

Project Group

“Restatement of European Insurance Contract Law”

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~~COMMON FRAME OF REFERENCE~~

~~CHAPTER III, SECTION IX~~

~~*INSURANCE CONTRACT*~~

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Part One

Provisions Common to All Contracts Included in the Principles of European Insurance Contract Law (PEICL)

Chapter One

Introductory Provisions

Section One

Application of the PEICL

Article 1:101

Substantive Scope of Application

- (1) The PEICL shall apply to private insurance in general, including mutual insurance.
- (2) The PEICL shall not apply to reinsurance.

Article 1:102

Optional Application

The PEICL shall apply when the parties, notwithstanding any limitations of choice of law under private international law, have agreed that their contract shall be governed by them. Subject to Article 1:103, the PEICL shall apply as a whole and no exclusion of particular provisions shall be allowed.

Article 1:103

Mandatory Character

- (1) Articles 1:102 sentence 2, 2:104, 13:101 [...] ¹ are mandatory. Other articles are mandatory as far as they regulate fraudulent behaviour.
- (2) The contract may derogate from all other provisions of the PEICL as long as such derogation is not to the detriment of the policyholder, the insured or beneficiary. However, derogation shall be allowed to the benefit of any party in contracts covering
 - (a) risks in classes 4, 5, 6, 7, 11 or 12 of the Annex to this Article;

¹ Articles 1:102 sentence 2, 2:104 and 13:101 are the only mandatory provisions so far; however further mandatory articles are anticipated in future Articles on specific branches of insurance.

(b) risks in classes 14 or 15 of the Annex to this Article, when the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;

(c) risks in classes 3, 8, 9, 10, 13 or 16 of the Annex to this Article, in so far as the policyholder exceeds the limits of at least two of the following three criteria:

- balance-sheet total: 6.2 million euros
- net turnover: 12.8 million euros
- average number of employees during the financial year: 250.

Annex²

1. Accident (including industrial injury and occupational disease)

- fixed pecuniary benefits
- benefits in the nature of indemnity
- combinations of the two
- injury to passengers

2. Sickness

- fixed pecuniary benefits
- benefits in the nature of indemnity
- combinations of the two

3. Land vehicles (other than railway rolling stock)

All damage to or loss of

- land motor vehicles
- land vehicles other than motor vehicles

4. Railway rolling stock

All damage to or loss of railway rolling stock

5. Aircraft

All damage to or loss of aircraft

6. Ships (sea, lake, river and canal vessels)

All damage to or loss of

² This Annex is modelled on Directive 73/239/EEC (as amended) and – in part – Directive 2002/83/EC (as amended).

- river and canal vessels
- lake vessels
- sea vessels

7. Goods in transit (including merchandise, baggage, and all other goods)

All damage to or loss of goods in transit, irrespective of the form of transport

8. Fire and force of nature

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to

- fire
- explosion
- storm
- natural forces other than storm
- nuclear energy
- land subsidence

9. Other damage to property

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than those mentioned under 8

10. Motor vehicle liability

All liability arising out of the use of motor vehicles operating on the land (including carrier's liability)

11. Aircraft liability

All liability arising out of the use of aircraft (including carrier's liability)

12. Liability for ships (sea, lake, river and canal vessels)

All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability)

13. General liability

All liability other than those forms mentioned under Nos. 10, 11 and 12

14. Credit

- insolvency (general)
- export credit

- instalment credit
- mortgages
- agricultural credit

15. Suretyship

- suretyship (direct)
- suretyship (indirect)

16. Miscellaneous financial loss

- employment risks
- insufficiency of income (general)
- bad weather
- loss of benefits
- continuing general expenses
- unforeseen trading expenses
- loss of market value
- loss of rent or revenue
- indirect trading losses other than those mentioned above
- other financial loss (non-trading)
- other forms of financial loss

17. Legal expenses

Legal expenses and costs of litigation

18. Assistance

Assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence

19. Life assurance (excluding the classes enumerated at 20 and 21)

20. Marriage assurance and birth assurance

21. Assurance linked to investment funds

Article 1:104

Interpretation

The PEICL shall be interpreted in the light of their text, context, purpose and comparative background. In particular, regard should be had to the need to promote good faith and fair dealing in the insurance sector, certainty in contractual relationships, uniformity of application and the adequate protection of policyholders.

Article 1:105

National Law and General Principles

(1) No recourse to national law, whether to restrict or to supplement the PEICL, shall be permitted. This does not apply to mandatory national laws specifically enacted for branches of insurance which are not covered by special rules contained in the PEICL.

(2) Questions arising from the insurance contract, which are not expressly settled in the PEICL, are to be settled in conformity with the Principles of European Contract Law (PECL)³ and, in the absence of relevant rules in that instrument, in accordance with the general principles common to the laws of the Member States.

Section Two

General Rules

Article 1:201

Insurance Contract

(1) "Insurance contract" means a contract under which one party, the insurer, promises another party, the policyholder, cover against a specified risk in exchange for a premium;

(2) "Insured event" means the materialisation of the risk specified in the insurance contract;

(3) "Indemnity insurance" means insurance under which the insurer is obliged to indemnify against loss suffered on the occurrence of an insured event;

(4) "Insurance of fixed sums" means insurance under which the insurer is bound to pay a fixed sum of money on the occurrence of an insured event.

Article 1:202

Further Definitions

(1) "Insured" means the person whose interest is protected against loss under indemnity insurance;

(2) "Beneficiary" means the person in whose favour the insurance money is payable under insurance of fixed sums;

³ Cf. Lando/Beale (eds.), *Principles of European Contract Law, Parts I and II* (Kluwer Law International, The Hague 2000); Lando/Clive/Prüm/Zimmermann (eds.), *Principles of European Contract Law, Part III* (Kluwer Law International, The Hague 2003).

(3) "Person at risk" means the person on whose life, health, integrity or status insurance is taken;

(4) "Victim", in liability insurance, means the person for whose death, injury or loss the insured is liable;

(5) "Insurance agent" means an insurance intermediary employed by an insurer for marketing, selling or managing insurance contracts;

(6) "Premium" means the payment due to the insurer on the part of the policyholder in return for cover;

(7) "Contract period" means the period of contractual commitment starting at the conclusion of the contract and ending when the agreed term of duration elapses;

(8) "Insurance period" means the period for which the premium is due in accordance with the parties' agreement;

(9) "Liability period" means the period of cover;

Article 1:203

Language and Interpretation of Documents⁴

(1) All documents provided by the insurer shall be plain and intelligible and in the language in which the contract is negotiated.

(2) When there is doubt about the meaning of the wording of any document or information provided by the insurer, the interpretation most favourable to the policyholder, insured or beneficiary, as appropriate, shall prevail.

Article 1:204

Receipt of Documents: Proof

The burden of proving that the policyholder has received documents to be provided by the insurer shall lie with the insurer.

Article 1:205

Form of Notice

Subject to specific rules contained in the PEICL, notice by the applicant, policyholder, insured or beneficiary in relation to the insurance contract shall not be required to take any particular form.

Article 1:206

Imputed Knowledge

⁴ Article 1:203 para. 2 is modelled on Article 5 of Directive 93/13/EEC.

If any person is entrusted by the policyholder, the insured or the beneficiary with responsibilities essential to the conclusion or performance of the contract, relevant knowledge which that person has or ought to have in the course of fulfilling his responsibilities shall be deemed to be the knowledge of the policyholder, the insured or the beneficiary, as the case may be.

Article 1:207

Non-Discrimination⁵

(1) The use of gender as a factor in the calculation of premiums and benefits shall not result in differences in individuals' premiums and benefits unless the insurer shows that proportionate differences in individuals' premiums and benefits are based upon relevant and accurate actuarial and statistical data. In any event, pregnancy and maternity shall not be factors resulting in differences in individuals' premiums and benefits.

(2) Nationality, racial or ethnic origin shall not be factors resulting in differences in individuals' premiums and benefits.

(3) Terms in breach of paras. 1 or 2, including terms as to premium, shall not be binding on the policyholder or the insured. Subject to para. 4, the contract shall continue to bind the parties on the basis of non-discriminatory terms.

(4) In the case of breach of paras. 1 or 2, the policyholder shall be entitled to terminate the contract. Notice of termination shall be given to the insurer in writing within two months after the breach becomes known to the policyholder.

Section Three

Enforcement

Article 1:301

Injunctions⁶

(1) A qualified entity, as defined in para. 2, is entitled to seize a competent national court or authority and seek an order prohibiting or requiring the cessation of infringements of the PEICL, if applicable in accordance with Article 1:102.

(2) A qualified entity means any body or organisation on the list drawn up by the European Commission in pursuance of Article 4 of the Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, as amended.

Article 1:302

Out-of-court Complaint and Redress Mechanisms

⁵ This Article is modelled on Directive 2004/113/EC.

⁶ This Article is modelled on Directive 98/27/EC.

Application of the PEICL does not preclude access to out-of-court complaint and redress mechanisms otherwise available to the policyholder, insured or beneficiary.

Chapter Two

Initial Stage and Duration of the Insurance Contract

Section One

Applicant's Pre-contractual Information Duty

Article 2:101

Duty of Disclosure

(1) When concluding the contract, the applicant shall inform the insurer of circumstances of which he is or ought to be aware, and which are the subject of clear and precise questions put to him by the insurer.

(2) The circumstances referred to in para. 1 include those of which the person to be insured was or should have been aware.

Article 2:102

Breach

(1) When the policyholder is in breach of Article 2:101, subject to paras. 2 to 5, the insurer shall be entitled to propose a reasonable variation of the contract or to terminate the contract. To this end the insurer shall give written notice of its intention, accompanied by information on the legal consequences of its decision, within one month after the breach of Article 2:101 becomes known or apparent to it.

(2) If the insurer proposes a reasonable variation, the contract shall continue on the basis of the variation proposed, unless the policyholder rejects the proposal within one month of receipt of the notice referred to in para. 1. In that case, the insurer shall be entitled to terminate the contract within one month of receipt of written notice of the policyholder's rejection.

(3) The insurer shall not be entitled to terminate the contract if the policyholder is in innocent breach of Article 2:101, unless the insurer proves that it would not have concluded the contract, had it known the information concerned.

(4) Termination of the contract shall take effect one month after the written notice referred to in para. 1 has been received by the policyholder. Variation shall take effect in accordance with the agreement of the parties.

(5) If an insured event is caused by an element of the risk, which is the subject of negligent non-disclosure or misrepresentation by the policyholder, and occurs before termination or variation takes effect, no insurance money shall be payable if the insurer would not have concluded the contract had it known the information concerned. If, however, the insurer

would have concluded the contract at a higher premium or on different terms, the insurance money shall be payable proportionately or in accordance with such terms.

Article 2:103

Exceptions

The sanctions provided for in Article 2:102 shall not apply in respect of

- (a) a question which was unanswered, or information supplied which was obviously incomplete or incorrect;
- (b) information which should have been disclosed or information inaccurately supplied, which was not material to a reasonable insurer's decision to enter into the contract at all, or to do so on the agreed terms;
- (c) information which the insurer led the policyholder to believe did not have to be disclosed; or
- (d) information of which the insurer was or should have been aware.

Article 2:104

Fraudulent Breach

Without prejudice to the sanctions provided for in Article 2:102, the insurer shall be entitled to avoid the contract and retain the right to any premium due, if it has been led to conclude the contract by the policyholder's fraudulent breach of Article 2:101. Notice of avoidance shall be given to the policyholder in writing within two months after the fraud becomes known to the insurer.

Article 2:105

Additional Information

Articles 2:102-2:104 shall also apply to any information supplied by a policyholder at the time of concluding the contract in addition to that required by Article 2:101.

Section Two

Insurer's Pre-contractual Duties

Article 2:201

Provision of Pre-contractual Documents⁷

(1) The insurer shall provide the applicant with a copy of the proposed contract terms as well as a document which includes the following information if relevant:

⁷ This Article is modelled on Directive 73/239/EEC (as amended), Directive 2002/83/EC and Directive 2002/65/EC.

- (a) the name and address of the contracting parties;
 - (b) the name and address of the insured and of the beneficiary;
 - (c) the name and address of the insurance agent;
 - (d) the subject matter of the insurance and the risks covered;
 - (e) the sum insured and any deductibles;
 - (f) the amount of the premium or the method of calculating it;
 - (g) when the premium falls due as well as the place and mode of payment;
 - (h) the contract period and the liability period;
 - (i) the right to revoke the application or avoid the contract in accordance with Article 2:303;
 - (j) the law applicable to the contract or, if a choice of law is permitted, the law proposed by the insurer;
 - (k) the existence of an out-of-court complaint and redress mechanism for the applicant and the methods for having access to it;
 - (l) the existence of guarantee funds or other compensation arrangements.
- (2) If possible, this information shall be provided in sufficient time to enable the applicant to consider whether or not to conclude the contract.
- (3) When the applicant applies for insurance cover on the basis of an application form and/or a questionnaire provided by the insurer, the insurer shall supply the applicant with a copy of the completed documents.

Article 2:202

Duty to Warn about Inconsistencies in the Cover

- (1) When concluding the contract, the insurer shall warn the applicant of any inconsistencies between the cover offered and the applicant's requirements of which the insurer is or ought to be aware, taking into consideration the circumstances and mode of contracting and, in particular, whether the applicant was assisted by an independent intermediary.
- (2) In the event of a breach of para. 1
- (a) the insurer shall indemnify the policyholder against all losses resulting from the breach of this duty to warn unless the insurer acted without fault, and
 - (b) the policyholder shall be entitled to terminate the contract by written notice given within two months after the breach becomes known to the policyholder.

Article 2:203

Duty to Warn about Commencement of Cover

If the applicant reasonably but mistakenly believes that the cover commences at the time the application is submitted, and the insurer is or ought to be aware of this belief, the insurer shall warn the applicant immediately that cover will not begin until the contract is concluded and, if applicable, the first premium is paid, unless preliminary cover is granted. If the insurer is in breach of the duty to warn it shall be liable in accordance with Article 2:202 para. 2(a).

Section Three

Conclusion of the Contract

Article 2:301

Manner of Conclusion

An insurance contract shall not be required to be concluded or evidenced in writing nor subject to any other requirement as to form. The contract may be proved by any means, including oral testimony.

Article 2:302

Revocation of an Application for Insurance

An application for insurance may be revoked by the applicant if his revocation reaches the insurer before the applicant receives an acceptance from the insurer.

Article 2:303

Cooling-off Period⁸

(1) The policyholder shall be entitled to avoid the contract by giving written notice within two weeks after receipt of acceptance or delivery of the documents referred to in Article 2:501, whichever is the later.

(2) The policyholder shall not be entitled to avoid the contract when

- (a) the duration of the contract is less than one month;
- (b) the contract is prolonged under Article 2:602;
- (c) it is a case of preliminary insurance, liability insurance or group insurance.

Article 2:304

Abusive Clauses⁹

⁸ This Article is modelled on Directive 2002/65/EC.

⁹ This Article is modelled on Directive 93/13/EEC.

(1) A term which has not been individually negotiated shall not be binding on the policyholder, the insured or the beneficiary if, contrary to the requirements of good faith and fair dealing, it causes a significant imbalance in his rights and obligations arising under the contract to his detriment, taking into account the nature of the insurance contract, all the other terms of the contract and the circumstances at the time the contract was concluded.

(2) The contract shall continue to bind the parties if it is capable of continuing in existence without the unfair term. If not, the unfair term shall be substituted by a term which reasonable parties would have agreed upon had they known the unfairness of the term.

(3) This Article applies to terms that restrict or modify cover but it applies neither to

(a) the adequacy in value of the cover and the premium, nor to

(b) terms that state the essential description of the cover granted or the premium agreed, provided the terms are in plain and intelligible language.

(4) A term shall always be regarded as not individually negotiated when it has been drafted in advance and the policyholder has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract. The fact that certain aspects of a term or one specific term have been individually negotiated shall not exclude the application of this Article to the rest of a contract if an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract. When an insurer claims that a standard term has been individually negotiated, the burden of proof in this respect shall be incumbent on the insurer.

Section Four

Retroactive and Preliminary Cover

Article 2:401

Retroactive Cover

(1) If, in the case of cover granted for a period before the contract was concluded (retroactive cover), the insurer knows at the time of the conclusion of the contract that no insured risk has occurred, the policyholder shall owe premiums only for the period after the time of conclusion.

(2) If, in the case of retroactive cover, the policyholder knows at the time of the conclusion of the contract that the insured event has occurred, the insurer shall, subject to Article 2:104, provide cover only for the period after the time of the conclusion of the contract.

Article 2:402

Preliminary Cover

(1) When concluding a preliminary insurance contract, the insurer shall issue a cover note containing the information specified in Article 2:501 (a), (b), (d), (e) and (h) if relevant.

(2) Articles 2:201-2:203 and, subject to para. 1 above, Article 2:501 do not apply to preliminary cover.

Article 2:403

Duration of Preliminary Cover

(1) When an applicant for an insurance contract is granted preliminary cover, that cover shall end no sooner than at the time when the cover under the insurance contract is agreed to begin or at the time the applicant receives notice from the insurer definitively rejecting the application, as the case may be.

(2) When preliminary cover is granted to a person who does not apply for an insurance contract with the same insurer, the cover may be granted for a period less than that stated in Article 2:601 para. 1. Such cover may be cancelled by either party giving two weeks notice.

Section Five

Insurance Policy

Article 2:501

Contents

When concluding the insurance contract, the insurer shall issue an insurance policy, together with the general contract terms as far as they are not included in the policy, containing the following information if relevant:

- (a) the name and address of the contracting parties;
- (b) the name and address of the insured and of the beneficiary;
- (c) the name and address of the intermediary;
- (d) the subject matter of the insurance and the risks covered;
- (e) the sum insured and any deductibles;
- (f) the amount of the premium or the method of calculating it;
- (g) when the premium falls due as well as the place and mode of payment;
- (h) the contract period and the liability period;
- (i) the right to avoid the contract in accordance with Article 2:303;
- (j) the law applicable to the contract;
- (k) the existence of an out-of-court complaint and redress mechanism for the applicant and the methods for having access to it;

- (l) the existence of guarantee funds or other compensation arrangements.

Article 2:502

Effects of the Policy

(1) If the terms of the insurance policy differ from those in the policyholder's application or any prior agreement between the parties, such differences as have been highlighted in the policy shall be deemed to have been assented to by the policyholder unless he objects within one month of receipt of the policy. The insurer shall give the policyholder notice in bold print of the right to object to the differences highlighted in the policy.

(2) If the insurer fails to comply with para. 1, the contract shall be deemed to have been agreed on the terms in the policyholder's application or the prior agreement of the parties, as the case may be.

Section Six

Duration of the Insurance Contract

Article 2:601

Duration of the Insurance Contract

(1) The duration of the insurance contract shall be one year. The parties may agree on a different period if indicated by the nature of the risk.

(2) Para. 1 does not apply to personal insurance.

Article 2:602

Prolongation

(1) After the one-year period referred to in Article 2:601 has expired the contract shall be prolonged unless

(a) the insurer has given written notice to the contrary at least one month before the expiry of the contract period stating the reasons for its decision; or

(b) the policyholder has given written notice to the contrary at the latest by the day the contract period expires or within one month after having received the insurer's premium invoice whichever date is later. In the latter case, the one month period shall only start to run if it has been clearly stated on the invoice in bold print.

(2) For the purposes of para. 1 (b) notice shall be deemed to be given as soon as it is dispatched.

Article 2:603

Alteration of Terms and Conditions

(1) In an insurance contract liable to prolongation under Article 2:602, a clause which allows the insurer to alter the premium or any other term or condition of the contract shall be invalid unless the clause provides that

- (a) any alteration shall not take effect before the next prolongation,
- (b) the insurer shall send written notice of alteration to the policyholder no later than one month before the expiry of the current contract period, and
- (c) the notice shall inform the policyholder about his right of termination and the consequences if the right is not exercised.

(2) Para. 1 shall apply without prejudice to other requirements for the validity of alteration clauses.

Article 2:604

Termination after the Occurrence of an Insured Event

(1) A clause providing for termination of the contract after an insured event has occurred shall not be valid unless

- (a) it grants the right to terminate to both parties and
- (b) the policy is not one of personal insurance.

(2) Both the provision for termination and the exercise of any right to terminate must be reasonable.

(3) Any right to terminate shall expire if the party in question has not given written notice of termination to the other party within two months after becoming aware of the insured event.

(4) The insurance cover shall terminate two weeks after notice in accordance with para. 3.

Section Seven

Post-contractual Information Duties of the Insurer

Article 2:701

General Information Duty

Throughout the contract period the insurer shall provide the policyholder without undue delay with information in writing on any change concerning its name and address, its legal form, the address of its head office and of the agency or branch which concluded the contract.

Article 2:702

Further Information upon Request

(1) On the policyholder's request, the insurer shall provide the policyholder without undue delay with information concerning

(a) as far as can reasonably be expected of the insurer, all matters relevant to the performance of the contract;

(b) new standard terms offered by the insurer for insurance contracts of the same type as the one concluded with the policyholder.

(2) Both the policyholder's request and the insurer's response shall be in writing.

Chapter Three

Insurance Intermediaries

Article 3:101

Powers of Insurance Agents

(1) An insurance agent is authorised to perform all acts on behalf of the insurer that according to current insurance industry practice are within the scope of his employment. Any restriction of the agent's authority shall be clearly notified to the policyholder in a separate document. However, the authority of the insurance agent shall at least cover the actual scope of his employment.

(2) In any event the authority of the insurance agent shall include the power:

(a) to inform and advise the policyholder, and

(b) to receive notices from the policyholder.

(3) Relevant knowledge which the insurance agent has or ought to have in the course of his employment shall be deemed to be the knowledge of the insurer.

Article 3:102

Agents of Insurers Purporting to be Independent

If an agent of the insurer purports to be an independent intermediary and acts in breach of duties imposed on such an intermediary by law, the insurer shall be liable for such breach.

Chapter Four

The Risk Insured

Section One

Precautionary Measures

Article 4:101

Precautionary Measures: Meaning

A precautionary measure means a clause in the insurance contract, whether or not described as a condition precedent to the liability of the insurer, requiring the policyholder or the insured, before the insured event occurs, to perform or not to perform certain acts.

Article 4:102

Insurer's Right to Terminate the Contract

(1) A clause which provides that in the event of non-compliance with a precautionary measure the insurer shall be entitled to terminate the contract, shall be without effect unless the policyholder or the insured has breached its obligation with intent to cause the loss or recklessly and with knowledge that the loss would probably result.

(2) The right to terminate shall be exercised by written notice to the policyholder within one month of the time when the non-compliance with a precautionary measure becomes known or apparent to the insurer. Cover shall come to an end at the time of termination.

Article 4:103

Discharge of the Insurer's Liability

(1) A clause that non-compliance with a precautionary measure totally or partially exempts the insurer from liability, shall only have effect to the extent that the loss was caused by the non-compliance of the policyholder or insured with intent to cause the loss or recklessly and with knowledge that the loss would probably result.

(2) Subject to a clear clause providing for reduction of the insurance money according to the degree of fault, the policyholder or insured, as the case may be, shall be entitled to insurance money in respect of any loss caused by negligent non-compliance with a precautionary measure.

Section Two

Aggravation of Risk

Article 4:201

Clauses Concerning Aggravation of Risk

If the insurance contract contains a clause concerning aggravation of the risk insured, the clause shall be without effect unless the aggravation of risk in question is material and of a kind specified in the insurance contract.

Article 4:202

Duty to Give Notice of an Aggravation of Risk

(1) If a clause concerning aggravation of the risk insured requires notification of an aggravation, notification shall be given by the policyholder, the insured or the beneficiary, as appropriate, provided that the person obliged to give notice was or should have been aware of the existence of the insurance cover and of the aggravation of the risk. Notice by another person shall be effective.

(2) If the clause requires notice to be given within a stated period of time, such time shall be reasonable. Notice shall be effective on dispatch.

(3) In the event of breach of the duty of notification, the insurer shall not on that ground be entitled to refuse to pay any subsequent loss resulting from an event within the scope of the cover unless the loss was caused by the aggravation of risk. Other losses resulting from events within the scope of the cover shall remain payable in accordance with Article 4:203 para. 3.

Article 4:203

Sanctions

(1) If the contract provides that, in the event of an aggravation of the risk insured the insurer shall be entitled to terminate the contract, such right shall be exercised by written notice to the policyholder within one month of the time when the aggravation becomes known or apparent to the insurer.

(2) Cover shall expire one month after termination or, if the policyholder is in intentional breach of the duty under Article 4:202, at the time of termination.

(3) If an insured event is caused by an aggravated risk, of which the policyholder is or ought to be aware, before cover has expired, no insurance money shall be payable if the insurer would not have insured the aggravated risk at all. If, however, the insurer would have insured the aggravated risk at a higher premium or on different terms, the insurance money shall be payable proportionately or in accordance with such terms.

Section Three

Reduction of Risk

Article 4:301

Consequences of the Reduction of Risk

(1) If there is a material reduction of risk, the policyholder shall be entitled to request a proportionate reduction of the premium for the remaining contract period.

(2) If the parties do not agree on a proportionate reduction within one month of the request, the policyholder shall be entitled to terminate the contract by written notice given within two months of the request.

Chapter Five

Insurance Premium

Article 5:101

First or Single Premium

When the insurer makes payment of the first or single premium a condition of formation of the contract or of the beginning of cover, that condition shall be without effect unless

- (a) the condition is communicated to the applicant in writing using clear language and warning the applicant that he lacks cover until the premium is paid, and
- (b) a period of two weeks has expired after receipt of an invoice which complies with requirement (a) without payment having been made.

Article 5:102

Subsequent Premium

(1) A clause, providing for the insurer to be relieved of its obligation to cover the risk in the event of non-payment of a subsequent premium, shall be without effect unless

- (a) the policyholder receives an invoice stating the precise amount of premium due as well as the date of payment;
 - (b) after the premium falls due, the insurer sends a reminder to the policyholder of the precise amount of premium due, granting an additional period of payment of at least two weeks, and warning the policyholder of the imminent suspension of cover if payment is not made; and
 - (c) the additional period in requirement (b) has expired without payment having been made.
- (2) The insurer will be relieved of liability after the additional period in para. 1 (b) has expired. Cover will be resumed for the future as soon as the policyholder pays the amount due unless the contract has been terminated in accordance with Article 5:103.

Article 5:103

Termination of the Contract

- (1) On expiry of the period referred to in Article 5:101 (b) or Article 5:102 para. 1 (b), without payment of the premium being made, the insurer shall be entitled to terminate the contract by written notice, provided that the invoice required by Article 5:101 (b) or the reminder required by Article 5:102 para. 1 (b), as the case may be, states the right of the insurer to terminate the contract.
- (2) The contract shall be deemed to be terminated if, as the case may be, the insurer does not bring an action for payment

- (a) of the first premium within two months after expiry of the period mentioned in Article 5:101 (b); or
- (b) of a subsequent premium within two months of expiry of the period mentioned in Article 5:102 para. 1 (b).

Article 5:104

Divisibility of Premium

If an insurance contract is terminated before the contract period has expired, the insurer shall only be entitled to premium in respect of the period prior to termination.

Article 5:105

Right to Pay Premium

The insurer shall not be entitled to refuse payment by a third party if

- (a) the third party acts with the assent of the policyholder; or
- (b) the third party has a legitimate interest in maintaining the cover and the policyholder has failed to pay or it is clear that he will not pay at the time payment is due.

Chapter Six

Insured Event

Article 6:101

Notice of insured event

- (1) The occurrence of an insured event shall be notified to the insurer by the policyholder, the insured or the beneficiary, as appropriate, provided that the person obliged to give notice was or should have been aware of the existence of the insurance cover and of the occurrence of the insured event. Notice by another person shall be effective.
- (2) Such notice shall be given without undue delay. It shall be effective on dispatch. If the contract requires notice to be given within a stated period of time, such time shall be reasonable and in any event no shorter than five days.
- (3) The insurance money payable shall be reduced to the extent that the insurer proves that it has been prejudiced by undue delay.

Article 6:102

Claims Cooperation

- (1) The policyholder, insured or beneficiary, as appropriate, shall cooperate with the insurer in the investigation of the insured event by responding to reasonable requests, in particular for

- information about the causes and effects of the insured event;
- documentary or other evidence of the insured event;
- access to premises related thereto.

(2) In the event of any breach of para. 1 and subject to para. 3, the insurance money payable shall be reduced to the extent that the insurer proves that it has been prejudiced by the breach.

(3) In the event of any breach of para. 1 committed with intent to cause prejudice or recklessly and with knowledge that such prejudice would probably result, the insurer shall not be obliged to pay the insurance money.

Article 6:103

Acceptance of Claims

(1) The insurer shall take all reasonable steps to settle a claim promptly.

(2) Unless the insurer rejects a claim or defers acceptance of a claim by written notice giving reasons for its decision within one month after receipt of the relevant documents and other information, the claim shall be deemed to have been accepted.

Article 6:104

Time of Performance

(1) When a claim has been accepted the insurer shall pay or provide the services promised, as the case may be, without undue delay.

(2) Even if the total value of a claim cannot yet be quantified but the claimant is entitled to at least a part of it, this part shall be paid or provided without undue delay.

(3) Payment of insurance money, whether under para. 1 or para. 2, shall be made no later than one week after the acceptance and quantification of the claim or part of it, as the case may be.

Article 6:105

Late Performance¹⁰

(1) If insurance money is not paid in accordance with Article 6:104, the claimant shall be entitled to interest on that sum from the time when payment was due to the time of payment and at the rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half-year in question, plus seven percentage points.

(2) The claimant shall be entitled to recover damages for any additional loss caused by late payment of the insurance money.

¹⁰ This Article is modelled on Article 3 para. 1 (d) Directive 2000/35/EC.

Chapter Seven

Prescription

Article 7:101

Action for Payment of Premium

Action for payment of premium shall be prescribed after a period of one year from the time when payment is due.

Article 7:102

Action for Payment of Insurance Benefits

(1) In general, action for insurance benefits shall be prescribed after a period of three years from the time when the insurer makes or is deemed to have made a final decision on the claim in accordance with Article 6:103. In any event, however, action shall be prescribed at the latest after a period of ten years from the occurrence of the insured event, except in the case of life assurance for which the relevant period shall be 30 years.

(2) Action for payment of the surrender value of life assurance shall be prescribed after a period of three years from the time when the policyholder receives the final account from the insurer. In any event, however, action shall be prescribed at the latest after a period of 30 years from the termination of the life assurance contract.

Article 7:103

Other Issues Relating to Prescription

Subject to Article 7:101 and Article 7:102 of the PEICL, Articles 14:101 – 14:503 of the Principles of European Contract Law (PECL)¹¹ shall apply to claims arising out of a contract of insurance. The insurance contract may derogate from these provisions in accordance with Article 1:103 para. 2 of the PEICL.

¹¹ Cf. Lando/Beale (eds.), *Principles of European Contract Law, Parts I and II* (Kluwer Law International, The Hague 2000); Lando/Clive/Prüm/Zimmermann (eds.), *Principles of European Contract Law, Part III* (Kluwer Law International, The Hague 2003).

Part Two

Provisions Common to Indemnity Insurance

Chapter Eight

Sum insured and Insured Value

Article 8:101

Maximum Sums Payable

(1) The insurer shall not be obliged to pay more than the amount necessary to indemnify losses actually suffered by the insured.

(2) A clause which provides for the agreed value of the subject-matter insured shall be valid even if the said value exceeds the actual value of the subject-matter, provided that there was no operative fraud or misrepresentation on the part of the policyholder or insured at the time the value was agreed.

Article 8:102

Underinsurance

(1) The insurer shall be liable for any insured loss up to the sum insured even if the sum insured is less than the value of the property insured at the time when the insured event occurs.

(2) However, when the insurer offers cover in accordance with para. 1, it shall be entitled alternatively to offer insurance on the basis that the indemnity to be paid shall be limited to the proportion that the sum insured bears to the actual value of the property at the time of the loss. In that case, moreover, mitigation costs, as defined in Article 9:102, shall be reimbursed in the same proportion.

Article 8:103

Adjustment of Terms in Case of Overinsurance

(1) If the sum insured exceeds the maximum possible loss under the insurance, either party shall be entitled to request a reduction of the sum insured and a corresponding reduction of premium for the remaining contract period.

(2) If the parties do not agree on such a reduction within one month of the request, either party shall be entitled to terminate the contract.

Article 8:104

Multiple Insurance

(1) If the same interest is separately insured by more than one insurer, the insured shall be entitled to claim against any one or more of those insurers to the extent necessary to indemnify losses actually suffered by the insured.

(2) The insurer against which a claim is brought shall pay up to the sum insured under its policy, together with the mitigation costs if any, without prejudice to its rights to contribution from any other insurer.

(3) As between insurers, the rights and obligations referred to in para. 2 shall be in proportion to the amounts for which they are separately liable to the insured.

Chapter Nine

Entitlement to Indemnity

Article 9:101

Causation of Loss

(1) Neither the policyholder nor the insured, as the case may be, shall be entitled to indemnity to the extent that the loss was caused by an act or omission on his part with intent to cause the loss or recklessly and with knowledge that the loss would probably result.

(2) Subject to a clear clause in the policy providing for reduction of the insurance money according to the degree of fault on his part, the policyholder or insured, as the case may be, shall be entitled to indemnity in respect of any loss caused by an act or omission on his part that was negligent.

(3) For the purposes of paras. 1 and 2 causation of loss includes failure to avert or to mitigate loss.

Article 9:102

The Costs of Mitigation

(1) The insurer shall reimburse the costs incurred or the amount of damage suffered by the policyholder or the insured in taking measures to mitigate insured loss, to the extent the policyholder or the insured was justified in regarding the measures as reasonable under the circumstances, even if they were unsuccessful in mitigating the loss.

(2) The insurer shall indemnify the policyholder or the insured, as the case may be, in respect of any measures taken in accordance with para. 1, even if together with the compensation for the loss insured the amount payable exceeds the sum insured.

Chapter Ten

Rights of Subrogation

Article 10:101

Subrogation

- (1) Subject to para. 3 the insurer shall be entitled to exercise rights of subrogation against a third party liable for the loss to the extent that it has indemnified the insured.
- (2) To the extent that the insured waives a right against such a third party in a way that prejudices the insurer's right of subrogation, he shall forfeit his entitlement to indemnity in respect of the loss in question.
- (3) The insurer shall not be entitled to exercise rights of subrogation against a member of the household of the policyholder or insured, a person in an equivalent social relationship to the policyholder or insured, or an employee of the policyholder or insured, except when it proves that the loss was caused by such a person intentionally or recklessly and with knowledge that the loss would probably result.
- (4) The insurer shall not exercise its rights of subrogation to the detriment of the insured.

Chapter Eleven

Insured Persons other than the Policyholder

Article 11:101

Entitlement of the Insured

- (1) In the case of an insurance taken out for a person other than the policyholder, if the insured event occurs, that person shall be entitled to the insurance money.
- (2) The policyholder shall be entitled to revoke such cover, unless
 - (a) the policy provides otherwise; or
 - (b) the insured event has occurred.
- (3) Revocation shall take effect when written notice of revocation is given to the insurer.

Article 11:102

Knowledge of the Insured

Knowledge of a person insured in accordance with Article 11:101 shall not be attributed to the policyholder, unless that person is aware of his status as insured, when the policyholder is obliged to provide relevant information to the insurer.

Article 11:103

Breach of Duty by One Insured

Breach of duty by one insured shall not adversely affect the rights of other persons insured under the same insurance contract, unless the risk is jointly insured.

Chapter Twelve

Insured Risk

Article 12:101

Lack of Insured Risk

(1) If the insured risk exists neither at the time of conclusion of the contract nor at any time during the insurance period, no premium shall be due. However, the insurer shall be entitled to a reasonable sum for expenses incurred.

(2) If the insured risk ceases to exist during the insurance period, the contract shall be deemed to have been terminated at the time that the insurer is notified thereof.

Article 12:102

Transfer of Property

(1) If the title to insured property is transferred, the insurance contract shall be terminated one month after the time of transfer, unless the policyholder and transferee agree on termination at an earlier time. This rule shall not apply if the insurance contract was taken out for the benefit of a future transferee.

(2) The transferee of the property shall be deemed to be the insured from the time that the risk in the insured property is transferred.

(3) Paras. 1 and 2 shall not apply

- (a) if insurer, policyholder and transferee agree otherwise; or
- (b) to a transfer of title by inheritance.

Part Three

Provisions Common to Insurance of Fixed Sums

Chapter Thirteen

Admissibility

Article 13:101

Insurance of Fixed Sums

Only accident, health, life, marriage, birth or other personal insurance may be taken out as insurances of fixed sums.