

Project Group

“Restatement of European Insurance Contract Law”

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**PRINCIPLES OF EUROPEAN INSURANCE CONTRACT LAW
(PEICL)**

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

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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 second sentence, 2:104, 2:304, 13:101, 17:101 and 17:503 are mandatory. Other Articles are mandatory in so far as sanctions for fraudulent behaviour are concerned.
- (2) The contract may derogate from all other provisions as long as such derogation is not to the detriment of the policyholder, the insured or beneficiary.
- (3) Derogation in the sense of para. 2 shall be allowed to the benefit of any party in contracts covering large risks within the meaning of Article 13 para. 27 Directive 2009/138/EC. In group insurance a derogation shall only be held against an individual insured who fulfills the personal characteristics mentioned in Article 13 para. 27(b) or (c) Directive 2009/138/EC, where applicable.

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)¹ 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.

(5) "Liability insurance" means insurance under which the risk is the exposure of the insured to legal liability towards the victim.

(6) "Life insurance" is an insurance in which the obligation of the insurer or the payment of premium depends upon an insured event that is defined exclusively by reference to the death or survival of the person at risk.

(7) "Contracts for group insurance" are contracts between an insurer and a group organiser for the benefit of group members with a common link to the group organiser. A contract for group insurance may cover also family of the group members.

(8) "Accessory group insurance" means group insurance under which group members are automatically insured by belonging to the group and without being able to refuse the insurance.

(9) "Elective group insurance" means group insurance under which group members are insured as a result of personal application or because they have not refused the insurance.

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

¹ 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).

- (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;
- (10) "Compulsory insurance" means an insurance which is taken out in pursuance of an obligation to insure imposed by laws or regulations.

Article 1:203 Language and Interpretation of Documents²

- (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

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-Discrimination³

² Article 1:203 para. 2 is modelled on art. 5 of the Unfair Contract Terms Directive (93/13/EEC).

³ This Article is modelled on the Gender Directive (2004/113/EC) and on Case C-236/09 *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres* [2011] ECR I-773.

(1) Gender, pregnancy, maternity, nationality and racial or ethnic origin shall not be factors resulting in differences in individuals' premiums and benefits.

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

(3) In the case of breach of para. 1, 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.

Article 1:208 Genetic Tests

(1) The insurer shall not ask the applicant, the policyholder or the person at risk to undergo a genetic test or to disclose the results of such a test, nor shall such information be used by the insurer for the purpose of rating risks.

(2) Para. 1 does not apply to personal insurance where the person at risk is 18 years of age or more and the sum insured for this person exceeds EUR 300,000 or the money payable under the policy exceeds EUR 30,000 per year.

Section Three

Enforcement

Article 1:301 Injunctions⁴

(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 2009/22/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

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

⁴ This Article is modelled on the Injunctions Directive (2009/22/EC).

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.

Article 2:106 Genetic Information

This Section shall not apply to the results of genetic tests which are subject to Article 1:208 para. 1.

Section Two

Insurer's Pre-contractual Duties

Article 2:201 Provision of Pre-contractual Documents⁵

(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:

- (a) the name and address of the contracting parties, in particular of the head office and the legal form of the insurer and, where appropriate, of the branch concluding the contract or granting the cover;
- (b) the name and address of the insured and, in the case of life insurance, the beneficiary and the person at risk;
- (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 and the method of calculating it;
- (g) when the premium falls due as well as the place and mode of payment;
- (h) the contract period, including the method of terminating the contract, and the liability period;
- (i) the right to revoke the application or avoid the contract in accordance with Article 2:303 in the case of non-life insurance and with Article 17:203 in the case of life insurance;
- (j) that the contract is subject to the PEICL;
- (k) the existence of an out-of-court complaint and redress mechanism for the applicant and the methods of 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.

⁵ This provision is modelled on arts. 183 to 189 of the Solvency II Directive (2009/138/EC).

(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 Period⁶

(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

⁶ This Article is modelled on the Distance Marketing Directive (2002/65/EC).

- (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 Clauses⁷

(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

⁷ This Article is modelled on the Unfair Contract Terms Directive (93/13/EEC).

(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, in particular of the head office and the legal form of the insurer and, where appropriate, of the branch concluding the contract or granting the cover;**
- (b) the name and address of the insured and, in the case of life insurance, the beneficiary and the person at risk;**
- (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 and the method of calculating it;**
- (g) when the premium falls due as well as the place and mode of payment;**
- (h) the contract period, including the method of terminating the contract, and the liability period;**
- (i) the right to revoke the application or avoid the contract in accordance with Article 2:303 in the case of non-life insurance and with Article 17:203 in the case of life insurance;**
- (j) that the contract is subject to the PEICL;**
- (k) the existence of an out-of-court complaint and redress mechanism for the applicant and the methods of 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 his 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 a consequence of the failure to notify the aggravated risk.

Article 4:203 Termination and Discharge

(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 Performance⁸

(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 eight percentage points.

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

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 insurance for which the relevant period shall be 30 years.

(2) Action for payment of the surrender value of life insurance 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 insurance 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)⁹ 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.

Part Two

⁸ This Article is modelled on art. 3 para. 1(d) of the Late Payment Directive (2000/35/EC).

⁹ 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).

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.

Part Four

Liability Insurance

Chapter Fourteen

General Liability Insurance

Article 14:101 Defence Costs

The insurer shall reimburse defence costs incurred in accordance with Article 9:102.

Article 14:102 Protection of the Victim

Unless the victim gives consent in writing, his position shall not be affected by any settlement of the insurance claim under the policy by the policyholder or the insured and the insurer, whether by agreement, waiver, payment or an equivalent act.

Article 14:103 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; this shall include non-compliance with specific instructions of the insurer after the occurrence of the loss, if done recklessly and with knowledge that otherwise the loss would probably be aggravated.

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

(3) 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 negligent non-compliance with specific instructions of the insurer after the occurrence of the loss.

Article 14:104 Acknowledgement of Liability

(1) A clause in the insurance contract releasing the insurer from its obligations in case the policyholder or insured, as the case may be, accepts or satisfies the victim's claim shall be without effect.

(2) Unless it consents, the insurer shall not be bound by an agreement between the victim and the policyholder or insured, as the case may be.

Article 14:105 Assignment

A clause in an insurance contract depriving the insured of his right to assign his claim under the policy shall be without effect.

Article 14:106 No-Claims-Bonuses / Bonus-Malus-Systems

(1) The policyholder shall have the right to request at any time a statement relating to his claims record for the past five years.

(2) If an insurer makes the premium or other conditions dependent on the number or the amount of claims paid under the policy, due consideration shall be given to the policyholder's claims record with other insurers for the past five years.

Article 14:107 Insured Event

(1) The insured event shall be the fact giving rise to the insured's liability that occurred during the liability period of the insurance contract unless the parties to an insurance contract for commercial or professional purposes define the insured event with reference to other criteria such as the claim made by the victim.

(2) When the contracting parties define the insured event with reference to the claim made by the victim, cover shall be granted in respect of claims made within the liability period or within a subsequent period of no less than five years and which are based on a fact occurred before the end of the liability period. The insurance contract may exclude cover on the basis that, at the time of conclusion of the contract, the applicant was or ought to have been aware of circumstances which he should have expected to give rise to claims.

Article 14:108 Claims Exceeding the Sum Insured

(1) If the total payments due to several victims exceed the sum insured, the payments shall be reduced proportionately.

(2) An insurer who, being unaware of the existence of other victims, has in good faith paid out insurance money to the victims known to it, shall be liable to the other victims up to the balance of the sum insured.

Chapter Fifteen

Direct Claims and Direct Actions

Article 15:101 Direct Claims and Defences

(1) To the extent that the policyholder or the insured, as the case may be, is liable, the victim shall be entitled to a direct claim for compensation against the insurer under the insurance contract provided that

- (a) the insurance is compulsory, or**
- (b) the policyholder or insured is insolvent, or**
- (c) the policyholder or insured has been liquidated or wound up, or**
- (d) the victim has suffered personal injury, or**
- (e) the law governing the liability provides for a direct claim.**

(2) As against the victim, the insurer may raise defences available under the insurance contract unless prohibited by specific provisions making the insurance compulsory. However, the insurer is not entitled to raise any defence based upon the conduct of the policyholder and/or the insured after the loss.

Article 15:102 Information Duties

(1) Upon request by the victim, the policyholder and the insured shall provide the information needed for making a direct claim.

(2) The insurer shall notify the policyholder in writing of any direct claim made against it without undue delay and, at the latest within two weeks following receipt of the claim. If the insurer breaches this obligation, a payment to or acknowledgement of debt towards the victim shall not affect the rights of the policyholder.

(3) If the policyholder fails to provide the insurer with information about the insured event within one month of receiving notice in accordance with para. 2, the policyholder is deemed to agree to a direct settlement of the claim by the insurer. This rule also applies to insureds who have actually received such notice in time.

Article 15:103 Discharge

The payment of insurance money to the policyholder or insured, as the case may be, will only discharge the insurer from its obligation towards the victim if the victim

(a) has waived his direct claim or

(b) has not notified the insurer about his intention to make a direct claim within four weeks of receiving the insurer's request in writing.

Article 15:104 Prescription

(1) Action against the insurer, whether brought by the insured or by the victim, shall be prescribed when the victim's action against the insured is prescribed.

(2) The period of prescription for a claim made by the victim against the insured is suspended from the time, if any, that the insured becomes aware that a direct claim against the insurer has been made until the time that the direct claim is settled or unequivocally rejected by the insurer.

Chapter Sixteen

Compulsory Insurance

Article 16:101 Scope of Application

(1) The PEICL may be chosen by the parties to an insurance contract concluded in performance of an obligation to insure

(a) prescribed by Community law,

(b) prescribed in a Member State, or

(c) prescribed in a Non-Member State to the extent allowed by the law of that State.

(2) The insurance contract shall not satisfy the obligation to take out insurance unless it complies with the specific provisions imposing the obligation.

Part Five

Life Insurance

Chapter Seventeen

Special Provisions for Life Insurance

Section One

Third Parties

Article 17:101 Life Insurance on the Life of a Third Party

An insurance contract on the life of a person other than the policyholder shall be invalid, unless the informed consent of the person at risk is obtained in writing and evidenced by signature. Any substantial later change to the contract, including a change of the beneficiary, an increase in the sum insured and a change in the duration of the contract shall be without effect without such consent. The same applies to an assignment of or encumbrance on the insurance contract or the right to the insurance money.

Article 17:102 Beneficiary of the Insurance Money

(1) The policyholder may designate one or more beneficiaries of the insurance money and may change or revoke such designation, unless the designation has been declared irrevocable. The designation, change or revocation, unless made in a will, shall be made in writing and be sent to the insurer.

(2) The right to designate, change or revoke the designation shall end on the death of the policyholder or the occurrence of the insured event, whichever occurs first.

(3) The policyholder or the heirs of the policyholder, as the case may be, shall be regarded as beneficiaries of the insurance money if

- (a) the policyholder has not designated a beneficiary or**
- (b) the designation of a beneficiary has been revoked and no other beneficiaries have been designated or**
- (c) a beneficiary has died before the insured event occurs and no other beneficiaries have been designated.**

(4) If two or more beneficiaries have been designated and the designation of any of them is revoked or any of them dies before the insured event occurs, the amount of the insurance money that would have been due to the beneficiary or beneficiaries in question shall be distributed among the remaining beneficiaries proportionately, unless otherwise specified by the policyholder in accordance with para. 1.

(5) Subject to any rules on the nullity, voidability or unenforceability of legal acts detrimental to creditors laid down in applicable rules of insolvency law, the insolvent estate of the policyholder shall have no rights concerning the insurance money, the conversion value or the surrender value as long as the money has not been paid to the policyholder.

(6) An insurer paying the insurance money to a person designated in accordance with para. 1 shall be discharged from its obligation to pay, unless it knew that the person in question was not entitled to the insurance money.

Article 17:103 Beneficiary of the Surrender Value

(1) Irrespective of a designation under Article 17:102, the policyholder may also designate a beneficiary of the surrender value, if any, and may change or revoke such designation. The designation, change or revocation shall be made in writing and be sent to the insurer.

(2) The policyholder shall be regarded as the beneficiary of the surrender value if

- (a) no beneficiary of the surrender value has been designated or**
- (b) a designation of a beneficiary of the surrender value has been revoked and no other beneficiaries have been designated or**
- (c) a beneficiary of the surrender value has died and no other beneficiaries have been designated.**

(3) Article 17:102 paras. 2, and 4 to 6 shall apply *mutatis mutandis*.

Article 17:104 Assignment or Encumbrance

(1) Where a beneficiary has been irrevocably designated, an assignment of or encumbrance on the insurance contract or the right to the insurance money by the policyholder shall be without effect unless the beneficiary has consented in writing.

(2) An assignment of or encumbrance on the right to the insurance money by a beneficiary shall be without effect unless the policyholder has consented in writing.

Article 17:105 Renunciation of Estate

Where a beneficiary is an heir of the deceased person at risk and has renounced the estate, the sole fact of renunciation does not affect his position under the insurance contract.

Section Two

Initial Stage and Duration of the Contract

Article 17:201 Applicant's Pre-contractual Information Duties

(1) The information to be provided by the applicant in accordance with Article 2:101 para. 1, shall include those circumstances of which the person at risk was or should have been aware.

(2) The sanctions for a breach of pre-contractual information duties under Articles 2:102, 2:103 and 2:105, but not under Article 2:104, shall only be available for five years after the conclusion of the contract.

Article 17:202 Insurer's Pre-contractual Information Duties

(1) The insurer shall inform the applicant about whether he has a right to participate in profits. The receipt of this information must be acknowledged by an explicit statement contained in a document separate from the application form.

(2) The document to be provided by the insurer in accordance with Article 2:201 shall include the following information:

(a) as regards the insurer: a specific reference to the compulsory publication of the annual report on its solvency and financial condition;

(b) as regards the contractual commitments of the insurer:

(i) an explanation of each benefit and each option,

- (ii) information about the proportion of the premium attributable to each benefit, both main benefits and supplementary benefits, where appropriate;
- (iii) the methods of calculation and distribution of bonuses including a specification of the applicable supervisory law;
- (iv) an indication of surrender and paid-up values and the extent to which they are guaranteed;
- (v) for unit-linked policies: an explanation of the units to which the benefits are linked, and an indication of the nature of the underlying assets;
- (vi) general information on the tax arrangements applicable to the type of policy.

(3) In addition, specific information shall be supplied in order to facilitate a proper understanding of risks underlying the contract which are assumed by the policyholder.

(4) If the insurer quotes in figures the amount of the possible benefits over and above the contractually guaranteed payments it shall provide the applicant with a model calculation which states the possible maturity benefit based on the actuarial principles for premium calculation with three different rates of interest. This shall not apply to insurance contracts covering risks for which the insurer is uncertain to be liable nor to unit-linked policies. The insurer shall clearly and comprehensibly indicate to the policyholder that the model calculation only represents a model based on fictitious assumptions and that the contract does not guarantee possible payments.

Article 17:203 Cooling-off Period¹⁰

(1) For contracts of life insurance, the cooling-off period laid down in Article 2:303 para. 1 shall be one month after receipt of acceptance or delivery of the documents referred to in Article 2:501 and Article 17:202, whichever is the later.

(2) The right of the policyholder to avoid the contract in accordance with Article 2:303 para. 1 shall lapse one year after the conclusion of the contract.

Article 17:204 Policyholder's Right to Terminate the Contract

(1) The policyholder shall be entitled to terminate a contract of life insurance which does not attract a conversion value or a surrender value, provided that the termination does not take effect earlier than one year after the conclusion of the contract. The right to terminate before the end of the contract period may be excluded where a single premium has been paid. Termination shall be in writing and become effective two weeks after receipt of notice of termination by the insurer.

(2) If the contract of life insurance has attracted a conversion value or surrender value, Articles 17:601 to 17:603 shall apply.

Article 17:205 Insurer's Right to Terminate the Contract

The insurer shall be entitled to terminate a contract of life insurance only to the extent permitted by this Chapter.

¹⁰ Article 17:203 para. 1 is modelled on art. 35 of the Life Assurance Consolidation Directive (2002/83/EC) and art. 6 of the Distance Marketing Directive (2002/65/EC).

Section Three

Changes during the Contract Period

Article 17:301 Insurer's Post-Contractual Information Duties

- (1) Where applicable, the insurer shall provide the policyholder annually with a written statement of the current value of the bonuses attached to the policy.**
- (2) In addition to the requirements of Article 2:701, the insurer shall inform the policyholder without undue delay about any change concerning:**
 - (a) the policy conditions, both general and special;**
 - (b) in the event of a change in the policy conditions or an amendment of the PEICL: the information listed in Article 2:201(f) and (g) as well as in Article 17:202 para. 2(b) points i to v.**
- (3) Article 17:202 para. 4 shall also apply where the figures relating to the estimated amount of possible benefits are provided at any time during the contract period. Where the insurer has provided figures, whether before or after the conclusion of the contract, about the potential future development of profit participation, the insurer shall inform the policyholder about any differences between the actual development and the initial data.**

Article 17:302 Aggravation of Risk

In a life insurance contract, a clause specifying age or deterioration in health as aggravations of risk within the meaning of Article 4:201 shall be regarded as an abusive clause under Article 2:304.

Article 17:303 Adjustment of Premium and Benefits Payable

- (1) In a life insurance contract covering risks for which the insurer is certain to be liable, the insurer shall only be entitled to an adjustment in accordance with paras. 2 and 3.**
- (2) An increase of premium shall be permissible where there has been an unforeseeable and permanent change in respect of the biometric risks used as the basis for calculating the premium, where an increase is necessary to guarantee the insurer's continued ability to pay out insurance benefits and where the increase has been agreed by an independent trustee or the supervisory authority. The policyholder shall be entitled to offset the increase in premium with an appropriate reduction of the insurance benefits.**
- (3) In the case of a paid-up policy, the insurer shall be entitled to reduce the insurance benefits under the conditions set out in para. 2.**
- (4) An adjustment in accordance with para. 2 or 3 shall not be permitted**
 - (a) in so far as an error has been committed in the calculation of the premium and/or benefits of which a competent and diligent actuary ought to have been aware, or**
 - (b) where the underlying calculation is not applied to all contracts including those concluded after the adjustment.**
- (5) An increase of premium or a reduction of benefits shall become effective three months after the insurer has provided the policyholder with written notice about the increase of premium or reduction of benefits, the reasons for this and about the policyholder's own right to demand a reduction of benefits.**

(6) In a life insurance contract covering risks for which the insurer is certain to be liable, the policyholder shall be entitled to a decrease of premium where, due to an unforeseeable and permanent change in respect of the biometric risks used as the basis for calculating the premium, the original amount of premium is not appropriate and necessary in order to guarantee the insurer's continued ability to pay insurance benefit. The decrease has to be agreed by an independent trustee or the supervisory authority.

(7) The rights set forth in this Article may be exercised not earlier than five years after the conclusion of the contract.

Article 17:304 Alteration of Terms and Conditions

(1) A clause which allows the insurer to alter the terms or conditions other than the premium and benefits payable shall be invalid, unless the alteration is required to

(a) comply with an amendment of supervisory law including binding measures taken by the supervisory authority, or

(b) comply with an amendment of mandatory rules of the applicable national law on employers' pension plans, or

(c) comply with an amendment of national rules imposing specific requirements on a contract of life insurance in order to qualify for special tax treatment or for state subsidies, or

(d) substitute a clause of the contract in accordance with the second sentence of Article 2:304 para. 2.

(2) The alteration shall become effective at the start of the third month after the policyholder has received written notice informing the policyholder about the alteration and the reasons for it.

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

Section Four

Relation to National Laws

Article 17:401 Pension Plans

A life insurance contract relating to a pension plan shall be subject to the mandatory rules of the applicable national law on pension plans. The PEICL shall only apply to the extent compatible with these rules.

Article 17:402 Tax Treatment and State Subsidies

The PEICL shall not affect national rules imposing specific requirements on a contract of life insurance in order to qualify for special tax treatment or for state subsidies. In the case of a conflict between such requirements of applicable national law and provisions of the PEICL, the latter may be derogated from.

Section Five

Insured Event

Article 17:501 Insurer's Investigation and Information Duty

(1) An insurer which has reason to believe that the insured event may have occurred shall take reasonable steps to ascertain this.

(2) The insurer, knowing that the insured event has occurred, shall make best efforts in the circumstances to discover the identity and address of the beneficiary and inform that person accordingly. This information shall be provided no later than 30 days after the insurer becomes aware of the identity and address of the beneficiary.

(3) If an insurer is in breach of para. 1 or 2, the prescription of the beneficiary's claim shall be suspended until the beneficiary acquires knowledge of his actual entitlement.

Article 17:502 Suicide

(1) If, within one year after the conclusion of the contract, the person at risk commits suicide, the insurer shall be discharged from its liability to pay the insurance money. If so, the insurer shall pay the surrender value and any profits in accordance with Article 17:602.

(2) Para. 1 shall not apply if

(a) the person at risk, when committing suicide, acts in a mental state precluding the ability to freely determine his intent, or

(b) it is proved beyond any reasonable doubt that, at the time of conclusion of the contract, the person at risk did not intend to commit suicide.

Article 17:503 Intentional Killing of the Person at Risk

(1) When a beneficiary kills the person at risk intentionally his designation as a beneficiary shall be deemed to be revoked.

(2) An assignment of the claim to the insurance money shall be without effect if the assignee kills the person at risk intentionally.

(3) When the policyholder who is also the beneficiary kills the person at risk intentionally, no insurance money shall be payable.

(4) When the beneficiary or the policyholder who kills the person at risk does so justifiably, such as in the case of legitimate self-defence, this Article shall not apply.

Section Six

Conversion and Surrender

Article 17:601 Conversion of the Contract

(1) Article 5:103 shall not apply to contracts of life insurance which have attracted a conversion value or a surrender value. Such contracts shall be converted into paid-up policies unless the policyholder requires payment of the surrender value within four weeks after receiving the information referred to in para. 2.

(2) The insurer shall inform the policyholder of the conversion value and the surrender value within four weeks of the expiry of the period referred to in Article 5:101(b) or Article 5:102 para. 1(b) and request the policyholder to choose between conversion and the payment of the surrender value.

(3) The request for conversion or payment of the surrender value shall be in writing.

Article 17:602 Surrender of the Contract

(1) The policyholder may at any time require the insurer in writing to pay, in part or in full, the surrender value which the policy has attracted, provided that this does not take effect earlier than one year after the conclusion of the contract. The contract shall be adjusted or terminated accordingly.

(2) Subject to Article 17:601, if a contract of life insurance which has attracted a surrender value is terminated, rescinded or avoided by the insurer, it is obliged to pay the surrender value, even in the case of Article 2:104.

(3) The insurer shall inform the policyholder upon request but in any case every year about the current amount of the surrender value and the extent to which it is guaranteed.

(4) The share of any profit to which the policyholder is entitled shall be paid in addition to the surrender value, unless the share has already been taken account of in the calculation of the surrender value.

(5) Sums due under this Article shall be paid no later than two months after the receipt of the policyholder's request by the insurer.

Article 17:603 Conversion Value; Surrender Value

(1) The insurance contract shall state the way the conversion value and/or the surrender value is calculated in accordance with the law of the home Member State of the insurer. The stated way of calculating the surrender and/or conversion value shall comply with established actuarial principles and with para. 2.

(2) When the insurer deducts the costs of concluding the contract, it shall do so in equal amounts and over a period of no less than five years.

(3) The insurer is entitled to deduct an appropriate amount, which is calculated in accordance with established actuarial principles, to cover costs related to the payment of the surrender value, unless the calculation already includes such reduction.

Part Six

Group Insurance

Chapter Eighteen

Special Provisions for Group Insurance

Section One

Group Insurance in General

Article 18:101 Applicability

Contracts for group insurance are subject to the PEICL provided that the group organiser and the insurer have made the agreement in accordance with Article 1:102. Group insurance is either accessory and subject to Section 2 of this Chapter or elective and subject to Section 3 of this Chapter.

Article 18:102 General Duty of Care of the Group Organiser

(1) In the negotiation and performance of a contract for group insurance, the group organiser shall act dutifully and in good faith taking account of the legitimate interests of the group member.

(2) The group organiser shall forward any relevant notices issued by the insurer to the group members and inform them about any amendments to the contract.

Section Two

Accessory Group Insurance

Article 18:201 Application of the PEICL

Where necessary, the PEICL shall be applied to accessory group insurance *mutatis mutandis*.

Article 18:202 Information Duties

(1) When a group member joins the group, the group organiser shall without undue delay inform the member about

- (a) the existence of the insurance contract,
- (b) the extent of cover,
- (c) any precautionary measures and any other requirements for preserving cover, and
- (d) the claims procedure.

(2) The burden of proving that the group member has received information required by para. 1 shall lie with the group organiser.

Article 18:203 Termination by the Insurer

(1) For the purposes of Article 2:604, the exercise of the right of termination by the insurer shall only be regarded as reasonable if it is limited to the exclusion from cover of the group member to whom the insured event occurred.

(2) For the purposes of Article 4:102 and Article 4:203 para. 1, the exercise of the right of termination by the insurer shall only have the effect of excluding those group members from cover who have not taken the required precautionary measures or whose risks were aggravated, as the case may be.

(3) For the purpose of Article 12:102 termination of the insurance contract shall only have the effect of excluding group members who have transferred their title to insured property from cover.

Article 18:204 Right to Continue Cover – Group Life Insurance

(1) If a contract for accessory group life insurance is terminated or if the member leaves the group, the cover ends after three months or with the expiry of the contract for group life insurance, whichever is earlier. When this occurs, the group member shall have a right to equivalent cover under a new individual contract with the insurer concerned without a new assessment of the risk.

(2) The group organiser shall inform the group member in writing without undue delay about

- (a) the imminent termination of his cover under the contract for group life insurance,**
- (b) his rights under para. 1 and**
- (c) how to exercise those rights.**

(3) If the group member has indicated his intention to exercise his right under Article 18:204 para. 1, the contract between the insurer and the group member shall continue as an individual insurance contract at a premium calculated on the basis of an individual policy at that time without taking into account the current state of health or age of the group member.

Section Three

Elective Group Insurance

Article 18:301 Elective Group Insurance: General

(1) Elective group insurance is deemed to be a combination of a framework contract between the insurer and the group organiser and individual insurance contracts concluded within such a framework by the insurer and the group members.

(2) The PEICL apply to the individual insurance contracts where the group organiser and the insurer have agreed on their application but, except for Articles 18:101 and 18:102, the PEICL do not apply to the framework contract.

Article 18:302 Alteration of Terms and Conditions

Alteration of terms and conditions of the framework contract shall only affect the individual insurance contracts if effected in compliance with the requirements of Articles 2:603, 17:303 and 17:304, as appropriate.

Article 18:303 Continuation of Cover

Termination of the framework contract or cessation of membership on the part of an individual group member shall not have any effect on the insurance contract between the insurer and the group member.