

Table of Contents

| | |
|--------------------------------------------------------------------------------------------------------------------------|--------|
| Our Sponsors | xxxi |
| Preface | xxxiii |
| Members of the Group | xxxv |
| Members of the Drafting Committee | xxxvi |
| List of Rapporteurs | xxxvii |
| Publications on the PEICL | xxxix |
| Introduction | xlix |
| Principles of European Insurance Contract Law (PEICL): Rules | I |
| Principles of European Insurance Contract Law (PEICL): Rules, Comments and Notes | 27 |
| 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 | |
| Comments | |
| Substantive Scope: Substantive Private Insurance Contract Law | 29 |
| Mutual Insurance | 29 |
| Social Insurance Law | 29 |
| Law of Insurance Supervision and Other Public Law on Insurance | 30 |

| | |
|---------------------------------------------------------|----|
| International Insurance Contract Law (Conflict of Laws) | 30 |
| Law of Insurance Intermediaries | 30 |
| Marine Insurance | 31 |
| Reinsurance | 31 |
| Notes | |
| Application to Private Insurance Contracts | 31 |
| Mutual Insurance | 32 |
| Marine Insurance | 32 |
| Reinsurance | 32 |
| Other Specific Branches of Insurance | 33 |
| Article 1:102: Optional Application | |
| Comments | |
| Basic Principle | 33 |
| Legal Nature of Opting-in | 33 |
| Priority over Conflict Rules | 34 |
| Domestic Insurance Contracts | 34 |
| No Partial Choice | 35 |
| Effect on Intermediaries | 35 |
| Note | 35 |
| Article 1:103: Mandatory Character | 36 |
| Comments | |
| Focus on Mandatory Law | 38 |
| Technique | 39 |
| Notes | |
| Mandatory Acts | 40 |
| Single Mandatory Provisions | 40 |
| Minimum Protection Acts | 41 |
| Single Minimum Protection Provisions | 41 |
| Beneficiaries of Mandatory and Minimum Protection Rules | 42 |
| Article 1:104: Interpretation | |
| Comments | |
| The Objective | 43 |
| Interpretation and Development | 44 |
| Textual Interpretation | 44 |
| Context | 44 |

| | |
|----------------------------------------|----|
| Good Faith and Fair Dealing | 44 |
| Certainty in Contractual Relationships | 45 |
| Uniform Application | 45 |
| Protection of Policyholders | 45 |

| | |
|------|----|
| Note | 46 |
|------|----|

Article 1:105: National Law and General Principles

| | |
|-------------------------------------------------------|----|
| Comments | |
| Basic Principle | 46 |
| Mandatory National Provisions | 46 |
| Supervisory Law | 47 |
| Internationally Mandatory Provisions | 47 |
| Exceptional Recourse to Mandatory National Provisions | 47 |
| Filling Gaps | 48 |
| General Principles of Contract Law | 48 |

| | |
|------|----|
| Note | 48 |
|------|----|

Section Two: General Rules

Article 1:201: Insurance Contract

| | |
|-------------------------|----|
| Comments | |
| Insurance Contract | 49 |
| Insured Event | 50 |
| Indemnity Insurance | 50 |
| Insurance of Fixed Sums | 50 |

| | |
|------------------------------------------------------------|----|
| Notes | |
| The Pros and Cons of Defining the Insurance Contract | 51 |
| Standard Elements of Definitions of the Insurance Contract | 51 |
| The Insurer’s Obligation | 52 |
| Uncertain Event | 52 |
| Definitions of Other Terms | 52 |

Article 1:202: Further Definitions

| | |
|----------------|----|
| Comments | |
| Introduction | 53 |
| Insured | 53 |
| Beneficiary | 54 |
| Person at Risk | 54 |

| | |
|--------------------------------------------------------------------|--------|
| Victim | 54 |
| Insurance Agent | 54 |
| Premium | 55 |
| Contract Period | 55 |
| Insurance Period | 55 |
| Liability Period | 56 |
| Note | 56 |
| Article 1:203: Language and Interpretation of Documents | |
| Comments | |
| Relationship to the Principles of European Contract Law | 56 |
| Transparency | 57 |
| Language of Documents | 57 |
| Sanctions | 58 |
| Notes | |
| Transparency | 58 |
| Language | 59 |
| In dubio contra stipulatorem | 59 |
| Article 1:204: Receipt of Documents: Proof | |
| Comments | |
| Notes | |
| General Law of Evidence | 60 |
| Specific Rules of Insurance Law | 60 |
| Article 1:205: Form of Notice | |
| Comments | |
| Consensual and Formal Contracts | 61 |
| Proof | 61 |
| Notice | 62 |
| Persons Favoured | 62 |
| No Particular Form Being Required | 62 |
| Notices by the Insurer | 63 |

Notes

Community Law 63

The Kind and Context of the Notice 63

General Principle: No Formal Requirements 64

An Example: Notice of an Insured Event 64

Article 1:206: Imputed Knowledge 65

Comments

The Issues 65

Imputation and Agency 66

Persons Whose Knowledge May Be Imputed 66

Notes

General Law of Agency 67

Specific Provisions for Insurance Contracts 67

Knowledge of the Policyholder’s Agent 67

When Policyholder and Insured are Not Identical 68

Article 1:207: Non-Discrimination

Comments

Insurance and Discrimination 69

Equal Treatment of Men and Women 70

Non-Discrimination on Grounds of Nationality, Racial or Ethnic Origin 71

Sanctions 72

Burden of Proof 72

Note 72

Section Three: Enforcement

Article 1:301: Injunctions

Comments

Enforcement of Mandatory Rules by Injunction 73

Measures by Qualified Entities 74

Notes

Background in Community Law 74

Implementing Provisions 74

Article 1:302: Out-of-court Complaint and Redress Mechanisms

Comments

Out-of-court Complaint and Redress Mechanisms under National Law 75

Relationship to the Principles of European Insurance Contract Law 75

Note

76

Chapter Two:

Initial Stage and Duration of the Insurance Contract**Section One: Applicants Pre-Contractual Information Duty****Article 2:101: Duty of Disclosure**

Comments

Information Imbalance 77

The Timing of the Duty 77

Questionnaires 78

Relative Knowledge 78

Inside Knowledge: The Alter Ego 78

Outside Knowledge: The Knowledge of Agents 79

Enquiry or Investigation 79

Notes

Survey 80

Duty of Spontaneous Disclosure 80

Duty to Answer the Insurer's Questions 81

Approximation 81

Article 2:102: Breach

81

Comments

Remedies Available to Insurers 82

Termination (Article 2:102 paras. 2 (second sentence), 3 and 4) 82

Variation (Article 2:102 para. 2) 82

Notice (Article 2:102 para. 2) 83

Discharge (Article 2:102 para. 5) 83

Notes

The All-or-Nothing Principle 83

The Proportional Reduction of the Insurance Money 84

Approximation 85

Innocent Breach 85

Article 2:103: Exceptions

| | |
|-----------------------------------------------------------------|----|
| Comments | |
| Unanswered Questions | 86 |
| Immaterial Information | 86 |
| The Reasonable Insurer | 87 |
| Waiver | 87 |
| Information Known to Insurers | 87 |
| Effects of the Exceptions | 88 |
| Notes | |
| Obvious Defects of the Policyholder's Answer, Article 2:103(a) | 88 |
| Immaterial Information, Article 2:103(b) | 88 |
| The Insurer's Knowledge and Behaviour, Article 2:103(c) and (d) | 89 |

Article 2:104: Fraudulent Breach

| | |
|-------------------------------|----|
| Comments | |
| The Range of Remedies | 89 |
| The Impact of Fraud | 89 |
| Avoidance | 90 |
| The Position of Policyholders | 90 |
| Notes | 91 |

Article 2:105: Additional Information

| | |
|---------|----|
| Comment | 91 |
| Note | 91 |

Section Two: Insurers Pre-Contractual Duties

| | |
|--------------------------------------------------------------|----|
| Article 2:201: Provision of Pre-Contractual Documents | 92 |
| Comments | |
| Pre-Contractual Documents in General | 93 |
| Duty to Provide an Applicant with a Pre-Contractual Document | 93 |
| Pre-Contractual Documents in Special Branches of Insurance | 93 |
| Right to a Copy of the Completed Documents | 93 |
| Form of Documents | 94 |

| | |
|-----------------------------------------------------------------|-----|
| Notes | 94 |
| European Directives and their Implementation | 94 |
| The Kind of Information to Be Given | 95 |
| Stricter Requirements under National Laws | 95 |
| Information Duty Drafted in General Terms | 95 |
| Application Form Provided by the Insurer, Article 2:201 para. 3 | 95 |
| | |
| Article 2:202: Duty to Warn about Inconsistencies in the Cover | |
| | |
| Comments | |
| General Remarks | 96 |
| Duty to Assist the Applicant | 96 |
| Consequences of Failure to Assist | 98 |
| Damages | 98 |
| Termination | 98 |
| | |
| Notes | |
| Community Law | 99 |
| National Law | 99 |
| Sanctions | 100 |
| | |
| Article 2:203: Duty to Warn about Commencement of Cover | |
| | |
| Comments | |
| Problems of Commencement of Cover in Practice | 101 |
| Duty to Warn | 101 |
| | |
| Notes | |
| Community Law | 101 |
| The Sanction of Immediate Cover | 102 |
| Incomplete and Unclear Sanctions | 102 |
| | |
| Section Three: Conclusion of the Contract | |
| | |
| Article 2:301: Manner of Conclusion | |
| | |
| Comments | |
| The Principles of European Contract Law | 103 |
| Agreement | 103 |
| Ways of Concluding an Insurance Contract | 104 |
| Insurance Contract | 104 |
| Mandatory Character | 105 |
| Proof | 105 |

Notes

| | |
|----------------------------------|-----|
| A Matter of General Contract Law | 105 |
| Consensual Contract | 106 |

Article 2:302: Revocation of an Application for Insurance

Comments

| | |
|--------------------------------------------------------------------------|-----|
| An Application for Insurance | 107 |
| Revocation by the Applicant | 107 |
| Time for the Arrivals of Revocations and Acceptances Sent Electronically | 107 |
| Effectiveness of Revocation | 108 |

Notes

| | |
|----------------------------------|-----|
| The Roles of Offeror and Offeree | 109 |
| The Binding Nature of an Offer | 109 |

Article 2:303: Cooling-off Period 110

Comments

| | |
|----------------------------------------|-----|
| Introduction | 111 |
| Structure of the Rule | 111 |
| Avoidance | 111 |
| Commencement of the Cooling-off Period | 111 |
| Timeliness of Notice to Withdraw | 112 |
| The Exceptions to the General Rule | 112 |

Notes

| | |
|--------------------------------------------------------|-----|
| Community Law | 113 |
| Implementation for Life Assurance and Similar Products | 114 |
| General Right of Withdrawal | 114 |
| Exception for Short-Term Insurance Contracts | 114 |
| Exception for Prolongation of Pre-Existing Contracts | 115 |
| Exception for Preliminary Cover | 115 |

Article 2:304: Abusive Clauses 115

Comments

| | |
|---------------------------------------------|-----|
| Unfair Contract Terms Directive (93/13/EEC) | 116 |
| Persons Protected under Article 2:304 | 116 |
| Core terms | 116 |
| Individually Negotiated Terms | 117 |
| Fairness Test | 118 |
| Grey List | 118 |

| | |
|----------------------------------------------------------------------|-----|
| Sanctions | 118 |
| Burden of Proof: Unfairness | 119 |
| Notes | |
| Implementation of EC Law | 122 |
| Additional and Broader Provisions on the Fairness of Insurance Terms | 123 |
| Absence of Specific Judicial Review | 124 |
| Non-Negotiated Contracts, Article 2:304 paras. 1 and 4 | 124 |
| Exceptions from Judicial Review, Article 2:304 para. 3 | 125 |
| Consequences of Invalidity of a Clause, Article 2:304 para. 2 | 125 |
| Section Four: Retroactive and Preliminary Cover | |
| Article 2:401: Retroactive Cover | 125 |
| Comments | |
| Issues of Risk | 126 |
| Knowledge of the Insurer | 126 |
| Knowledge of the Policyholder | 126 |
| Notes | |
| General Permission for Retroactive Cover | 127 |
| Sector-Specific Permission for Retroactive Cover | 128 |
| Article 2:402: Preliminary Cover | |
| Comments | |
| Preliminary Cover | 129 |
| Evidencing the Preliminary Cover | 129 |
| Exclusion of Articles 2:201 to 2:203 | 130 |
| Notes | |
| Survey | 130 |
| Form and Information Requirements: Germany, Greece | 130 |
| France | 131 |
| Belgium | 131 |
| Luxembourg | 132 |
| United Kingdom | 132 |
| Terms of the Cover Note | 132 |
| Article 2:403: Duration of Preliminary Cover | |
| Comments | |
| Duration of the Preliminary Cover | 133 |

| | |
|---------|-----|
| Notes | |
| Germany | 134 |
| France | 134 |

Section Five: Insurance Policy

Article 2:501: Contents

| | |
|---------------------------------|-----|
| Comments | |
| Insurance Policy | 135 |
| Evidence | 135 |
| Parol Evidence Rule | 136 |
| Preliminary Insurance Contracts | 136 |

| | |
|----------------------------------------------------|-----|
| Notes | |
| Issue of a Document | 136 |
| Information to Be Provided – Detailed Requirements | 136 |
| Mixture: General Provision with Some Details | 137 |
| Means of Proof | 137 |
| Constitutive Effect | 138 |
| Issue of General Contract Terms | 138 |
| Cover Notes | 138 |
| Written Form | 138 |

Article 2:502: Effects of the Policy

| | |
|----------|-----|
| Comments | 139 |
|----------|-----|

| | |
|--------------------------------------------------------------|-----|
| Notes | |
| Legal Presumption of Approval | 140 |
| Term for Contradiction | 140 |
| Preconditions for Presumption | 141 |
| Signature as Means of Protection | 141 |
| Legal Presumption of Contract in Accordance with Application | 141 |

Section Six: Duration of the Insurance Contract

Article 2:601: Duration of the Insurance Contract

| | |
|---------------------------------|-----|
| Comments | |
| Comparative Survey | 142 |
| Structure of the Rule | 143 |
| Duration of the Contract Period | 143 |

| | |
|--------------------------------------------------------------------------------|-----|
| Effects of Violation | 144 |
| Personal Insurance | 144 |
| Notes | |
| Maximum Period | 144 |
| Personal Insurance | 145 |
| Article 2:602: Prolongation | |
| Comments | |
| The Need for Prolongation | 146 |
| Prolongation and Renewal | 146 |
| Adjustment of Contract | 147 |
| Form of Notice | 147 |
| Term of Notice | 147 |
| Notes | |
| Statutory and Contractual Prolongation | 148 |
| Period of Prolongation | 148 |
| Prolongation and Renewal | 149 |
| Article 2:603: Alteration of Terms and Conditions | 149 |
| Comments | |
| The Need for a Rule for Alteration | 150 |
| The Need for a Special Rule for Insurance Contracts | 150 |
| The Concept Underlying Article 2:603 | 150 |
| Minimum Standards for an Alteration Clause | 151 |
| Notes | |
| Article 2:603 para. 1 | 151 |
| Article 2:603 para. 1(a) – Commencement of Alteration | 152 |
| Article 2:603 para. 1(b) – Notice | 152 |
| Article 2:603 para. 1(c) – Right of Termination | 152 |
| Article 2:604: Termination after the Occurrence of an Insured Event | |
| Comments | |
| The Need for Termination | 153 |
| Statutory and Contractual Rights to Terminate | 153 |
| Time Limits | 153 |
| Other Rights to Terminate | 154 |

Notes

| | |
|----------------------------------------------------------------|-----|
| Article 2:604 para. 1 | 154 |
| Article 2:604 para. 2 – Reasonableness | 155 |
| Article 2:604 para. 3 – Expiration of the Right of Termination | 155 |
| Article 2:604 para. 4 – End of Cover | 155 |

Section Seven: Post-Contractual Information Duties of the Insurer

Article 2:701: General Information Duty

Comments

| | |
|---------------------------------------------------------------|-----|
| The Need for Information During the Period of Insurance Cover | 156 |
| Information to Be Given in All Cases | 157 |
| Information about Changes in the Contract | 157 |
| Updating Information | 157 |
| Manner of Communication | 157 |

Notes

| | |
|----------------------------------------------------------------|-----|
| Survey | 158 |
| Life Assurance Directive | 158 |
| Legal Expenses Insurance Directive | 159 |
| Further Post-Contractual Information Duties under National Law | 159 |

Article 2:702: Further Information upon Request

Comments

| | |
|-------------------------------------------------------|-----|
| Purpose | 160 |
| Limits | 160 |
| Information on Changes in Standard Terms of Insurance | 161 |
| Manner of Communication | 161 |
| Remedies | 161 |

Note

161

Chapter Three:
Insurance Intermediaries

Article 3:101: Powers of Insurance Agents

Comments

| | |
|--------------------------------------------------------|-----|
| Legal and Contractual Authority of the Insurance Agent | 162 |
| Minimum Authority | 163 |
| Imputation of the Agent's Knowledge | 163 |
| Liability of the Agent | 163 |

Notes

| | |
|-------------------------------------------------------------------------------|-----|
| First Sentence of Article 3:101 para. 1 – Statutory Powers | 164 |
| Second and Third Sentences of Article 3:101 para. 1 – Contractual Limitations | 164 |
| Article 3:101 para. 2 – Minimum Powers | 164 |
| Article 3:101 para. 3 – Imputation of the Agent’s Knowledge | 165 |

Article 3:102: Agents of Insurers Purporting to Be Independent

Comments

| | |
|--------------------------------------|-----|
| Rationale | 166 |
| Scope | 166 |
| Actual Authority of “Pseudo-brokers” | 166 |

Note

| | |
|--|-----|
| | 167 |
|--|-----|

Chapter Four:
The Risk Insured

Section One: Precautionary Measures

Article 4:101: Precautionary Measures: Meaning

Comments

| | |
|--------------------------------------|-----|
| General Remarks | 168 |
| The Concept of Precautionary Measure | 169 |

Notes

| | |
|-----------------------------------------|-----|
| General Remarks | 169 |
| Finland and Sweden | 170 |
| Austria, Germany, Switzerland | 170 |
| United Kingdom | 170 |
| France | 170 |
| Belgium, Luxembourg and the Netherlands | 171 |
| Spain | 171 |
| Poland | 171 |
| Greece | 171 |

Article 4:102: Insurer’s Right to Terminate the Contract

Comments

| | |
|------------------------------------|-----|
| Termination and Non-Prolongation | 172 |
| Termination under Other Provisions | 172 |
| Manner of Termination | 172 |

Notes

| | |
|---------------------------------------------------|-----|
| Ipsa iure Avoidance or Declaration of Termination | 173 |
| Termination ex tunc or ex nunc | 173 |
| Causation: France and United Kingdom | 173 |
| Causation in Other Member State Laws | 174 |
| Fault: France, the Netherlands and United Kingdom | 174 |
| Fault: Other European Laws | 174 |
| Written Notice and Time Limits | 175 |
| End of Cover | 175 |
| National Peculiarities | 175 |

Article 4:103: Discharge of the Insurer's Liability

Comments

| | |
|-----------------|-----|
| General Remarks | 176 |
| Causation | 176 |
| Fault | 176 |

Notes

| | |
|----------------------------|-----|
| General Remarks | 177 |
| Causation | 177 |
| France | 177 |
| United Kingdom | 178 |
| Italy | 178 |
| Belgium and Luxembourg | 178 |
| Austria and Germany | 178 |
| The Netherlands | 178 |
| Further Objective Elements | 179 |
| Fault | 179 |
| Germany | 179 |
| Finland | 179 |
| Austria | 180 |
| Belgium and Luxembourg | 180 |

Section Two: Aggravation of Risk

Article 4:201: Clauses Concerning Aggravation of Risk

Comments

| | |
|---------------------------|-----|
| Allocation of Risk | 181 |
| The Need for Rules of Law | 181 |
| Aggravation of Risk | 182 |
| Clauses | 182 |

| | |
|--------------------------------------------------------------|-----|
| Notes | |
| Information Requirements | 182 |
| Material Aggravation of Risk | 183 |
| Aggravation Specified in the Contract | 183 |
| | |
| Article 4:202: Duty to Give Notice of an Aggravation of Risk | 183 |
| | |
| Comments | |
| The Need for Notification | 184 |
| The Manner of Notification | 184 |
| Breach | 184 |
| | |
| Notes | |
| Notice in Reasonable Time | 185 |
| Insurer's Duty to Pay Insurance Money | 185 |
| | |
| Article 4:203: Sanctions | 185 |
| | |
| Comments | |
| Reconsideration of the Risk by Insurers | 186 |
| Time for Policyholders to Find Alternative Cover | 186 |
| Discharge | 186 |
| | |
| Notes | |
| Expiry of Cover | 187 |
| Discharge | 187 |
| | |
| Section Three: Reduction of Risk | |
| | |
| Article 4:301: Consequences of the Reduction of Risk | |
| | |
| Comments | |
| Purpose and Scope | 188 |
| Materiality | 189 |
| Policyholder's Initiative | 189 |
| | |
| Notes | |
| Reduction of the Premium | 189 |
| Termination of Contract | 190 |
| Exceptions for Personal Insurance | 191 |

Chapter Five: Insurance Premium

Article 5:101: First or Single Premium

Comments

| | |
|----------------------------------------------------------------------------------|-----|
| Scope of Regulation | 192 |
| Regulatory Approach | 192 |
| First and Single Premium | 193 |
| Prerequisites for Giving Effect to a Condition Which is Subject to Article 5:101 | 194 |
| Consequences of Payment or Non-Payment within the Two Week Period | 194 |

Notes

| | |
|--------------------------------------------|-----|
| Postponement of Cover | 195 |
| Protection of the Applicant's Expectations | 195 |

Article 5:102: Subsequent Premium

Comments

| | |
|-------------------------------------------------------------------------------|-----|
| Scope of Regulation | 196 |
| Regulatory Approach | 197 |
| Subsequent Premium | 197 |
| Prerequisites for Giving Effect to a Clause Which is Subject to Article 5:102 | 197 |
| Consequences of Payment or Non-Payment within the Period of Grace | 197 |

Notes

198

Article 5:103: Termination of the Contract

Comments

| | |
|-----------------------------------------------------------------|-----|
| Scope of Regulation | 199 |
| Regulatory Approach | 200 |
| Termination in Case of Non-Payment of a First or Single Premium | 200 |
| Termination in Case of Non-Payment of a Subsequent Premium | 200 |
| Notice of Termination | 201 |
| Effects of Termination | 201 |
| Automatic Termination | 201 |

Notes

| | |
|-----------------------------------------------|-----|
| Article 5:103 para. 1: The Right to Terminate | 201 |
| Form of Termination | 202 |
| Article 5:103 para. 2 | 203 |

Article 5:104: Divisibility of Premium

Comments

The Principle 203

Abolition of a Principle of Indivisibility of Premium 203

Notes 204

Article 5:105: Right to Pay Premium

Comments

Obligation of the Insurer to Accept Payment 205

Consent of the Policyholder 205

Legitimate Interest of Third Party 206

Notes 206

**Chapter Six:
Insured Event****Article 6:101: Notice of Insured Event**

Comments

Channels of Communication 207

Balancing Interests 207

Notice Periods 208

Contents of the Notice 208

Breach of Duty 209

Notes

Article 6:101 para. 1: Duty to Notify 209

Who Owes The Duty to Notify 209

Article 6:101 para. 2: Time Allowed for Notification 210

Contractual Derogations 210

Article 6:101 para. 3: Sanction – Reduction of Insurance Money 211

Contractual Arrangements 211

Article 6:102: Claims Cooperation 212

Comments

Information about the Occurrence of the Insured Event 213

Reasonable Requests 213

Breach of Duty 213

Notes

Article 6:102 para. 1: Duty to Cooperate 214

Article 6:102 paras. 2 and 3: Sanctions 214

Article 6:103: Acceptance of Claims

Comments

Settlement 215

Prompt Settlement of Claims 215

Notes 216

Article 6:104: Time of Performance 216

Comments

The Importance of Performance 217

Undue Delay 217

The Amount Payable 217

Notes

Article 6:104 paras. 1 and 3: Rules on the Time of Payment 217

Article 6:104 para. 2: Partial Payment 218

Article 6:105: Late Performance

Comments

Compensation 219

Damages 220

The Conceptual Basis of Liability 220

Assessment of Loss 220

Instances of Loss 221

Notes

General Rules on Interest 221

Specific Interest Rules for Insurance Law 221

Punitive Interest Rates 222

Chapter Seven: Prescription

Article 7:101: Action for Payment of Premium

Comments 223

Notes

Community Law 223

General Rules for All Claims Arising from Insurance Contracts 223

Specific Rules on Prescription of Premiums 224

General Rules of the Law of Prescription 224

Comparison of Prescription Periods 224

Article 7:102: Action for Payment of Insurance Benefits

Comments

General Period of Prescription and its Commencement 225

Absolute Period of Prescription and its Commencement 226

Notes

Introduction 226

A Single Rule without Any Requirement of Knowledge 227

A Double Standard: Knowledge plus Time 227

The Insurer's Decision on the Claim as Starting Point of Prescription 228

The Duration of the Prescription Periods 228

Exception for Life Assurance Contracts 229

Article 7:103: Other Issues Relating to Prescription

Comments

Prescription of Claims Not Covered by Articles 7:101 and 7:102 229

Unregulated Issues of Prescription 229

Contractual Derogations 230

Notes

General Remark 230

Contractual Derogation 230

Suspension in Case of Negotiations 231

Suspension when Notice or Claim is Lodged 231

Additional Reason for Suspension or Renewal 231

Part Two:
Provisions Common to Indemnity Insurance

Chapter Eight:
Sum Insured and Insured Value

Article 8:101: Maximum Sums Payable

| | |
|-------------------------------------------------------|-----|
| Comments | |
| The Indemnity Principle and the Sum Insured | 233 |
| Mitigation Costs | 234 |
| The Sum Insured | 234 |
| Valued Policies | 234 |
| Notes | |
| The Indemnity Principle | 234 |
| Value Agreements | 235 |
| Effect of Value Agreements | 235 |
| Fraud or Misrepresentation on the Part of the Insured | 236 |

Article 8:102: Underinsurance

| | |
|----------------------------------------------|-----|
| Comments | |
| Basic Principle: First Loss Cover | 236 |
| Permitted Derogation: Proportionate Recovery | 237 |
| Alternative Remedies | 237 |
| Notes | |
| The Principle of Proportionate Reduction | 237 |
| Exceptions | 238 |
| Contractual Derogations | 238 |

Article 8:103: Adjustment of Terms in Case of Overinsurance

| | |
|------------------------------------------------|-----|
| Comments | |
| Basic Principle: Adjustment of Terms | 239 |
| Overinsurance Caused by Multiple Insurance | 239 |
| Determination of Insurance Money | 239 |
| Alternative Remedies | 239 |
| Notes | |
| General | 240 |
| The Claim for Reduction, Article 8:103 para. 1 | 240 |
| Termination, Article 8:103 para. 2 | 240 |

Article 8:104: Multiple Insurance

Comments

| | |
|-------------------------------------|-----|
| Background | 241 |
| Key Elements of Multiple Insurance | 241 |
| The Insured's Choice | 242 |
| Contributions by Different Insurers | 243 |

Notes

| | |
|----------------------------------------------------------|-----|
| General | 243 |
| Indemnity Principle, Article 8:104 para. 1 | 244 |
| Full Liability of Each Insurer, Article 8:104 para. 2 | 244 |
| Recourse against Other Insurer(s), Article 8:104 para. 3 | 245 |

Chapter Nine:
Entitlement to Indemnity

Article 9:101: Causation of Loss

Comments

| | |
|---------------------------------|-----|
| Limits on Recovery of Indemnity | 246 |
| Intention | 246 |
| Recklessness | 247 |
| Failure to Avert or Mitigate | 247 |
| Duty and Causation | 247 |
| The Persons Prohibited | 248 |

Notes

| | |
|-----------------------------------------------------------|-----|
| Survey | 248 |
| Intention and Gross Negligence, Article 9:101 para. 1 | 248 |
| Intention and Recklessness of Third Parties | 249 |
| Contractual Derogations in Case of Negligence | 250 |
| Failure to Avert and Mitigate Loss, Article 9:101 para. 3 | 250 |

Article 9:102: The Costs of Mitigation

Comments

| | |
|---------------------------------------------------|-----|
| Establishment of a Right to Recover Certain Costs | 251 |
| Scope of the Right of Recovery | 252 |
| Underinsurance | 252 |

Notes

| | |
|----------------------------------------------------|-----|
| General | 253 |
| Reasonable Mitigation Costs, Article 9:102 para. 1 | 253 |
| The Sum Insured as Limit, Article 9:102 para. 2 | 254 |

Chapter Ten:
Rights of Subrogation

Article 10:101: Subrogation

| | |
|----------------------------------------------------------------------|-----|
| Comments | |
| Introduction | 255 |
| Need for Indemnity | 256 |
| Protection for Insurer | 256 |
| Third Party | 257 |
| Protection of Third Parties in a Close Relationship with the Insured | 257 |
| Notes | |
| General | 258 |
| Basic Principle, Article 10:101 para. 1 | 258 |
| Protection of Subrogation Rights, Article 10:101 para. 2 | 258 |
| Protection of the Insured's Entourage, Article 10:101 para. 3 | 259 |
| No Subrogation Rights against the Insured, Article 10:101 para. 4 | 260 |

Chapter Eleven:
Insured Persons other than the Policyholder

Article 11:101: Entitlement of the Insured

| | |
|-------------------------------------------|-----|
| Comments | |
| Concept | 261 |
| Protection of the Insured and Scope | 261 |
| Basic Rule | 261 |
| Other Third Party Claims | 262 |
| Revocation of Cover | 262 |
| Form of Notice | 263 |
| Effects of Revocation | 263 |
| Notes | |
| Article 11:101 para. 1: General Principle | 263 |
| Article 11:101 para. 2: Revocation | 264 |
| Acceptance | 264 |
| Insurance for Whom It May Concern | 265 |

Article 11:102: Knowledge of the Insured

| | |
|-----------------------------|-----|
| Comments | |
| Rationale | 265 |
| Relation with Article 1:206 | 266 |

| | |
|----------------------|-----|
| Elements of the Rule | 266 |
| Legal Consequences | 267 |

Notes

| | |
|-------------------------------------------|-----|
| Imputation to the Policyholder | 267 |
| Direct Notification Duties of the Insured | 268 |

Article 11:103: Breach of Duty by One Insured

Comments

| | |
|---------------------------------------|-----|
| Rationale and Purpose | 268 |
| Scope: the Policyholder as an Insured | 269 |
| Scope: Group Insurance | 269 |
| Relation to Article 1:206 | 270 |
| Legal Consequences | 270 |
| Joint Insurance | 271 |

| | |
|------|-----|
| Note | 271 |
|------|-----|

**Chapter Twelve:
Insured Risk****Article 12:101: Lack of Insured Risk**

Comments

| | |
|------------------------------------|-----|
| Structure and Position of the Rule | 272 |
| Non-Existence of Insured Risk | 272 |
| Cessation of Insured Risk | 273 |
| Transfer of Title | 273 |

Notes

| | |
|------------------------------------------------------|-----|
| General | 274 |
| Initial Absence of Risk, Article 12:101 para. 1 | 274 |
| Subsequent Cessation of Risk, Article 12:101 para. 2 | 275 |

Article 12:102: Transfer of Property

Comments

| | |
|-----------------------------------------------------------------------|-----|
| The Need for a Rule concerning Transfer of Property | 275 |
| The Underlying Concept | 276 |
| Non-Mandatory Character of the Rule | 276 |
| Scope of Application | 277 |
| Inapplicability to Transfer of Title by Inheritance | 277 |
| The Fiction of an Insurance Contract for the Benefit of a Third Party | 277 |

| | |
|----------------------------------------------------|-----|
| Notes | |
| General | 277 |
| The Termination Approach, Article 12:102 para. 1 | 278 |
| The Substitution Approach | 278 |
| Transferable Insurance Policies | 279 |
| Passing of Insurance Cover, Article 12:102 para. 2 | 279 |
| Exceptions, Article 12:102 para. 3 | 279 |

Part Three:
Provisions Common to Insurance of Fixed Sums

Chapter Thirteen:
Admissibility

Article 13:101: Insurance of Fixed Sums

| | |
|------------------------------------|-----|
| Comments | 281 |
| Notes | |
| General | 282 |
| Content | 282 |
| Relationship to Personal Insurance | 283 |

Principles of European Insurance Contract Law (PEICL):
Translations (non-authentic)

| | |
|------------------------------------------------------------------|-----|
| Czech version | |
| Zásady Evropského Pojišovacího Smluvního Práva (ZEPSP) | 287 |
| Dutch version | |
| Principles of European Insurance Contract Law (PEICL) | 312 |
| French version | |
| Principes du Droit Européen du Contrat d'Assurance (PDECA) | 339 |
| German version | |
| Grundregeln des Europäischen Versicherungsvertragsrechts (GEVVR) | 365 |
| Greek version | |
| Αρχές Ευρωπαϊκού Δικαίου της Ασφαλιστικής Σύμβασης (ΑΕΔΑΣ) | 393 |
| Hungarian version | |
| Az Európai biztosítási szerződési jog alapelvei (EBSJA) | 421 |

| | |
|---------------------------------------------------------------------------|-----|
| Italian version | |
| Principi di Diritto Europeo del Contratto di Assicurazione (PDECA) | 447 |
| Polish version | |
| Zasady europejskiego prawa ubezpieczeń (ZEPU) | 473 |
| Portuguese version | |
| Princípios do direito europeu do contrato de seguro (PDECS) | 501 |
| Slovak version | |
| Zásady Európskeho Práva poistnej Zmluvy (ZEPPZ) | 527 |
| Spanish version | |
| Principios de Derecho Europeo del Contrato de Seguro (PDECS) | 553 |
| Swedish version | |
| Principer För En Europeisk Försäkringsavtalsrätt (PEFAR) | 580 |
| Annexes | |
| Abbreviations | 607 |
| Table of National Statutes (including draft legislation and like sources) | 610 |
| Table of EC Legislation (including draft legislation and like sources) | 619 |
| Table of International Conventions and Model Laws | 624 |
| Table of Cases | 625 |
| Bibliography of Works Cited | 629 |
| Index | 643 |