Cuniberti on the New Provision of the Unidroit Principles on Contracts Infringing Mandatory Rules

I (University of Luxembourg) have posted A Critical Appraisal of Article 3.3.1 of the PICC on Contracts Infringing Mandatory Rules (*Le Nouvel Article 3.3.1 Des Principes Unidroit 2010 Sur Le Contrat Violant Une Règle Impérative: Un Regard Critique Du Point De Vue Du Droit International Privé*) on SSRN. The English abstract reads:

> *The 2010 UNIDROIT Principles of International Commercial Contracts include several new provisions on illegality. This paper offers a critical appraisal of one of them, Article 3.3.1 on Contracts Infringing Mandatory Rules. First, the paper wonders the extent to which applicable mandatory rules will tolerate the attempt of Article 3.3.1 to regulate their application. The paper then focuses on the distinction between effects of the infringement upon the contract expressly prescribed by the applicable mandatory rule and effects non expressly prescribed. It argues that, while the distinction makes sense in the context of the American Restatement (Second) on Contracts, which inspired the drafters, it does not in the context of a private instrument which will essentially be used by arbitrators to decide particular disputes. Finally, the paper discusses the relevance of the distinction between effects of the infringement of a mandatory rule upon the contract and the right to exercise remedies under the contract.*
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> *Note: Downloadable document is in French.*

The paper is forthcoming in the *Uniform Law Review*.