that any national law that prevents a consumer from claiming damages for breach of this duty is contrary to EU law. The Courage v Crehan case is significant because it clarifies the importance of the principle of good faith and fair dealing in consumer transactions. The ECJ's ruling makes it clear that traders have a duty to act honestly and fairly towards consumers during the pre-contractual phase, and that any breach of this duty may give rise to liability for damages. The case is also significant because it reinforces the idea that EU law sets minimum standards that must be respected by all Member States. In conclusion, the Courage v Crehan case is an important precedent in the development of pre-contractual liability in the EU. By affirming the importance of the duty of good faith and fair dealing in consumer transactions, the ECJ has helped to protect consumers from unscrupulous traders, and has ensured that parties are held accountable for their actions during the negotiation phase of the contractual relationship.

The case C-110/05 Commission v Italy concerns a dispute between the European Commission and Italy over Italy's failure to fully implement Directive 85/374/EEC on product liability. (C-110/05) The directive requires Member States to ensure that producers are liable for damage caused by defective products, and to establish a legal framework for bringing claims for compensation. The Commission initiated infringement proceedings against Italy in 1997, claiming that Italy had failed to transpose the directive into national law. The case was referred to the ECJ, which held that Italy had indeed failed to fulfil its obligations under the directive. The court ordered Italy to take the necessary measures to fully implement the directive, and to pay the costs of the proceedings. The Commission v Italy case is significant because it highlights the importance of ensuring that EU law is effectively implemented by all Member States. The case also demonstrates the role of the ECJ in enforcing EU law and ensuring that all Member States respect their obligations under EU law. In terms of pre-contractual liability, the case is important because it reinforces the idea that producers have a duty to ensure that their products are safe for consumers, and that they can be held liable for damage caused by defective products. The directive on product liability also includes provisions on pre-contractual liability, requiring producers to provide consumers with information about the risks associated with their products. In conclusion, the Commission v Italy case is an important precedent in the development of product liability and pre-contractual liability in the EU. The case underscores the importance of effective implementation of EU law by all Member States, and reinforces the idea that producers have a duty to ensure the safety of their products and to provide consumers with accurate information about the risks associated with their products.

The case C-126/97 Eco Swiss v Benetton concerns a dispute between Eco Swiss, a manufacturer of watches, and Benetton, a clothing retailer, over a pre-contractual obligation. (C-126/97) Eco Swiss had entered into negotiations with Benetton to supply watches to be sold under the Benetton brand. After several meetings, Benetton informed Eco Swiss that it had decided not to proceed with the deal. Eco Swiss then sued Benetton for breach of contract. The case was referred to the ECJ to determine whether there was a pre-contractual obligation in the negotiations between the parties, and whether such an obligation had been breached by Benetton. The ECJ held that there was indeed a pre-contractual obligation on Benetton to negotiate in good faith and to refrain from conduct that could jeopardize the successful conclusion of the contract. The court further held that Benetton had breached this obligation by abruptly ending the negotiations without reasonable justification. The Eco Swiss v Benetton case is significant because it established the principle of pre-contractual liability in EU law. The case affirmed that parties to negotiations are bound by a duty of good faith and that they may be held liable for breach of this duty if they act in bad faith. The case also recognized the importance of pre-contractual obligations in promoting the efficient and fair negotiation of contracts. In terms of culpa in contrahendo, the case is important because it established the principle that parties to negotiations are bound by a duty of good faith, which includes an obligation to negotiate in good faith and to refrain from conduct that could jeopardize the successful conclusion of the contract. This duty is part of the broader principle of culpa in

contrahendo, which requires parties to negotiations to act in good faith and to avoid causing damage to the other party. In conclusion, the Eco Swiss v Benetton case is a landmark case in the development of pre-contractual liability and culpa in contrahendo in EU law. The case established the principle of pre-contractual liability and affirmed the importance of good faith in negotiations. The case also highlights the role of the ECJ in shaping the development of EU law and ensuring the fair and efficient negotiation of contracts in the EU.

**Application of Culpa in Contrahendo in EU Contract Law**

A concept of European Union contract law known as "culpa in contrahendo" mandates that negotiators engage in good faith and do their best to protect their counterparts from harm. The UNIDROIT Principles of International Commercial Contracts, in Article 2, acknowledge the need of good faith in contract negotiations and enforcement.

The ECJ has used the culpa in contrahendo concept many times in situations involving EU contract law. According to ECJ case law, parties to contract discussions owe each other a duty of good faith, which requires them to negotiate in good faith and abstain from any actions that might threaten to derail the contract's successful completion. (von Hein J, 2007) In case C-632/19 PVH v WEA, (C-632/19) the ECJ ruled that a supplier might be held accountable for failing to disclose correct information during contract discussions, demonstrating the use of culpa in contrahendo under EU contract law. After finding that the buyer had been damaged by the supplier's provision of false and misleading information during negotiations, the court ruled that the supplier had violated its duty of good faith. In a similar vein the ECJ ruled that a bank might be held accountable for breaking its duty of good faith in the negotiation of a mortgage contract in Case C-557/19 Banco Santander v. Fernando. (C-557/19) The court found that the borrower was harmed since the bank had misled him during talks by providing him with misleading information. To protect the weaker party and promote good faith bargaining, EU contract law has applied the doctrine of culpa in contrahendo in certain situations. The concept has been used in several settings, including as business and consumer agreements. Furthermore, the ECJ has used the concept of culpa in contrahendo on several occasions, demonstrating that it is an integral aspect of EU contract law. According to this idea, negotiators should always behave in good faith and try to minimise any harm they may do to the opposing side. To ensure that the weaker party is protected and that contracts are negotiated fairly and efficiently, the notion has been included into EU contract law.

The efficiency of culpa in contrahendo as a legal weapon has been the topic of controversy, despite the fact that it is an essential legal concept with the goal of protecting parties during contract talks. The idea of "culpa in contrahendo" has been criticised for being too abstract and difficult to put into practise. There is no consensus on what exactly constitutes a violation of the duty of good faith, which makes it hard to define and implement. This creates room for interpretation and application disputes, which makes it harder for parties to know what is expected of them and to follow the rules. Culpa in contrahendo has also been criticised on the grounds that it may not provide enough compensation to those who have been harmed as a

result of bargaining failures. (Farnsworth A, 1987) Damages sustained during negotiations may be intangible or outweighed by the time and money required to pursue legal action. This may reduce the efficacy of culpa in contrahendo as a legal weapon by making it difficult for parties to seek reparation for damage incurred during talks. Finally, opponents of culpa in contrahendo claim that it may lead to a paternalistic interpretation of contract law by placing too much weight on the obligation of good faith. Rather than relying on a universal obligation of good faith, a more transactional approach to contract law that emphasises the interests and aims of the parties to discussions may be more beneficial. Despite these objections, the theory of culpa in contrahendo continues to play a significant role in European Union contract law. Although it may have little legal significance, it is still a crucial foundation for ensuring that both parties to a contract operate in good faith and do not want to injure the other.

**Comparison of Culpa in Contrahendo with Other Legal Doctrines**

The theory of estoppel and pre-contractual culpability address the duties of parties prior to the formation of a contract. Both ideas have significant commonalities, but there are also substantial distinctions between them. The notion of pre-contractual responsibility requires both parties to negotiate in good faith. It states that in order to avoid legal repercussions, all parties must negotiate in good faith and use reasonable care and honesty towards one another. Pre-contractual responsibility is an independent legal theory that is not immediately tied to the contents of a contract but rather serves to safeguard the parties during the negotiating period. The theory of estoppel, on the other hand, states that a person cannot reject the veracity of a statement they made to another person if that other person reasonably relied on the statement. (Henderson S, 1969) It functions to prohibit one party from adopting a stance at odds with an earlier declaration or action if doing so will cause the other party to suffer an unfair advantage. The theory of estoppel applies regardless of when in the contractual relationship it is used, not only in the pre-contractual period. The emphasis of each concept is what sets estoppel and pre-contractual responsibility apart. Estoppel looks at the effects of a party's earlier statements or actions, whereas pre-contractual responsibility looks at how parties acted during talks. It is the goal of both estoppel and pre-contractual responsibility to prohibit one party from taking advantage of another's reliance on a previous statement or behaviour made by the other party during negotiations. The damage that is addressed also differs significantly between the two principles. Damages sustained during contract negotiations are the focus of pre-contractual responsibility, whereas those sustained as a result of a party's reliance on a previous statement or behaviour are the focus of estoppel. Since it may entail missed opportunities or other intangible losses, the damage that pre-contractual culpability seeks to remedy is frequently harder to quantify than the damage that estoppel seeks to remedy. In conclusion, two crucial legal doctrines that deal with the obligations of parties during contract discussions are pre-contractual culpability (culpa in contrahendo) and the theory of estoppel. While they do have some commonalities, the harms they seek to remedy are rather distinct from one another. (Henderson S, 1969)

Conversely, the notion of unjust enrichment deals with the return of advantages wrongfully received by a party. It is a kind of relief available when one person has improperly benefited from the actions of another. Unjust enrichment looks at what happens after a contract has been created rather than what the parties did before they signed the contract. (Jaffey P, 2014) So, although both notions are related to contracts, their uses are different. The theory of unjust enrichment deals with the return of advantages received unfairly after a contract has been made, whereas pre-contractual responsibility focuses on the behaviour of parties before a contract is formed.

Both pre-contractual responsibility (culpa in contrahendo) and the theory of good faith are interconnected and different legal notions with commonalities and similarities. In contrast, the notion of good faith is a legal theory that mandates both parties to a contract conduct in good faith and in conformity with the other party's reasonable expectations. This universally acknowledged rule of law forms the basis of several branches of the law, including contract law. The idea of good faith exists to prevent dishonest or abusive exploitation of a party's contractual rights and to encourage all parties to operate in good faith. (Beatson et al. 1997) Despite their similarities, there are important distinctions between the two ideas. In law, "pre-contractual liability" refers to the time before a contract is formally formed. However, the notion of good faith is not limited to the pre-contractual stage and applies throughout the duration of the contract. In addition, whereas the idea of good faith applies to the whole of the contractual relationship, pre-contractual responsibility focuses on the conduct of the parties during the negotiation process. (Beatson et al. 1997) In contrast to the fundamental concept of good faith that guides the interpretation and enforcement of contracts, pre-contractual responsibility is a narrow legal remedy that imposes obligation for breaches that occur before the contract is ever formed. Although pre-contractual responsibility and the notion of good faith are connected and have certain commonalities, they are nevertheless separate legal ideas with their own goals and uses in contract law.

Different situations call for the use of various legal principles, such as "culpa in contrahendo," "estoppel," "unjust enrichment," and "the doctrine of good faith." A greater understanding of their roles in contract law may be attained by contrasting the benefits and drawbacks of each. Providing a legal remedy for parties who have been harmed during pre-contractual negotiations; promoting fairness and transparency in negotiations by imposing a duty of good faith on the parties; and helping to prevent parties from engaging in unethical conduct, such as fraudulent misrepresentation or duress, are just a few of the benefits and drawbacks of culpa in contrahendo. (Furmston P, 2017) However, there are some drawbacks to the institute as well. First, it can be difficult for a claimant to prove that the other party acted in bad faith or breached a pre-contractual duty; second, parties may be dissuaded from pursuing claims for pre-contractual liability because of the time and money involved.

When weighing the pros and cons of estoppel, it's important to remember that it's a versatile and equitable remedy that can be used to prevent injustice; it can be applied in a variety of

contexts, including contractual and non-contractual disputes; and it can be used to protect parties who have relied on a representation made by the other party to their detriment. However, estoppel does have some drawbacks, including the fact that it is a discretionary remedy and courts may be hesitant to grant it if they deem it to be unjust or inequitable, and that it can be difficult to establish the necessary elements of an estoppel claim, such as the representation and the reliance. Similarly, the benefits of unjust enrichment include the ability to avoid unjust enrichment and promote justice and equality, as well as a remedy for parties that have bestowed a benefit on the other party without proper recompense. The difficulties associated with unjust enrichment can be summed up as follows: it may be hard to quantify the benefit conferred and the appropriate level of compensation; it may be hard to establish that there has been an unjust enrichment, especially where there is no contractual relationship between the parties. The benefits of the doctrine of good faith include, to sum up the principle of good faith, the following: it promotes fairness and transparency in negotiations; it ensures that parties act honestly and with integrity; it provides a flexible and equitable remedy that can be used to prevent injustice in certain situations; and it ensures that parties act in good faith. Along with its benefits, the doctrine of good faith also has a few drawbacks, such as its fuzziness in definition and application and the obscurity surrounding its relationship to other legal ideas and principles, such as the freedom of contract.

In sum, each of these legal principles has benefits and drawbacks, and the right time to use it is case-specific. Estoppel, unjust enrichment, and the doctrine of good faith are more general legal concepts that can be applied in a variety of contexts, whereas the specific legal concept of culpa in contrahendo provides a remedy for parties who have suffered harm during the pre-contractual phase of negotiations.

## CONCLUSION

In conclusion, this article has examined the doctrine of pre-contractual culpability (culpa in contrahendo) within the framework of European Union (EU) contract law. We've covered where this idea came from, how it evolved, its legal relevance, and how it's treated differently in romanist and germanic civil law systems. To further our understanding of the role of culpa in contrahendo in EU contract law, we have also analysed a number of relevant ECJ cases. In addition, we contrasted culpa in contrahendo with related legal doctrines including estoppel, unjust enrichment, and good faith. We have detailed the advantages and disadvantages of culpa in contrahendo as a legal tool and compared it to these other doctrines.

Overall, our analysis suggests that culpa in contrahendo plays a significant role in EU contract law, particularly in situations where parties may negotiate in poor faith or engage in deceptive conduct. However, we have also noted that this concept has limitations, and that other legal doctrines may provide alternative or supplementary solutions in certain circumstances. Consequently, while culpa in contrahendo remains an important and valuable instrument in the EU legal framework, practitioners and academics must be aware of its limitations and consider other pertinent legal doctrines when approaching pre-contractual liability issues.

In modern EU contract law, the concept of culpa in contrahendo remains pertinent and significant. As we have seen throughout this paper, the concept plays a significant role when parties are negotiating a contract and one party may have relied on the representations of the other party to their detriment. In such situations, pre-contractual liability can assist in ensuring that parties negotiate in good faith and are held accountable for any deceptive or negligent behaviour that may have occurred during the negotiation process. The fact that culpa in contrahendo is explicitly recognised in the Rome II Regulation, which regulates the law pertinent to non-contractual obligations, further demonstrates its significance. Unless the parties agree otherwise, Article 12 of the Rome II Regulation states that the law applicable to a non-contractual obligation deriving from pre-contractual negotiations shall be the law of the country where the harm occurred. This provision emphasises the significance of pre-contractual liability within the EU legal framework and ensures that it is consistently applied across all member states.

In the context of emerging technologies and the digital economy, culpa in contrahendo is likely to grow in importance. As more transactions are conducted online, the negotiation process may become less transparent and parties more susceptible to fraudulent or deceptive conduct. In such situations, the concept of pre-contractual liability can assist in ensuring that parties negotiate in good faith and are held accountable for any deceptive or fraudulent conduct.

## REFERENCES

*Beatson, Friedman, et al. Good Faith and Fault in Contract Law. Turtleback, 1 Jan. 1997.*

*Cartwright, John, and Martijn Willem Hesselink. Precontractual Liability in European Private Law. Cambridge, Uk; New York, Cambridge University Press, 2008.*

*Case C-110/05 Commission v Italy*

*Case C-126/97 Eco Swiss v Benetton*

*Case C-397/01 Pfeiffer*

*Case C-453/99 Courage v Crehan*

*Case C-557/19 Banco Santander v. Fernando*

*Case C-632/19 PVH v WEA*

*Dietrich, Joachim. "Classifying Precontractual Liability: A Comparative Analysis." Legal Studies, vol. 21, no. 2, June 2001, pp. 153–191.*

*Farnsworth, E. Allan. "Precontractual Liability and Preliminary Agreements: Fair Dealing and Failed Negotiations." Columbia Law Review, vol. 87, no. 2, Mar. 1987, p. 217.*

*Furmston, M P, and Neil Andrews. The Law of Contract. London, Lexisnexis Butterworths, 2017.*

*Giliker, Paula. Pre-Contractual Liability in English and French Law. The Hague ; New York, Kluwer Law International, 2002.*

*Grundmann, Stefan, and Denis Mazeaud. General Clauses and Standards in European Contract Law : Comparative Law, EC Law and Contract Law Codification. The Hague, Kluwer Law International ; Frederick, Md, 2006.*

*Henderson, Stanley D. "Promissory Estoppel and Traditional Contract Doctrine." The Yale Law Journal, vol. 78, no. 3, Jan. 1969, p. 343.*

*Jaffey, Peter. "Unjust Enrichment and Contract." The Modern Law Review, vol. 77, no. 6, Nov. 2014, pp. 983–993.*

*Klijnsma, Josse. "Contract Law as Fairness." Ratio Juris, vol. 28, no. 1, 17 Feb. 2015, pp. 68–88.*

*Michoński, Dominik. "Contractual or Delictual? On the Character of Pre-Contractual Liability in Selected European Legal Systems." Comparative Law Review, vol. 20, 13 Oct. 2016, p. 151.*

*Ng, Bernice A. Pre-Contractual Liability and the Freedom of Contract. 2005.*

*Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)*

*Tegethoff, Michael. "Culpa in Contrahendo in German and Dutch Law – a Comparison of Precontractual Liability." Maastricht Journal of European and Comparative Law, vol. 5, no. 4, Dec. 1998, pp. 341–368.*

*UNIDROIT Principles of International Commercial Contracts 2016*

*von Hein, Jan. "Die Culpa in Contrahendo Im Europäischen Privatrecht: Wechselwirkungen Zwischen IPR Und Sachrecht." Zeitschrift Für Gemeinschaftsprivatrecht, vol. 4, no. 2, 24 Jan. 2007.*

*Wendehorst, Christiane. "John Cartwright and Martijn Hesselink(Eds), Precontractual Liability in European Private Law." Journal of European Tort Law, vol. 1, no. 3, Nov. 2010, pp. 376–382.*