Part I

Economic Facts ans General Framework

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Report of the Commission's Expert Group on European Insurance Contract Law

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Introduction

I ECONOMIC BACKGROUND: STATE OF PLAY OF CROSS-BORDER TRADE IN INSURANCE IN THE EU

1. Statistics

1.1 Three generations of insurance directives have substantially facilitated the cross-border operation of insurance companies within the EU over the past 40 years. Data indicates that the market share of foreign controlled undertakings and branches or agencies of such undertakings in overall EU primary insurance has almost doubled respectively from 19% to 37%[1] between 2000 and 2009. The top large EU insurance companies are more active internationally in comparison to the top 15 US insurers[2] who are much more focused on domestic sales in the US. The Single Market and further liberalisation of trade in insurance services is critical for the maintenance of the competitive position of the top EU insurers in the global market[3].

1.2 Cross-border insurance sales, on the basis of freedom to provide services and branches however represented only 4.10% of total gross premiums written in the EU in 2007[4]. This low level of cross-border activity does not reflect cross-border activity from specific Member States. Certain jurisdictions such as Ireland and Luxembourg appear more export oriented from the Insurer's perspective. On the other hand, in most Member States the percentage of total gross premiums written cross-border will be tiny compared to their domestic activity. Cross-border activity has also developed by way of mergers and acquisitions (M&As). For instance, in the area of third party motor liability insurance 344 M&As took place within the 27 EU Member States over the period of 1999-2008 albeit with a significant decline in annual volume over the latter part of the period. The number of cross-border transactions is significant with just under 30% of the total M&As in the EU 27 involving a company headquartered in another EU Member State[5]. The acquiring companies have mainly been

[1] European Financial Stability and Integration Report 2011 p.93

[2] Presentation by Lloyds of 26 October 2012: "Insurance Regulation: International Horizons": http://www.lloyds.com/the-market/communications/events/past-events/uk/insurance-regulators/new-horizons-audio/session-1-introduction - see from 17.48 minutes onwards. According to the presentation less than 10% of the business (premiums) of the top 15 US insurers came from outside the US. Among the top EU insurers Allianz and Axa carry out 78% of their business internationally, Generali carries out 61% of its business internationally and Lloyd's of London carries out over 80% of its business internationally.

[3] Presentation by Lloyds of 26 October 2012: "Insurance Regulation: International Horizons": http://www.lloyds.com/the-market/communications/events/past-events/uk/insurance-regulators/new-horizons-audio/session-1-introduction - see from 17.48 minutes onwards. According to the presentation less than 10% of the business (premiums) of the top 15 US insurers came from outside the US. Among the top EU insurers Allianz and Axa carry out 78% of their business internationally, Generali carries out 61% of its business internationally and Lloyd's of London carries out over 80% of its business internationally.

[4] Impact assessment accompanying The White Paper on Insurance Guarantee schemes, SEC 2010(828), p. 17

[5] Retail Insurance Market Study, Final Report by Europe Economics, 26. 11. 2009, p.15

based in well-developed insurance markets, such as France, Austria, Germany, the UK, Spain, the Netherlands, Denmark and Belgium. While large and well developed markets, such as the UK, France, Germany and Italy have been the major destinations for mergers and acquisitions in the EU, a significant number of cross-border transactions have also targeted Central and Eastern European countries. [6]

1.3 The volume of exported insurance products (by means of established branches and free provision of services) in terms of gross written premiums in the EU amounted to 42.8 billion EUR in 2007 respectively with 33.2 billion EUR accounting for life insurance and 9.6 billion EUR[7] for non-life.

1.4 The Expert Group approached the statistical data with some caution on the basis that data can be collected in different ways and for different purposes; thus data is not always comprehensive or comparable due to the different methods and questions used in each study. Some statistics in relation to freedom of establishment include the operation of branches alone, while others also include subsidiaries and agencies. The discrepancy may be due to a different basis for the calculation of the figures. For instance, if a foreign owned company (following a merger or acquisition) is considered as operating on a cross-border basis the share of cross-border activity would be substantially higher.

1.5 Both data and assumptions were used by the experts in their deliberations. Where no data was available, certain conclusions were drawn by the experts in this report based on reasonable assumptions and the experts' experience. For instance this was particularly the case in assessing future demand for insurance contracts which relies on future needs and is based on, and limited by, future market conditions and the opportunities which may exist.

1.6 There was a broad consensus that the demand and market for large risks are not impeded by contract law.

2. **Definition of the 'cross-border insurance contract'**

2.1 Insurance is, broadly, a transfer of risk in return for a payment of premium. Each member state has different definitions of an insurance contract. The contract terms will reflect the risk and market conditions. The two fundamental freedoms of establishment and free provision of services should be treated on an equal footing for the purposes of the definition of 'cross-border activity' allowed within the internal market. Thus, contracts sold on either a freedom of services or a freedom of establishment basis are accepted as being part of the scope of the Expert Group's work.

2.2 Whilst the scope of the experts' deliberations is to consider 'cross-border insurance contracts', a contract may not apparently be a 'cross-border contract' from the insured's perspective. When an insurance contract is sold on the basis of either freedom of establishment or services it will be received by the insured in his country of residence, complying with the general good and according to the applicable law of that country

[6] Retail Insurance Market Study, Final Report by Europe Economics, 26. 11. 2009, p.16
[7] Impact Assessment accompanying The White Paper on Insurance Guarantee Schemes, SEC 2010 (828), p.17

(provided the citizen is not a national of another Member State and has elected to alter the applicable law): the applicable law of that contract will be that of the 'host' state.

2.3 Whilst it is generally accepted that a 'cross-border insurance contract' is a contract concluded between an insurer whose domicile is in a different Member State from that of the insured 'cross-border activity' could cover situations in which both the insurer and policyholder were located in the same country but the risk was located in another one, for example a second home or a car licenced in a Member State other than the policyholder's habitual residence. Although such scenarios exist it was not thought to be relevant evidence of a barrier to trade although it may be relevant for any consideration of a definition of a cross-border contract. Cross-border activity could also cover situations in which insurance intermediaries are involved, for example the insurer and the policyholder are located in the same country but the risk and the intermediary are located in another country.

2.4 Some insurance products provide cover for domestic activities and others for activities carried out also in other countries, for example household and motor insurance. Whilst these products typically have limitations it may be possible for a home owner who has household insurance to continue to benefit from private liability insurance coverage whilst staying away from his/her home in another Member State for a period of time. Similarly cars insured in some Member States can be driven to other Member States. However the national motor vehicle registration rules in some countries may require deregistration and re-registration when the insured changes his/her residence. Experts were reluctant to conclude that domestic insurance which may include temporary cross-border cover meant that cross-border insurance was being carried out or that such scenarios present barriers to trade. However they may, again, be relevant consideration for any definition of a cross-border contract.

2.5 In the case of large risks there are often a number of parties to the contract established in different countries and subject to the laws of those jurisdictions. The subscribing parties would often choose one applicable law for the insurance contract. Except for the case of credit insurance, marine and transport insurance, the question whether the risk is a large risk does not only depend on the product itself but on different criteria (i.e. balance sheet total, net turnover and number of employees). Such products have to be individually determined for each customer. For the use of cross-border products the calculation of the risk may have to be adjusted, e.g. where a life insurance is calculated for the German market, it has to be taken into account that the mortality in other Member States could be different. In addition the administration and operational management of cross-border sales would have to be adjusted. For instance, the MAT (Maritime, Aviation Transport) insurance for large ships (damage and liability), aircraft (damage and liability) and goods in transit is commonly traded cross-border for EU and non-EU risks and is often based on the same insurance policy forms whatever the risk's origin because the main market that provides this type of insurance is in the UK, the Lloyd's market.

2.6 The scenario of 'fly-to-buy', where a consumer would stay in the insurer's country only in the short term (i.e. is not habitually resident) but approaches an insurer in that country to insure a risk in another Member State, may also be a 'cross-border insurance contract'.

Although this is a common model for sales in other countries outwith Europe, for example in Asia, this could only be feasible for freedom of services scenarios where the insurer is authorised in the country in which the European citizen is habitually resident, i.e. a consumer could not 'shop around' in Europe to find an insurance contract because s/he could only be sold a contract by insurers who are authorised to do so in his/her country of residence. It is not known the extent of such demand.

2.7 While the previous sections addressed the 'cross-border' element of the contract, barriers can arise around the formation of an insurance contract. Disputes can arise over whether a given contract can be classified as an 'insurance' contract governed by the laws on insurance contracts in different Member States. For example if a person moves to Spain with an investment linked insurance contract his/her investment choices may render the contract as being excluded from the definition of an insurance contract in Spain. In Germany a 'UK style' investment-linked life insurance bond may not be treated as a life insurance contract for tax purposes. Personal pension products also face significant challenges for recognition in 'host' Member States due to the fact that they are formed in response to specific national pension frameworks and tax systems. These significant barriers which stop cross border trade dictate the contract terms but are not barriers caused by insurance contract laws.

3. **Cross-border supply**

3.1 Cross-border insurance can be considered from both the supply and the demand side. Insurers may wish to explore market opportunities beyond those already available under Freedom of Services and Freedom of Establishment to expand and sell their products in another Member State, having taken into consideration all possible obstacles[8] but may experience difficulty and uncertainty in doing so, for example identifying exactly what the general good requirements are in a member state (which must be complied with) can be problematic. Such obstacles are often not of a contract law nature but will dictate the contract terms, for example tax and regulatory issues. According to analysis[9], in general cross-border insurance provision is mostly driven by the availability of supply-side resources, by the size of the destination market (and hence opportunity) and by geographical distance. The ability for intermediaries to provide advice on a cross border basis can also affect supply. The Insurance Mediation Directive[10] adopted in 2002 also enables insurance intermediaries on the basis of their registration in their home Member State to do business in other EU Member States by way of freedom to provide services or by establishing a branch.

3.2 At present, establishment currently plays a greater role in cross-border supply than the cross border free provision of services in consumer scenarios (it is less likely in large risk placements). This includes branches which operate on the 'single passport'[11] basis, which are authorised and regulated by the 'home state' regulator, and subsidiaries of group companies whose head office is in another Member State. This is illustrated by the very competitive

[8] including important factors such as 'knowing your customer', understanding the true risk proposed for cover, language, culture (including expectations of the local policyholder), the form and prevalence of frauds, the tax environment and supervisory environment
[9] Retail Insurance Market Study (2009) by Europe Economics for the EC: para 3.19, pg 37
[10] European Commission (2003) "Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation" in *Official Journal of the European Communities, L9, Volume 46*, 15 January
[11] Consolidated Life Directive 2002/83/EC

German motor insurance market which operates with more than 100 insurance providers some of which are subsidiaries of foreign-owned companies.

3.3 Whilst insurers may choose to form an establishment for practical operational reasons insurers may perceive advantages in operating on a freedom of services basis which could deliver shorter market entry timeframes and cheaper operational costs. Some insurers prefer to take the simplest, fastest and cheapest route to market. Others choose to operate on a freedom of services basis to begin with and then expand to form an establishment over a period of time. It was not thought to make any difference to the terms of the contract whether the insurer was operating on a freedom of establishment or a freedom of services basis because the contract which the insured receives must comply with the local general good requirements either way. There is still a lack of clarity between where the freedom of services stops and the freedom of establishment begins for both insurance undertakings and intermediaries despite the attempts at clarification by the Interpretative communication concerning the freedom to provide services and the general good of the insurance sector.[12] There can also be a lack of clarity where an insurer acts through an intermediary on the basis of an exclusive mandate.

3.4 In the area of life insurance, depending on the level of cover, supply may be affected by the different assessments of the risk and/or levels of disclosures required to be provided by the insured. Member States have different rules around disclosures required before entering insurance contracts. The example of 'ticket' insurance in Spain demonstrates the supply of certain products based on an extended pool of insured persons which typically does not require any assessments or disclosures. The larger the pool, the less expensive the corresponding premiums are. Life insurance can be obtained for relatively small sums with such arrangements (e.g. 5.000/6.000 €). Concerning such pooled insurance the different treatment of prudential regulation could present barriers to trade rather than any contract law barriers.

3.5 Barriers to cross-border trade can have an impact on product innovation because insurers must take time to work around differences in, amongst other barriers, the general good rules and cannot offer products which have been successful in one Member State to another without adaptation.

4. **Cross-border demand**

4.1 The state of development and sophistication of markets and the extent to which insurance products have penetrated the markets in each individual Member State will have a bearing on demand. There is a significant difference between 'EU 15' and 'EU 13' Member States'.

Consumer Demand

4.2 Consumer demand is typically reactive, their demand for insurance products is typically based on those products available to them and they are more likely to stay with products and an insurance market they are familiar with. Evidence from consumer surveys,

[12] OJ C43 of 16.02.2000

Special Eurobarometer 373, 'Retail Financial Services' 2012, indicates that only 1% of consumers said they had purchased life insurance products cross-border from a different Member State and 1% said they purchased other insurance products from a different Member State, which is a tiny percentage actively seeking insurance from another country[13]. The survey, which was made from a base size of 8202 holders of life insurance products and 13682 non-life insurance products was considered to be sufficient for analysis, however as the incidence of cross-border purchasing is so low it was not possible to analyse by individual Member State and the data available therefore needs to be treated as indicative only.[14] Furthermore the survey[15] indicates that 2% of consumers would like to purchase life insurance contracts on a cross-border basis whilst 3% of consumers would like to purchase other insurance contracts from different Member States. There therefore seems to be little evidence of appetite for cross-border shopping for insurance products by consumers based on existing survey data. Consumers may not be confident purchasing insurance contracts on a cross border basis because they may not have the means, support and appropriate information to do so. Comparison data, including on the price, content of insurance products, the application of cross-border redress systems as well as other relevant information may not be available for consumers to enable them to take informed decisions on whether they can purchase from insurers in other countries and how such offers compare to domestic products. They may also be reluctant to purchase cross border insurance because they may not be confident that they are protected by strong and efficient rights which could be enforced across borders within a solid legal framework applicable to all market players. When consumers move to another Member State, an insurer may refuse to renew an insurance policy and direct the insured to obtain fresh insurance locally. This may partly be a commercial issue and a difficulty in rating a risk in another liability context (e.g. motor claims may produce higher damages in a new country of residence). For the consumer, differences in contract law can play only a minor part (or none at all) in their demand for an insurance contract.

4.3 Demand is often driven by supply and is product led. Many firms may wish to test a market anticipating 'latent demand' for insurance products. Although there is little evidence of consumers actively seeking insurance on a cross-border basis insurers appear able to build market share once a product is offered to a consumer on a freedom of establishment/services basis. Latent demand is a potential demand which may not be evidenced by statistics or other data, but which occurs and is mobilised when a product is offered in a given market. Latent demand is not only linked to the availability of products but also to the standards of living. For instance, it could be influenced by the financial and educational ability of the consumer. In principle this could happen with any kind of insurance product and is not dependent on the contract law underlying the product. The extent for latent demand for any particular insurance product from Member State to Member State is not known. For example, however, such latent demand (if it exists) could possibly arise[16] where European citizens, particularly in central Europe, regularly travel across borders and may culturally and linguistically feel comfortable concluding contracts in a country which they neighbour but are not resident within. For

[13] P.28, 33, 34: Only 1% of consumers said that they had purchased insurance products cross-border
[14] Page 32
[15] Page 32
[16] The group did not have representative statistic data

example citizens in the Italian Autonomous Province of Bolzano may have close relations to Austria; the citizens in the Alsace region of France may have close relations to Germany; the Danish minority living in northern Germany may maintain close relations with Denmark etc.

4.4 Individuals with pension contributions accrued in a personal pension scheme in the UK who are no longer resident in the UK may wish to transfer their personal pension rights to another UK pension insurance contract but cannot do so without the insurer being authorised in the state in which s/he is habitually resident. Similarly a person living in another Member State may wish to purchase an annuity in the UK in respect of his/her UK personal pension contributions but as s/he is resident in another Member State s/he is considered to be concluding a contract in the Member State in which s/he is habitually resident.[17]

4.5 A person may work in Paris, accruing pension rights in France but live in Belgium and commute to work. This type of consumer demand scenario is more likely to increase than reduce with the rise of part-time working, compacted hours and cheaper transport. S/he is habitually resident in Belgium and therefore the 'Member State of the commitment' will be Belgium, where s/he is habitually resident. Whilst Rome I will allow an agreement on choice of law in certain situations this will not override pre-contractual requirements and may even require contractual documents to be drafted in the language of the Member State of the commitment. Although this person can elect to have the insurance contract governed by the law of his/her nationality, should the person be neither a French nor a Belgian national Rome I does not provide a solution to this problem. And if s/he wishes to adopt the law of his/her nationality a further layer of complexity would be added.

4.6 The demand of consumers and business for cross-border insurance can also be triggered by lower prices and this can be particularly relevant where the same currency is used in the countries of insurer and policyholder, allowing a direct comparison of offers from different Member States. Consumers may not be concerned about where the contract is issued or whether the insurer is domiciled in another country if they can secure a cheaper premium. However the premium may not be the most important factor for consideration before entering into an insurance contract, particularly for consumers. The basis upon which consumers select their preferred insurance providers and the criteria consumers apply in their product selection should remain at the consumer's discretion. In Spain taxi drivers have increasingly taken contracts of insurance for their taxis from Latvian insurers who offer lower premiums. However, Latvian insurers are not part of the fast settlement of claims structure which operates in Spain as there is no such mandatory requirement. Many taxi drivers are now experiencing long delays when claiming on insurance policies from these insurers.

4.7 The internet could potentially reach both domestic and foreign markets more easily and faster than with non-internet sales. This could lead to the rapid growth of direct distribution of standardised insurance products. Should insurers have the freedom to develop strategies and to take commercial risks to sell contracts more easily in 'host' states, 'latent' demand, if it exists, may be met. The use of the internet may further facilitate such demand

[17] Directive 2002/83/EC, Article 32

once insurers have a product which meets the needs of businesses and consumers better than those which are offered in the 'host' state, although it should be remembered that an insurance contract is a complex product.

Business Demand

4.8 There is hardly any statistical data on business demand. Regardless of the lack of statistical data, the approximate level of cross-border demand from consumer and business users could differ given their different interests and their different approaches to dealing with risks. The experts were generally of the view that businesses would wish to simplify their insurance arrangements by not having to take out multiple insurance contracts to cover their operations in different Member States. Business demand is more pro-active in its nature than consumer demand as business users have to actively consider insurance to manage their risk as part of their risk management processes. With the help of specialist intermediaries business users can tap into the international market.

4.9 Professional liability insurance for commercial risks was identified as an area where there may possibly be some increased demand. Insurers may be unable or unwilling to cover any cross-border element of a professional activity despite demand. For example the possible gaps in insurance coverage in some Member States may hinder the exercise of cross-border activities for lawyers, since compulsory professional indemnity is generally required for lawyers' activities in most EU Member States. It was recognised that there may be a number of reasons for refusal of cover which may be unrelated to contract law, for example regulatory, risk and the diverging national liability rules. Differences in contract law are therefore only part of the many elements which require to be checked and evaluated when offering and issuing a cross-border insurance contract for professional liability and can be a relatively minor factor compared with the challenges posed by other obstacles. Insurance providers confirm this can be due to factors such as local professional bar requirements, different legal and regulatory systems, diverse national general best practice rules, cultural practices that are specific to each jurisdiction and potential language barriers. The diverging national liability rules are an important obstacle. Please see [Part 5] of this report where liability insurance is considered in greater detail.

4.10 Despite there being hardly any statistical data on business demand, there may be business demand for sophisticated products not available in all countries. The insurance market in certain Member States may not have developed sufficiently to meet the demands due to development and innovation (for example cloud computing). An example is provided by the decennial insurance of constructors, see below section 4.14. It is possible that in these circumstances the need for insurance can only be met by insurance companies in other Member States where that insurance market has developed. Such insurance provision can be accessed with the assistance of insurance intermediaries.

Scenarios for cross-border demand

4.11 Examples of future cross-border demand from a consumer and business perspective were considered by the experts. The examples considered did not strictly illustrate examples

of contract law obstacles. Rather, they illustrated commercial decisions which insurers must remain free to make. For example, cross border demand can arise when citizens who move to other EU countries wish to retain insurance products in order to retain benefits such as the no-claims bonus accumulated under the "bonus-malus system" (used in third party motor liability insurance). This can be an important competitive factor within a market which offers this as the consumer may lose any benefits earned under this system provided he or she is not able to switch to another provider under the same terms, but it is not a contractual barrier to trade and should remain a matter on which parties are free to trade.

4.12 Three types of factors influencing cross-border supply could be identified: (1) commercial considerations (based on insurers' ability and willingness to insure risks - these depend, amongst other things, on an insurer's understanding of the risks and ability to collate relevant statistical data for the underwriting process, where relevant, its risk appetite and its ability to obtain reinsurance cover); (2) the impact of contract law differences leading to adaptations in contracts and calculation of new prices; and (3) the impact of various other factors including regulatory differences (e.g. tax law, supervisory authorities' influence, see section II (2) of this report). A review of the local market requirements in relation to all the matters referred to above is a necessary and inevitable part of an insurer entering a new market. An examination of the differences in national insurance contract laws is only a small part of such review and such differences generally are only of minor significance.

Compulsory insurance and demand

4.13 The demand for insurance may also arise as a consequence of compulsory insurance obligations created by the Governments of Member States. Governments may, for policy reasons seek to safeguard consumers' or businesses' interests by requiring consumers and businesses to take out insurance against certain risks. This is referred to as compulsory insurance or compulsory requirements for insurance. The most common examples of compulsory insurance cover include liability (in particular in respect of motor vehicles), aviation, ships, motor and environmental insurance (especially for cover in respect of pollution risk).

4.14 Compulsory insurance requirements differ substantially from country to country. In Spain there are around 400 cases of compulsory insurance, for example liability for bullfighting and dangerous dogs, while in France there are around 100 and in Germany around around 30. Businesses which wish to offer services in a Member State which require compulsory insurance can have difficulty getting such insurance from insurers on a cross-border basis.

4.15 In some instances Member States create schemes because private insurance cover is not available (for instance, where insurers are unable to cover the risk due to a lack of statistical data to perform the underwriting process and determine the risk proposed or an inability to obtain reinsurance cover). This can happen, for example, in relation to disaster

recovery. However this 'demand' is primarily a demand from national governments and arises for political reasons.

4.16 Differences in local liability law and corresponding liability insurance requirements which are reactive to political influence present obstacles which are not easy to overcome. For example in Belgium and Italy there is a requirement for decennial insurance in construction which is relatively new and the products available may be expensive. In France, French insurers have been involved in creating solutions for foreign builders. There are a variety of insurers that offer a stand-alone decennial insurance cover in France to foreign constructors. Cover is available regardless of the home state of the policyholder[18.] The insurers of foreign construction companies providing liability insurance allowing the company to operate in France can require that decennial liability insurance be a part of the contract. Sometimes therefore the construction company needs to find another insurer in the country of origin or in the country in which they operate. This search may take some time. When a professional provides services or exercises its activity within the EU on a cross-border basis, two solutions are possible for the provision of professional liability insurance cover in such a situation:

4.16.1 Either the insurer from the home Member State follows his professional customer and adapts the insurance contract to the conditions of new business abroad; or

4.16.2 The insurer cannot follow the service provider/professional customer given its risk acceptance policy, which may not permit the insurer to underwrite risks in the foreign jurisdiction. In this case, in particular with the help of insurance intermediaries (e.g. brokers of the home Member State or the other host Member State) it is necessary to find another insurer which will provide the appropriate cover required to develop the cross-border provision of services.

4.17 Compulsory insurance requirements could be considered to be barriers to trade.

Large risks and demand

4.18 In the market for large risks demand for cross-border insurance is not impeded by contract law where choice of law clauses tend to be negotiated. The level of demand for mass and large risks differs as mass risks are typically consumer related and large risks are typically industry related. Nevertheless it was also recognised that even large risks are subject to the overriding mandatory rules of Member States[19].

5. **Insurance Products which could address the needs in various scenarios for cross-border demand**

[18] In the past some foreign construction companies had difficulty securing insurance. Foreign builders took their own liability insurance with them but some builders ignored the mandatory requirements for 'decennial insurance' in France and French citizens experienced loss due to the lack of insurance liability of their foreign builder. A number of initiatives have been adopted to avoid this through the initiatives of the FFSA in France.

[19] Rome I, Article 7(2) & 9(2)

5.1 The discussions of the Expert Group focussed on the current role of the following products, whether they could meet the needs of future demand in cross-border insurance trade as well as their future potential:

5.1.1 Products developed for the domestic market, which could be offered on a cross-border basis without adaptations;

5.1.2 Products with features specifically designed to cover activities of a cross-border nature;

5.1.3 Pan-European products developed for multiple EU countries which can be marketed cross-border without adaptations;

5.1.4 "Follow-your customer products" which could be used by customers when they move to another country on the basis of the same contract (with possible adaptations of the premium).

5.2 It is difficult to provide data on areas for future product development because such strategies concern commercially sensitive data. The future demand from businesses is even less certain than for consumers.

5.3 Cross-border sale of products without any adaptations is virtually limited to large risks or in business-to-business cases where there is a choice of law. Many large risks placed in the co-insurance market are individually tailored and negotiated to meet customer needs, with a professional intermediary involved in advising the (re)insured and placing the contract. In all other cases where choice of law is restricted the terms and conditions of products developed for the domestic market have to be adapted to the local laws and regulatory regimes of the policyholder . For instance in the case of complex life products, compliance with domestic laws in relation to surplus participation and surrender values would render it impossible to offer the same product without contractual adaptations. Investment linked life insurance contracts may be complex from an investment perspective but this does not mean that simple term assurance life insurance contracts are easier than investment linked contracts to be sold on a cross-border basis as the 'International Bond'[20] market demonstrates. For example, one German insurer has in the past acknowledged openly that they choose not to offer life policies to residents in other EU countries due to differences among others in contract laws[21]. A choice not to offer insurance is often due to other factors such as tax and regulatory issues.

5.4 There is very little data on pan-European products available. Even if a product could have pan-European coverage the product would still have to be tailored to each market where it was offered.

5.5 The taxation differences between member states have a significant bearing on the portability of insurance pension contracts and form the main obstacle, which cannot be

[20] Insurers typically operating out of Ireland and the Isle of Man selling investment linked life insurance contracts to, for example UK residents.

[21] Leander Loacker, Insurance soft law? Anton K. Snyder, ed., Internationales Forum zum Privatversicherungsrecht 2008, Zurich 2009, p.27-48. At p.40 the author cites the web-site of a German insurance company (CosmosDirekt), a standard answer given to applicant who are habitually resident outside of Germany.

ignored, for cross border pensions. The design of national pension systems may require complimentary pension products to contain certain features (i.e. capital guarantees, coverage of biometric risk). Such issues are being considered in a consultation procedure by EIOPA and by DG Sanco.

5.6 There have also been industry initiatives to attempt to develop products on a follow-your-customer basis. Thus, when moving, consumers would take the product with them (on the basis of it being the same contract) with possible modifications of the premium to account for the difference in risk. Some professional users such as lawyers have also favoured the development of 'portable products'.

5.7 Regardless of whether an insurer was operating on either a freedom of establishment or freedom of services basis, mass insurance products are transformed and adapted when they are sold on a 'cross-border basis'. Such transformation is a cost to insurance businesses and if passed on to customers, it is a cost to them. The features of insurance contracts have to be adapted for each host state to comply with 'general good' and mandatory requirements and if they are not adapted insurers still have to take advice as to whether they need to be adapted. Such contract adaptations may be required for reasons other than contract law. Even if an insurer wishes to sell to nationals who choose the law of the Member State of which s/he is a national when they are living in another European Member State the insurer has to consider the general good and adapt the contract because the insured will be protected by the laws within the Member State of the commitment. Pre-contractual requirements in the Member State of the commitment would also still have to be complied with. The approach for the mass market can be distinguished for large risks because adaptation of contracts for large risks could be for commercial reasons to meet the parties' needs.

5.8 There is evidence of products offering cross-border features for the domestic market. For instance, in the UK the majority of travel insurers offer pan-European coverage, while in Belgium the five biggest insurers offer household insurance coverage without geographical limitations in Europe. National contracts can in certain circumstances adapt to the needs of policyholders, for example all insurers in the French market in the case of 'multi-risk home insurance' include civil liability coverage for a property which may be rented outwith France.

II POSSIBLE REASONS FOR LEVEL OF CROSS-BORDER TRADE IN INSURANCE

1. **Nature of insurance activity**

1.1 Insurance contracts are offered and purchased within an environment affected by commercial and legal factors. Alongside differences in contract law other important and inextricably linked non-contractual barriers exist to prevent cross-border trade in insurance contracts and would still prevent trade even if differences in contract laws did not pose any obstacles. Contract law was viewed as a minor barrier, if a barrier at all, by a number of experts.

1.2 The insurance contract which an insurer is willing to offer depends on the level of risk it is willing and able to accept and the insurer's ability to rate and price the risk. Insurance is a

private contract which generally involves the insurer agreeing to take on a risk in exchange for a premium. For some risks, there may be no insurers willing or able to provide cover because the risks are too big relative to the potential premium which policyholders would be willing to pay. Alternatively the insurer may not be able to purchase reinsurance cover or the establishment of an appropriate infrastructure or network to manage claims efficiently may simply be too costly or cumbersome. For other risks there are many insurers willing and able to provide cover. Without a proper appreciation of the risks to be assumed an insurer will not be able to price the product appropriately and may therefore inadvertently compromise its solvency and long term survival which would not be in the best interests of consumers.

1.3 Unlike the purchase of a tangible good, such as a pair of shoes where the product remains the same wherever it is sold, the insurance 'product' involves the purchase of contractual rights and obligations which alter, amongst other things, according to the insurer's 'risk appetite' (for example resulting from actuarial studies, prudential rules, financial capacity, knowledge of the risks) and the conditions of the national target market. Availability of local statistical data is necessary to develop actuarial models underpinning the underwriting process for the calculation of premiums.

1.4 Commercial reasoning may explain the non-availability of compulsory insurance on a cross-border basis. Insurers may view the risks as being disproportionately high and may have difficulty assessing the risk. Where risks differ between countries, differentials in prices may arise due to other reasons than differences in contract laws.

1.5 The insurance contract is therefore a reflection of the risk (the anticipated claims frequency and the anticipated claims severity) and the 'risk appetite' of the insurer in question. The level of risk which is tolerable will, amongst other things, depend on the insurer's equity and on market conditions, in particular the intensity of competition and the profit outlook. Those market conditions will shape the nature of the insurance.

2. **Non-contract law –related factors and obstacles**

2.1 From an insurance provider's perspective, a number of commercial and practical factors are of high (or even primary) importance, when determining whether to start cross-border activity. These include 'knowing your customer', understanding the true risk proposed for cover, language, culture (including expectations of the local policyholder), the form and prevalence of frauds, the tax environment and supervisory environment.

2.2 The weight of each of these factors on a particular product may vary according to the characteristics of the relevant product. The level of insurance penetration and likelihood of profitable business in a given market is an important factor. It is generally recognised that insurance operates within a wider environment, impacted by factors such as cultural sensitivities and expectations; tax laws (particularly for life insurance and pensions); differences in the legal environments (other than contract laws e.g. different liability regimes); the regulatory environment and supervision; pre-contractual and 'know-your-customer' rules; the liability laws in the target market; the 'risk appetite' of the insurer, variations in the prevalence and form of insurance frauds; knowledge of local languages and culture; the need

for a local presence; the redress mechanisms required to be available in Member States (e.g. the Financial Ombudsman Service in the UK which applies its own standards of fairness); and maintenance of a long-term relationship throughout the duration of the contract being an important element of the claims management system[22]. Insurers may be reluctant to invest in selling a cross-border product for any of these reasons or due to the challenges of building a brand[23] in that Member State. These factors all have an impact on the product design and the true risk to be assumed by the insurer and cannot therefore be disregarded or underestimated. These factors all have an impact on business start-up costs in a new market; the costs of developing a reliable network of service providers to handle claims or provide support; IT systems; and the potential for errors in the risk assessment when the new market is not properly understood by the insurer.

2.3 One of the most significant factors impacting cross-border life insurance is tax. Differences in taxation produce an unequal playing field for providers. This is particularly the case for life insurance pension contracts (the features of which are characterised by the tax legislation in the insurer's home state) and investment linked life insurance. Tax incentives offered in each member state also play a significant role in generating demand. In the UK demand can be evidenced for cross-border trade in response to tax benefits relating to a gross roll-up of income tax where tax is 'rolled' over from year to year until the benefits under the contract are exercised when the tax is then paid. This has contributed to the 'international bond' market where insurance products are sold on a cross-border basis to persons resident in the UK.

2.4 Differences in distribution systems also present challenges and demand is often driven by the distribution models in a given country. Intermediaries often avoid advising on foreign insurance products due to liability risks and/or due to a lack of knowledge of foreign laws. The question of distribution becomes a particularly important consideration if a product is not sold through intermediaries and is sold directly, particularly if the contract is concluded 'on-line'. Insurers may not wish to sell products on a direct sales basis where advice is particularly important to ensure the customer understands the terms and conditions (or benefits and risks) of the product. This may be the case, for example, with more complex investment linked insurance contracts and insurance pensions contracts.

2.5 With the increased use of the internet direct sales may become more of a feature in the insurance market.

2.6 After sales services in relation to a cross-border insurance contract also play an important role in both product distribution and competition. Not all types of intermediaries are able to offer after-sales services for products developed on the basis of another law or under the authority of another regulator. This is a particular problem if the insured's intermediary is not authorised to carry on business in the jurisdiction to which the insured's contract is

[22] Retail Insurance Market Study, Final Report by Europe Economics 26.11.2009, p. 30, 33, 51-53
[23] Notwithstanding that an insurer has the right to advertise its services in another Member State this right is still subject to the host state's general good provisions, introduced by Article 41 Third Non-Life Directive (92/49/EEC) and Article 41 Third Life Directive (92/96/EEC).

submitted. For direct sales where products are not intermediary led or for the development of internet sales, after sales obstacles could present a barrier to market development and trade.

2.7 The mandatory rules of each Member State cannot be derogated from which underlines a significant difficulty for the development of cross-border trade. For example in France it is not compulsory to insure against fire or other natural events, but if such insurance is taken out it is mandatory to add cover for natural catastrophes and terrorism. In particular, the law[24] regulates the amount of the additional premium for the compulsory insurance against the effects of natural disasters. This premium is 12% of the fire insurance. A part of this additional premium is paid to a natural risk prevention fund.

2.8 There are several other real obstacles to the introduction of a pan-European pension plan including pre-contractual information, the requirements of regulators and each national pension system.[25] Differences in social and labour law were singled out as legal areas with a relevance to pensions and for insurance pension contracts the wider 'general good' will also have to be complied with in accordance with the Consolidated Life Directive[26].

2.9 National liability regimes are an area of relevance to non-life insurance.

2.10 It was observed that, in all lines of insurance, companies may be dissuaded from offering certain products on a 'cross-border basis' following informal contacts with supervisory authorities. Whilst insurance companies are not legally obliged to submit their products to the supervisory authorities in EU countries, they may choose to do so due to uncertainties as to what constitutes the 'general good' and mandatory requirements in a host state. Simply establishing what the host state requirements are and negotiating compliance with the host state authorities is difficult. This could lead to an uncertain process for the insurers which may result in them being dissuaded from entering the market should the supervisory authorities comment and engage in the informal process. Pension products may also find additional regulatory hurdles as they may require regulation by a second supervisory authority.

2.11 These factors all have an impact on the product design and the true risk to be assumed by the insurer. They have an important impact on business start-up costs, the costs of and the potential for errors in the risk assessment when the new market is not properly understood by the insurer. Whilst small to medium companies are likely to be hindered from starting cross-border activities it will not simply be the question of the insurance contract terms which will act as obstacles to cross-border trade; and of the insurance contract terms, not all of which will reflect insurance contract law (and could for example reflect regulatory or tax requirements). Market entry costs can be high for insurers in the European Union to enter the insurance market of another Member State. However, costs can be lower if distribution of a product is through an arrangement made with an intermediary and that intermediary has the relevant expertise relating to the product's design. Smaller companies are hindered from

[24] Article A.125-2 du Code des assurances
[25] Pan-European Pension Plans, From Concept to Action June 2007. European Financial Services Round Table
[26] Directive 2002/83/EC

starting cross border business not only due to lack of resources but also due to the lack of know-how and due to the lack of local market data and knowledge to be able to adequately assess risks. Small and medium-sized businesses may however deliberately decide against cross-border activities in order to focus on the local market and not necessarily because of the lack of resources etc. Larger companies may bear larger costs due to their size, processes and 'risk appetites' when developing products for new markets.

2.12 The experts recognised the importance of all these factors for cross-border trade. However, the mandate of the Expert Group and the scope of this report are limited to considering whether differences in insurance contract laws pose an obstacle to the cross-border provision of insurance and, if so, the areas of insurance most affected. Even although any isolated consideration of insurance contract law has a limited effect on the various obstacles to cross-border provision of insurance business, the analysis of other factors impacting the cross-border trade in insurance is not within the scope of the Expert Group.

3. **Differences in insurance contract laws**

Specific examples in areas of insurance contract law

3.1 The following examples provide a flavour of the type of issues and contractual problems faced in the exercise of cross-border insurance and are examined in greater detail in further chapters of this report.

3.2 Where an insurance contract has been validly concluded in a domestic setting, neither insurer nor insured can presently be confident that their contract will remain valid when they travel cross border to another Member State. This is the case particularly where there may be a variation in a contract which would have been effective if it had been made before the person moved/travelled and which violates certain mandatory provisions of the law in the country to which the insured moves. For example, a person who has purchased a single premium UK investment linked life insurance contract may wish to live in Germany. S/he then wishes to make an additional ad hoc payment which was not contemplated by the original contract. Whether this constitutes a simple amendment of the old contract or gives rise to a new one depends on the applicable law which may now be German law. Thus there is no new contract but there is uncertainty surrounding such a scenario. For example, could the additional premium trigger any disclosure requirements? Would it be considered to be a new contract? If regulatory changes affecting the insurer require amendment to the contract, would that trigger general good requirements?

3.3 In certain Member States the distinction between 'primary contract law', 'regulatory law' and 'soft law' is an important consideration. Regulatory laws include provisions laid down by supervisory authorities; soft laws are surrounding provisions contained e.g. in codes of conduct established by business associations that impact insurance product design and formalities. Such elements of the overall framework may act as obstacles to cross-border sales. For example in Italy automatic renewal clauses allowed in other Member States are not permitted in car insurance but the Italian Supervisory Authority issued guidance about how insurers manage renewal.

3.4 The fairness of terms can be interpreted differently on both the European and national level. Insurance based on the so-called 'claims made principle' where the presentation of a claim against an insured person must be made during the insured period may become part of a German law governed contract[27]. But should advantages be outweighed by the disadvantages to the policyholder the German courts may hold this principle void. The existence of Article 4 (2) of Directive 93/13/EEC[28] which provides that "assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration ..." has created a barrier and inconsistent treatment. The German Bundesgerichtshof and the Austrian Obsterster Gerichshof have held that exclusion clauses are not core terms.[29] However other jurisdictions treat exclusion clauses as core terms, for example in England and Scotland[30]. An English or Scottish insurance policy may therefore be invalid in Germany and Austria even although it is lawfully distributed in the UK[31].

3.5 There are different rules on warranties and disclosures throughout Europe and these have a bearing on the contract terms. Under German law if a contractual warranty is breached the insurer will only be exempt from liability if the breach was committed with gross negligence, any claim would be reduced in accordance with the degree of fault. This would not necessarily be anticipated by firms operating on a cross-border basis which may expect to rely on such a warranty. The English and Scottish legal position has recently changed[32] with regard to consumer disclosures and the standard of utmost good faith which consumers were previously expected to maintain has been amended. When entering into an insurance contract declarations made by a consumer can no longer form a basis of the contract and the insurer is expected to make clear and specific enquiries rather than expecting the consumer to reveal all relevant facts, unprompted.

3.6 In respect of profit participation, the German legislator tried to avoid any conflict in the German Insurance Contract Act 2008[33] with the freedom to provide services and the right of establishment of foreign insurers. Therefore it allowed an exclusion of profit participation of the policyholder *in toto*. If however an insurer gives profit participation it must also include to a certain extent so called 'hidden reserves'[34]. According to the statutory materials[35] this may create a barrier for a cross-border selling of foreign with-profits policies but the restriction of the freedom to provide services was justified by the general good.

[27] OLG München 8 May 2009, case no. U 5136/08; Versicherungsrecht 2009, 1066-1071
[28] On unfair terms in consumer contracts
[29] A decision on the point is BGH 20 July 2011, case no. IV ZR 291/10, BeckRS 20249, para.41. Comment Prof. Dr. Helmut Heiss
[30] English law case: Bankers Insurance Company Limited v South [2004] Lloyds Rep. IR.1, an exception to cover was held to be a core term
[31] Please note that some changes in the treatment of unfair contract terms, contained in the Consumer Rights Bill are currently being considered by the UK Parliament for enactment.
[32] Consumer Insurance (Disclosure and Representations) Act 2012
[33] VVG §153(1)
[34] VVG §153(3)
[35] Deutscher Bundestag, Drucksache 16/3945 of 20th December 2006, Draft ICA of the German Government, page 96

3.7 The differing treatment of surrender values which must be paid in the case of early termination present problems in a number of jurisdictions. In France[36] personalised surrender values for the first 8 years of a life insurance contract are required to be provided to the insured. In Germany foreign insurers are permitted to calculate surrender values on the basis of values used in the insurer's home state[37]. Such different approaches mean insurers must alter their contractual terms in each Member State.

3.8 In the Netherlands an individual can save for an additional third pillar pension. Under certain conditions the contribution is deductible and the annuities are taxed. The Dutch tax law prohibits the pay-out of a lump sum. If the policyholder moves residence to another Member State and retires there, according to the Dutch law s/he would have to convert his accrued pension capital into an annuity. However, according to the Dutch Central Bank, the conversion into an annuity is a new legal agreement and not the continuation of the old contract. For the insurance provider this means that they would be considered as conducting cross-border activity and would for instance need a notification and ensure compliance with general good rules of the country where the policy holder is resident. Thus, the company may not wish to offer the new contract in the form of an annuity. Consequently the policyholder would be confronted with a major fiscal claim. S/he would have to pay up to 72% taxes and fines to the Dutch authorities and of an accrued pension of €100 000 would only receive € 28 000. Existing Directives do not preserve the rights under existing insurance contracts including contracts which are varied when European citizens change their habitual residence within Europe.[38] The position would be similar in the UK where the conversion of a pension into an annuity is also a new legal agreement.

[36] The proposal or contract must include a specimen letter in a prescribed form for exercise of cancellation rights (and additional wording provided for under secondary regulations). The proposal or insurance contract must also include a surrender value table covering the first eight years of the contract together with the amount of premiums paid during these years, minimal values and information regarding calculation of surrender values where these are not available initially (i.e. in unit linked contracts) [(Article L 132-5-2, Code des Assurances)]

[37] VVG §169 (3)

[38] Rome I Regulation (EC) No 593/2008; Consolidated Life Directive 2002/82/EC

Part II

Differences in Insurance Contract Law and Existing EU Legal Framework

Helmut Heiss

Report of the Commission's Expert Group on European Insurance Contract Law

Part II

Differences in Insurance Contract Laws and Existing EU Legal Framework

Prepared by

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1. THE EXISTING EU LEGAL FRAMEWORK

a. Substantive Law

1. A large body of substantive European insurance law has been created by EU secondary legislation. Directive 2009/138/EC (Solvency II)[1], which recasts and repeals thirteen existing Directives, covers mainly aspects of supervisory law. It also harmonises certain aspects of insurance contract law in Title II (articles 178 to 211 providing "Specific Provisions for Insurance and Reinsurance"), such as information duties of the insurer (articles 183 to 185), the cancellation period in individual life insurance (article 186) and the free choice of a lawyer guaranteed and qualified in articles 201 and 202. These rules still allow Member States to increase the level of policyholder's protection: Under the conditions set by article 185 para. 7, Member States may impose additional information requirements and article 186 para. 1 allows Member States to provide for a cancellation period somewhere between 14 and 30 days.

2. Directive 2009/103/EC (Motor Insurance)[2] contains further rules relating to contract law such as the minimum amounts covered (article 9), the direct right of action (article 18) and exclusion clauses (article 13). Also, Directive 2002/92/EC (Insurance Mediation)[3] may have an impact on the contractual relationship between an insurer and its customer whenever an insurer is vicariously liable for a breach of duty

[1] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), OJ 2009 L 335/1.
[2] Directive 2009/103/EC of 16 September 2009 of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (codified version), OJ 2009 L 263/11.
[3] Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, OJ 2003 L 9/3.

committed by an agent, e.g. an inaccurate instruction on the contents of a particular product. Moreover, current proposals for a new Insurance Mediation Directive (IMD II)[4], for a new Directive on Markets in Financial Instruments (MiFID II)[5] as well as for a Regulation on Key Information Documents for Investment Products (PRIPs Regulation)[6] provide for special rules on insurance contracts which are investment products, such as funds linked life insurance. Specific duties to inform and to advise customers, which would apply not only to intermediaries but also to insurers, are proposed.

3. Moreover, insurance contract law is harmonised to a certain degree by directives on consumer contract law covering consumer insurances. Mention is to be made of Directive 2002/65/EC (Distance Marketing of Financial Services)[7] and Council Directive 93/13/EEC (Unfair Contract Terms)[8]. Council Directive 93/13/EEC (see article 8) and some of the provisions in Directive 2002/65/EC concerning information duties (see article 4 para. 2) provide EU minimum standards of consumer protection and allow Member States to adopt more protective measures.

4. Other directives outside the scope of consumer protection, such as the Directive 2000/31/EC (Electronic Commerce)[9], Directive 2011/7/EU (Late Payment)[10], Directive 95/46/EC (Data Protection)[11] and Directive 2004/113/EC (Gender Equality)[12] also have an impact on insurance contract law.

5. Human rights as guaranteed by the ECHR and national constitutional laws may also have an impact on national insurance contract law, for instance on disclosure duties imposed by medical questionnaires[13].

[4] Proposal for a Directive of the European Parliament and of the Council on insurance mediation (recast), COM (2012) 360 final.
[5] Proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (Recast), COM (2011) 656 final.
[6] Proposal for a Regulation of the European Parliament and of the Council on key information documents for investment products, COM (2012) 352 final.
[7] Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directives 90/619/EEC, 97/7/EC and 98/27/EC, OJ 2002 L 271/16.
[8] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ 1993 L 95/29.
[9] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ 2000 L 178/1.
[10] Directive 2011/7/EU of 16 February 2011 of the European Parliament and of the Council on combating late payment in commercial transactions (recast), OJ 2011 L 48/1.
[11] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ 1995 L 281/31;
[12] Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ 2004 L 373/37.
[13] See Belgian Constitutional Court judgement of 166/2011 of 10 November 2011; see also decisions of the German Federal Constitutional Court 17.7.2013, 1 BvR 3167/08 and BVerfG 23.10.2006, 1 BvR 2027/02 (data protection); BVerfG 26.7.2005, 1 BvR 80/95 (profit participation in life insurance), et al.

b. Private International Law

Mass risks

6. Private international law on matters relating to insurance has largely been unified by Regulation (EC) No 44/2001 (Brussels I)[14], Regulation (EC) No 593/2008 (Rome I)[15] and Regulation (EC) No 864/2007 (Rome II)[16]. Put in a nutshell, these Regulations create the following framework for cross border provision of insurance services: Brussels I allows policyholders to bring actions against an insurer in the courts of their domicile, thereby subjecting insurers to foreign jurisdiction.[17] Deviating jurisdiction clauses are only valid in specific cases, among them in large risk insurance.[18]

7. Rome I calls for the application of the law of the Member State in which the risk is situated which in most cases of mass risk insurance is the Member State in which the policyholder is habitually resident.[19] The legislator has adopted this system in order to protect the weaker party. The parties' choice of law is not free; instead it is limited to a comprehensive list of a very few choices.[20] Member States are, however, permitted to provide for a broader freedom of choice of law[21]. Thus, in mass risk insurance, an insurer providing its services cross-border will be exposed to the application of foreign law in most cases while this rule means for the consumer that he can rely on the application of his home country law. This prevents such consumer insurance where for example on divorce, a Greek father might want to take out a UK life insurance contract to provide a £sterling sum assured payable on his death to provide on his death support, education etc. for his children resident in the UK with their mother. In this example the Greek father would only be able to purchase a contract from a UK insurer authorised to carry on such insurance business in Greece, he could not for

[14] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2001 L 12/1; to be replaced by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ 2012 L 351/1.
[15] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ 2008 L 177/6. Art. 27 of this Regulation obliges the Commission to submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. The report shall include a study on the law applicable to insurance contracts and an assessment of the impact of the provisions to be introduced, if any.
[16] Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ 2007 L 199/40.
[17] See article 9 para. 1 lit. b Brussels I.
[18] See article 13 para. 5 in connection with article 14 para. 5 Brussels I.
[19] Third subparagraph of Article 7 para. 3 Rome I; the situation differs in insurance of immovable property, insurance of licensed vehicles and travel insurance. The Rome I approach is based on the solution in the previous Life and Non-Life Directives.
[20] First subparagraph of article 7 para. 3 Rome I.
[21] See, in detail, second subparagraph of article 7 para. 3 Rome I.

example do so directly from Greece with a firm providing insurance for UK risks (either on-line or by other means) since UK insurers would not offer life insurance governed by Greek law. Neither could he 'fly-to-buy' the insurance from the UK as he is habitually resident in Greece which would dictate the law of the contract. Other reasons, such as market considerations, or the preference of intermediaries may also lead to the application of local law.

Large risks

8. In contrast, large risk insurance is subject to the law of the country where the insurer has its habitual place of residence.[22] Moreover, parties enjoy free choice of law.[23] Nevertheless, internationally mandatory rules according to Art. 9 Rome I and rules on compulsory insurance according to Art. 7 para. 4 Rome I restrict the free choice of the parties on specific points in those cases. The parties accept that the choice of law will carry the consequences of the application of local mandatory law.

2. THE IMPACT OF NATIONAL INSURANCE CONTRACT LAW

a. Protection of policyholders under national insurance contract law as an overriding public interest

9. EU insurance law as presented above leaves most issues of insurance contract law to national legislation. National rules of insurance contract law often prevent parties to opt out (mandatory rules) or to deviate to the detriment of the policyholder (semi-mandatory rules). While such mandatory or semi-mandatory rules may restrict the freedom of the insurer to provide its services cross border (and may thus form obstacles); such rules are important to protect European citizens as consumers or for example as victims of road accidents. The European Court of Justice has held in its judgment of 4th December 1986, that "the insurance sector is a particularly sensitive area from the point of view of the protection of the consumer both as a policy-holder and as an insured person"[24] and that "there are imperative reasons relating to the public interest which may justify restrictions on the freedom to provide services, provided, however, that the rules of the State of establishment are not adequate in

[22] Second sentence of the second subparagraph of article 7 para. 2 Rome I.
[23] First subparagraph of article 7 para. 3 Rome I.
[24] ECJ 4th December 1986, Case 205/84, Commission v. Germany, no. 30.

order to achieve the necessary level of protection and that the requirements of the State in which the service is provided do not exceed what is necessary in that respect."[25]

b. Choice of law as exercised by the parties in large risk insurance

10. The option in favour of a free choice of law as provided in article 7 para. 2 Rome I is exercised very frequently in large risk insurance business. The parties will choose a law which gives them certainty, allows tailor-made solutions for the policyholder or is simply considered to be neutral from the perspective of the parties to the contract. Overall, a decision to offer insurance services cross-border will not depend so much on the law applicable, even though it may come to play an important role at a later stage (e.g. during dispute litigation or arbitration).

11. The choice of law can be made in favour of the law of the insurer, i.e. the law of the state where the insurer has its habitual residence, of the law of the state where the risk is situated or where the policyholder has its habitual place of residence, of the law of the competent court or court of arbitration (thereby avoiding costs of applying foreign law) or of the law as selected by the parties for other reasons (for example, certainty or being amenable to tailor-made solutions, as mentioned above).

12. The parties will usually make an appropriate choice of law where there are international co-insurance arrangements and/or, international insurance programs (for example, master policies and local policies and/or, possibly, several layers of liability under direct insurance and reinsurance arrangements, and/or fronting constructions). Some of these constructions, as e.g. fronting agreements, are means to circumvent restrictions on the provision of insurance services cross border. Choice of a foreign law has its implications on the insurance policy: for instance, where an English insurer is asked to underwrite a transport risk under German law, it ought to be aware that German law prohibits clauses of promissory warranties exempting the insurer from its obligation to pay insurance money without negligence on the part of the policyholder

[25] ECJ 4th December 1986, Case 205/84, Commission v. Germany, no. 33.

even in (large risk!) transport insurance.[26] Moreover, even in large risk insurance a free choice of law will be restricted by Article 9 Rome I (mandatory rules) as well as article 7(4) Rome I (compulsory insurance).

13. Difficulties can arise, irrespective of the applicable law, as a result of the different approaches taken by different courts, arbitral tribunals and alternative methods of dispute resolution; and minimising such difficulties is one reason for the parties to agree a particular choice of law and dispute resolution procedure in a large risk insurance programme.

c. Impact of national mandatory rules applicable to mass risk insurance

14. The situation in mass risk insurance is worse than in large risk insurance when it comes to insurance contracts covering mass risks situated within an EU or EEA Member State. As demonstrated EU private international law limits a free choice of law and calls for the application of the law of the Member State in which the risk is situated, usually the habitual place of residence of the policyholder, for the sake of policyholders' protection. While the application of mandatory national insurance contract law is important in order to ensure the protection of the weaker party, and considering that policyholders will (and should) choose a particular product not merely for its low price, the limitation placed on a free choice of law forces insurers to adapt their insurance contracts to the local law. Entering foreign markets generates various kinds of costs. The costs generated by the required adjustments to foreign mandatory contract laws are part of these overall costs. This factor may prevent insurers from using their freedom to provide services to enter foreign insurance markets, at least if it is only on an occasional basis. At the same time, it may prevent customers from shopping for foreign products, making insurance markets inaccessible to "active" foreign customers. For example, insurers offering their services online usually reject applications from abroad. While a number of factors may be the reason

[26] See in the given context the following decisions of the German Federal Court: BGH 15.6.1951 BGHZ 2, 336 (341); BGH 28.4.1980 BGHZ 77, 88 (93) (concerning marine insurance which is exempt from the scope of application of the German Insurance Contract Act, ICA), as well as BGH 9.5.1984 VersR 1984, 831; BGH 2.12.1992 VersR 1993, 223 (other transport insurance within the scope of application of the ICA; provisions oft he ICA are non –mandatory in transport insurance due to its nature as "large risk insurance")

for this behaviour, becoming submitted to foreign mandatory contract law and foreign jurisdiction may be an important one.

15. A group of potentially "active" consumers are cross-border commuters, e.g. a German national who buys a house and starts living in Belgium but continues working in Germany. This German may want to finance the acquisition of the house through a loan to be granted by his/her German bank and secure the loan by taking out insurance for the residual debt in case of an accident or illness[27] with a German insurer. Faced with the application of Belgian law and the jurisdiction of Belgian courts, the German insurer may, however, refuse to provide cover. The same applies if a Belgian lives and works in Germany for his/her entire life, but decides to move back to Belgium (or to move on to any other EU country) upon retirement. This Belgian person may be much more familiar with the German insurance market than with the Belgian or any other market in the EU. However, faced with the application of Belgian (or another Member State's) law and the jurisdiction of Belgian (or another Member State's) courts, the German insurer may refuse to provide cover. The German insurer may even prefer to terminate existing contracts or at least refuse to alter them, because an alteration could be considered a new contract and, thus, subject the insurer to foreign law. These examples illustrate that policyholders will not only be excluded from or severely restricted in shopping in foreign markets, but also from keeping existing insurance contracts when moving abroad. It has to be noted, that it will not suffice if policyholders who move to another country retain a postal address in their home countries for instance with relatives or friends taking care of their mail.

16. Limitation of free choice of law may also pose an obstacle for insurance of "expatriates". While they may be a profitable target group for insurers offering specialised insurance contracts, for instance "expat life insurance", the insurer will not be able to subject all its contracts with expatriates to one and the same law due to article 7 para. 3 Rome I limiting free choice of law in mass risk insurance. There is, of course, a choice of law option in life insurance allowing for the application of the law of the Member State of which the policyholder is a citizen. However, this allows application of the same law only to contracts with expatriates holding the same citizenship.

[27] The situation is different in life insurance where article 7 para. 3 lit. c Rome I allows a choice of the law of the Member State of which the policyholder is a national.

16. The prospect of being subject to the jurisdiction of foreign courts and application of foreign law, as demonstrated, may not stop an insurer from entering a targeted foreign market strategically – either by providing its services cross-border or by establishing itself abroad. However, the penetration of a foreign market will require both insurance products and the administration of insurance contracts, which regularly establish a long term relationship with the policyholder, to be adapted to the new regime, leading to legal costs for the insurer and consequently for the customer. Products which are construed and calculated in accordance with the actuarial principles applied in the insurer's home Member State may have to be recalculated, amongst other things, in line with the contract law requirements of the target market. Insurers are prevented from building up a European pool of risks. The costs may well deter an insurer from doing business in all of the EU or EEA Member States, because the legal costs will multiply in correlation with the number of jurisdictions within the EU/EEA. In any event, legal costs make it less attractive and less efficient to enter foreign markets. This applies in particular to insurance because the complexity of mandatory law in this field always leaves a certain degree of uncertainty as to the effects of foreign law on a given insurance product.

d. Compulsory insurance

17. Compulsory insurance requirements with which parties must comply by virtue of article 7(4) Rome I can provide obstacles to the cross-border provision of insurance due to their mandatory nature.[28] Such requirements, which are frequently found in the area of liability insurance, are sometimes established by EU law (most notably in article 3 of the Motor Vehicle Liability Insurance Directive), but more usually by national law. The number of compulsory insurance schemes varies drastically among Member States: While Polish law provides for around 40 types of compulsory insurance, the number exceeds 130 under French law and even 400 under Spanish law. National rules also vary considerably in substance. Typically, rules on compulsory insurance extend beyond a duty to take out insurance as such, but also establish requirements for an insured sum, specific elements of the cover, the availability and effect of exclusion clauses, deductibles, etc. Clearly, insurance products need to be

[28] Moreover, Member States may require that a compulsory insurance contract is not only subject to the specific provisions establishing the insurance requirement, but to the law of the Member State imposing the duty to insure in its entirety; see article 7 para. 4 lit. b Rome I.

adapted to the law of the Member State imposing compulsory insurance (see article 7(4) Rome I). Sometimes, as is the case with motor vehicle liability insurance in Italy, insurers are even compelled to offer model policies ("basic insurance cover") as an alternative to specific products offered in the market. Adaptation of the product is accompanied by changes in the administration of insurance contracts, in particular in the IT system. It follows that little cross-border activity is to be observed in areas of compulsory insurance, such as motor vehicle liability insurance, construction insurance, professional liability insurance and insurance for midwives. Policyholders, e.g. professionals from some Member States, cannot simply take insurance cover with them when providing services in other Member States; they frequently have to conclude local insurance contracts.

3. Relevant Rules of (Mandatory) Insurance Contract Law

a. Rules having direct influence on the insurance product

18. There are many rules of national law with a direct influence on the insurance product. Rules on compulsory insurance as discussed above[29] form the main example. However, rules with direct influence on the insurance product also exist for non-compulsory insurance. Such rules are often mandatory in favour of the policyholder, irrespective of whether the policyholder is a consumer or a (small or medium-sized) enterprise. Such mandatory rules governing the insurance product may be rules of contract law, rules of supervisory law or rules of tax law. In addition, account must be taken of those institutions offering alternative forms of dispute resolution and their requirements or where these are less specific, such as in the case of the Financial Ombudsman Service in the UK, the approach that they adopt. An example of contract law in the *acquis communautaire* can be found in article 201 of the Solvency II Directive granting policyholders of legal expenses insurance the free choice of a lawyer (with exceptions as stated in article 202 Solvency II Directive).

19. In life insurance, product-related mandatory rules are a particular problem for the cross-border provision of services. If an insurer wants to start life insurance business e.g. in Austria or Germany, it will face the application of a series of product related

[29] See section 4 above.

rules. A (statutory or contractual) exclusion clause exempting the insurer from liability in case of suicide committed by the person at risk is usually restricted by mandatory rules which vary in detail: In Germany, the insurer has to pay out insurance money in any event if the person at risk commits suicide more than 3 years after the contract was concluded (§ 161 para. 1 sentence 1 of the German ICA). Within the first 3 years of the contract term the insurer will only have to pay out insurance money if the person at risk committed suicide in a state of mental incapacity (§ 161 para. 1 sentence 2 of the German ICA). The latter rule applies in Austria irrespective of the time when suicide is committed (§ 169 of the Austrian ICA). Furthermore, § 153 of the German ICA grants policyholders of life insurance contracts a right to participate in profits (including hidden reserves) earned by the insurer. Such profits must be calculated and distributed in the manner prescribed by § 153 of the German ICA. While the right to participate in profits may be excluded as a whole, modification or exclusion of such right is prohibited under § 153 para. 1 of the German ICA.

20. Product related rules apply in other branches of insurance as well. Semi-mandatory § 63 para. 1 of the Austrian ICA and § 83 para. 1 of the German ICA, applicable to all indemnity insurances, allow policyholders to recover costs of mitigating loss. If such costs have been incurred upon request by the insurer, it has to cover the costs even if such costs exceed the insured sum together with the insurance money. Similarly, an insurer has to cover defence costs in liability insurance, under certain circumstances even beyond the insured sum (§ 150 para. 2 of the Austrian ICA; § 101 para. 2 of the German ICA). In spite of the non-mandatory character of this rule, exclusion or restriction of defence cover is limited by an unfair contract terms control (§§ 305ff of the German Civil Code; § 879 para. 3 of the Austrian Civil Code). Waiting periods, which will be discussed separately, form another example.

b. Control of unfair contract terms

21. Among the provisions which have an effect on the insurance product, rules on unfair contract terms have a particular impact, more so on b2c contracts than on b2b contracts. Such rules differ from the product related mandatory rules described above[30] in that they do not impose specific contents, but limit the freedom of the

[30] Section 3.a above.

insurer to define the contents of an insurance contract in its general contract terms. Control of unfair terms by national judges may directly affect the insurance product and lead to a distortion of the insurer's calculation of the risk and the corresponding premium. Since insurers subject all or most of their contracts to the same general terms, a court decision holding a term to be unfair will not only have an effect on one particular contract; it will affect the insurer's entire risk pool.

22. In spite of the enactment of the Unfair Contract Terms Directive and because of its minimum harmonisation approach, national approaches differ greatly. In some countries, control is restricted to contracts involving consumers, whereas in others, such a restriction does not apply. English law provides that the description of the insured event ("insurance clause" or "trigger") and exclusion clauses are exempt from unfair terms control, because these rules directly relate to the main subject matter of the contract.[31] In contrast, German law allows for a control of exclusion clauses and even of the definition of the insured event where such definition contains restrictions in the scope of cover (e.g. the use of claims-made policies instead of occurrence-based cover[32]). For example, according to leading commentators, a clause in a life insurance contract excluding cover for a death caused by an illness in existence at the time the contract is concluded will not pass the fairness test, because such exclusion would undermine the protective purposes of the rules on pre-contractual disclosure (§§ 19ff of the German ICA).[33] Moreover, other countries may submit clauses in insurance contracts which directly relate to the main subject matter (i.e. the scope of cover) to a fairness test. Such differences may lead to a situation where an exclusion clause, which is applied validly in one country, may be held void by the court of another country. Clearly, this would force an insurer to adapt and re-calculate its products when entering a foreign market. The same effect would occur where similar national rules, in particular general clauses defining the unfairness of a contract term, are applied differently by national courts. The concepts of the "main subject matter of the contract" and "adequacy of the price" being notions of community law their

[31] See Art. 6 para. 2 The Unfair Terms in Consumer Contracts Regulations 1999; as to its application to insurance contracts see CLARKE, *The Law of Insurance Contracts* (6th edn, Informa 2009) 19-5A at page 623.
[32] As to the position of German courts see e.g. PRÖLSS in Prölss and Martin (eds), *Versicherungsvertragsgesetz* (28th edn, Beck 2010) Vorbem. I para. 58.
[33] See PRÖLSS in Prölss and Martin (eds), *Versicherungsvertragsgesetz* (28th edn, Beck 2010) § 19 para. 77ff.

interpretation by the European Court of Justice[34] may bring closer the interpretation existing in the different Member States.

c. Other rules affecting the insurance product

23. There are other rules of national law which do not govern a specific element of the cover (inclusion or exclusion of certain risks), but nevertheless have an effect on it. National insurance contract laws commonly provide the insurer with an exceptional right to terminate the contract for specific reasons or to withhold payment of insurance money. Such rules concern pre-contractual disclosure by the applicant, precautionary measures imposed by contract, aggravation of risk, payment of premium, notification of the insured event, mitigation duties, etc. In the first case (termination), the policyholder will lose his/her insurance contract. In the second case (full or partial discharge of the insurer), the policyholder will lose his/her cover. Depending on the law applicable, the insurer will either have to pay and/or maintain the insurance relationship, as the case may be, which will distort its assumptions on the contract and the conditions for cover, or the policyholder will face a loss of contract and/or cover which might disappoint his/her expectations for a reliable insurance product. In any event, such rules have an effect, albeit an indirect one, on the product itself.

24. Insurance products may also be affected by formal requirements. This is the case whenever an insurance contract, or a specific clause relevant to the design of an insurance product, is held to be void because formal requirements have not been met. For instance, under French law, exclusion clauses must be printed in bold print in a prominent place on the policy (article L 112-4 Codes des assurances). Thus, a German insurance policy sold into the French market without adhering to this formal requirement would render any exclusion clauses void. Another example is the requirement under Austrian and German law of obtaining written consent from the person at risk upon whose life a life insurance is taken out (see § 159 para. 2 of the Austrian ICA; § 150 para. 2 of the German ICA; formal consent requirements also exist in the laws of Member States when a life insurance contract is altered). Thus, a life insurance taken out by a German policyholder upon the life of her German

[34] See conclusions of advocate general Trstenjak in the case c-484/08 point 66 to 69

husband with an English insurer may be void under the applicable German law, despite the fact that the wife has an insurable interest in the life of her husband within the meaning of English law. On the other hand, life insurance taken out by an English policyholder upon the life of another Englishman with a German insurer may be void under the applicable English law, because the policyholder may lack an insurable interest in the life of the person at risk, irrespective of the fact that the person at risk has given written consent as required under § 150 para. 2 of the German ICA. Finally, the insurance policy may deviate from the application made or any previous agreement. If so, various national laws declare the contents of the policy to constitute the contents of the contract if certain formal requirements are met. For example, a policy edited by the insurer with contents deviating from the application made by the policyholder will be deemed to constitute the parties' agreement under § 5 of the German ICA, but only if the insurer has highlighted all the deviations and informed the policyholder of his/her right to reject the policy. If this formality is not observed, the contents of the application made will prevail. This will not be the case in other jurisdictions where there is no such formal requirement.

25. The duties of the insurer to provide pre-contractual information regarding the insurance or even to advise the policyholder may also have an effect on the insurance product. The penalty for breach of such duties is often the retention of the policyholder's withdrawal rights and/or damages. If, for instance, an insurer provides information that specific incidents are covered while in fact it does not provide such cover, the insurer may be held liable to put the policyholder in the position he/she would have been in, had the information been correct.

d. Rules on the administration of insurance contracts by insurers

26. Insurance is a contract for the performance of continuing obligations on both sides. Even where the contractual term is only one year, contracts are frequently renewed or extended. Insurance contracts require on-going administration, e.g. invoicing (first and follow-up premium), post-contractual information (among other things on new products), adjustment of terms and premiums, dealing with notifications by the policyholder, aggravations of risk, claims handling and the like. Many of these topics are governed by mandatory rules of insurance contract law in the Member States. Such

rules set out formalities, e.g. a requirement to give notice in writing. While electronic documents fulfil the requirement of writing in some Member States, this is not the case in other Member States. Other rules provide for certain time limits to be observed by the insurer, e.g. for invoking penalties following the discovery of a non-disclosure or misrepresentation, an aggravation of risk or any other fact relevant under the contract. Some Member States impose duties upon the insurer to warn the policyholder at certain instances, e.g. German ICA obliges the insurer to warn the policyholder about the consequences of any non-disclosure or misrepresentation (§ 19 para. 4 of the German ICA), of a breach of a contractual duty to notify and give information on an insured event (§ 28 para. 4 of the German ICA), of a non-payment of premium (second sentence of § 37 para. 2 and second sentence of § 38 para. 1 of the German ICA), etc. Irrespective of other factors the large number of such mandatory rules and their diversity in different Member States pose a problem for an insurer entering a new market. The complexity of such rules will often prevent an insurer from having the same employees and the same IT system deal with such matters in various jurisdictions. The insurer will have to employ specialists and maintain separate IT systems for each Member State. Again, costs will multiply in correlation with the number of Member States in which an insurer is doing business.

e. In particular: Group insurance

27. Group insurance poses questions of its own. It is striking to observe that in spite of its enormous economic relevance only very few legislators (e.g. in Sweden and France) have enacted special rules on group insurance. Under other jurisdiction's laws, including the new German ICA, it is left to the judge to deal with the specific aspects of group insurance. Clearly, national solutions vary significantly. There are also other influences. In Poland, for instance, the supervisory authority discourages the use of "bancassurance" products based on group insurances in order to safeguard consumer protection. Therefore, any use of group insurance schemes as a tool for marketing insurance products at a European level would still have to be tested as to adverse effects of foreign law on the relationship of the insurer to the group insurance policyholder and individual group members.

Part III

Insurance Contract Law – General Part I

Yannis Samothrakis

Discussion Paper III

Differences in Insurance Contract Laws and Existing EU Legal Framework

Insurance Contract Law – General Part 1

Prepared by

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1. DEFINITION OF INSURANCE CONTRACT

1. As seen in the previous section, in spite of a limited harmonisation and to some extent approximation of insurance contract laws, significant differences remain between Member States. The purpose of this section is to assess the extent to which such differences constitute an obstacle for insurers and for consumers when offering or taking insurance contracts on a cross-border basis, the analysis being conducted for each of a number of specific aspects of insurance contract law.

2. One notable illustration of the above is the lack of a meaningful definition of insurance at EU level[1], either as an activity or as a contract. In fact, few Member States have adopted a statutory definition of insurance (e.g. Belgium, the Netherlands[2]). It is generally acknowledged that defining insurance as an activity or as a contract is a perilous task and, arguably, a futile one: by its nature, insurance is closely linked to human activities and is therefore in a constant state of evolution which a fixed definition may hinder. In addition, insurance can be defined differently depending on whether one contemplates the legal relationship (insurer, policyholder, insured and beneficiary), the technical process (the mutualisation of a large number of risks) or even the tax qualification (e.g.: in case of life insurance or pensions). For instance, in their recent reform of business-to-consumer insurance contract law, the English and Scottish Law Commissions decided not to define insurance[3].

3. As such, the main features of insurance contracts often result from case law. For example in France, the *Cour de Cassation*[4] has ruled that an insurance contract has three main

[1] Regulation 878/2011 of 2 September 2011 amending Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria does contain a definition of insurance, however considering the specific context of the Regulation and the actual drafting of the definition, it is unlikely that such definition could be used for any other purpose. The same definition can also be found in Regulation 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010

[2] Insurance Europe Art. 7:925 Burgerlijk Wetboek (Civil Code)

[3] The Law Commission and the Scottish Law Commission, Consumer Insurance Law: Pre-contract disclosure and misrepresentation, December 2009 - http://lawcommission.justice.gov.uk/docs/lc319_Consumer_Insurance_Law.pdf

[4] Cass. Civ., 31 January 1956

characteristics: a risk, defined as a future uncertain event independent from the will of the parties; a premium; and the payment of a sum of money or the performance of an agreed task in case of realisation of the risk. The notion of *alea*[5], which can be translated as *uncertainty*, is an essential element of the insurance contract and its absence will generally void the contract. In Germany, the insurance contract itself is not legally defined, either. However, the typical obligations arising from an insurance contract are listed[6].

4. One possible area of concern is investment-linked life insurance, as the same contract may qualify as insurance in one Member State and not in another. In that respect, some Member States require a minimum death benefit for the contract to qualify as insurance (either from a legal or from a tax point of view, e.g. Germany), while others (e.g. France[7]) do not. Even within a single Member State, differences can occur in the contract law, tax or supervisory definition of insurance adding another significant layer of complexity. Indeed, contracts classified as insurance in one Member State may be treated, for example, as a financial or investment product in another for regulatory purposes.

5. Some contracts may also qualify as insurance only when they are offered by an insurance undertaking. This is sometimes the case of warranty extensions for consumer products such as cars or electrical appliances, which may be offered as a paid option by the manufacturer itself or as an insurance contract by the seller. The same seller may therefore be acting as an insurance intermediary when offering the extended warranty as an insurance product, but not if such extended warranty is provided by the manufacturer.

6. In spite of the above, in practice, the qualification of a contract as insurance is rarely an issue for the parties and there is no indication that consumers consider this as a concern from a contract law perspective. Therefore, differences between Member States in the definition of insurance operations, of insurance contracts or of their essential features generally constitute a relatively minor obstacle for insurers as they are able to overcome differences when offering their products on a cross-border basis.

7. For large risks, insurance programmes may contain local policies and higher layers providing coverage on a global or pan-European basis. Only the local policies tend to require any adaptation to meet local definition requirements.

8. Generally, the consensus is that material differences in definitions result either from prudential regulation and supervisory practice or from tax. The required adaptations and the associated costs are generally minor. For instance, investment-linked life insurance contracts may require a death benefit when offered in some jurisdictions. In such case, insurers may

[5] Article 1964 of the French Civil Code
[6] Section 1 German Insurance Contract Act
[7] In four decisions of 23 November 2004: Cass. ch. mixte, 23 nov. 2004, no 02-11.352, no 01-13.592, no 03-13.673 and no 02-17.507

typically provide an additional death benefit expressed as a percentage of the surrender value of the policy. For example, 103% of the surrender value may be paid to the designated beneficiaries in case of death of the life insured, thus adding a 3% mortality risk on top of the purely investment part of the contract. While this affects the actuarial basis on which the contract is designed, insurers have the option of reinsuring all or part of the mortality risk thus mitigating the cost and operational burden of this additional benefit.

2. ELEMENTS OF THE CONTRACT

9. There are several elements required for the formation of an insurance contract. These elements differ from country to country. If some elements are not present the contract will be void.

10. Of all the elements of the insurance contract considered, insurable interest has one of the most significant impacts on cross-border business for life insurance, as opposed to other elements which do not seem to represent major problems. Nevertheless, other elements known to raise issues include for example, with life insurance contracts, the amount of death benefit and for investment linked life insurance contracts, the amount of investment discretion permitted by the policyholder or the types of investments which are permitted to be linked to the contract. The necessary elements can also be dictated by tax or regulatory requirements which also differ between jurisdictions.

11. The definition, requirements and sanctions relating to insurable interest vary significantly across Member States, while European law does not deal with this concept.

12. Insurable interest relates to the definition of an insurance contract as it is considered an essential feature distinguishing it from other contracts such as gambling. Insurable interest also aims at preventing one person from attempting to benefit from another person's loss.

13. Certain laws, such as English and Scottish laws, treat insurable interest as an essential legal element of the insurance contract. As such, the lack of insurable interest *per se* will cause the contract to be void under certain circumstances[8]. The English and Scottish Law Commissions considered this issue[9] and responses are summarised in the introduction to their report[10]. In essence, the Law Commissions noted a strong support for maintaining the principle of insurable interest during consultations in 2008, adding that it was nevertheless

[8] In Fuji v Aetna (*Fuji Finance Inc v Aetna Life Insurance Co Ltd*, [1995] Ch. 122), it was found on a trial of preliminary issues, that the life insured had no insurable interest. However the Court of Appeal overruled the decision at first instance. The contract was a life insurance contract even although the amount payable on death and that payable on surrender were the same.
[9] The Law Commission and Scottish Law Commission, Issues Paper 4, January 2008 - http://lawcommission.justice.gov.uk/docs/ICL4_Insurable_Interest.pdf
[10] Insurance contract law, Summary of responses to second consultation paper, Insurance Contract Law, Post Contract Duties and other Issues, Chapter 3: Insurable Interest - http://lawcommission.justice.gov.uk/docs/post-contract-duties_responses_insurable-interest.pdf

difficult to state what amounts to an insurable interest or to specify the consequences of writing insurance without it.

14. French law has a rather economic approach, simply requiring that the policyholder have *an interest in safeguarding a property or a direct or indirect interest in the non occurrence of a risk*[11]. In life insurance, the insurance contract will be void unless the insured has given his or her written and express consent[12]. In the Netherlands the insurable interest in indemnity insurance is the compensation of loss or damage. The insurable interest is restricted: the compensation cannot place the insured in a clearly more advantageous position than he would be in without insurance. In life insurance the insurable interest relates to the interest of the person effecting the insurance/beneficiary in the life of the person insured. In Germany, consequences in case of a lack of insured interest are regulated in Section 80 German Insurance Contract Law[13].

15. These differences may, in certain circumstances, require a careful adaptation of insurance contracts but do not seem, by themselves, likely to prevent an insurer from entering another market.

3. THE PRE-CONTRACTUAL STAGE

3.1. Pre-contractual information

16. Pre-contractual information encompasses all the obligations, for the insurer, to provide documents and information relating to the insurance contract prior to the conclusion of such contract. A number of European directives have attempted to harmonise certain aspects of pre-contractual information[14] and several initiatives are under way in that respect[15].

17. From an insurance contract law point of view, the pre-contractual stage is of significant importance as it defines the terms of the future contractual relationship. Any irregularity in the pre-contractual information itself or in the manner in which it is provided may therefore impact the parties' respective rights and obligations.

[11] Article L. 121-6 of the Insurance Code (applicable to non-life insurance)
[12] Article L. 132-2 of the Insurance Code
[13] Section 80, para. 1 German Insurance Contract Act: The policyholder shall not be obligated to pay the insurance premium if no insured interest exists when the insurance cover commences; this shall also apply if the interest does not arise in the case of an insurance taken out for a future enterprise or for another future interest. However, the insurer may demand an appropriate fee.
[14] Solvency II Directive 2009/138, Directive 2000/31 on Electronic Commerce, Directive 2002/65 on the Distance Marketing of Financial Services, Insurance Mediation Directive 2002/92 (for intermediaries)
[15] E.g.: Packaged Retail Investment Products Regulation and Insurance Mediation Directive 2

18. In that respect, EU legislation is on a minimum harmonisation basis as seen above[16]. Member States have transposed pre-contractual information requirements in varying manners and many have adopted additional requirements aiming at providing a higher level of protection for consumers, a practice often referred to as *gold-plating*.

19. As a consequence, significant differences in legislation and in case law between Member States exist in terms of pre-contractual information requirements, primarily for business-to-consumer contracts. Large risks are less affected by such requirements.

20. For example, the French Insurance Code provides a very detailed set of rules relating to the content and the form of the documents to be provided to the policyholder at the pre-contractual stage[17]. These requirements and their interpretation by the Courts have gained in complexity and lost in clarity over the years, thus generating a significant level of uncertainty for French insurers and even more so for insurers established in other Member States.

21. In case of non-compliance, the start of the withdrawal period is deferred until fully compliant information is provided to the policyholder, up to a limit of eight years. This entails that the policyholder may at any time during these eight years request the reimbursement of all the premiums paid, which is typically done in case of poor performance of the assets to which the contract is linked.

22. The French *Cour de Cassation* has adopted a very strict interpretation of these provisions, going as far as to rule that a policyholder may use his or her right of withdrawal even if in bad faith[18]. In practice, in a recent case, the Paris Tribunal ruled that an insurer, by adding a number in front of each separate charge, had breached the requirement whereby all charges should be grouped together in the table to be inserted on the first page of the contract[19].

23. Several insurers established in Luxembourg or Ireland have faced difficulties in applying these provisions to their insurance contracts, in particular because the French Insurance Code is tailored to French contracts[20].

24. Other Member States have also introduced specific requirements. Italy requires insurers to provide a specific note relating to withdrawal rights[21] while in the Netherlands,

[16] Section I of Report II
[17] In particular under articles L. 132-5-1, L. 132-5-2, A. 132-4 and A. 132-8.
[18] Civ 2, 4 February 2010, N° 08-21.367, 09-10.311
[19] Tribunal de Grande Instance de Paris, 19 October 2010, RG 09/5269
[20] For instance, the concept of *fonds dédiés* which exists under Luxembourg law allowing a more flexible approach to the assets that can be linked to under a life insurance contract (Insurance Europe: pursuant to the *Lettre circulaire 08/1 du Commissariat aux Assurances relative aux règles d'investissements pour les produits d'assurance-vie liés à des fonds d'investissement*) are almost impossible to reconcile with specific French law requirements to be found under the French Insurance Code, which is only adapted to the French list of admissible assets.
[21] Art. 185 D. lgs. 209 7/9/2005

both the Dutch Central Bank (DNB) and the Netherlands Authority for the Financial Markets (AFM) have introduced distinct rules on transparency and pre-contractual information on costs. In Germany, the national statutory ordinance ("VVG-Info-Verordnung)[22] gives detailed requirements regarding the order of the information provided and itemises the specifications regarding the content.

25. These differences in content, form and sanctions of pre-contractual information rules constitute significant obstacles for insurers as they generate an important level of uncertainty and require constant monitoring. Empirical evidence shows that insurers have renounced penetrating certain markets, in particular the French market, after a careful analysis, considering that the level of additional operational risk generated by legal uncertainty was unacceptable. It is, in fact, difficult to find out what the pre-contractual information requirements in another Member State are without access to a local distribution network or a substantial investment to build up the necessary knowledge.

26. On the other hand, a cumulative application of requirements from different countries is not possible, as there may be conflicting national rules. For instance, different Member States may require highlighting of different parts of information which may be conflicting.

3.2. Pre-contractual duty of disclosure

27. Precise and accurate information improves the insurer's ability to assess the risk and therefore to price it accordingly. However, several factors may impact the access to such information. Applicants may be reluctant to disclose sensitive or personal information, or may simply not be aware of its relevance to the insurer. They may also be unwilling to disclose specific information in order to avoid the risk of higher cost of insurance. In any case, they may be acting in good or in bad faith.

28. The rules governing the manner in which the applicant to an insurance contract is required to disclose information relevant to the risk to be insured have not been harmonised. As such, these rules vary significantly from one Member State to another, including the sanctions in case of inaccurate or wrongful disclosure. Furthermore, the practise of using questionnaires to obtain the necessary disclosure from applicants is not mandatory in all Member States and the rules relating to allowed questions vary significantly. In Belgium, for instance, questions related to genetic diseases are prohibited[23]. In France, the *Cour de Cassation* has recently ruled that a pre-printed declaration inserted in the insurance contract

[22] Based on Section 7, para. 2 German Insurance Contract Act.
[23] Insurance Europe: This prohibition results from Article 5 of the *Loi sur le contrat d'assurance terrestre* of 25 June 1992 (as amended). Article 95 of the same text also excludes genetic tests from medical tests performed for the purpose of taking an insurance contract. For more information on genetic tests, please refer to Section VI on Life Insurance.

signed by the policyholder does not constitute a valid pre-contractual questionnaire[24], thus preventing the insurer from relying on such declaration to prove the policyholder's bad faith. In England and Wales, there are currently significant disclosure requirements in a commercial context on the policyholder, which can nevertheless be mitigated by negotiation. However, the burden of disclosure placed on commercial policyholders is being reviewed and may be reformed in the near future. It is generally acknowledged that the issue is more significant for consumer than for commercial contracts. In the Netherlands, if the insurance is placed on the basis of a questionnaire drafted by the insurer, the insurer cannot decline a claim on the basis that facts in respect of which no question was raised were not disclosed, or that the answer to a question couched in general terms was incomplete, unless there was intent to mislead the insurer. A general catch-all question ("Are there any facts or circumstances that may be important to the insurer that you have not mentioned so far?") does not remedy this lack of information. In Germany, the duty of disclosure is established in Section 19 German Insurance Contract Act. However, agreements that deviate from it to the detriment of the policyholder are not permitted.[25]

29. Therefore, while there is a perceived convergence of the rules relating to the pre-contractual duties of disclosure, understanding the differences in disclosure requirements in different markets and adapting the products tends to result in added costs which are ultimately born by policyholders. It also precludes online contracting through the use of a single website which would otherwise be possible within the same language area. In addition, disclosure requirements are typically an area where case law is of significant importance, with local insurers having necessarily a better knowledge than those established in other Member States, incurring higher costs for monitoring evolutions in that area.

4. CONCLUSION OF THE CONTRACT

4.1 Offer, acceptance and form of the contract

30. Different legal traditions and the absence of harmonisation explain the differences in the manner insurance contracts are concluded across the EU.

31. Firstly, the essential issue of offer and acceptance is treated differently in each Member State. In general, it will be considered that the applicant is making an offer to the insurer which is free to accept it[26]. Such offer may or may not be binding[27] and some Member

[24] Cass. Crim., 10 January 2012, n° 11-81.647

[25] Section 32 German Insurance Contract Act. Section 56 provides additional consequences of a breach of duty of disclosure. Section 157 provides in case of a life insurance contract consequences where the insured person's age has been declared incorrectly. Here, agreements that deviate from it to the detriment of the policyholder are also not permitted, Section 171.

[26] E.g. France, UK, Italy, the Netherlands. In Germany, According to § 5 of the German ICA, deviations from the application contained in the policy shall be deemed to be approved by the policyholder, unless the latter does not object in writing within one month of receipt of the insurance policy. While this deviation from general contract law is also applied in some other Member States (see Article 2:502 PEICL N1),

States require that the insurer send any contractual documentation prior to any oral contact with the applicant[28], which can be difficult to prove in practice.

32. The specific rules relating to the distance marketing of insurance contracts add much complexity for adapting to the rules relating to offer and acceptance. For instance, when marketing its products by telephone, an insurer will typically want to conclude the contract at the end of the call, which may not be possible if the law of the Member State in which the applicant is located requires the latter to return a signed application after the telephone call. Tax law or jurisprudence may also prevent such a distribution method as the intermediary making the telephone call may be treated as a permanent establishment in the host country for tax purposes if it is allowed to inform the applicant that the contract is concluded at the end of the call[29].

33. Empirical evidence suggests that some host supervisors are also extremely inquisitive when contemplating notification requirements for cross-border distribution of insurance contracts by insurers established in other Member States, going as far as requesting a detailed written explanation of the whole underwriting cycle and the production of contractual documents proving that rules on offer and acceptance will be scrupulously complied with.

34. This leads to the second issue relating to the form of the contract. Requirements in this respect vary considerably across Member States. While in some Member States, the existence of a signed written document is a condition for the validity of the insurance contract[30], others simply require the insurer to provide contractual documents in written form after the conclusion of the contract[31]. The requirement of a signed written document, unless interpreted such as to include electronic communication, impedes online contracting.

35. Other specific insurance contract law provisions may also require the insurer to be able to prove that the policyholder has received, read and accepted the terms of the contract. For instance, the French Insurance Code provides that exclusions may only be enforced if they are printed in very apparent fonts[32], a requirement which has given rise to very detailed case law on font types, colours and weight. This entails that although an oral contract may in theory be valid, a written document is still required for evidential purposes. In Germany, if the content of the insurance policy deviates from the application made by the policyholder or the agreements made, the deviation shall only be deemed to be approved if further preconditions

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it is not in other Member States, e.g. Italy (ibid. N8). Insurers from countries applying the rule will have to adjust their contracting procedures when they offer cover in countries such as Italy. This will generate additional costs.

[27] E.g. in France, the offer is not binding pursuant to Article L. 112-2 of the French Insurance Code, while in Italy it is valid for a period of 15 days only

[28] Italy

[29] This appears to be the case in Italy

[30] E.g. Bulgaria

[31] Insurance Europe E.g. the Netherlands (art. 7:932 Civil Code)

[32] Article L. 112-3 of the French Insurance Code

are met and the policyholder does not object in writing within one month of receipt of the insurance policy[33].

36. The same applies to the obligation for insurers to provide the applicable terms and conditions, also referred to as general terms and conditions. Differences exist in terms of content, form and timing of communication between Member States.

37. All the differences relating to the conclusion and form of the contract discussed above lead to additional costs in that they require insurers to adapt to very different frameworks. One key source of costs is the obligation to adapt existing IT systems and to ensure that they remain compliant as legislation and case law evolve.

4.2. Withdrawal period

38. Withdrawal periods are subject to minimum harmonisation EU provisions[34] and there are therefore some differences between Member States, especially for mass risks, as such rights are generally not relevant in large risks.

39. In order to minimise IT costs, insurers tend to adopt, whenever possible, the most generous rules in terms of length of the withdrawal period and empirical evidence suggests that longer periods do not increase materially the number of withdrawals.

40. The most notable differences between Member States relate to the treatment of premiums in investment-linked insurance contracts. More precisely, the question is how to treat the premiums paid by the policyholder during the withdrawal period. They may either be held in cash by the insurer (or invested in assets that guarantee the return of the initial investment) or invested in the assets chosen by the policyholder. Insurers will only accept to do the latter if the policyholder has agreed to take the risk of a fall in the value of the assets to which his or her contract is linked, provided of course that the applicable law authorises such an agreement.

41. Differences in withdrawal period requirements are not seen as a major obstacle by insurers.

4.3. Waiting periods

[33] Section 5, para. 1 German Insurance Contract Act
[34] Article 186 of the Solvency II Directive and article 6 of the Directive on the Distance Marketing of Financial Services

42. Waiting periods generally refer to periods during which the policyholder has to pay the premiums and the reinsurer provides cover, such cover being however limited by the exclusion of certain risks for a predetermined period.

43. Waiting periods typically concern health insurance, life insurance (e.g. for suicide) and legal expenses insurance. Some Member States have limited the scope of waiting periods, for instance by prohibiting them in relation to pregnancy[35], while in some others waiting periods are simply illegal[36].

44. While these differences tend to add some elements of complexity to conducting cross-border business, they do not represent a major obstacle for insurers to provide their products on a cross-border basis.

5. EXECUTION OF THE INSURANCE CONTRACT

5.1 Aggravation of the risk during the duration of the policy

45. As for the pre-contractual duty of disclosure, requirements and sanctions relating to the aggravation of the risk during the duration of the policy vary significantly between Member States. Under English law, an insured has no general duty to disclose changes in the risk after the policy period has begun unless this is provided for contractually whereas other Member States such as France or Germany[37] impose an obligation on the policyholder to disclose any new circumstances that either aggravate existing insured risks or create new risks[38]. Sanctions also differ, ranging from a reduction of cover to the total loss of cover[39].

46. These differences can generate complexity and an increased level of uncertainty for insurers doing cross-border business, especially for mass risks.

5.2 Precautionary measures

47. In addition to the obligation to disclose information relevant to the insurer's risk assessment, insureds are generally expected to avoid the materialisation of the insured risk or to mitigate its consequences. This obligation is often referred to as *precautionary duties*. From a purely behavioural perspective, the requirement is that the existence of an insurer should not by itself discourage the insured to behave prudently.

[35] Belgium
[36] E.g. Poland
[37] Section 23 German Insurance Contract Act mainly comprises the relevant regulations in detail.
[38] Article L. 113-2 of the French Insurance Code.
[39] E.g. French Insurance Code, articles L. 113-8 (intentional wrongful declaration or non-declaration will generally void the contract) and L. 113-9 (non-intentional wrongful declaration or non-declaration will entail a proportional reduction of cover)

48. Rules on precautionary duties are not harmonised and the applicable legal frameworks vary among Member States. The main differences lie in the assessment of the causal link between the breach of precautionary duties and the occurrence or aggravation of the risk.

49. The impact on insurers intending to conduct their business on a cross-border basis is more relevant for mass insurance contracts and in particular with regards to claims management.

Part IV

Insurance Contract Law – General Part 2

Report of the Commission's Expert Group on Insurance Contract Law

Discussion Paper IV: Report on the meeting of the Expert Group on 17-18 July 2013

Insurance Contract Law – General Part 2

Section 1: Unfairness controls of standard terms and conditions of insurance contracts

The nature of an insurance product is delineated by its terms and conditions. The terms of the insurance policy set out the scope of cover provided and the mechanism by which claims can be made.

For mass risks, terms will typically be developed through standard terms and conditions for the relevant market; for large risks this is less so since there is more scope for specific negotiation of the product.

Each Member State has developed its own laws for protection of unfair terms. In an area of law such as insurance of mass risks, where standard terms and conditions are heavily used, unfairness controls play a significant part in the control of the product which is being sold.

Some of the legal rules which govern unfairness control were developed before the Unfair Contract Terms Directive and were (and remain) broader in scope than the Directive[1]. However, much of the EU approach has derived from the Unfair Contract Terms Directive[2].

The Unfair Contract Terms Directive sets out general rules on unfair terms in consumer contracts based on the minimum harmonisation principle. Member States are therefore able to provide higher consumer protection standards in their national laws if they choose to do so. The resulting differences lead to diverging standards of unfairness control in the Member States.[3] There are a number of differing issues which add to the complexity; The Unfair Contract Terms Directive does not only apply to insurance contracts, but all consumer contracts.

Unfairness control

Some Member States have restricted unfairness control to standard terms only; some Member States extend the control to individually negotiated terms.[4]

According to Art.3(1) of the Unfair Contract Terms Directive, a contractual term is regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer. This approach has been interpreted differently in Member States with differing interpretations of what causes a significant imbalance in the parties' rights and obligations. The Unfair Contract Terms Directive on

[1] For example, Portugal and Belgium were cited as examples of states which have developed their unfair terms legislation prior to the introduction of the Directive.
[2] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, Official Journal L95, 21.4.1993 p.29-34
[3] For a comparative overview see for example Consumer Law Compendium p.341 et seq: http://www.eu-consumer-law.org/comsumerstudy_part2c_en.pdf . See also the comparative table produced by the Expert Group in the present study.
[4] For example: France, Belgium, Sweden, Denmark, Finland, Latvia, Luxembourg, Malta and Slovenia all choose to go beyond the Directive so as to provide unfairness control for individually negotiated terms.

its own was insufficient to bring coherence to the rules on unfair contract terms. The policymakers' intention was to provide only for minimum harmonisation, thus enabling Member States some freedom in adopting, maintaining or amending unfairness controls in their markets. The Annex to the Unfair Contract Terms Directive provides a list of terms which may be considered unfair in an indicative and non-exhaustive manner. Some Member States have adopted a "grey" list which results in the terms not always being unfair[5]; some Member States have put the clauses on a black list and regard them as always unfair[6].

The approach adopted across the Member States is further complicated by the approach to "core" terms. Art. 4(2) of the Unfair Contract Terms Directive specifies that an assessment of the unfair nature of the terms will not apply to the main subject matter of the contract or to the adequacy of the price and remuneration of the services supplied in exchange.[i] However the Court of Justice[7] has made clear "Member States cannot be prevented from adopting or retaining, throughout the area covered by the Directive, including Article 4(2) thereof, rules which are more stringent than those provided for by the Directive itself, on condition that they are designed to afford consumers a higher level of protection."

For insurance contracts, Recital 19 states that "the terms which clearly define or circumscribe the insured risk and the insurer's liability" do not fall in the scope of the unfairness control since "these restrictions are taken into account in calculating the premium paid by the consumer"[8].

A number of Member States have not however adopted Art. 4(2) and in these Member States[9] both the price and delineation of the insured risk are subject to unfairness control. A number of other Member States[10] have implemented Art. 4(2) of the Unfair Contract Terms Directive by exempting every term which addresses the insured risk and the insurer's liability from the unfairness control. Certain other Member States largely apply the unfairness controls to the terms of the insurance policy and exclude only essential elements such as the scope of the insurance cover and the premium[11]. It is not always straightforward to define what a core term is and what is not.

Art. 4(2) of the Unfair Contract Terms Directive provides that core terms will only be excluded from the test if they are drafted in "plain and intelligible" language. Art 5, sentence 1 stipulates that standard terms in a written contract should be drafted in plain and intelligible language but does not give any guidelines as to what such language is. Different approaches are adopted in different Member States as to that meaning and in particular as to the level of technical language which can be used.

A breach of Art. 5 sentence 1 will lead to the clause being interpreted in favour of a consumer. In at least one Member State[12], however, breach will lead to the clause being void.

According to Art. 6(1) of the Unfair Contract Terms Directive, "Member States shall lay down that unfair terms shall not be binding upon the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms".

[5] For example, Cyprus, Ireland, Poland, Slovakia and the United Kingdom
[6] For example, Austria, Belgium, Bulgaria, Czech Republic, Estonia, Greece, Latvia, Lithuania, Luxembourg, Malta, Romania, Slovenia and Spain.
[7] Caja de Ahorros y Monte de Piedad de Madrid (Case C‑484/08)
[8] The differences are not differences between national laws, but between language versions of the Directive, i.e. differences within EU law. Recital 19 uses the word "since" in the English version and corresponding conjunctions in French, Spanish, Portuguese, Swedish, but the word "sofern" (to the extent that) in German and "qualora", "wanneer", når (when) in the Italian, Dutch and Danish versions. In the latter language versions the impact of a clause on premium and/or cover is a condition for the exemption from the judicial review whereas this exemption is considered as a consequence following from the application art. 4(2) in France, the UK etc. The CJEU will have to decide which of the language versions is correct and binding.
[9] Member States not implementing Art.4(2) include Portugal, Austria, Denmark, Latvia, Luxembourg, Greece, Romania, Slovenia, Spain and Sweden.
[10] Member States choosing to adopt this approach are the UK and France
[11] Germany, Italy
[12] Germany

Whereas in some Member States[13] the unfair term can remain in force, in others the unfair term is automatically deemed null and void[14] or non-existent[15]. In some countries the courts may declare a term void but may also alter, amend and adjust the particular term, other terms, or indeed the entire contract[16].

Whilst the Unfair Contract Terms Directive is only applicable to contracts between a trader and a consumer, some Member States also foresee unfairness controls in standard terms in B2B contracts[17]. The approaches adopted by different Member States to B2B contracts vary considerably; indeed, some Member States do not provide for any specific rules for unfair contracts in B2B[18].

The relevant rules in some Member States regarding incorporation of terms and their interpretation represent a mechanism of content review; for example in a number of Member States the incorporation of a standard term depends not only on whether a party has had an opportunity to review the term but also upon the content of the clause; the fairness will form part of that analysis. In some Member States[19] general (non-insurance) concepts of law can be used to correct what are perceived to be disproportionate imbalances in the obligations to be applied – such as the principle of *laesio enormis* or the benchmark of "public policy/good morals" or the doctrine of *cause*.

Determining unfairness

The modes of enforcement in local courts together with consumer organisations, supervisory authorities, ADR bodies are all cited as having an effect in the process of enforcement of terms of insurance policies. For example, in France there are two sets of controls: administrative control by the supervisory authority and judicial control. In the UK, the Financial Conduct Authority may conclude that a particular term is unfair even if there is no judicial finding to that effect; in practice that will have an effect on an insurer's use of any similar clause thereafter. In Germany, there is an ex-ante administrative control by the supervisory authority only in relation to health insurance and compulsory insurance, but ex-post judicial control is still possible. In other Member States, undertakings are asked by regulators not to use certain clauses. Such clauses are easily accessible as they were published on the regulator's website.

It was noted that the adoption of ombudsman services to determine disputes and complaints (which services are typically not limited to insurance matters) has an impact on the approach to unfairness since an ombudsman in some jurisdictions (e.g. the UK) will often apply concepts of good faith unrelated to contractual interpretation or controls[20]. This is not the case in, for example, Germany where the ombudsman is bound to apply the law and is not entitled to "make" new law.

Situations may also arise where national courts find that certain clauses are unlawful when they had been understood in the market to be permitted. For example, in one Member State[21], an expert group of insurers and policyholders had reached agreement on a number of clauses, but the Supreme Court has subsequently ruled some of them to be unclear and unfair.

[13] Czech Republic, Latvia, the Netherlands
[14] Bulgaria, Estonia, Germany, Ireland, Portugal, Romania, Slovakia, Slovenia and Spain.
[15] France, Luxembourg, Malta
[16] Denmark, Finland, Sweden.
[17] For example Germany, Austria, Estonia, Hungary, the Netherlands, Portugal, Slovenia
[18] Belgium, Bulgaria, Cyprus, Czech Republic, France, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, Slovakia, Spain
[19] For example in Belgium, Spain and France
[20] The Financial Ombudsman Service in the United Kingdom was cited as an example of a service which applies fairness controls unrelated to any national or EU legal controls.
[21] Germany

The wider impact of a judgment or finding classifying a term as unfair varies across different Member States. For example, in Spain a recent judgment which declared several clauses unfair applied to all market participants[22]. In Spain, Italy and Portugal, if a case is brought by a consumer association and succeeds, this will have a general effect on the market. In contrast, in Belgium, even in such a case the judgments of the Commercial Court of Brussels in the Test Achats/DKV, AG, ING cases of 16 June 2003 only affected the companies involved in the cases and did not affect the practices of the other market participants (although the rulings later influenced specific legislation on health insurance regarding, for instance, pre-existing diseases).

Where there is a low level of legal certainty, unfair contract terms issues do make a difference to an insurer's decision to offer its services cross-border.

Area of complexity and changes to the product

There was consensus that unfairness control across the EU is an area of complexity. Given that insurance products are contained within the wording of standard terms for mass risks, the extent of unfairness control in Member States is an area which requires specific legal advice wherever an insurance product is to be offered. The different rules are a cause of legal uncertainty. The fundamental importance of clarity of the contract to be offered means that unfairness control is an important issue for an insurer's decision to offer its services cross-border.

Resolving differences, for example, between different black and grey lists, whether a term is or is not core or examining the different consequences of unfairness from Member State to Member State may represent one of the challenges to an insurer considering offering a product in a new market.[23]

The different and complex national regimes make it very costly to find out about the substance of national laws. Besides these costs also other local factors such as local regulatory and enforcement issues will have to be assessed.

As to large risks, there was consensus that unfairness control for large risks was less problematic. This is partly because such risks are typically brokered and the policyholders have the benefit of broker advice. Further, the sums at stake often mean that both parties are able to take the time (and to incur the cost) of negotiating specific terms so as to find the appropriate balance of protection offered by the product for the particular case. However, it was noted that there is sometimes an indirect effect on B2B risks since contract terms declared invalid in B2C contracts may thereafter be removed from B2B contracts since insurers seek to increase standardisation of approach. Furthermore, in some Member States SMEs are treated more comparably with consumers than with large risks. For certain types of large risks (e.g. energy, cargo, marine/aviation hull) standard or model contract terms developed in consumer insurance contracts have no relevance.

Section 2: Payment of premiums and consequences of non-payment

The payment of the premium is the main obligation of the policyholder. The parties must determine the amount of the premium, the date by which payment must be made and the consequences of non-payment

Non-payment and late payment

[22] See Sentencia del Tribunal Supremo, Sala Primera, de lo Civil, de 1 Julio de 2010, rec. 1762/2006

[23] For example, in Poland the Consumer Protection Authority could include a clause on a black list, which from then on had the force of law. More than 100 unfair clauses had been identified for insurance.

A distinction can be drawn between non-payment of the first premium or a single premium payment and subsequent premium payments. In a number of Member States, insurance cover will only commence following payment of the first premium or the single premium[24] . In other Member States, it is the promise to pay the premium which provides the necessary consideration to complete the contract and actual payment is not therefore a formal necessity[25].

Given that suspension of insurance can have far reaching consequences for a policyholder, many Member States do provide for some form of protection to a policyholder before insurance protection is lost. This might include for example some kind of warning regarding the impending loss of insurance cover[26] automatic termination[27] or a "period of grace" which provides time for payment[28].

In case of late payment of subsequent premiums, a number of Member States will suspend cover[29]. In some Member States there is a requirement that the insurer should set a deadline and give notice of this to the policyholder[30]. At least one Member State does not require any such warning[31]; insurance cover is lost automatically 15 days after the premium was due. There also appear to be Member States where an insurer can only choose between continuation and termination of cover (such that suspension is not an option)[32].

Right to terminate

The right of a party to terminate a contract if the other party has not performed is an accepted principle across Europe as a matter of contract law. This applies whether the failure to pay is of the first premium of instalments, single payment premium or subsequent adjustment premium. Variations occur around the time within which termination can take effect. The period can vary from two weeks[33], (or not less than two weeks[34]) to one month or more[35]. There are a number of other variations which may apply in different Member States (e.g. invoicing and fault requirements). Accordingly, although principles regarding late or non-payment of premiums seem to show some similarity across Europe, the conditions for exercising remedies and remedies do vary.

In the brokered market (i.e. for large risks) there will typically be a premium due date and the consequences of late payment or non-payment would be set out in the contract. If payment is not made, the cover will then lapse.[36]

Different approaches

[24] For example: Austria (section 38(2) Insurance Code, Germany (Section 37(2) VVG (unless the policyholder is not responsible for the non-payment), Italy (Art.1901 (1) Civil Code).
[25] For example, in the UK.
[26] Austria (Section 38(3) Insurance Code, Belgium (Art 15, Insurance Code), Germany (Section 37(2) sent.2 VVG, Portugal (Art 60(1) Insurance Code), France (Art. L 113-3 Insurance Code).
[27] In the UK there is automatic renewal of household and motor policies to prevent the customer from becoming unintentionally uninsured. Cover can be cancelled by the customer within 30 days.
[28] Austria (Section 38(2)).
[29] Austria (Section 39(2) Insurance Code), France (Art.L113-3 Insurance Code), Italy (Art.1902(2) Civil Code). . In the London market, a model clause is frequently used, whereby the contract will contain a premium due date(s), and the insurer has to give notice of cancellation for late payment (15 days or more); therefore, cover will continue unless notice is given and acted on.
[30] Austria (Section 39(1) Insurance Code, Belgium (Art15(2) Insurance Code, France (Art. L113-3 Insurance Code), Germany (Section 38(1) and (2) VVG).
[31] Italy; in Italy the requirement upon insurers to receive premium before providing insurance cover is a matter of public policy rather than insurance law.
[32] Greece, Sweden
[33] Austria (Section 39(1) and (3) Insurance Code), Bulgaria (Art.202 and 236 Insurance Code), the Netherlands (Art.7:934 Civil Code)
[34] Belgium (Art 16(1) and (3)), Art.15(2) Insurance Code not less than 15 days), Germany (Section 38(1) and (3))
[35] France (Art.L113-3 Insurance Code)
[36] Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation also has differing provisions relating to the effect of payment to a broker.

In relation to mass risks, it was agreed that such differences in provision of cross border insurance services could require that different approaches be taken internally within insurance companies for the administration of policies. IT systems and automated procedures for premium collection and sending of notices regarding non-payment will need to be adapted for each market. A cost would be attached to this; there would also be costs for the administration of insurance policies. Providing insurance in countries where there is a culture of late payment was also identified as having the potential to affect the price of a product.

Suspension of cover

The potential for difficulty where a host country did not allow suspension of cover in case of late payments while the home country of the insurer allows suspension of cover (and Rome 1 therefore operated to determine the law of the host country as the applicable law) was discussed. A further potential difficulty was suggested where a Member State (such as Italy) did not permit cover without payment while an insured was in the UK, which does permit such cover based on the promise to pay, However, these were discussed as theoretical examples rather than as regular issues of practical difficulty.

Conclusions

Generally the consensus was that premium payment was not an area where insurance contract law differences, although generating additional costs, presented any major problems for the cross border provision of insurance products. The effect of differences of law, and the requirement to adapt standard terms, was thought to be minimal and the impact of other practical issues, most particularly dependent upon the modalities of payment (e.g. by credit agreement, direct debit or as an online transaction) would be of greater significance by comparison as different consumer protection provisions would come into play. Difficulties which arise are sometimes general contract law issues and sometimes insurance law matters.[37]

Section 3: Remedies for non-performance

Non-performance of a contractual obligation by one party subject to an insurance contract gives rise to certain remedies. There are differences in the remedies between Member States as a matter of substance and as to their application in practice. These are part of the overall complexity in this field.

Practical implications

Remedies available for non-performance differ depending upon the nature of the breach (non-disclosure, misrepresentation or fraud) and between Member States as to the remedy available.

These can be an important aspect of the policy, because these differences may cause costs of administration and uncertainty. For example in France, the procedure for amendment and termination of contracts that must be followed by law can create difficulties for insurers' IT systems and corresponding additional costs. There may be difficulties as to discharge and termination which could directly affect the nature of a product or affect the underlying risk and consequently its pricing.

Consideration of cross-border impact

[37] For example issues relating to the formation of a contract, principles of contractual interpretation, when a term may be implied, the circumstances in which a contract may be terminated etc,.

It is not clear how much of a practical problem this is. For example, while some experts are of the opinion that this matter could have a potential cross-border impact, others either consider the remedies to be important but not a real obstacle (as they do not necessarily lead to additional costs) or not an obstacle at all.[38] A further opinion is that the issue is part of the general problems of complexity linked to the applicable foreign law.

Limitation periods

Consideration was given to the impact of different national laws on the subsequent period during which an insurer can remain liable after termination of 'claims-made' insurance contracts (a separate matter to the question of coverage under a policy). Although the cover is for issues that arise during the contract, some claims for damages may be made well after termination. The period during which such claims can be made varies in the different Member States (for example, 5 years in Austria and 10 years in France), which can have a corresponding impact on the price of the products. Differences in limitation periods (for example, 1 year in France and 3 years in Germany) could also lead to some requirements for adaptation.

Nevertheless, there seems to be consensus that different limitation periods are not an obstacle for entering a foreign market and therefore would not influence a decision regarding this. Such differences might however lead to an adaptation of the insurer's internal procedures.

A distinction should also be made between life and non-life products. Limitation is not a difficulty in relation to life insurance products.

Sections 4 & 5: Renewal and Termination

Renewal

Member States have diverging rules concerning the duration and renewal of insurance contracts. In many Member States[39] there are no legal obstacles to the conclusion of long term contracts. There are however in such Member States statutory provisions granting the insured a right to terminate such long term contracts after a certain time period has elapsed. In some Member States such as France or Luxembourg that period is only one year, in others such as Germany termination is possible after 3 years, in the Netherlands after 5 years; in Finland the contract may be cancelled by the policyholder at any time. On the other hand, there are statutory provisions in some Member States[40] that limit duration to one year. Many insurance contracts in Member States with one year contracts nonetheless contain provisions for tacit renewal or prolongation.

Where choice of law is restricted to host state or other particular law, the variation in approaches in national rules requires that insurers which are considering offering an insurance product in another Member State will need to take legal advice in the new market where the product is to be launched. Insurers will then have to adapt their standard forms and contract administration procedures accordingly, both of which have a cost associated with them.

Termination

Normally, the duration of a contract is a matter to be agreed upon between the parties to the contract. However, as mentioned above, in some Member States a one year contract can be

[38] There are differences between the law of England and Wales and of Scotland in this regard that do not cause practical difficulties within the United Kingdom.
[39] Germany, Austria (with the exception of mandatory motor insurance), Netherlands, Greece, France, Finland, Luxembourg, Poland, Italy, Bulgaria
[40] Sweden, Portugal. Belgium (Art.30 Section 1(1) of the Belgian "loi sur le contrat d'assurance terrestre" of 25 June 1992).

extended by tacit agreement[41]. The approach to termination can vary widely both as to the time when termination can take effect and as to whether this is possible after the occurrence of an insured event[42]. Termination is only possible prospectively (that is: as to future claims) in any event and typically can only be exercised during certain periods of time which can vary between Member States.

Termination may also be closely linked to the duration of the contract. For example, in Belgium duration of a contract has been reduced to one year with automatic renewal. Thus consumers have the choice between termination and renewal. Insurers have a right to terminate only in accordance with certain legal requirements. .[43]

In many Member States[44] it is possible to alter the premium or other terms if such change takes effect on renewal and where the insurer has sent advance notice of such change and the insured is entitled to terminate the contract.

Where a policy is terminated before the expiration of cover, Member States take different approaches to the premiums which have been paid. In some countries the insured will receive a refund of the unused premium, where the law treats the premium as divisible[45]; in other Member States the whole premium may remain payable. . In large risk contracts, this is usually a matter of specific provision in the contract, and often market model clauses are used by the parties.

Obstacles resulting from differences of approach to renewal and termination

Therefore there is considerable variation in the approach to duration of insurance policies across Europe and regarding renewal and termination. These differences involve local customer expectations and understanding of financial products together with local market customs which have developed over many years. However, these differences impose upon an insurer which wishes to launch an insurance product in a new country a need for care in adapting standard terms and will also involve a need to adapt IT systems, examine pre-contractual information requirements on renewal and disclosure duties on renewal.

There are also differences where an insurer comes from a Member State where the duration of the contract can be agreed for a longer term and in the host country there is a possibility for the insured to terminate the contract at any time.

Mandatory caps on duration, and differences between such caps from country to country, were noted as being of particular importance. In the majority of cases, product characteristics will not be affected by such differences, although for some insurance business it will require change and will have an effect on product design and accordingly upon pricing. For some insurance categories (for example: health insurance) the option to alter the premium during the duration of the contract is an essential part of the product concept such that national rules affecting this would have a decisive impact upon whether the product can be offered in a jurisdiction.

Particular note was also made of occasions where the result of a local law would be that a new contract is created. For example, if a policyholder had the benefit of a Scottish law policy but, now resident in another Member State, found that a modification in the policy meant the technical

[41] Belgium (Art.30(1) Insurance Code) and the UK, as a matter of general contract law depending upon the intention of the parties.
[42] For example, in Finland and Spain a clause providing termination after the occurrence of an insured event is regarded as unfair. Italy only allows the use of such terms in non-consumer contracts.
[43] In other words there will be more renewals in a longer term contract.
[44] For example in Luxembourg (Art.42(1) Insurance Code, Finland (Section 19(1) Insurance Code), Germany (Section 163, 164, 203 VVG for life and health insurance. (However, the insured is not entitled to terminate the contract.) In other cases it may be agreed as a matter of contract.
[45] For example in Austria (Section 40 Insurance Code), Belgium (Art.18 Insurance Code), Germany (Section 39 VVG)

creation of a new insurance contract in that new country of residence, this has the potential to introduce confusion and uncertainty and to result in the applicability of a new law; it would also be a disincentive to an insurer to continue the policy since the insurer might face regulatory sanction if it were not authorised to offer business in the new country of residence. Thus a Member State's rules on renewal of insurance contracts could have unintended consequences and reduce the scope for provision of insurance services. It was noted that the exposure to regulatory sanction may be less a question of insurance law and more of regulation.

Consequences were also noted in the area of adjustment of premiums or alteration of conditions such as indexation clauses. In some Member States such modifications are permitted whereas in others they are permitted only under certain conditions or not at all. For an insurer coming from a Member State where such modifications are allowed seeking to enter into a market where they are not, such differences could influence the pricing of the product.

It was agreed that there was no evidence that any such issues presented a problem for large risks. In that arena there appear to be no identified obstacles to cross border trade.

Section 6: Claims settlement/liquidation

Management of a policyholder's claim is a core issue for insurers and policyholders. Efficient claims management is central to the product; indeed it was agreed that efficient payment and dealing with a claim is a differentiator for insurers.

Variations in approach

Laws and practices between Member States appear to differ significantly; both as to whether there exist any national laws on the issue at all and concerning the content of such rules as do exist. Even where national rules exist they appear to regulate claims management only partially. An example of such national rules can be found in Chapter 8 of the UK's Insurance Conduct of Business Sourcebook (ICOBS) which contains some general and specific rules on claims handling (e.g. for motor vehicle liability and employer's liability). These rules include for example provisions which will regulate when it is permissible as a matter of regulatory practice for an insurer to reject a claim for misrepresentation. Another example was provided of Bulgarian law which required payment by an insurer within 15 days of proper notification of a property insurance claim.[46] [47]

Local supervisory review of claims handling is frequently very stringent and EIOPA has also launched guidelines in this field.[48] It is therefore acknowledged that claims handling and settlement must be assessed not merely by reference to insurance contract law but also by reference to local supervisory rules and EIOPA guidelines.

Claims must be settled promptly

A common principle concerning claims settlement in European insurance is that claims must be settled promptly. Several Member States have provisions requiring insurers to accept or reject claims in a specific time. For example, in Austria the claim becomes payable if the insurer does not respond within one month to the insured's enquiry regarding non-payment, provided that the

[46] Art 208 of the Bulgarian insurance law.
[47] In Germany, insurers may submit to a local ombudsman (Versicherungsombudsmann e.V. – a registered association). This service is open for its members that need to be members of the German Insurance Association.
[48] EIOPA, Guidelines on Complaints-Handling by Insurance Undertakings, EIOPA-BoS-12/069 of 14 June 2012, see https://eiopa.europa.eu.

inquiry was submitted two months after the claim was made[49]. If the insurer responds and explains why investigations have not been completed yet, the insurance money does not fall due[50] .

The imposition of interest upon unpaid claims was mentioned as a significant factor which can vary from Member State to Member State. For example, in Spain interest may increase, after two years, to 20% per annum.

As a result of such variations insurance contracts may require significant adaptations if an insurance product is to be offered cross-border since it will be important for an insurer to understand such factors fully. However, the consensus was that most of these issues are not a problem caused by differences of national insurance contract law, The obstacles to cross-border provision on insurance contracts were instead mainly practical – for example, the costs of setting up a sufficient network of third parties capable of assisting an insurer in providing services in a manner and to the standard acceptable in the local market and reflecting the insurer's reputation, business model and objectives. For example, in the case of property insurance, an insurer will need to build up relationships with a network of builders, plumbers, locksmiths, roofers, electricians etc.[51] The legal aspects and the need for adaptations of the contract arising from differences in contract laws were perceived in this context to be of relatively minor relevance.

[i] Please note that some changes are being introduced into United Kingdom law in this field through the Consumer Rights Bill, currently being considered for enactment in the United Kingdom Parliament.

[49] Section 11(1) Insurance Code

[50] However, § 11 (2) Austrian ICA may provide for a part payment.

[51] Reference in this regard was made to the 2010 Retail Market Study prepared for the Commission where it was found that a lack of local presence for claims handling was treated sceptically by consumers – see paras 3.8 at page 30 and para 3.12(d) on page 33.

Part V

Liability Insurance

Diana Cerini

REPORT ON COMMISSION'S EXPERT GROUP
ON EUROPEAN INSURANCE CONTRACT LAW

SEPTEMBER MEETING ON LIABILITY INSURANCE (9-10/09/13)

Rapporteur: Prof. Avv. Diana Cerini

In representation of ANIA – Associazione Nazionale Imprese di Assicurazione (Italy)

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§ 1. General premises: (1.a), Economic impact of liability insurance; (1.b) : conflicts of law connections and interferences with contract law; (1.c) essential preliminary point to be considered in the discussion.

The fifth meeting of the Expert Group was devoted to liability insurance. Before entering into the analysis of specific problems concerning insurance contract law in the Member States, some preliminary and general aspects have been debated.

1.a) As it was confirmed by comments and data produced from both the Commission and the Experts, from an economic point of view, liability insurance accounts for some 11% of the non life insurance market. The proportion may vary between Member States with more established markets such as France, the UK and Germany seeing liability insurance making up a larger proportion of their non-life markets in 2011 (only) 26 billion Euros of premiums were collected in the Market, including in this sum Switzerland, Norway, Iceland, Turkey and Liechtenstein[1].

Notwithstanding the economic representation of the sector in term of premiums collected and intermediated, there is no doubt that liability insurance has a much stronger economic impact for the insured parties, such as for enterprises, professionals as well as consumers who stipulate a liability insurance policy: in fact, when a liability insurance exists, they can better plan their future economic duties and, consequently, realize a better management of the risk.

In addition to economic considerations, one also has to focus on the social impact of liability insurances spread all over the market. It is common perception that the liability coverage has an essential role in order to facilitate exchanges between the economic players of the EU markets. Scope and importance of liability insurance are clearly evident also in respect of both the policyholder and third parties: where voluntary, liability insurance has the main function of protecting the insured policyholder; where compulsory, the policy objective is to protect the victim in the first place.

Because of all these considerations, it is essential to consider in detail the problems for liability insurance within the general matter of insurance contract law.

[1] As per references see *Insurance Europe*, *European General liability insurance report 2011*, p. 2, in www.insuranceeurope.eu/facts-figures/statistical -series/nonlife/general-liability; see also data on the websites of the national associations of insurers.

1.b) In the overall views, all the Expert share the feeling, supported by concrete experiences in the different field of competence they have, that liability insurance is something "complex" (in fact, "complex" will be a recurring word in the discussion).
Complexity is, nevertheless, the *result of many and heterogeneous factors*: (i) liability insurance genetically involves more than two parties (policyholder, insured and potential liable parties, beneficiaries, victims, etc.); (ii) a number of rules and provisions are concerned with reference to the insurance contract as well as the contractual and extra-contractual liability in question; (iii) specific connection with the local legislation with reference to the risk underlying the coverage.

The complexity of the matter is evident from preliminary discussions with specific reference to two specific topics: the intersection between rules on liability insurance and conflict of laws rules, from one side, and the limits of what is to be understood as "insurance contract law" and what goes under the category of "general rules on liability", on the other side (1.c).
In fact, for what concerns principles of international private law, the Regulation Rome I as well as the implementation of the Third Directives on Non-Life Insurance have provided important rules concerning the law applicable to non-life insurance activities; the same provisions, and especially Rome I, has set the limit for the Host State Member to impose rules on foreign companies or in case of application of a different legislation to the contract. Notwithstanding the said harmonization (if not unification) of rules, the laws applicable testify of a number of problems and discrepancies, also as a result of the national laws that gave implementation to either the EU provisions or the options set by the conventional rules. The matter will be more extensively considered under § 2.

1.c) Before considering the specific aspects set by the Discussion paper V circulated by the EU Commission, some preliminary aspects have to be taken into consideration in this report:

i) The contractual or non-contractual nature of the problems and rules to be examined when dealing with liability insurance and the consequent perimeter of the Group mandate with reference to the qualification of the rules as insurance contract law or not. In fact, we should recall that the mandate of the Expert Group is to investigate whether and to what extent differences in insurance contract law create obstacles to cross-border provision of insurance. In the light of this mandate, a specific issue has immediately appeared to be of a crucial importance in the general perspective of the Experts' activity and specific worries have been raised on this point by several members of the Group: that is the *contractual* –and *contractual-related differences* to be examined when dealing with liability insurance.
As it is easily understood, the matter goes to the heart of the mandate of the Group: in other words, when dealing with liability insurance, a clear distinction should be raised between rules that are "within" the perimeter of the insurance contract law, and rules that are "outside" that perimeter as they concern liability in itself, i.e. the relation between the tortfeasor and the victim, the assessment of the liability, the types and amount of recoverable damages, the individual risk assessment and underwriting guidelines of insurers and so on.
It is evident that the final answer to the question, is not merely theoretical, but it is critical to the outcome of the expert group.
A distinction has to be drawn between differences among national liability regimes which are not part of the mandate of the Expert Group and differences between national liability insurance contract law regimes which are within the mandate. I.e., a rule establishing the

liability of a doctor is not within the notion of insurance contract law; a rule that identifies the recoverable damages for the victim of a tort is not an insurance contract law rules.
In the end, the enlarged discussion on this point has finally confirmed that, when dealing with liability insurance, many of the rules existing at a national level cannot be qualified as "insurance contract law" in a narrow sense, as the insurance contract law is meant to regulate the relation between the parties of the insurance contract.
Put aside the tautology, it appeared equally evident that a thorough analysis of the insurance contract law cannot be pursued without having in mind the general legal system where those rules have to be applied and that are consequently relevant, both on contract terms and on costs, for the insurance contract.

ii) Different sets of rules to be taken into consideration: Another important preliminary point has been raised: when dealing with liability insurance, different set of rules are to be taken into consideration, such as 1)rules on insurance contract law; 2)rules on general liability insurance; 3)rules applicable to all compulsory insurance (in some countries); 4) very detailed rules that are specifically provided for certain types of liability insurance: once again, the result may be the complexity of the legal system.

iii) Other important general elements have been discussed and can be summarised as: *the mandatory/voluntary character of the coverage*; the different "triggers" of the liability insurance, i.e. whether the trigger for the coverage is on a claims made or an occurrence based clause, with all the consequent costs referring to the choice of one or the other model. Other triggers may also be used including: infringement, causation, acts committed and manifestation, although these may be interpreted differently between local courts[2].. There can also be large variations in the wording for "claims made" where some will be very restrictive, which is the reason for claims made policies having attracted criticism from some courts. This is especially true in contracts concluded between professionals and businessmen (the so called B2B contracts; the connection and interferences between the content of the coverage, especially with reference to minimum amount, and the substantial risk; the expertise and relation with liability regimes to be understood and known by the insurers.

iv) In addition, there is a fundamental point, which is that insurers have to have an expertise in the national law and in the characteristics of the host market in order to cover risk: this is specifically true, for example, with reference to construction liability insurance, or for medical liability insurance.
Depending on the countries concerned by a cross-border liability insurance contract, the lack of specific knowledge and expertise on the local market, as well as the concrete possibility to assess the risk, the different tax regimes, the professional regulations, the supervisory laws and, last but not least, the foreign language represent important obstacles to the decision to offer product in that market. In fact, without expertise in local markets, it is costly for insurers to find out about those differences. The dimension of the problem is less significant in brokered markets.

[2] In Germany there exist four types of triggers: infringement, occurrence, manifestation, claims made. There is no specific statute law governing the admissibility or restricting the use of any particular trigger definition, see § 100 of the German Insurance Code (Versicherungsvertragsgesetz) only defining the meaning of the term "policy trigger" (Versicherungsfall) as such, because the parties to an insurance contract should be free to agree the trigger most suitable to a particular class of liability insurance and the individual risk to be insured

This clarified as a method to approach the discussion, the group then discussed the case of professional liability insurance for lawyers, which can be considered quite a good example of intersection of the outlined problems. In fact, liability insurance for lawyers clearly shows the obstacles that exist when a EU citizen – in the specific case a professional - decides to exercise his/her profession abroad or with reference to cross border risks. It is important to say that, theoretically, liability insurance for lawyers does not differ or is not more important than other fields of liability insurance: in fact, the same, and many other problems, could be considered with reference to other professional activities, such as engineers, medical professions, etc.

On this assumption, one can observe that the practice of holding professional liability insurance for lawyers is widespread both in countries where a duty to be insured exists (that is the majority of the States)[3] and in countries where there is no duty to be insured (this actually represents a minority of the Member States, as also the more reluctant – such as Italy – have recently introduced a duty to be insured by law). The duty to be insured, as well as the rules and characteristics of the coverage, arise not only by operation of the law, but also to a large extent from local (national) requirements (e.g. bar associations).

This situation gives rise to a number of problems concerning *free circulation* of lawyers, including access to the market on one side, and *costs* for the exercise of the legal profession abroad or sometimes even locally where foreign matters are involved. For example, liability insurance contracts generally limit the coverage to damages caused by giving legal assistance in the national legislation, while in many cases lawyer have to argue and give advice referring to foreign laws (this can happen quite often, and not only in "frontier cases", but also when a lawyer gives advice to domestic clients on foreign law as a consequence of the application of choice of law).

In the majority of cases, lawyers are not able to have one single "portable" insurance contract; this inability arises from insurance contract law and from the regulations of the Home or Host State Country.

As a result of this situation, in a number of cases lawyers exercising their profession cross-border are obliged to have two insurance contracts which leads to an increase in costs (with consequences not only for the professional, but also for the costs of the clients).

The economic consequences of the problems related to liability insurance for lawyers include that a number of lawyers cannot find tailor-made products or single insurance policies covering several Member States and the existence of higher premiums for cross-border coverage arising for instance from insurers's difficulties in assessing the risk (affected by a larger risk to be covered or an uncertain demand)[4]. The group also concluded that some of the said problems are common to other forms of liability insurance.

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At the end of the discussion of the general and preliminary figures and problems when dealing with liability insurance, some general conclusions can be drawn:

[3] Even those who did not have a compulsory regime for lawyers have introduced it quite recently: see the case of Italy, as per L. 137/2012, in force since August 2013; in Germany the mandatory professional liability insurance was introduced for lawyers in 1994, see now § 51 Bundesrechtsanwaltsordnung.

[4] Those examples are well illustrated by the CCBE study (CCBE, SUMMARY of answers to the CCBE Professional Indemnity Insurance questionnaire 2009 http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Summary_of_answers_t1_1296464154.pdf) which confirmed that 32% of lawyers practicing cross-border have experienced difficulties related to obtaining professional indemnity insurance for their cross-border activities owing to the high premium arising from the difficulties to assess the risk and the need in many cases due to professional regulations to have an insurance cover that complies with the requirements of the host Member State.

1) When dealing with liability insurance, a distinction between national liability regimes, which are not part of the mandate of the group, and liability insurance regimes which are part of the mandate of the expert group must be taken into consideration. That is to say, rules that are defined as insurance contract law and rules that are outside the perimeter of insurance contract law.
2) Liability insurance is intrinsically a complex product. Complexity derives not only from the close connection with the liability rules, but also because different set of rules applicable to the contract: general insurance law, liability insurance rules, compulsory liability insurance rules (which exist in some Member States), etc.
3) The number of compulsory insurances differs (around 30 at federal level and also about 280 at Länder level in Germany, 120 in France, 400 in Spain etc.), most of them concerning liability insurances. In addition to the nationally applicable compulsory liability insurances, there are others foreseen by other entities, even by professional regulatory bodies. Often, national rules dealing with compulsory liability insurances are themselves of a mandatory character. This can concern both the rights and obligation of the parties, but also the management of the contract, e.g. the question whether a renewal of the contract is necessary.
4) An essential expertise in the local market is necessary on the side of the insurers when dealing with liability insurance. As a consequence, the choice to offer, or not to offer, a liability insurance contract is mainly dependant on the possibility to "know" the risks, that's to say assess the risk within the relevant legal system as well as with reference to local characteristics of the risk and on the knowledge of the logic of the market in question.
5) In many cases, the source of the duty to be insured is not easy to detect, as - in addition to national rules set by the law – specific duties to be insured can derive also from regulatory bodies (es. local bar for lawyers) – this will be better examined in § 2.
6) When dealing with liability insurance, a vast majority of rules are considered mandatory or "necessary" by the Host Country (see application of options set by Rome I).
7)A common conclusion is that in presence of such complexity of rules and liability regimes, uncertainty exists for both national and foreign insurers.
8) In the light of the complexity concerning some aspects of liability regimes, insurance contract law related differences are an obstacle, even if not the major one, to the cross border activity.

§ 2. Compulsory - or non compulsory - nature of the liability insurance

When dealing with liability insurance, a preliminary distinction has to be made between voluntary and compulsory liability insurances.

First of all, it should be clarified that there is a common perception, within the Group, on the fact that a considerable variety exists in determining what falls within the description of *'mandatory'*. In fact, the duty to be insured can be established by the law or by duties relating to the exercise of a profession/activity as identified by professional bodies or by code of conducts or other self-governing body. In this case, the stipulation of a liability insurance coverage is necessary for those registered with or subject to the professional self-governing body. The body may provide for an invite to stipulate or require it as an element for the participation to the body. Nevertheless, the non-performance cannot result in the impossibility to exercise a profession.
This may consequently raise important consequences when assessing the notion of "compulsory", on one side, and the consequent number of existing compulsory insurances in the EU experiences. In addition, the decision to introduce a liability insurance compulsory by law is based on the characteristics of their market and the needs of their citizens.

In some countries, the number of compulsory liability insurance is relatively low. In England and Wales, rules on liability insurance are mandatory if enshrined in statute: there seem to be relatively few forms of compulsory insurances in comparison with some other EU jurisdictions. Examples of types of compulsory insurance required in England and Wales include: motor (third party risks),[5] employers' liability,[6] nuclear installations,[7] oil pollution,[8] maritime claims,[9] carriage of passengers by sea,[10] aviation (passengers, baggage, cargo and third party),[11] package travel,[12] space launching,[13] horse-riding establishments,[14] dangerous wild animals,[15] zoos,[16] dangerous dogs (exemption conditions),[17] insurance brokers,[18] estate agents,[19] osteopaths,[20] chiropractors,[21] and solicitors.[22] Equally, in Germany approximately 30 compulsory insurances exist at a federal level.
In other Member States, the number of compulsory liability insurances (always with reference to duties set by law) is much higher. This is for example the case of Spain (400), France (120) and Italy (almost 80, some still waiting for implementation laws to render the duty effective)[23].
In many cases, compulsory liability insurances have been introduced because of an "imposition" by the EU legislation, or at least the national legislation already existing have been accordingly modified (see for example automobile insurance, which will be considered in detail in a later part of the Report, as well as compulsory insurance for intermediaries in the cases provided by dir. EC 2002/92); in other cases the Member States have introduced specific types

[5] Road Traffic Act 1988, s143
[6] Employers' Liability (Compulsory Insurance) Act 1969
[7] Nuclear Installations Act 1965, s19
[8] Merchant Shipping Act 1995
[9] EU Directive 2009/10
[10] EU Regulation 392/2009
[11] EU Regulation 785/2004
[12] Package Travel Regulations 1992
[13] Outer Space Act 1996, s5(1)
[14] Riding Establishments Act 1964
[15] Dangerous Wild Animals Act 1976
[16] Zoo Licensing Act 1981
[17] Statutory Instrument 1991/1744
[18] Financial Conduct Authority rules
[19] Estate Agents Act 1979 s16
[20] Osteopaths Act 1993 s37
[21] Chiropractors Act 1994 s 35
[22] Solicitors Act 1974 ss 31 and 37
[23] See Ania's Annual Reports for a complete list.

of compulsory insurances also in an attempt to solve certain social problems arising from the society or with reference to needs of the population.
A specific problem concerning the application of international conventions and conflict of law rules was noted.
In particular, insurers face the situation that insurance policies covering risks abroad have, according to Art. 7 (4) (a) of the Rome I Regulation, to comply with the "specific provisions" of the law of the MS imposing the compulsory insurance. In addition, a number of Member States, e.g. France and Germany have used the possibility of Art. 7 (4) (b) of the Rome I Regulation foreseeing that compulsory insurances have to comply with the entire law of the Member States imposing the compulsory insurance.
In many cases, the various requirements for compulsory liability insurance across the Member States are a result of different contract law provisions or other legislative mandatory regimes.

Often, national rules dealing with the specific content of the compulsory liability insurance contract are themselves of a mandatory character. This can concern both the rights and obligation of the parties, but also the management of the contract, e.g. the question whether a renewal of the contract is required.
Once again, the Experts' perception is that rules on liability insurances are often very detailed, specific and complex. They can create uncertainty for both national insurers and foreign insurers wishing to enter a market.
The existence of such national differences, which of course is the result of multiple factors, hereby included national characteristics of the legal systems and the risk, creates costs for insurers as they cannot simply adjust the contract of their home market but can be required to draft entirely new contract terms in accordance with the law of the targeted market.
This situation also creates uncertainty as both insurers and insured may not be sure which are the "specific provisions" to comply with in each Member State. Already for that reason, they may come to an overall adaptation of the contract terms with the result of higher costs.

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In conclusion, the numbers and types of compulsory insurances are very different from state to state. Equally, the source of the duty to be insured may be different.
Insurers may incur in additional costs as a result of the existence of different legal regime on insurance contract law, even if these costs may be ancillary to the cost of adaptation required by the intrinsic characteristics of the risk.

§ 3. Occurrence based v. claims made policies.

An essential element in liability insurance policies is the determination of the so-called triggers for the coverage. Contract solutions for determining in which moment the insurer's liability is triggered and until when, and consequently the extension of the coverage in time, can play a crucial role not only for the insured, but also for third parties. As it has been suggested, triggers and in particular the alternative between claims made or occurrence[24] are key aspects of liability insurance contracts; in addition, the choice to adopt one system or the other is a fundamental condition of financial capacity to adequately cover long term risks and safeguard insurers' solvency[25].

[24] See § 1.iii)
[25] See in particular FFSA comments on Discussion Paper V.

"Triggers" are both an aspect of insurance contract law solution and practice in local markets which can reflect historical developments in that market.
Some Member States allow claims made policies in B2B contracts as well as in B2C contracts. Other States allow claims made terms, but the imperative statute law or the case law limits their effect towards third parties (this is the case of France[26]).
In other cases, the claims made clause is valid, but its validity is subject to the respect of the rules on unfair contract terms[27].
In addition, the discussion has outlined examples of the court intervention relating to the operation of claims made clauses. For example, it was mentioned a German leading case[28] on the subject, where the court ruled that contract terms restricting the liability period of the insurer to claims made before the end of the insurance contract period are valid if other elements of the contract compensated the said restriction. Such other elements may be the retroactive cover granted by the contract, the policyholder's possibility to notify, before the end of the insurance contract, events which may result in claims to be made against the policyholder later-on or a post-contractual notification period.

On the other side, it should be taken into consideration that claims made and insured event triggers can be observed in the medium and long time, and the practical combination between the two solutions can give rise to a lack of coverage. This situation is also relevant with reference to the liability of the insurance intermediaries who assist the clients in the drafting of the contract clauses fitting their situation of risk.
It should also be mentioned that, as emerged during the discussion, the presence of a claims made term has effect also with reference to the procedure and, in particular, for the exercise of eventual direct actions by third damaged parties.
As a consequence, deciding which kind of trigger to choose and truly understanding how it applies can be a complex game for the companies and for their clients; for the insured, different solutions concerning the validity of claims made clauses can equally raise some uncertainty.

Having said that, the main problem is to evaluate if and in which terms the problem of claims made or insured event triggers has an impact on insurers' decision to sell their products cross-border or in one or more of the other EU countries.
On this point, different positions exist. On one side, it seems that for companies the alternative between the two models of triggers is crucial but that an eventual rule on the matter could not solve the existing problems. In other words, practitioners have commented that the existence of occurrence based versus claim made polices is not seen as a major hindrance in practice and consequently the applicable rule of law is not crucial.
In any case, the trigger of a policy is a key element for insurers to control their exposure and is a fundamental condition for financial capacity to cover long-term risks. The trigger that applies to a policy is usually derived from national legislation or regulation applicable[29]. The trigger that applies to a policy is intimately linked to the risk insured – including with respect to the national rules of causation – as different risks lend themselves to different triggers. Therefore triggers and scope of cover vary across the different product lines and Member States
In fact, insurers can price the risk accordingly if they are aware of the rules in force in the host state. The contract, in other words, can make reference to the local rule which determines the

[26] See art. L 124-5 Code des assurances.
[27] See for examples Italy and Germany.
[28] OLG München, 8 May 2009, case 25 U 5136/08, Versicherungsrecht 2009, 1066.
[29] See § 1.iii)

admissibility of the claims based or the occurrence based models[30]. The final choice on the used triggers is, in any case, a commercial one where the insurer evaluates the best solution, also taking into consideration the clients and the type of risk in question. For example, professional risks, as well as D&O policies, may require adaptation of the clauses where a combination between claims made solutions and sunset coverages (that is to say clauses that regulate the way in which the coverage expires after the conclusion of the contract) are used in order to best answer to the need of protection of the clients.
For other members of the Expert Group, the existence of a rule imposing one trigger solution or the other would be not only useless but also limiting the freedom of the parties.
Even in this awareness, what practitioners, companies as well as clients need is a clear rule that says if the choice if possible, and within what limits: in fact, "knowing the rules" on the admissibility of claims made triggers could at least reduce the alea for companies, as they may not be able to determine in advance which risks they are facing in the local market.
Finally, another point raised concerns the link between insurance and reinsurance. The relevant period of the coverage is in fact also determining the extension of the re-insurance coverage.

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In order to set some conclusion on the topic of claims made/occurrence based policies, one can summarize as follows:
1. The agreement and rules on the "trigger" of the insurer's obligations concern the extent of cover, particularly with respect to causation wording which varies between Member States (i.e. one of the essential features of the insurance product).
2. In this context it is not so important what the regime is, but that insurers know what the "trigger" is, as this affects the calculation of the premium.
3. Differences as to the extension of coverage in time could generate costs. For instance, in France there is a mandatory post-contractual notification period of 5 years in general and 10 years for the professional liability insurance of lawyers and some other professionals.[31] In Germany, a claims-made policy with a shorter post-contractual period is possible where other elements of the contract compensate this restriction. A German insurer offering such a claims-made policy would have to adapt it to French law if he wanted to enter the French market.
4. National systems can be very complex. This can make it difficult for a foreign insurer provider to enter the national market unless he has the sufficient knowledge of national trigger rules.
5. The issue about occurrence-based versus claims-made policies is not a B2C problem in those countries like France, where there is a strict exclusion of claims-made policies in B2C contracts. However, in some other countries like Germany and Italy, (where occurrence is the common trigger for B2C), a comparable result is only reached through unfairness control. This approach has however the disadvantage of creating legal uncertainty to the extent that the jurisprudence cannot be foreseen with certainty. In general, national approaches to the problems have contributed in most cases to create legal uncertainty to the extent that different legal solutions exist and the local trends of case-law cannot be foreseen with certainty, especially for a foreign company or the insured.

§ 4. Extent and characteristics of the cover

[30] See for example what has been observed by the LSEW, Comments on discussion Paper V.
[31] See art. L 124-5 and R – 124-2 Code des assurances.

When talking about extent of cover, the topics under discussion may relate to very different situations: (minimum) insured sums, cover for expenses for judicial and extrajudicial costs, prescription terms, duties to notify in the concrete coverage and limits of liability insurances.
Some of these elements are strictly connected with the local legal systems and rules that establish and regulate the liability in question. For example, it is obvious that the rules on the extent of the cover are most likely to be part of the same law which renders liability insurance mandatory and requires specific protection of the victim. This being clarified, specific aspects of the extent of the coverage have been considered:

4.1. Insured sums: In some countries legislation sets out minimum insured sum for compulsory insurance, or for some specific kind of compulsory insurance. In other countries there are no minimum insured sums for the same kind of insurance. Those differences can create costs on the side of the insurer and the insured; nevertheless, one has to acknowledge that if the choice to set, or not to set, a limit, may be independent, the amount of the minimum sum set by the law is strictly influenced by considerations relating to the awards made to victims in a specific country.

A few examples can clarify the problem: in medical malpractice cases, in the UK and Italy the average indemnisation of victims is set at relatively high sums, so the minimum liability insured will be of 5 million Euros. In other member countries damages awards for victims might be significantly lower: as a consequence the minimum insured sum required in compulsory professional liability insurance will be lower as well.

4.2 Cover for expenses for judicial and extrajudicial costs: With reference to recoverable expenses for judicial and extrajudicial costs, a comparative survey can equally show important differences in the national legal solutions. In the UK provisions on legal expenses are typically part of the standard terms in full indemnity insurance such as an insurance on property. Policy provisions often have a clause whereby the assured is bound to take all necessary steps in the interests of the insurer. Where this is implied legal expenses for example can be recoverable. Rules on the extent of the cover however can be interpreted differently by judges in Member States and create obstacles and other jurisdictions may not agree that such a standard clause entitles an assured to conduct litigation at the expenses of the insurer unless the insurer expressly agreed beforehand. A question can arise whether there is a full indemnity or not which could also affect the application of such a clause. In other countries, especially those with a civil law system, the law provides for minimum provisions for the indemnisation of judicial and extrajudicial costs. Italy, for example, provides for a mandatory rule in the civil code[32]. Similar solutions are provided in France and Spain.

4.3 Deductibles: Deductibles are generally set in the contract in order to reduce moral hazard and to make the insured participate in the risk. They can also have an impact on the premiums.
The nature, limits and types of deductibles applied is also strictly influenced by the type of risk in question, according to the technical choices of the insurers. Even if deductibles are in the majority of the cases the result of contractual negotiations, or are at least provided in standard forms for mass risks, some differences in law exist. In fact, there are cases in which specific deductibles are imposed by the law in order to limit moral hazard.

[32] See art.1914 c.c.

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In order to set some conclusions:
1. The rules on the extent of cover differ among Member States. The differences have an effect on the insurer's exposure to risk and thereby affect the premium calculation.
2. While these differences would not necessarily stop an insurance provider in his decision to distribute his product across border, the provider would look to adapt the product itself.
3. The adaptation of the product leads to costs, in terms of legal fees for consultancy, adaptations of the standard forms, etc. The concrete extent of these costs might be minor if compared to other "extra" legislative costs, but still they exist and in the end are part of the insured premium payable by the policyholders.

§ 5. Causation and mitigation of loss

Different rules on causation and mitigation of loss add complexity and uncertainty. They can also affect the pricing. However, according to a majority of the experts, the differences are probably not so significant as to cause an insurer to refrain from providing his products across borders.
On the other hand, a minority of experts have insisted that rules on mitigation of loss, in particular, go to the heart of the balance of the insurance contract and are generally regulated by the law. Differences exist and they can alter the costs of the insurance product; moreover, as the analysis should be conducted having in mind all the players in the insurance sector, different rules – especially for what concerns duties on the charge of the insured in case of the insured event (duty to mitigate and consequent effect, modification of premiums, etc.), may significantly modify its right to receive compensation, or not. Consequently, different rules result, in the end, in a discrimination on the insured's side "by way of applicable law". In other words, consumers and professional clients in the EU can have a different degree of protection according to the applicable laws.

§ 6. Direct claim of the third party

As a premise, it is important to consider that the matter of direct claim goes directly to the essentials of liability insurance: this claim is in fact strictly connected to the position of the victim and it is crucial to look at the rights victims have towards the insurer of the liable party. With reference to the existence and characteristics of direct action, different solutions and models exist in EU Member States and consequences are truly divergent. Any rights to direct action are closely tied to national laws and thus do not necessarily represent an insurance contract law issue.
1) First model: in some Member States a direct claim is always allowed. In other words, as a general rule, the law allows third parties to have a direct action against the insurer of the liable party.
2) In other countries, the situation is reversed. The third party does not have a right to act against the insurer, but this right can be specifically provided. Within this model we have nevertheless important differences. In some countries, the direct claim is allowed in very special cases: this is, for example, the Italian solution, where only some compulsory insurances grant direct actions (not all compulsory insurances). In other countries, a direct claim is provided with reference to all compulsory liability insurances.

Between the members of the group that consider direct action a relevant matter, it should be added that the perspective is that the presence/absence of third party direct claims can create costs of different nature like costs of procedure, costs in order to set conflict resolution rules in the contract, etc. In any case, the Group remembers that a direct claim is an element of the protection of third parties. Protection of third parties, often consumers, is the second main purpose of compulsory liability insurance with the protection of the insured.

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Some conclusions can consequently be drawn:

1. The differences between the laws of Member States could have an impact on calculation or pricing.
2. Insurers cannot avoid the costs anyway, because liability insurers, without engaging in cross-border business, may be confronted with certain cross-border claims even in a purely domestic liability insurance[33].
3. Costs arising from rights of direct actions are not likely to be so significant as to stop an insurer to go cross-border.
4. The question of whether the costs resulting from the differences on direct action are more contract-law- or more tort-law-relate remains disputed.

§ 7. Construction insurance

After dealing with general problems on insurance contract law, it seems important to focus on concrete examples of liability insurance coverages offered in the EU market, in particular construction insurances. It has to be clearly said that the choice to consider in more specific terms construction insurance is in part discretional, as many other examples of insurance are of great importance: see for example the case of the family liability insurance[34].
With regard to construction insurance, this activity involves property insurance contracts and liability insurance contracts for companies and for professionals and financial guarantees, which can be offered by insurance companies. Those financial guarantees are not classified as insurance contracts, even if they are part of the regulated insurance activity and have to be authorized under branch "15" of the harmonized procedure of authorization for non-life activities, as set by the Solvency II Directive (dir. EC 2009/138, Annex I); because they are not classified as insurance contracts, those financial guarantees can be offered as well as by banks and other supervised financial institutions. For professionals involved in the construction activity (engineers, architects, etc.), different approaches exist.

More in general, the need to share information, data and to have a clear survey of the different national solutions is testified by the presence of many research groups on the matter; in

33. Art. 9 Brussels I Regulation (ECJ 13. 12.2007, C – 463/06 – FBTO Schadeverzekering v. Odenbreit) and Art. 18 Rome II Regulation.
34 See for example data and suggestion by BEUC, *Comments on minutes of September meeting.*

particular, projects named Elios I and Elios II must be mentioned[35]. In general, the studies conducted at national as well as supranational level have confirmed that a number of factors and elements strictly influence the market and characteristics of construction insurance. One can mention safety culture, propensity to the use of prevention measures, public finance of the private initiatives, the propensity and conditions for the use of ecotecnologies, etc. In addition, and in result, very detailed legislation in the different Member States exist. Comparison between the different solutions may be difficult[36]. Once again, specific expertise in the local market is an essential element in the decision to sell, or not to sell, cross border. While differences exist, there is no doubt that, even in admitting that obstacles are mainly set by non-contractual elements, some general rules of liability and liability insurance could be useful and could reduce the existing complexity of the market. This view is confirmed in the result of the ELIOS project and is shared by some members of the Group.

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General conclusions and suggestions from the V^th^ meeting of the Expert Group

In general, the Group shares the view that many rules that have an impact on liability insurance are not within the mandate of the Group itself, as they are not within the perimeter of (insurance) contract law. In any case, *insurance contract law rules do not appear to be the main obstacle* to the offering of liability insurance on a cross border basis.

Whereas other factors (e.g. analysis of the local risks, courts decisions on types of recovery of damages, other areas of law) may influence the decision to sell – or not to sell – liability insurance on a cross-border basis, a large part of the members of the Group, here included some representatives of insurance associations at a national level, confirmed that *the existence of different contract law solutions for liability insurance, as well as the mandatory character of many rules of national laws (especially in the field of mandatory liability insurance), add complexity to the system and consequently represent obstacles* to the functioning of the internal market of insurance. In other words, it is sure that different rules (by law or by court decisions) generate costs, of whatever amount, for the companies; equally, different legal rules increase the legal uncertainty to the detriment of insurers as well as consumers and clients in general.
Among the issues analysed above, rules on admissibility of different triggers for the coverage, rules on mitigation of loss, right of the third parties to the direct action seem to create the main problems and consequent costs for insurers as well as insured parties.

[35] See, in particular, the first Elios report, in http://www.elios-ec.eu/sites/default/files/pdf/Eliosfinalreportfullversion.pdf
[36] See J. Basedow, *Comments on Discussion Paper* 5, 5/9/2013, point 9.

Part VI

Life Insurance

Jürgen Basedow /
Erik Schouten

Report of the Commission's Expert Group on European Insurance Contract Law

Part VI (Life Insurance)

Prepared by

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1. Introduction

- In 2011, life insurance generated more than 50% of the total premium revenue in the European insurance market.[1] Life insurance has various functions: for example to provide means of support for the policyholder's family after his/her death; to provide means of support (by investment) during the policyholder's life combined with the protection of a death benefit; to provide security for loans and life insurance in connection with other commercial transactions;[2] to be part of a pension scheme for the policyholder's own old age.[3] Accordingly life insurance may adopt a great variety of forms. Defining the different forms of a life insurance contract is problematic as there are many elements amongst which make up the contract. There is much overlap between the different forms of the contract. The following three examples demonstrate different types of life insurance which can be obtained (but which should not be considered to be exhaustive):
- *Pure risk policies* provide financial protection in case of death, (serious) illness or disability[4] of the person at risk in the form of payment of a fixed sum or an annuity at that occasion.
- *With-profits policies* contain both a risk and a savings element in the premium and mature either with the death or the survival of the person at risk at a certain date; they allow the beneficiary to have its share in the profit made by the insurer's investment or the result of a certain benchmark.
- *Investment-linked policies* equally combine life insurance with an investment in financial products which are selected, , by the client who consequently bears the investment risk. Investments that home state regulators permit to be linked to investment-linked insurance contracts, differ in each country. Such contracts can also be described as 'unit-linked' contracts. In countries such as France and Belgium the 'unit' has a specific statutory meaning which does not exist in other

[1] http://www.insuranceeurope.eu/uploads/Modules/Publications/life-2011_final.xls.

[2] Life insurance can be used as a collateral in all transactions where a debtor promises performance over a long term and the risk of non-performance resulting from this person's death is meant to be reduced, e.g. the takeover of an undertaking by a purchaser promising to pay the price in instalments.

[3] On the latter point see the Commission's White Paper "An Agenda for Adequate, Safe and Sustainable Pensions", COM(2012) 55 final, of 16 February 2012, see measure 19 which indicates the Commission's intention to "explore the need for removing contract-law related obstacles to the design and distribution of life-insurance products..."

[4] Not in every country illness and disability are considered life insurance. In for instance the Netherlands, they are classified as non-life insurance.

countries. For example the meaning and treatment of the 'unit' in France and Belgium is similar but in one country charges should be taken by cancelling units whereas in the other charges must *not* be taken by unit cancellation. In other countries such as the UK if the 'unit' is mentioned in the contract terms it simple serves an administrative function for the purposes of describing how that particular contract operates. In Ireland the investment-linked rules are broader than in for example, Germany. Such rules will dictate product design and are an important consideration for insurers when offering investment-linked insurance products on a cross-border basis. Furthermore, the tax treatment of these products plays a major role in this context as well. For instance, in Spain tax benefits are linked to the permitted asset rules in that country (tax deferral is only available if the funds satisfy those rules).

2. Numerous other intermediate forms of life insurance exist.[5] The various elements of life insurance are applied in different ways in different Member States: the definition of the insured event; the determination of the duration of the contract (term or whole life); the risk distribution with regard to the investment portion of the premium; the payment of premiums in a single amount of money or in installments; the mode of payment of the insurance money in a lump sum or in annuities; the time when payment falls due, i.e. at the occurrence of the insured event or at a later date. Other variations result from the conclusion of the contract by an individual or as a group insurance which represents an important number of cases in some Member States such as France.. The mix and overlap of risk and investment elements in commercial practice explains the existence of divergent national legal definitions of life insurance which may give rise to difficulties in the cross-border sale of insurance products, see infra 3.

3. Retirement products differ from other life insurance products because they must have an explicit retirement objective and provide an income after retirement. Thus pensions are a specific type of "life savings insurance contract" with a maturity at retirement age and which can be converted (either automatically or through a new contract with the same or another provider) into an annuity but which can also be paid out as a lump sum in whole or in part (for example in the UK pension benefits can be taken partly as a lump sum, the remainder must be used to purchase an annuity). As such, pensions have an accumulation phase (building up savings) and a decumulation phase (payment of annuities or a lump sum).

4. This part of the report is meant to shed light on any potential problems that result, for the cross-border provision of life insurance, from the divergences between national insurance contract laws, both general and specific to life insurance. Alongside the areas outlined below the Expert Group discussed other topics such as differences relating to the designation of the beneficiary, the, although these are by no means the only rules to be considered on suicide and on the intentional killing of the person at risk. While contributing to uncertainty and complexity in the cross-

[5] In Houseman's Law of Life Assurance, 14th ed. London 2012, p. 52, more than thirty types of insurance contracts are listed and described.

border insurance business they were not considered to impede such business on their own. In many Member States, legislation other than on insurance contract law (especially tax law, social and labour law and supervisory law) determines the parameters of many of the topics mentioned below. See para 10. In addition, actuarial practice and mortality risk differences make it more difficult to provide cross-border insurance.

5a. Many of the issues discussed in this paper can result in legal uncertainty and costs for insurers wishing to provide cross border services. However, if an insurer has clear evidence on the benefits of entering a market by conducting a cost benefit analysis - of which legal uncertainty and costs are only two of the many factors to consider- none of the issues presented would deter them.

2. Insurable Interest

5. In the UK[6] and Ireland, a life insurance contract is void in the absence of an insurable interest which the person interested in the policy must have in the life of the person at risk; it may result *inter alia* from natural affection, e.g. towards a spouse, or from a financial loss which the policyholder might suffer when the person at risk dies e.g. an employee. While it is the duty of the court always to lean in favour of an insurable interest, if possible,[7] there is abundant case-law holding for example that a parent has no insurable interest in the life of a child and a debtor no insurable interest in the life of the creditor whereas the creditor may insure the debtor's life.[8] (As discussed, in practice in the UK life assurers are less inclined to take a hard line regarding insurable interest whether in spouse-type relationships or others). The unattractive position of taking a premium and no insurance interest has not been embraced. Functionally, the requirement of the insurable interest is intended to distinguish insurance from wagering, and to protect the person whose life is insured. In continental jurisdictions like France and the Netherlands the latter objective is pursued by the requirement of that person's consent. As to the prevention of wagering the present insurance industry appears unlikely to succumb to the temptation of gambling. In the UK, the Law Commission is therefore enquiring whether the element of insurable interest is still needed as a determining element for an insurance contract.[9] For the time being, however, it is part of the law.

6. Where an insurer from a continental Member State offers cover in the UK market it will have to take into account that the consent of the person at risk which the insurer wants to obtain in accordance with its own procedures may in some cases not suffice to replace the insurable interest required by UK law, and that the contract may therefore be considered as void by an English court applying English law. This

[7] As stated by Clarke referred to Re London County Commercial Reinsurance Office Ltd [1922] 2 Ch 67.
[7] As stated by Clarke referred to Re London County Commercial Reinsurance Office Ltd [1922] 2 Ch 67.
[8] *Malcolm Clarke*, The Law of Insurance Contracts, 4th ed. London 2002, ch. 3-7, p. 125 ff. providing a broad survey over the case-law applying the Life Assurance Act, 1774.

will hardly impede the insurer to enter the UK market but it will be an obstacle to the conclusion of the contract intended in the individual case. Moreover, the insurer will have to incur additional costs for legal advice as part of the advice they receive for entering any new market.

3. Pre-contractual information

7. The insurer's pre-contractual information duties have been (or are being)[10] harmonised to a large extent by general rules and specific rules for life insurance.[11] They relate to many aspects of the contract: the provider, the applicable law, the right of withdrawal, the product characteristics to mention just a few. These rules lay down minimum requirements and allow Member States to establish further information duties.[12] Member States have made use of this permission to add national legislation in numerous ways.[13] Supervisors of some Member States[14] have been empowered to add their own additional regulation on top of national law. For foreign insurers it is quite difficult to get to know the additional national law, the additional supervisory regulation and practices and possible self-regulation and how to interpret them. Regarding pensions, local social and labour law and sometimes tax law in many Member States overrules certain provisions in insurance law.[15]

8. As to the insurer, there are Member States which require insurance undertakings to provide their entry number in a commercial register or to disclose the financial group to which they belong.[16] With regard to the product one Member State insists on the consumer's signature affirming the receipt of a written guide containing

[10] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce"), OJ 2000 L 178/1, art. 5, 6 and 10; Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning distance marketing of consumer financial services and amending Council Directives 90/619/EEC, 97/7/EC and 98/27/EC (Distance Marketing of Financial Services Directive), OJ 2002 L 271/16, art. 3 and 4; Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (Insurance Mediation Directive), OJ 2003 L 9/3, art. 12 and 13; Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ 2009 L 335/1, art. 183 and 184, not yet implemented.

[11] Solvency II, previous fn., art. 185; PRIPs proposal.

[12] See e.g. art. 4(2) of the Distance Marketing Directive or art. 185(7) Solvency II, both above in fn. 5.

[13] For a comparative survey which does however not identify the Member States where specific rules are in force, see Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), Report on National Measures regarding Disclosure Requirements and Professional Requirements for Unit-Linked Life Insurance Products, which are additional to the Minimum Requirements of the CLD and IMD, CEIOPS-DOC-20/09 of 2 July 2009, to be found on the website of EIOPA: https://eiopa.europa.eu/publications/reports/index.html.

[14] For instance in the Netherlands the Dutch Central Bank (DNB) and Netherlands Authority for the Financial Markets (AFM) introduced additional regulations regarding transparency and pre-contractual information on costs.

[15] In the Netherlands the Pension Law overrules the provisions on for instance pre-contractual information, right of withdrawal, payment of premiums and payment of insurance money.

[16] The following survey summarizes information contained in CEIOPS document 20/09 cited above in footnote 10.

information about the product. A similar confirmation by signature is needed in another Member State in respect of the description of the investment option chosen by a client purchasing an investment-linked life insurance. Concerning the intermediary's services, some Member States require the disclosure of business connections between the intermediary and the insurer and a precise description of the intermediary's rights and obligations before and after conclusion of the contract. There are also in several Member States divergent information duties relating to the charges and other costs of the conclusion and administration of the contract. Finally, national legislation may also prescribe specific ways and forms of providing information; it may e.g. standardise the forms to be used by insurers for the conveyance of the information or may insist on specific information to be highlighted in order to warn the applicant.

9. The divergences reported in the preceding paragraph do not relate to the insurance product as such but rather to its marketing. Therefore, no adaptation of the insurance contract is required where an insurer wants to enter the market of another Member State. However, the insurer will have to adjust its marketing procedures, in particular regarding pre-contractual information, to the legal requirements of the target state[17]. Information requirements are causing costs to the insurance industry. The more states that are targeted the more difficult and costly compliance will become. The use of unified websites within the same language area (e.g. Greece/Cyprus or France/Belgium/Luxembourg) may be excluded altogether where for example one Member State requires information A to be highlighted whereas another Member State rather demands information B to appear in bold letters. On the other side the users of cross border insurance services could increasingly become uncertain about the information needed if they experience that pertinent requirements change from Member State to Member State; as a result, this may affect legal certainty.

10. Certain insurance products, in particular investment-linked life insurances, may be classified, because of their hybrid character (see *supra* paras. 1-2), in some Member States as insurances while other Member States consider them as financial instruments. The former has been the case in France[18] and the Netherlands,[19] the latter in Italy.[20] The consequences of such classification will influence the pre-contractual information duties and duties during the duration of the contract. According to the Italian *Corte de cassazione* the insurer, when marketing a financial product, may be subject to obligations similar to those incumbent upon investment firms, i.e. the enquiry into the client's knowledge and investment objectives as well

[17] Depending on the familiarity of the consumer in the target state with some or all elements of the product in question, this might not be sufficient.

[18] See four decisions of Cass. ch. mixte 23 November 2004, no. 02-11.352, no. 01-13.592, no. 03-13.673 and no. 02-17.507.

[19] Art. 7:975 Burgerlijk Wetboek (Civil Code) defines a life insurance, irrespective of unit-linked or with-profit. A life insurance product has to have a certain degree of risk. For instance a unit linked product will be considered a life insurance product when the amount payable when the insured dies is 90% or 110% of the value of the contract at moment of death.

[20] Cass. 7 February 2012 no. 6061/12, confirming a judgment of App. Firenze.

as the giving suitable advice.[21] The breach of such obligations led to a damages award which shifted the risk inherent in unit-linked policies from the policyholder to the insurer and thereby profoundly distorted the product. A foreign insurance company offering an investment-linked insurance policy in Italy would have to adjust its market entry strategy; beyond providing information it would also have to take an active role in investigating the client's profile and providing best advice.

11. In summary, divergences in the national laws relating to pre-contractual information duties and to their scope of application have a high potential of rendering the cross-border distribution of life insurance products more costly and making it more difficult to use certain distribution channels, for instance online insurance. Pre-contractual disclosure requirements are sometimes also rooted in local supervisory law. The main restrictive effect on cross-border trade is legal uncertainty about the consequences of providing information under the legislation of one Member State to satisfy the pre-contractual duties required but which would not satisfy the requirements of another Member State for the same life insurance product. This adds to the complexity of cross-border insurance arising from other legal divergences. In light of the serious consequences of a breach of such duties the legal differences were considered as a major obstacle to cross-border insurance[22]

4. Right of withdrawal

12. The policyholder's right of withdrawal from a life insurance contract is harmonized in art. 186 Solvency II. However, the Directive leaves some leeway for – potentially divergent – national rules: such as (a) the duration of the cancellation period between 14 and 30 days;[23] (b) its starting point and its end in case the policyholder is not informed about the right of withdrawal; (c) the contracts that may be excluded; and (d) the consequences of a withdrawal, in particular the restitution of the sums paid by the policyholder. Member State law differs on these points. In some Member States such as France, in the absence of receipt of the policyholder's information about the right of withdrawal, the cancellation period may be extended over years.[24]

13. Life insurers count on a certain quota of their contracts to be cancelled anyway, whether by withdrawal at the initial stage of the contract, by the later claim for the

[21] See art. 19 of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EC, OJ 2004 L 145/1.

[22] There are currently on-going debates within the European institutions on pre-contractual information disclosure requirements with an aim to increase consumer protection, such as the proposed Key Information Document (KID) for PRIPS. In addition, DG SANCO recently conducted a consultation on consumer protection for third pillar retirement products and EIOPA on creating a single market for Personal Pension Products including references to pre-contractual information disclosure requirements.

[23] It is only for contracts falling within its scope that the Distant Marketing of Financial Services Directive fixes an inderogable withdrawal period of 30 days, art. 6 Dir. 2002/65/EC.

[24] See art. L 135-5-2 para. 4 Code des assurances where the right of withdrawal is extended to a period of eight years where the policyholder does not receive the pertinent information.

surrender value or by other forms of termination. In light of this experience differences in withdrawal rights do not deter an insurer from entering a foreign market. However, the differences relating to the subsequent stages of the contract increase uncertainty, complexity and costs. This pertains in particular to different rules on the reimbursement of premium and investment.[25] Such claims may be brought after many years depending on the sanctions imposed by national laws.

5. Disclosure

14. For policies providing for a high death benefit in particular,[26] the pre-contractual disclosure of data relating to the age, health, lifestyle and profession of the person at risk by the policyholder is crucial for the assessment of the risk by the insurer. The laws around the insured's duty of disclosure and the connected remedies are not harmonized in the EU. The rules on how that data may be procured differ between the Member States. [27] Some of the differences relate to fundamental rights,[28] data protection laws, genetic testing laws or anti-discrimination laws; they are considered to be outside the mandate of the group, despite their obvious impact on life insurance contracts.

15. In contract law, the main difference is between those Member States which require the applicant to spontaneously disclose the relevant information and to provide answers to general questions concerning for example the "present state of health" or "previous diseases", and those jurisdictions which limit the applicant's duty to replying to clear and precise questions. Member States such as Austria, Belgium, Portugal would be in the first group, while Finland, France, Germany, the Netherlands Poland ,and the UK (for consumers – the main customers of life insurance policies) would belong to the second.[29] The transition between the two models is fluid, since there may for example be different views on what a "clear" question is and how "precise" it has to be. Insurers must investigate what kind of question is permitted in the target country before engaging in cross-border business. This causes costs and may make it more difficult, depending on the pairs of countries involved to develop interactive websites for online business even in the same language area. Consumers who can purchase contracts on a cross border basis may

[25] The economic relevance of such differences is highlighted in the case C-209/12 (*Endress v. Allianz*), currently pending in the Court of Justice.Tthe Court has to deal with a rule of the former German Insurance Contract Act providing that the withdrawal period does not start to run until the policyholder has been informed of the right of cancellation but that it ends in any case one year after payment of the first premium. According to Advocate General Sharpston this limitation is not in line with the underlying EU directive, cons. 39 ff. and 73, and therefore is inapplicable; the consequences of an inapplicability under German law are still unclear.

[26] Another example would be cases where the annuities paid by the life insurer depend on the lifetime of the insured.

[27] In the Netherlands, regarding occupational pensions: the insurance company is not allowed to ask any questions regarding the health of the employee.

[28] The Belgian Constitutional Court in its judgment of 24 November 2011 on the law of 21 January 2010 relating to insurance (death insurance linked to a mortgage) decided in relation to policy holders with a serious health risk that medical questionnaires of insurance companies constituted an infringement of the right to respect for private life as provided by Article 8 of the ECHR. Questions by of insurance companies for life insurance must be strictly necessary and proportionate which excludes all questions of the type mentioned in point 15.

[29] See the references in PEICL, Article 2:102 N1 – N5.

find the inconsistencies confusing and may not be certain about their own responsibilities depending on the country they are dealing with.

16. The differences also concern the legal consequences of a breach of the disclosure duties and even the handling of a claim.[30] In some countries, the policyholder may entirely lose cover retroactively even in the case of an innocent breach, while in others the extent of the insurer's discharge depends on the causation of the insured event by the inaccurate disclosure, and in a further group of jurisdictions on the additional requirement of the policyholder's fault.[31] These differences affect the extent of cover, i.e. the product of insurance.

17. By contrast, differences relating to post-contractual disclosure duties emerging in the case of an aggravation of risk were not perceived as an obstacle to the conclusion of cross-border life insurance contracts by either insurers or consumers.

6. Payment of insurance money

18. The payment of insurance money is regulated with regard to two aspects: the time of payment including the sanctions for default, and the form of payment. The divergent regulations of the delays allowed for payment and of the sanctions for default were generally not considered to pose problems for cross-border insurance. However Spanish law fixes the interest rate at 50% above the legal interest rate and – from two years after the insured event onward – at a minimum of 20%.[32] Where the insurer is still disputing its liability after those two years this implies a rapid increase of the sums owed and has allegedly induced foreign insurers to leave the Spanish market in the past.

19. Rules on the form of payment concern, first, the choice between a lump sum and annuities and, second, where agreed upon, the insurer's right, in the case of health insurance or disability insurance, to perform its obligations in kind, e.g. by an accredited physician. The former point relates to regulations of tax law and social security law which are not covered by the mandate of the Expert Group, see however below at para 10. On the latter aspect the law does not appear to be settled in many Member States.[33]

7. Payment of premium

[30] For instance in the Netherlands; when the insurance company suspects that a deceased didn't answer the health questions faithfully (so there is a suspicion of fraud), this has to be investigated by a special committee (Toetsingscommissie Gezondheidsgegevens). This committee gives a binding judgement.

[31] See the comparative survey in PEICL, notes N1 to N7 on Article 2:102. Recently the UK has enacted the Consumer Insurance (Disclosure and Representations) Act 2012, c. 6.

[32] See art. 20 para. 4 Ley 50/1980 de contrato de seguro.

[33] A clear prohibition of insurance contracts that exclusively grant performance in kind follows, at EU level, from art. 201 – 202 Solvency II for legal expense insurance.

20. The Member States have enacted a number of – divergent – general provisions aiming to protect policyholders who default in the payment of the first or a subsequent premium.[34] In respect of life insurance generating a surrender value these provisions are often superseded by special rules, see below 8. For other policies the above-mentioned national provisions require the insurer to warn the policyholder of the imminent forfeiture of cover; they may provide for a certain form to be used for such warning; and they may impose a certain grace period that has to elapse before cover is suspended. But the details concerning the required form, the way of communication or the duration of the grace period differ from country to country. While most Member States require the insurer to remind and warn the policyholder somehow, no warning is required under Italian law, and insurance cover automatically ends 15 days after the subsequent premium fell due.[35] These differences are not perceived as an impediment to enter a foreign market, but they raise costs in particular for IT systems for the administration of the invoicing, warning and collection procedures that usually have to comply with the law of the policyholder's domicile.

8. Termination of the contract and surrender value

21. Given the long-term duration of most life insurance contracts, early termination occurs frequently. Termination as such does not appear to pose many problems: In some Member States mandatory provisions enable the policyholder to stop paying premium and claim the surrender value or convert the contract into a paid-up policy; in others this follows from contract terms and commercial practice.

22. But there are differences between national rules concerning the exercise of those rights and its consequences. For example, the repurchase may be excluded or deferred for certain types of life insurance, in particular those forming part of a pension scheme.[36] While such qualifications are motivated by public policy considerations relating to old age provision and might be excluded from the mandate of the Expert Group, other limitations form part of contract law. Thus, some national laws require waiting periods of two years before the policyholder may claim the surrender value,[37] whereas other national laws are silent on this point or like German law that gives the right of termination at any time[38]. They leave the time factor to the terms of the contract and to the accumulation of a surrender value sufficient to justify a claim. Thus, where an insurer originating in a Member State lacking mandatory rules on this point and allowing its policyholders, under the insurance contract, to claim the surrender value for example after 4 years, enters the Bulgarian

[34] See the survey in PEICL, notes N3 – N4 to Article 5:101 for the first premium and notes N2 – N3 to Article 5:102 for subsequent premiums.
[35] Art. 1901 para. 2 Codice civile.
[36] See for example for Sweden ch. 11 § 5(2) Försäkringsavtalslag (2005:104): deferral of one year; for France Art. L 132-23 Code des assurances: exclusion for some and limitation for other types of life insurance. In the Netherlands surrender of a pension is forbidden; art. 65 Pensioenwet (Pension law) except for small amounts (€ 451 per year – 2013; art. 66 Pensioenwet).
[37] Art. 240 (1) of the Bulgarian Insurance Contract Code.
[38] Section 168 para. 1 and 2 German Insurance Contract Act.

market, it will have to adjust its products to the compulsory two-year period. This may imply further changes relating to the remuneration of its intermediaries.

23. Different national rules of law may also determine the calculation of the surrender value. This issue is mainly a matter of supervisory law and therefore outside the mandate of the Expert Group. But it also depends on the deductions from the gross surrender value which are permitted by insurance contract law, in particular the costs of contracting including the acquisition costs. According to German law only 20% *per annum* of those costs may be deducted from the gross surrender value in case of surrender during the first five years[39].[40] Thus the possible reduction is much lower (and the resulting net surrender value higher) under German law than in other Member States whose laws allow insurers to deduct the full costs of contracting and acquisition from the first year's premium. Where an insurer from such a country, having for example an average termination quota of 10% decides to enter the German market with the business model of its home country it will soon notice that the costs calculated for the payment of surrender values to the 10% of its German customers terminating their policies will be much higher than those in its home state. Thus, that insurer will have to adjust its product to German law and will for example be compelled, *ceteris paribus*, to either charge a higher premium than at home or to amend the distribution agreement to the effect for example that the intermediary's commission is either deferred and payable in installments over five years or has to be repaid accordingly in case of early surrender. Concluding, differences in regulation regarding termination of the insurance contract between Member States is not considered a major obstacle to cross-border provision of life insurance, but they compel insurers to adjust their products to the insurance contract law of the host Member State (which is currently the generally accepted approach used by insurers seeking to enter into a new market).

9. Review of standard contract terms: transparency

24. The judicial review of unfair contract terms may gain particular significance for life insurance. This has been demonstrated by German case-law dealing with intransparent clauses. Directive 93/13/EEC provides that such clauses will be interpreted to the benefit of the consumer.[41] Moreover, intransparent clauses will be subject to a judicial review of their content even where they deal with the core elements of the contract; such clauses would be immune against judicial review if they are transparent.[42] Under the Directive, the non-binding effect of an intransparent clause depends on a substantive finding, namely whether that clause, "contrary to the requirement of good faith, … causes a significant imbalance in the parties' rights and obligations…"[43] Lack of transparency as such does not invalidate

[39] Section 169 para. 3 and 4 German Insurance Contract Act.
[40] See Art. 169(3), 1st sentence Versicherungsvertragsgesetz.
[41] See art. 5, 2nd sentence of Directive 93/13/EEC.
[42] See art. 4(2) Directive 93/13/EEC.
[43] See art. 3(1) Directive 93/13/EEC.

the clause. This is the law in most Member States resulting from the implementation of the Directive. The Directive provides for minimum harmonisation.[44]

25. In Germany, the *Bundesgerichtshof* has started as early as in the 1990s to consider lack of transparency as a ground of invalidity irrespective of any imbalance of the parties' rights and obligations; since 2001, that case-law has been extended to insurance contracts. Contract terms relating to the core of the insurance product, i.e. to the calculation of surplus bonuses in with-profits policies, to the calculation of the surrender value or of the costs to be deducted from it are by their very nature complicated. Nevertheless the court postulates that they should be transparent to the extent possible, and invalidates intransparent terms.[45] The standards of transparency are not very clear and emerge only in the course of development of that case-law. Lack of transparency may for example result, not only from the wording of a contract clause, but also from its allocation in the whole contractual framework. Compliance is difficult. It is even more difficult for foreign insurers which have drafted their policies against the backdrop of transparency standards of their own jurisdiction. For the use in Germany such policies would certainly need to be adjusted in order to be immune against judicial review and invalidation.

10. Impediments inherent in areas other than contract law

26. This part of the report points to a number of legal divergences originating outside general contract law and insurance contract law which have an impact on cross-border insurance business. Their impact has been clearer in life insurance than in other sectors. While these legal divergences are outside the mandate of the Expert Group, they should be mentioned here. First, there are many intricate links between life insurance and other parts of private law such as family law, succession law or insolvency law. It is not always easy to assign a legal divergence that hinders cross-border insurance to either insurance contract law or to one of those areas.

27. Second, life insurance is also influenced by public interest that affects a number of issues and the basic structure of some products. Modern legislation inspired by human and fundamental rights limits the possibilities of the insurer to assess the risk by appropriate questions and the requirement of medical tests. While this development has a European dimension, the positive legal rules on data protection, genetic tests and anti-discrimination differ from Member State to Member State.

28. Third, life insurance is also one of the tools employed by a large number of Member States in pursuance of their social policy. To prevent poverty of the retired elderly citizens and to supplement the social security pension systems they promise tax benefits to those who save money while they are younger to take out life insurance. This is not the case in all Member States; in some countries such as

[44] See art. 8 Directive 93/13/EEC.

[45] The most recent decision of the Bundesgerichtshof, BGH 14 November 2012 (IV ZR 198/10), Versicherungsrecht 2013, 1116 ff., at the complaint of a consumer organization, declared invalid about a dozen of contract terms.

Bulgaria life insurance is not ”shaped” by the laws pursuing a specific social policy. But in other Member States the national laws often prescribe details of the contracts which are susceptible of being subsidized. In practice, these provisions often overrule the general provisions in insurance contract law. [46]

29. A pension product consists of two parts: an accumulation and a decumulation phase. When a policyholder is obliged to transfer his accrued pension capital to an annuity, cross-border movement of the policyholder can cause problems. For instance in the Netherlands, an individual can save for additional, private pensions in the third pillar. The Dutch tax law prohibits the pay-out of a lump sum[47]. Suppose the policyholder moves to another Member State, where he reaches his retirement age. According to the Dutch and UK tax law, the policyholder would have to convert his accrued pension capital into an annuity. According to the Dutch Central Bank (the supervisor) the conversion into an annuity is a new legal agreement. This means that the Dutch insurance company would be considered conducting cross border activity and would for instance need a notification. However, the company may not be interested in providing services in that country in order not to be confronted with insurance and applicable law in that Member State. As a result, the insurance company may refuse to offer the annuity. The policyholder who would be forced to receive a lump sum would be confronted with a major fiscal claim. He would have to pay up to 72% taxes and fines to the Dutch tax authorities. [48]

30. In the UK, there are also tax incentives to take an annuity before the age of 75 (and tax penalties on taking any benefits before retirement age). For third pillar pensions there is a regulatory requirement[49] for insurers to offer an ‘open market option statement’ which enables their policyholders to accept an annuity from the insurer or to decide to purchase an annuity on the open market. The Association of British Insurers has also created a Code of Conduct on retirement choices to enhance customer communications concerning retirement options and which insurers have signed as a condition of membership. The ABI’s Code aims to ensure that policyholders are equipped with the information they need to understand their options, shop around and make informed choices.

31. Cross-border movement of a policyholder can also cause other problems. Third pillar pension holders may wish to make a transfer of their pension contributions from one pension scheme to another in the same country but would encounter barriers if they are habitually resident in the second country. They may wish to do this for a number of reasons, for example to take advantage of a new pension product, to access different investment options or because of concerns surrounding their existing pension provider. They may even wish to transfer their pension from

[46] For instance insurance contract law allows for withdrawal while other law (like pension law) forbids this.

[47] In Germany, the situation is comparable for certain products where tax reliefs are granted in case of an annuity but not in case of the payout of a lump sum.

[48] Art. 19b Wet op de loonbelasting 1964 (Wage Tax Act 1964) and art. 30i Algemene Wet inzake Rijksbelastingen (State Tax Act).

[49] UK Financial Conduct Authority Handbook COBS 19.4

one product to another with the same pension provider. From the consumer's perspective they may see the pension savings as attached to the country where the savings are held, particularly because of the tax benefit surrounding the schemes. However the transfer would involve a new insurance pension contract and therefore the pension provider would have to be regulated in the country where the person is habitually resident and the social and labour laws, general good and pre-contractual requirements of that member state would have to be complied with. As mentioned in earlier parts of this Report the scope and extent of 'general good' is uncertain for an incoming insurer and the same uncertainty applies to the scope and extent of social and labour laws applicable to pensions. Advice is therefore necessary for insurers to establish what the general good and the social and labour laws are.

32. In Germany, life insurance contracts have to comply with a number of conditions in order to be certified as eligible of subsidies; among others the costs of contracting must be charged to the policyholder's account by not more than 20% *per annum*, and the disbursement of the benefits must not begin before the policyholder reaches his or her 60th birthday.[50] These are but some examples which explain the great significance which divergent tax law and social security law has on cross-border life insurance. In particular with regard to pension products these divergences have already stimulated recent consultations by EIOPA[51] and the Commission.[52] Within the Expert Group the impact of those divergences has been estimated to exceed that of divergent contract laws.

11. Impediments inherent in contract law

33. However, the report has also disclosed a number of divergences between the contract laws of the Member States which impede cross-border life insurance and/or certain marketing practices. Where divergences of tax law are less significant, e.g. when life insurance is used as a collateral in commercial transactions, such differences gain relative weight. Of particular importance are the divergent rules on the insurer's pre-contractual information duties and on the applicant's pre-contractual disclosure duties which render the online marketing of life insurance costly and/or more difficult. Where courts subject insurers to the pre-contractual information duties relating to financial instruments, they require insurers to apply active contracting procedures such as the profiling of the client which will impose a much heavier burden on a foreign insurer than on a domestic insurer.[53] Divergent rules relating to the calculation of the surrender value and to the judicial review of pertinent contract clauses equally impair the possibility of selling and purchasing life

[50] See § 1 no. 2 and 8 Gesetz über die Zertifizierung von Altersvorsorge- und Basisrentenverträgen of 26 June 2001, Bundesgesetzblatt I, p. 1310. Regarding contracts that were concluded after 2011, the payout is permitted after the 62nd birthday only.

[51] See "Discussion Paper on a possible EU-single market for personal pension products", EIOPA/13/241 of 16 May 2013, https://eiopa.europa.eu/consultations/consultation-papers/2013-closed-consultations/index.html.

[52] See "Consumer protection in third-pillar retirement products", a consultation paper of 11 April 2013, http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/docs/swd_consumer_protection_thirds_pillar_pensions_en.pdf.

[53] See for instance para. 10.

insurance cross-border. Further the nature of pension arrangements in certain Member States, which separate the pension contract from the annuity combined with the difficulty of an insured to transfer assets between insurers in the same Member State, create difficulties for policyholders of third pillar pension contracts when they become habitually resident in another Member State. This difficulty arises as a consequence of the choice of law rules under the Rome I Regulation which is discussed more fully in section 2 of this Report.[54]

34. Other rules have the effect of increasing legal uncertainty and complexity, and of raising costs of cross-border activities. They concern the withdrawal period and the consequences of cancellation, the drafting of questionnaires, the payment of premium and of the insurance money, and numerous details of the termination of the contract. How insurers manage these requirements is a business decision driven by their commercial approach and attitude to risk.

[54] Regulation (EC) No 593/2008

Part VII

Motor Insurance

Nuria Castañer Carrasco

Expert Group on European Insurance Contract Law

Meeting of 12-13 November 2013

MOTOR INSURANCE

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I. INTRODUCTION

a) European Motor insurance market

In 2011 European motor insurers generated a total premium income of €129bn, compared to €124bn in 2010. This corresponds to a growth of 4%, against +1.2% the previous year that is the consequence of recovering from 2010 losses, which were brought about by the rising costs of personal injury claims. Most large motor insurance markets witnessed an increase in premiums in 2011 which reflects the fact that competition remains as high as in previous years. At the same time, motor insurers are offering more services in addition to traditional cover (e.g. assistance), new products (e.g. cover for occasional drivers) and more advantageous policy conditions (e.g. no change in Bonus/Malus for drivers who have had few accidents, profit sharing) [1].

In such a **competitive** situation, the most significant complication to the cross border provision of insurance products lies in the fact that insurers have to assess the local environment into which they wish to sell in order to price their products based on risk analysis. This necessity applies irrespective of whether insurers are supranational or functioning merely on a local basis. This is especially the case for motor insurance. Although this analysis will obviously include the local contractual law, it will be based on the wider local legal and regulatory framework.

Besides that, in a market as competitive as motor insurance, an insurer seeking to offer motor insurance products Europe-wide would require separate **market expertise** and information for

[1] All the previous information is according to Insurance Europe's "Statistics N°46: European Insurance in Figures", published January 2013, and available at: http://www.insuranceeurope.eu/uploads/Modules/Publications/eif-2013-final.pdf

risk calculation and pricing in each Member State,[2] as well as pricing systems which have been adapted for each country. It should be noted that there exist significant risk differences not only between Member States but also within national markets. Offering a single pricing system for multiple countries would not be possible from an actuarial and prudential perspective.

Accurate and precise risk calculation is therefore an indispensable aspect of motor insurance. Factors other than differences in contract law impact the cross-border provision of motor insurance, including factors such as the **laws governing compensation of damages** and rules of evidence and civil procedure, the entire system of civil law, including the civil code, laws governing general terms and conditions of business, commercial law, etc. Questions of access, errors and appeals, the enforcement of damage claims by injured parties and the enforcement of claims by the insurer, differ from Member State to Member State. The social security systems in the various countries are also different, which has a substantial impact on the insurer's damage and recourse payments in case of personal injury. Different tax systems also require fundamentally different and costly business processes for each individual country in which the insurer seeks to operate. Road safety conditions, consumer driving behaviour and legislation also play a determining role and differ considerably from Member State to Member State.

Besides that, motor insurance is a **mass market product** which is organised by means of automated processes. Conditions are determined not as much in reference to insurance contract laws, but by the wider legal framework. By way of example, the UK has seen a massive increase in whiplash claims, many associated with fraudulent claims. Any insurer intending to insure motor risks in the UK will need to have a detailed understanding of both the liability and quantum risks associated with whiplash in order to price its products correctly - indeed to determine whether it wishes to underwrite the risk at all.

There will be a consequent need in practice for local infrastructure to service the placing of policies and the adjustment of claims in order to meet the expectations of consumers. It is clear that Member States have very different legal and claims management environments that insurers need to be aware of. These differences inevitably create disincentives to direct-cross border insurance trade (in "freedom of services") and this is unlikely to be addressed over time.

[2] Commission Regulation No 267/2010 on the application of Article 101(3) of TFEU to certain categories of agreements, decisions and concerted practices in the insurance sector, expressly exempts joint compilations, tables and studies and this with the explicit goal (see recitals 9 and 10) to facilitate entry of new competitors on a national market, who necessarily have to access all these calculations and compilations.

The need for **local presence** is even taken into account in EU legislation. In motor insurance, the provider should designate a **"claims representative"** in each Member State as required under Article 21 of Motor Insurance Directive 2009/103/EC[3] as well as a "**correspondent**" established under Article 4 of the Internal Regulations of the Green Card System. Both legal functions may be (and usually are) carried out by the same provider. This shows that even European legislation understands that the need for a local infrastructure is particularly important in relation to offering motor insurance. Additionally, insurers need to have local arrangements to effectively manage claims, for example, with garages for repairing vehicles and road-side assistance services and it can take significant time and investment to establish such networks where the aim is to offer a product cross-border.

Furthermore, compensation systems differ across Member States, both in terms of substantive rules on liability, causation and loss, as well as procedural issues around advancing a claim (e.g. different 'trigger events' for limitation purposes) and reaching settlements. Rules around compensation for both economic and non-economic loss differ across Europe[4]. Many Member States use compensation systems which are based on negligence while other Member States use strict liability systems. This is a significant difference which has an impact on both claims handling procedures and claims costs. In addition, there exist differences between Member States in the compensation of the vulnerable road users. For example, in Belgium, a law obliges the insurer of a vehicle involved (may be not responsible) in an accident with a vulnerable road users (pedestrians, bicycle, passenger) to compensate the vulnerable road user's personal injury.

b) EU harmonisation so far

All these differences persist even though **five EU Directives** have been adopted on motor insurance which are consolidated under the mentioned Motor Insurance Directive 2009/103/EC. Whereas other provisions of this Directive can be considered as full harmonisation, the EU legislator did not harmonise other issues, for instance, Article 9 of the

[3] [3] Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, OJ L 263, 7.10.2009, p. 11

[4] See the Report elaborated for DG Markt "*Compensation of victims of cross-border road traffic accidents in the eu: comparison of national practices, analysis of problems and evaluation of options for improving the position of cross-border victim*" http://ec.europa.eu/internal_market/insurance/docs/motor/20090129report_en.pdf

MID only prescribes minimum harmonisation, i.e. minimum third-party liability insurance cover in EU Member States.

Based also on article 22 of this Directive, Member States have adopted provisions to ensure that a **reasoned offer of compensation** is being made to the victim within three month of when he/she presents the claim and, where the offer is not made, interest shall be payable on the amount of compensation offered by the insurance undertaking or awarded by the court to the injured party. In Italy these measures have been strengthened by imposing administrative sanctions on insurance companies in case of offers made after the lapse of the three month period.

However, Directive 2009/103 does not deal with the issue how the insurer has to respond where liability is denied; Member States have responded differently with laws seeking better protection of the consumer.[5]

Other provisions relate to different issues: vehicles should be registered in the country of residence of the policy holder and/or vehicle owner; provided their registration is in order, they may be insured by an insurer established in the country of registration or in any other EU country by freedom of services (FoS); insurers providing cross-border insurance services must fulfil certain formalities.

The benefits of the **Green Card system** in Europe reflected in this Directive must also be highlighted, which was first established in 1949 and has now been joined by more than 40 countries. The purpose of this system is to protect victims of road traffic accidents involving foreign motor vehicles from those countries. Motor Insurance Directive 2009/103/EC further provides for cooperation between national insurers' bureaux as per Article 6, which help facilitate compensation in such cross-border cases. Chapter 4 of the Motor Insurance Directive 2009/103/EC moreover outlines the compensation procedure for damage caused by an unidentified vehicle or a vehicle for which the insurance obligation has not been satisfied, which is then handled by the national guarantee fund in accordance with Article 25.

c) Compulsory liability insurance

[5] French law and its interpretation in case-law may result in the situation that the sanction of the insurer who initially contests the responsibility of the policy holder but whose stance is later denied by the courts consists of a (double) penalty both for late offer (L 211-13 of French insurance legislation – code des assurances) and for clearly insufficient offer (L 211-14).

According to Directive 2009/103/EC motor liability insurance is a compulsory insurance in all Member States. Where insurance policies covering such risks are concluded on a cross-border basis, they must comply, according to art. 7 (4) (a) of the Rome I Regulation, with the specific provisions of the law of the Member State imposing the compulsory insurance (namely, the Member State where the car is registered) which, in the case of motor insurance, may be very detailed. Moreover, some Member States (e.g. France, Germany, the Netherlands) have made use of the option granted by art. 7 (4) (b) Rome I Regulation and require the whole liability insurance contract to be subject to their own law. This leads foreign insurers entering the market to adapt the policies used in their respective home countries.

It must be also taken into account that motor insurance consists of two main categories, namely third party liability motor insurance and comprehensive motor insurance (own damages), with only the former being made compulsory by EU legislation[6]. As a consequence, motor insurance is the **most widespread liability insurance in all the EU** so all the conclusions made in the chapter on Liability insurance should be taken into account here. That is to say, rules on liability insurances are often very **detailed, specific and complex**. They can create uncertainty for national insurers and also for foreign insurers.

As with any liability insurance policy, motor third party liability insurers must also still compensate for the additional costs of providing legal and/or risk assessment experts for the foreign jurisdiction, conducting transactions in the language of the foreign jurisdiction, obtaining and analysing risk data from the foreign jurisdiction, and so forth. It is moreover necessary for insurers to safeguard their ability to cover these costs without failing to comply with legislative solvency requirements and their financial obligations to investors (ie in the form of returns), both of which are intended to secure insurance capacity for the cover of potential claims.

Furthermore, motor insurance is a **compulsory insurance** in all Member States, at least as regards third parties liabilities and insurance policies covering risks from abroad, according to

[6] It is referred to as a **'third-party'** cover since the beneficiary of the policy is someone other than the two parties involved in the contract (the car owner or the driver and the insurance company). In most Member States, the policy does not provide any benefit to the insured. However, it covers the insured's legal liability for death/disability of third-party loss or damage to the third-party property. Some Member States, however, use a first party cover. For instance, in Sweden motor third party liability insurance also covers personal injuries suffered by the driver (who often also is the owner and policy holder) of the vehicle. On a **voluntary basis** insurers also may offer a "comprehensive cover" that is an add-on to the mandatory third party cover and protects the car owner or driver from financial losses, caused by damage or theft of the vehicle.

article 7 (4) of the Rome I Regulation[7], and must comply with the specific provisions of the law of Member States imposing the compulsory insurance (namely, the Member State where the car is registered); which, in the case of motor insurance, is very detailed.

Italian law regulating the contents of compulsory motor liability insurance including the premium was upheld by the ECJ as a restriction of the freedom of establishment and the freedom to provide services, justified by the protection of victims of road traffic accidents.[8]

d) Cross-border activity and pan-European Prospects

This is the main reason why when offering motor third party liability insurance, any development of a suitable and effective cover must entail a thorough analysis of the host Member State's motor liability law as well as the legal processes and administrative procedures of the jurisdiction in which the policyholder's insured activities take place. Considering this, not all insurers may be entirely capable (either in terms of financial capacity and/or expertise) to cover foreign risks or else have the risk appetite (i.e. business strategy) to offer products in a foreign market. Regardless, there are multinational insurance companies offering multi-State motor third party liability policies through local affiliates as well as local insurers that can offer endorsements and/or extensions to accommodate customers driving cross-border. Insurers may work with their policyholders to **custom-design** a policy or policy extension that adequately covers their potential risk exposure in the foreign Member State. As a result, only large motor insurers operate in multiple Member States. Because risk calculation and business processes cannot be combined across national boundaries, the most expedient way of doing so is to form or acquire a separate company in the relevant country.

At this time there appears to be no concrete evidence that there are pan-European products concerning cross-border motor third party liability insurance.

To the contrary, motor insurance is a **highly competitive national market** with a variety of insurance products available to European consumers within their respective countries. Beside the possible obstacles mentioned in the following sections, there appears to be no evidence suggesting that insurance contract laws on their own are impacting the availability and/or

[7] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6–16.

[8] European Commission v. Italian Republic of 28 April 2009 (Case C-518/06), judgment of the Grand Chamber.

provision of insurance to the point of hindering users' freedom of movement, or establishment or freedom to provide services.

2. POSSIBLE CONTRACT-LAW RELATED OBSTACLES TO CROSS-BORDER MOTOR INSURANCE

Therefore, national legal environments that affect motor liability insurance differ to a significant extent which may have different consequences for insurers who want to offer their products abroad.

The analysis of possible contract law related obstacles is complicated by the difficulty in defining whether a potential obstacle is related to contract law or better described as a potential obstacle deriving from the national regime which applies, for example, to issue of licences or local formalities.

The following areas were analysed in view of their particular relevance to motor liability insurance.

a) Coverage amounts

Article 9 of the Motor Insurance Directive 2009/103/EC provides that without prejudice to any higher guarantees which Member States may prescribe, each Member State shall require motor third party liability insurance to be compulsory at least in respect of the following amounts:

- in the case of personal injury, a minimum amount of cover of €1,120,000 per victim or € 5,600,000 per claim, whatever the number of victims;

- in the case of damage to property, €1,120,000 per claim, whatever the number of victims.[9]

The primary objective of the coverage amounts according to Article 9 of the Motor Insurance Directive 2009/103/EC is to protect the victim of a road traffic accident following a severe loss

[9] See for the revised amounts: *Commission notice regarding the adaptation in line with inflation of certain amounts laid down in the Motor Insurance Directive 2009/103/EC (2010/C 332/01),* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:332:0001:0001:EN:PDF

by fully compensating the damage.[10] The amounts Member States have introduced as minimum amounts differ to a significant extent: for personal injury between €481,000 and unlimited coverage in Belgium, Finland, France, Ireland, Luxembourg and the UK, and for damage to property between €206,000 and unlimited coverage in Luxembourg.[11]

It is not clear that these differences constitute an obstacle for a foreign third party motor liability insurer, coming into one of the markets with mandatory **unlimited coverage** (Belgium, Finland, France[12], Ireland, Luxembourg and the UK) to increase the coverage significantly. For a foreign insurer this could make more difficult to enter into these markets as the insurer would be bound by the unlimited amount. Furthermore, not only the amount and level of compensation awarded in the different Member States, but also the differences in their systems of compensation, would constitute a reason for motor insurance not to be sold cross-border (e.g. compensation could consist in awarding not only a lump sum, but also the reimbursement of constant care in the future). Nevertheless, although a different level of coverage is a reason to change the contract, insurers are used to adjusting their prices by taking into account different levels of coverage. For pricing, the important point is the number of claims (claims frequency) and the liability regime, influenced by the amount of damages paid in an average case, the costs of spare parts, higher economic development which would lead to a higher claim tendency (all reflected in the claims severity), landscape, consumer habits, driving culture and road safety. It is not clear that different minimum levels of compensation, per se, are a cost or obstacle to cross border motor insurance because the level of minimum coverage in each Member State is readily ascertainable and the level of premium easily adjusted.

Some possible contract law related obstacles are analysed:

- Certain non-harmonised restrictions of coverage (**exclusions**) are subject to different national regimes. For instance, certain exclusions are allowed in some Member States, while they are prohibited in others or there are different regimes on the violation of

[10] Recital 12 of Directive 2009/103 EU: Member States' obligations to guarantee insurance cover at least in respect of certain minimum amounts constitute an important element in ensuring the protection of victims. The minimum amount of cover for personal injury should be calculated so as to compensate fully and fairly all victims who have suffered very serious injuries,

[11] For more detailed information about the different coverage amounts per Member State see http://www.versicherung-und-verkehr.de/auto/unfall/unfall-im-ausland/deckungssummen.htm

[12] The representative of a major French mutual insurance company (Macif) thus explained to the newspaper "Les Echos" in an article of 29 November 2013 that for the ten first month of year 2013, this company had to settle 9 claims for greater amounts than 5 million euros each time.

precautionary measures. Different limitations to recourse against the policyholder about these exclusions may lead as well to different risk assessments and therefore differences in premium calculation as well.

- There are also differences in the positive mandatory content of coverage (**compulsory inclusions**), for instance on the inclusion of legal expenses or the obligation to insure several drivers. For an insurer, coming from a country like for instance the UK where no such extension of coverage exists into, for instance, the Austrian market, where such mandatory coverage exists, this would change the content of coverage and therefore cause costs under the policy and a consequent rise in premiums to a level equivalent to that charged by local insurers in order to take local requirements into account.

- Differences between national rules creating **mandatory preliminary coverage** or other requirements for **registration** need to be built in the product. This leads to a different content of the product on these points. Examples: the necessity of provisional coverage for registering a car and the possibility of seasonal registration in Germany.

Other obstacles observed around coverage amounts are of a legal nature, but not insurance contract law. There are others of a non-legal nature like the frequency of claims and severity of claims.

b) Bonus/Malus systems

Bonus/Malus systems are very common in motor insurance. A Bonus is a discount in the premium which is given on the renewal of the policy if no claim has been made in the previous year. A Malus is an increase in the premium if there has been certain number of claims in the previous year. Bonus/Malus systems differ between Member States[13] and are **largely subject to voluntary regimes** by insurers.

In France, Luxembourg and Italy, the Bonus/Malus systems are regulated by the law,[14] whereas for example in Germany[15], in Spain, the UK and the vast majority of other Member States, this is

[13] See in this context also the following judgments of the European Court of Justice in which the Court ruled on the compatibility of national bonus/malus systems with the fundamental freedoms: Judgment of 7 September 2004, *Commission/Luxemburg*, Case C-346/02, 2004 I-7517; Judgment of 7 September 2004, *Commission/French Republic*, Case C-347/02, 2004 I-7557.

[14] See Art. L 111-4, A 121-1 of the French Insurance Code. Luxembourg: Loi du 16 avril 2003 relative à l'assurance obligatoire de la responsabilité civile en matière de véhicules automoteurs; Art. 11 Règlement grand-ducal du 11 novembre 2003 pris en exécution de la loi du 16 avril 2003 relative à l'assurance obligatoire de la responsabilité civile en matière de véhicules automoteurs.

not the case. There, insurers are free to decide whether and if so which Bonus/Malus system they offer. [16]

In most Member States, Bonus/Malus are offered as a result of insurers' commercial decision to do so in a competitive environment. In the other Member States, a regulated bonus-malus system contributes to market fluidity which is highly appreciated by consumers. The contract law related obstacle arising in relation to Bonus/Malus would concern a scenario where an insurer from a market with no regulation of Bonus/Malus system like the UK, who does not offer a similar Bonus/Malus in his home State on a voluntary basis, enters a market where there are mandatory Bonus/Malus rules (at the present stage of discussion of the Group only three such countries are known). Having to provide a mandatory bonus could, in such instances, affect the premium calculation.

c) Other specific (mandatory) national rules

Taking into account that motor **insurance is compulsory at EU level as regards third party liability** (see Footnote 5), furthermore there are other specific rules under national legislation which insurers that want to offer motor insurance abroad must be aware of and must comply with. This is a consequence of the fact that under Art. 7(4) of the Rome I Regulation[17] the **compulsory rules relating to mandatory motor insurance largely prevail**. Thus, products must be adapted to the legal requirements of the specific markets. In Poland and in Spain, for instance, mandatory motor liability insurance is fully regulated by mandatory provisions. Therefore, motor insurance contracts often directly refer to the respective insurance law provisions. In Belgium, standard contract terms for motor insurance are prescribed by regulation;

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[15] In Germany, the Association of Insurers (GDV, *Gesamtverband der Deutschen Versicherungswirtschaft*) has developed a bonus-malus system which most insurers follow.

[16] See for details: Taik, Monir, *Mitgliedstaatliche Grenzen der Gestaltung von Versicherungsprodukten im Europäischen Binnenmarkt für Versicherungen*, Berlin, 2012, p. 55 ff.

[17] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6–16.

Art. 7(4) provides as follows: *„The following additional rules shall apply to insurance contracts covering risks for which a Member State imposes an obligation to take out insurance:*

> *(a) the insurance contract shall not satisfy the obligation to take out insurance unless it complies with the specific provisions relating to that insurance laid down by the Member State that imposes the obligation. Where the law of the Member State in which the risk is situated and the law of the Member State imposing the obligation to take out insurance contradict each other, the latter shall prevail;*
> *(b) by way of derogation from paragraphs 2 and 3, a Member State may lay down that the insurance contract shall be governed by the law of the Member State that imposes the obligation to take out insurance."*

in Germany, they are subject to approval of the supervisory authorities. Foreign insurers may therefore face obstacles when entering the relevant market, due to additional operational costs, for instance legal costs for adaptations and modifications of their contracts and IT costs.

On the other hand, many national laws on motor insurance regulate these contracts often only **punctually and partially**. Good examples of such rather limited partial regulation are the German Law on mandatory motor insurance[18] and the Spanish Law[19]. Even such partial regulation can, however, be an obstacle to cross-border motor insurance since the insurer who wants to operate abroad must be aware of it and comply with it regardless of whether or not there is an equivalent to such legislation in their home market.

Besides that, there are some non-contract law related requirements stemming from **public law**, e.g. for reasons of fraud prevention, or simply of a practical nature (e.g.: direct settlement agreements; in Spain more than 90% of the claims in motor insurance liability are handled through them [20]).

There are also a number of borderline cases. For instance, German insurers of small motorbikes can hand out the number plates (public law element) only once the money has been paid (contractual counter-performance regulated by contract law) by the insured. Another example concerns a mandatory Austrian rule according to which when the insurer sends the declaration of cover to the registration office, at the same time the insurer grants cover to the policy holder.

The following issues that could affect the insurance contract are flagged up:

A. **Form requirements**: in some Member States (for instance Italy,[21] Bulgaria or France) certificates need to be delivered as original on paper. For instance in Italy, Bulgaria and France the insurance cover has to be evidenced by a sticker attached to the windscreen of the car. This added formality creates costs and makes online distribution more onerous.

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[18] *Gesetz über die Pflichtversicherung für Kraftfahrzeughalter.*

[19] Real Decreto Legislativo 8/2004, de 29 de octubre, por el que se aprueba el Texto Refundido de la Ley sobre Responsabilidad Civil y Seguro en la Circulación de Vehículos a Motor.

[20] See Memoria Social del Seguro Español 2012, p. 157 http://www.unespa.es/adjuntos/fichero_3575_20130521.pdf

[21] It must be said, though, that pursuant to Decree n.110, dated 9 August 2013 of the Italian Ministry of Economic Development, within the period of 2 years the paper certification named "contrassegno" will be substituted by an electronic evidence stored in a dedicated data-base.

This situation is contrary to other countries, e.g. the UK, where electronically produced evidence is sufficient. In the UK more than 50 % of motor insurance is sold via comparison websites. Therefore for instance a UK insurer wanting to enter the Italian market would face a fairly major impediment for its business model and vice versa.

B. **Automatic renewal**: in some Member States like France, Spain or Poland there is automatic renewal of the contract after one year. In France and Spain, the insured can terminate the contract at any time. A foreign insurer coming into this market has to adapt to this possibility. On the contrary, in some countries (e.g. Italy) the law forbids an automatic renewal clause.

C. **Compulsory risk acceptance**: in some Member States (e.g. Germany, Italy or in France via the intervention of the *'bureau central de tarification'*), any insurance provider, including incoming foreign insurers, is obliged to accept risks (i.e. the insurer is obliged to accept any insured that ask for an insurance). For example in Belgium, contractual freedom for the insurer to accept or refuse to conclude a determined contract is limited by the concept of abuse of rights and the requirement that any difference of treatment has to be objective and reasonable. In Poland, if an insurer does not reply within a specified deadline, the contract is concluded between the applicant and the insurer at the regular pricing system and the insurer cannot ask for a higher price for a possibly higher risk. Other Member States have established a fund or an institution, the costs of which are partially covered by insurers, to give access to insurance. The result is that an insurer from a fund/institution-type Member State would have to pay into this system in its own country of establishment while at the same time they have to accept any contract in the Member States of the former group.

D. The **differences between the unfairness control regimes** has also to be highlighted as regards price adjustment clauses (indexation clauses) which are more difficult to design for motor insurance than for other insurance sectors. As the insurer may not be able to cancel the contract, it is crucial to be able to adjust the premium. However, it is also necessary to ensure that the price adjustment clauses were transparent for customers. The specific importance of differences between the unfairness control regimes is therefore relevant for price adjustment clauses, which are more difficult to design for motor insurance than for other insurance branches

E. Contract law rules on claims handling may have an impact on the cross-border offer of motor insurance, although it should be noted that differences in regulatory requirements or industry codes of practices may also be a significant factor of cross border trade.

- In Italy, an insurer does not only have to pay the damages caused by the insured, but by law also has to pay the damage suffered by the insured if he so requires.

- In Austria there is a mandatory rule that if policyholders waive their right to ask for a replacement car, the premium is significantly reduced. This affects incoming insurers which see their premium reduced while they may not have the mutual advantages of the Austrian internal system.

- In Spain, the law establishes that if the payment of the insurance money is overdue or if a reasoned offer of compensation is not made within the three-month time limit foreseen in the codified Motor Insurance Directive 2009/103/EC, the compensation will be increased by the payment of an annual interest rate similar to that of the legal interest rate at the moment in which it is paid, increased by 50%. Notwithstanding the above, once two years have elapsed since the occurrence of the claim event, the applicable interest rate may not be less than 20% per year.[22]

F. Some other **concrete situations** should be taken into account when operating in Italy:

- A mandatory duty imposed upon insurers to offer 'basic contracts' is an obstacle for foreign insurers because the foreign insurer needs to change its offer. The purpose of this rule is that all insurers offer a basic simple product which would be easy to compare and thus would encourage competition. In practice though insurers may not even offer this basic product, but more sophisticated ones which are developed by adding extra features to the basic one with the respective premium additions. When required to comply with this rule, foreign insurers would face an obstacle, as they would have to adjust their product offered so as to ensure that they offer the basic product required in Italy and even to define what should be considered as "basic".

[22] See article 9 Real Decreto Legislativo 8/2004, de 29 de octubre, por el que se aprueba el Texto Refundido de la Ley sobre Responsabilidad Civil y Seguro en la Circulación de Vehículos a Motor.

- There is also an obligation to provide a personalised quote that also applies to foreign insurers with the effect of being an obstacle for them as it is causing additional costs.

Rechtsvergleichung

Definition of insurance contract

Definition of insurance contract[1]

Member State	
Austria	§ 1 VersVG: (Versicherungsvertragsgesetz, Insurance contract law act) In the case of indemnity insurance, the insurer is obliged to compensate the policyholder the financial damage suffered. In the case of life assurance and accident insurance, the insurer is obliged to pay to the policyholder the agreed amount. The policyholder is obliged to pay the agreed premium.
Bulgaria	Art. 183 Code for the Insurance: An insurance contract shall bind an insurer to undertake certain risks in return for the payment of premium, and upon occurrence of an insured event to pay the insured or a third beneficiary party an insurance indemnity or an amount in cash. Articles 214, 215, 216, 217, 222, 222a, 223, 230, 230a provide definitions for specific Insurance contracts. Art.195: A contract concluded without insured interest is null and void. Insured interest is defines as *legally recognised necessity for protection against the consequences of an insured event*.
Croatia	Pursuant to Article 921 of the Civil Obligations Act under the insurance contract, an insurer undertakes to a policyholder to pay the indemnity to the insured person or insurance beneficiary upon the occurrence of an insured event, while the policyholder undertakes to pay insurance premiums to the insurer.
Estonia	Law of Obligations Act (LOA) defines the insurance contract through the main obligations of the contracting parties: § 422 (1) Pursuant to an insurance contract, a person (insurer) undertakes, upon the occurrence of an insured event, to compensate for damage caused by the insured event or to pay the agreed amount of money as a lump sum or in installments, or to perform the contract as otherwise agreed (insurer's performance obligation). The other person (policyholder) undertakes to pay insurance premiums to the insurer.
Finland	Under the Finnish civil law insurance contract in the field of voluntary insurance is based on an agreement/contract between the insurance company and the policyholder. After the conclusion of the insurance contract the insurance company is to transfer the insurance policy to the policy holder. The insurance policy document should contain the most relevant points of the insurance contract and terms of the policy and all other requirements stipulated in the Finnish Insurance Contract Act. An insurance contract is considered valid through an offer-response mechanism under

[1] The information in this table is provided by insurance experts or insurance organisations from respective country. It does not contain a thorough review of all Member States' insurance contract laws and does not reflect the official opinion of the Commission.

	the Finnish civil law. In the Finnish Insurance Contract Act (543/1994), there is no definition of an insurance contract Despite the absence of a definition in law, insurance activity is defined by practitioners and legal literature as having the following characteristics: • The risk must be uncertain (not inevitable). • The risk must involve potential economic damage (therefore meaning that the insurable interest can be expressed in terms of money). • There must be a correspondence between the risk and the premium. • The risk must be divided between a large number of policyholders. • The insurer and the policyholder must be separate entities.
France	There is no legal definition of an insurance contract in the Insurance Code. However, it commonly refers to an agreement where one party (the insurer), agrees to provide coverage to another party (the insured), on the occurrence of a specified event that is beyond the control of either party, in exchange for receiving payment of premiums from the policyholder[2]. Insurance contracts are not regulated *per se*, in the sense that prudential supervision applies to entities and not to contracts. For instance, there is no pre-approval of contract terms, nor does the ACP systematically check terms and conditions for compliance. Nevertheless, all insurance contracts are subject to a wide variety of rules to be found in the Insurance Code, as well as in other codes or statutory provisions. There is also extensive case law applying to insurance contracts[3]. As a general rule, the most regulated contracts are consumer insurance contracts, with an exceptionally protective set of rules applying to unit-linked life assurance contracts[4]. Insurers and reinsurers established in France must obtain a licence from and are supervised by the ACP. However, reinsurers are subject to a less restrictive set of rules[5]. Reinsurance contracts stay outside the scope of the rules applying to insurance contracts. <u>Art. 1964 Civil code:</u> Insurance contracts are considered aleatory contracts. <u>Article R. 332-3-3, Insurance Code:</u> Modifié par Décret n°2008-1437 du 22 décembre 2008 - art. 6 French insurers can be reinsured by non-EEA reinsurers. Non-EEA reinsurers must provide collateral to the ceding insurers to secure their obligations. EEA reinsurers are exempt from doing so[6].

[2] http://uk.practicallaw.com/4-501-3670?qaq=W_q3&qaid=9-501-3248 ; Yannis Samothrakis, Dewey & LeBoeuf LLP.
[3] http://uk.practicallaw.com/4-501-3670?qaq=W_q4&qaid=9-501-3248 ; Yannis Samothrakis, Dewey & LeBoeuf LLP.
[4] http://uk.practicallaw.com/4-501-3670?qaq=W_q4&qaid=9-501-3248 ; Yannis Samothrakis, Dewey & LeBoeuf LLP.
[5] http://uk.practicallaw.com/4-501-3670?qaq=W_q4&qaid=9-501-3248 ; Yannis Samothrakis, Dewey & LeBoeuf LLP.
[6] http://uk.practicallaw.com/4-501-3670?qaq=W_q4&qaid=9-501-3248 ; Yannis Samothrakis, Dewey & LeBoeuf LLP.

Germany	In DE law there is no legal definition. § 1 Insurance Contract Act (VVG) deals with the main obligations of both parties: "By making a contract of insurance the insurer undertakes to cover a certain risk of the policyholder or a third party by paying a benefit upon occurrence of the agreed insured event. The policyholder is obligated to pay the agreed contribution (insurance premium) to the insurer."
Greece	Art. 1 of Law 2496/97 in regard to insurance contract: " By the insurance contract an insurance undertaking (the insurer) undertakes to make payments or if specifically agreed, to make provision in kind to the other party (the policyholder) or to a third party, in return for a premium, on the occurrence of the event on which it has been agreed that the insurer's obligation depends (the insured event)".
Hungary	**(Ptk. 6:439)**[7] Insurance company is obliged to supply insurance cover stipulated in the insurance contract, and when insurance event occur the insurer must perform in the way that it has been fixed in the contract. Performance can be e.g. payment of prefixed sum, compensation of the effective damage suffered by the insured person, or providing assistance. The Hungarian civil law distinguishes two kinds of insurance. One is the "insurance against damage" where compensation of damage is paid by the insurer. The so called "sum-insurance", where insurer pays the pre-fixed sum stipulated in the contract (typically life insurance). The contracting party is obliged to pay an insurance premium. *Section 6:439* *"(1) Under an insurance contract the insurer undertakes to provide coverage for the risk specified in the contract, and to provide settlement or benefits for loss arising upon the occurrence of a specific future event after the starting date of risk coverage, and the insured person undertakes to pay an insurance premium agreed upon.* *(2) The insurance company's service covers the payment for the insured person's loss in the amount and in the manner defined in the contract and other policy benefits (hereinafter referred to as „indemnity insurance") or the payment of a sum specified in the contract (hereinafter referred to as „fixed-sum policies").* *Section 6:440* *[Insurable interest]* *An insurance contract may be concluded by any person who has a vested interest in avoiding the occurrence of an insured event under some form of property or personal relationship; or who has a vested interest in the occurrence of an insured event in respect of life insurance policies which comprises assurance on survival to a stipulated age only, birth assurance or marriage assurance, or those who concludes the contract*

[7] ▪ **Ptk.** – *Hungarian Civil Code; Act of V of 2013.*
▪ **Bit.** – *Act on Insurance Institutions and Insurance Business; Act of LX of 2003.*

	on behalf of an interested person. Any indemnity insurance and group fixed-sum policy concluded in contradiction to this provision shall be null and void."
Italy	Art. 165 d.lgs. 209 7/9/2005 (rule of coordination between Civil Code and Code of Private Insurance): The Civil Code still applies for insurance contracts [where not derogated by the Code of Private Insurances] Art. 1882 Civil Code: Insurance is the contract with which an insurer (in exchange of the payment of a certain premium) obliged himself: 1) to pay an indemnity to the insured equivalent to the damage caused by an accident; 2) to pay an income or a capital if a life-related event occurs. It is considered to be an "upon payment" and synallagmatic contract: in fact, this assumption has to be clarified. Insurance is consider by a large part of the doctrine to be a synallagmatic contract even if it is at the same time an aleatory contract, we can also say that it has a synallagmatic element with reference to the genetic moment where the insurer assume the duty to cover and even if the insured event will never occur.
Portugal	There is (there has never been) a legal definition of insurance contract **Article 1** of the Legal Regime states: *Typical content* Under the terms of a contract of insurance, the insures covers a specific risk of the policyholder or of another party, and undertakes to make the agreed payment should the random event provided for in the contract occur, and the policy holder undertakes to pay the corresponding premium:
Romania	The definition of insurance contract in regulated by the Civil Code of Romania. Article 2199 of Civil Code states that the insurance contract is a contract in which the policyholders or the insured is obliged to pay the insurance premium and the insurer, has to pay an indemnity in the event of the insured risk occurs, to the insured or injured third party insurance beneficiary.
Slovakia	§ 788 of Civil Code No. 40/1964 Coll. (CC) Under an insurance contract, the insurer undertakes to pay a benefit in the agreed extent if it comes to a contingent event specified in the contract and natural person or the legal entity who concluded the insurance contract with the insurer undertakes to pay an insurance premium. The insurer's general insurance terms are a part of the insurance contract to which the insurance contract refers and they are attached to the contract or the person who concluded the contract with the insurer was informed about them before conclusion of the contract. The insurance contract may deviate from the insurance terms only in cases specified in the insurance terms. In other cases, the deviation shall be admissible only if it is to the insured party's benefit.

	§ 797 of CC The right to the claim payment shall belong to the person to whose property, life or health or liability for damage the insurance applies (the insured person). The right to the benefit shall arise if it comes to the event with that rise of the insurer's duty to pay the benefit is connected (the insurance event).
Spain	<u>*Art. 1 Insurance Contract Act (Ley 50/1980, de Contrato de Seguro, LCS)*</u> According to the Spanish Insurance Contract Act a ***contract of insurance*** is the contract by virtue of which the insurer agrees, for a specified consideration (premium) and when an event occurs (the risk of which is the object of the coverage), to indemnify, within the agreed limits, the damage suffered by the insured or to pay a capital sum, a rent or other agreed compensation.
Sweden	There is no definition of insurance contract in Swedish national law. The legal doctrine has displayed great interest in the matter. According to an article published in a Nordic insurance law publication[8] there were already in 1931 at least 200 definitions suggested.
United Kingdom	**General definition:** **There is no statutory definition of an insurance contract.** For the purposes of both contract law and regulation, a description of an insurance contract which is typically employed is the one adopted by Channell J in *Prudential v Commissioners of Inland Revenue* [1904] 2 KB 658, namely a contract whereby one party (the insurer) promises in return for a money consideration (the premium) to pay the other party (the insured) a sum of money or to provide him with a corresponding benefit upon the occurrence of one or more specified events. There are a number of products which lie on the margins of this description, a number of which are discussed in the Perimeter Guidance of the Financial Conduct and Prudential Regulation Authorities (PERG 6), together with references to the relevant case-law. **Specific definitions:** <u>Marine Insurance Act 1906, Section 1:</u> "A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in a manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure." <u>The Consumer Insurance (Disclosure and Representations) Act 2012, Section 1</u> defines a consumer insurance contract as "a contract of insurance between an individual who enters into the contract wholly or mainly for purposes unrelated to their trade, business or profession" and a person who carries on the business of insurance. *[Note: the definition simply determines whether, if a contract is one of insurance, it is made with someone who for the purposes of the Act is to be treated as a consumer.]*

[8] Nordisk Försäkringstidskrift 1931, p. 214, Ingvarsson, T., Borgensliknande säkerhetsrätter, 2000, p. 144.

	It is sometimes more relevant to consider what is a *regulated* contract of insurance, whether within the mandatory scheme for regulation of insurance under EU Directive (the minimum mandatory framework) or under wider protections permitted and afforded in national law of Member States: see eg the recent decision of the UK Supreme Court in *Re Digital Satellite Warranty Cover* [2013] 1 WLR 605. Some forms of Credit Default Swap appear functionally identical to insurance, but are not treated as insurance (and are not regulated as such) There is also an important distinction drawn in European law between insurance and reinsurance: see eg *Universal General Insurance Co v Group Josi Reinsurance Co SA* (Case C-412/98) which has been acknowledged in England: *Agnew v Lansforsakringsbolgagens AB* [2001] 1 AC 223 HL

Rechtsvergleichung

Pre-Contractual Information

Pre-Contractual Information[1]

Austria	<u>§ 5b VersVG:</u> Insurer must provide: — a copy of the application — general contract conditions and provisions on fixing the premium — notifications under §§ 9a and 18b VAG — information on right of withdrawal (for consumers see also § 5c VersVG) + § 1a VersVG Warning that insurance contract and cover will only commence upon receipt of insurance policy or letter of acceptance
Bulgaria	Art.185 Code for the Insurance: Except where it is about insurance of large risks, the insurer has the obligation to provide each consumer of insurance services, prior to conclusion of an insurance contract with information in an appropriate written form about the particular types of insurance. That information shall contain certain details. The insurer has similar obligation for providing information during the period of validity of the contract. When an insurance contract is concluded through an insurance broker or an insurance agent, the information shall be provided by them. There is no obligation for information in cases of insurance for large risks. A more detailed obligation on the pre-contractual information for the insurer stems from Articles 4, 5, 24-27 from Consumers protection act and Articles 8-11 of Distance Delivery of Financial Services Act in cases of distance insurance contracts.
Croatia	Pursuant to the Insurance Act (Article 89) before an insurance contract is concluded, the insurer shall inform the potential policyholder on certain facts i.e. data. The information on these data shall be delivered to the policyholder in writing, formulated in a clear and understandable way for the policyholder and in Croatian language. By the Insurance Act the insurer is obliged to inform the policyholder before entering the insurance contract on basic information about the business, legal status and organisational structure of the insurance company and the branch by which the contract will be concluded, general insurance terms and conditions, the law applicable to the insurance contract, duration of the insurance contract, the rules and conditions for any deviation from the contract, the amount of insurance premium, the method of payment of insurance premium, the amount of contributions, tax and other costs charged in addition to the insurance premium, the total cost of insurance, the time period which is binding for the proposer under the contract, the right to cancellation of or withdrawal from the contract, the manner of settlement of disputes between the parties to the contract and the supervisory authority competent for the supervision of the insurance company concerned. In the case of life assurance, the communication referred to in paragraph 1 of this Article shall also contain the base amount and criteria for participation in profits, tables of surrender values, the entitlement to paid-up sum assured under the life assurance contract and any rights ensuing from such insurance contract and the tax system

[1] The information in this table is provided by insurance experts or insurance organisations from respective country. It does not contain a thorough review of all Member States' insurance contract laws and does not reflect the official opinion of the Commission.

	applicable to the concerned assurance. Similar provisions are entailed in the Consumer Protection Act which particularly refers to the conclusion of contracts offered by distance. The Code of Insurance and Reinsurance Ethics that was voluntarily adopted by the insurers also brings provisions on the obligation of pre-contractual information.
Estonia	§ 428 (1) (LOA) provides information to be disclosed by the insurer to a natural person wishing to enter into insurance contract: 1) the name and legal form of the insurer; 2) the address of the insurer, and the address of the office through which the contract is entered into if this is not done at the seat of the insurer; 3) standard terms applicable to the insurance contract, including the insurance premium rate and information concerning the provisions of law applicable to the contract; 4) obligations of the insurer if different from those prescribed in the policy conditions and in the insurance premium rate; 5) the period of validity of the insurance contract and conditions for termination thereof; 6) the size of the insurance premiums and the procedure for payment thereof, stating separately the size of the different insurance premiums if the insurance relationship is to comprise several independent insurance contracts; 7) the amount payable by the policyholder together with the insurance premiums, including the fees payable by the policyholder relating to the insurance contract and related costs of the policyholder and the principles of their formation; 8) the term during which the person wishing to enter into the insurance contract is bound by the application to enter into the contract; 9) the address of the competent insurance supervisory body where the policyholder may lodge a complaint concerning the activities of the insurer. Additional duties to provide information - to a policyholder who is a natural person stem from § 428 (2) LOA in case of life insurance contract or an accident insurance contract with the return of premiums (e.g. surrender value) - to a consumer stem from § 54 (1) (2) (LOA) in case of long distance contracts of financial services - to a customer when entrying into contract through computer network stem from § 62^1 (2) LOA. Two other relevant lists of pre-contractual information for consumer protection can be found from draft paper implementing directive 2011/83/EU on consumer rights, making changes to the LOA: - § 14.1 (1) (general obligation to provide pre-contractual information when contracting with a consumer) - § 48 (1) (contracts negotiated away from business premises) Regarding B2B contracts, there is a general rule that persons who engage in pre-contractual negotiations or other preparations for entering into a contract shall inform the other party of all circumstances with regard to which the other party has, based on the purpose of the contract, an identifiable essential interest. (§ 14 (2) LOA)
Finland	Section 5 of the Insurance Contract Act lays down the obligations of the insurer prior to the conclusion of the contract. "Before an insurance contract is concluded, the insurer shall provide the applicant with

	any information that the applicant may need to assess his insurance requirement and select the insurance, such as details on the insurer's insurance products, insurance premiums and insurance terms and conditions. When giving such information, the insurer shall point out all major exclusions in the cover provided. Moreover, attention needs to be paid to circumstances important for the selection of any investments that may be linked to the insurance, taking particular account of the applicant's previous investment experience and investment targets. No information need be given if the applicant does not want any information or if it turns out that the disclosure of such information would pose excessive inconvenience. Moreover, in distance marketing of insurance policies, consumers are to be provided with prior information of the kind referred to in Part 6a of the Consumer Protection Act (38/1978) (30/2005)[2]."
France	Article L112-2 Insurance Code: Modifié par Loi 2003-706 2003-08-01 art. 80 III, VII JORF 2 août 2003 en vigueur le 2 novembre 2003 Modifié par Loi n°2003-706 du 1 août 2003 - art. 80 (V) JORF 2 août 2003 en vigueur le 2 novembre 2003 It is mandatory for the insurer to provide an information notice on the price and the warranties before the conclusion of the contract. Before the conclusion of the contract, the insurer shall provide the insured alternatively a sample of the contract and of its annexes, or an information notice describing precisely the warranties, the exclusions and the insured's duties. The applicable law, if different from the French one, shall also be indicated. The possibility for unilateral change in the contract shall be clearly indicated, without any prejudice to the possibility for the insured to start an action in front of the competent court (towards the insurer company or one of its agencies). Before the conclusion of a contract implying liability warranties, the insurer provides the insured an information note (whose form is defined by the law) describing the way those warranties work if the insured event happens, if there is a claim for compensation or if there is a succession in the contract. A State Council regulation shall determine the way to ascertain the effective delivery of those documents and any derogation deriving by the nature of the contract or by the circumstances of its subscription. The proposal of the insurance does not bind nor the insurer, nor the insured. Only the policy or the "cover note" binds the both of them. (NON LIFE) The proposal to prolong or modify a contract or to re-start a suspended contract is considered as accepted if sent by registered mail and if the insurer does not refuse it within 10 days from its reception. The presence of particular circumstances is required to impose the insurer the duty to advise the insured in respect of his individual requirements of insurance:

[2] See also sections 8 and 9 on remedies and consequences for non-compliance.

	Cass. Civ. 2/10/1984, Bull. Civ. In. 241; Cass. Civ. 1/12/1989, RGDA 1999, 335 (336)[3] Article L112-4 Insurance Code: Modifié par Loi n°94-5 du 4 janvier 1994 - art. 35 JORF 5 janvier 1994 en vigueur le 1er juillet 1994 The insurance policy has the date of the day it was established. It shall specify: - names and addresses of the contract parties; - the insured object or the insured person; - the nature of the insured risks; - the moment of the beginning of the coverage and its duration; - the extent of the coverage; - the premium or the contribution of the insurance; It shall also specify: - the applicable law (if it is not specified the applicable law is considered to be the French one); - the address of the insurer's headquarter or, if this is the case, the address of the agency providing the coverage - the name and the address of the authorities in charge of controlling the insurance company providing the coverage. Every policy clause stating nullities, losses of rights or exclusions are not valid if they are note written in highly visible fonts. (LIFE) Article R132-4 Insurance Code: Modifié par Décret n°95-390 du 12 avril 1995 - art. 1 JORF 14 avril 1995 Life insurance contracts shall also specify (other than the requirements imposed by Article L112-4): - the name(s), the surname(s) and the date(s) of birth of the insured(s); - the condition, the term or the event on which depends the possibility to ask for the capital or for the granted annuity; - the delays and the modalities to claim the capital or the annuities. Capitalisation contracts shall furthermore specify: - the amount repayable at maturity; - the date of the effect starting and the date of its maturation; - the amount of the premiums and the dates for their payment. - the delays and the modalities to claim the capital. […] The used Unit linked shall be clearly specified in the contract. If the premiums or the capital have to be converted in other currencies, the conversion taxes and the relevant Unit linked shall be clearly specified in the contract.

[3] Principles of European Contract Law (PEICL), J. Basedow, J. Birds, M. Clarke, H. Cousy, H. Heiss 2009, p. 99 N3.

Germany	According to § 7 VVG in connection with the Regulation on Duties of Information Relating to Insurance Contracts of 18/12/2007 (VVG-InfoV)[4]: The insurer shall inform the policyholder in writing of his terms of contract, including the general terms and conditions of insurance, as well as the information set out in a statutory ordinance referred to in subsection (2). § 7 VVG in connection with the VVG-InfoV implements European Directives and sets stricter standards: The information must include among other items the general policy conditions , the name and address of the contracting parties, the total costs too be borne by the policyholder, including the premium and any taxes and additional fees and the right of withdrawal. § 7 VVG is semi-mandatory, § 18 VVG.
Greece	<u>Art. 4 of law decree 400/70 in regard to private insurance undertaking:</u> The afore-mentioned provisions transfer the exact wording of the respective provisions of the EU Directives 92/49/EEC and 2002/83/EC. Exception from the pre-contractual information context in regard to non life insurance is only provided in case of large risks. Concerning non life insurance, the insurance company is extra obliged to state the member state of its head office or if necessary the branch or agency which shall issue the insurance policy. It is further predicted that all information communicated to the insured before the contract is concluded is issued in Greek whenever the insurance is compulsory or the law applicable to the contact is Greek law. <u>Art.4a of law 2251/94 in regard to consumers protection:</u> The afore-mentioned provisions implement with no alterations or extra national requirements the rules of pre-contractual information of the EU Directive 2002/65/EC in terms of by distance sale of insurance contracts. <u>Art. 11 of presidential decree 190/2006 in regard to insurance mediation:</u> The specific article transfers art.12 of the EU Directive 2002/92/EC concerning the pre-contractual information delivered to the insured prior the conclusion of the insurance contract. <u>Act of the Bank of Greece (to be adopted): Code of Conduct of insurance intermediaries (Art.5):</u> The insurance intermediary is obliged to ensure that the information delivered to the client takes into account the specific investment preferences and needs of the latter as well as his capacity to comprehend the specialised conditions and dangers of the proposed insurance product. He must also explain to the client of the consequences of pre-mature surrender and of delay in the payment of premiums, including the exceptions from coverage.

[4] It is published in German under: http://www.gesetze-im-internet.de/vvg-infov/

Hungary	**(Bit. 166.)**[5] In line with the European IMD regulation client must be informed about the data of the insurance company and/or the insurance mediator. Moreover the customer must be informed about the general contract term, detailed terms of the insurance contract and the insurance product. Minimum requirements are listed in the Annex No. 10. of Insurance Law. In case of life insurance product with investment element there are additional informational requirements (compared with the non-life products).
Italy	General regulation by art. 182-183 d.lgs. 209 7/9/2005: Specific rules and duties imposed to insurers and intermediaries when providing the insured documents and information notes. In particular there is the specific duty to advise the insured in respect of his individual requirements of insurance and the suitability of the offered products. Regulation Isvap (now Ivass) no. 5/2006, Title II, Capo I (artt. 45-57): rules on presentation and behaving requirements towards clients for any registered insurer/intermediary. Art. 185 d.lgs. 209 7/9/2005: Obligation for the insurers to deliver the insured (attached to a copy of the insurance contract) also a comprehensive information note Art. 120 d.lgs. 209 7/9/2005: Intermediaries shall provide the insured: - information on the relevant products - complete price information - information about the insurer companies behind their activity Art. 121 d.lgs. 209 7/9/2005: Specific rules established for intermediaries in case of distance sale of insurance products LIFE: circular letter 551 1/3/2005, (modified by the Code of Private Insurance and mostly amended or abrogated by following regulations) – Regulation by ISVAP (now IVASS) no. 5/2006 and Regulation 35/2010: To be provided by the insurer: - synthetic form - information note - insurance conditions - glossary - answer form Motor vehicle insurance : Additional rules for automobile insurance provided by ISVAP Regulation 23/200
Portugal	II - Pre-contractual Information Articles 18 to 23 of the Legal Regime state: Subsection I - Insurer's duty to provide information Article 18

[5] ▪ **Bit.** – *Act on Insurance Institutions and Insurance Business; Act of LX of 2003*

	General provisions Without prejudice to the compulsory wording to be included in the policy, the insurer must provide any clarification that may be required and inform the policyholder of the conditions of the contract, namely: a) Its name and legal status; b) The scope of the risk that it proposes to cover; c) Any exclusions and limitations of cover; d) The total value of the premium or, where that is not possible, the method of calculating the premium, as well as the arrangements for payment of premium and the consequences of failure to effect payment; e) Any increases or bonuses that may be applied to the contract, indicating the respective method of calculation; f) the minimum amount of capital in mandatory insurance; g) the maximum amount to which the insurer commits in each period of validity of the contract; (h) the duration of the contract and the respective renewal, termination or voluntary termination arrangements; i) the arrangements for transfer of the contract; j) the method for making claims, the corresponding mechanisms for legal protection and the supervisory authority; and k) the regime relating to applicable law, in the terms established in arts 5-10, with an indication of the law that the insurer proposes be chosen. Article 19 Reference 1. If the contract of insurance is taken out remotely, the information referred to in the previous article shall accompany that provided for in the specific regime. 2. If the policyholder is deemed by law to be a consumer, the information indicated in the preceding article shall be accompanied by the information provided for in other laws, namely the law on consumer protection. Article 20 Establishment Without prejudice to the obligations contained in art.I8, the insurer must inform the policyholder of the place and the name of the State in which the registered office is located and the respective address, and, as appropriate, the branch through which the contract is entered into and the respective address. Article 21 Method of providing information 1. The information referred to in the preceding articles must be provided in a clear manner, in writing and in Portuguese, before the policyholder makes any commitment. 2. The competent supervisory authorities may establish, by regulation, rules concerning the medium on which the information is to be provided to the policyholder. 3. In distance contracts of insurance, the method of providing the inform~tion shall be governed by legislation on the marketing of distance financial contracts. 4. In the situations provided for in art.36(2), the information referred to in para. 1 above may be provided in another language. 5. The insurance proposal must contain wording evidencing that the information that the insurer is bound to provide has been provided to the policyholder before any commitment is assumed by the latter. Article 22 Specific duty to provide clarification 1. Insofar as is justified by the complexity of cover and the amount of the premium payable or the sum insured, and where the method by which the contract is entered into so

	permits, the insurer, before conclusion of the contract, must provide the policyholder with details on which insurance arrangements, from amongst those on offer, are appropriate for the specific cover sought. 2. In fulfilling the duty referred to in the preceding paragraph, the insurer shall be responsible not only for responding to all requests for clarification made by the policyholder but shall also draw the attention of the policyholder to the scope of the cover proposed, namely any exclusions; grace periods and the terms and conditions for terminating the contract at the discretion of the insurer and also, in cases of succession or modification of contracts, the risks of discontinuance of cover. 3. In insurance proposing cover for different types of risk, the insurer must provide detailed clarification as regards the relationship between the various covers. 4. The specific duty to provide clarification provided for in this article shall not apply to contracts relating to major risks or where an insurance broker intervened during negotiation or signature, without prejudice to the specific duties incumbent thereupon pursuant to the provisions of the legal regime for access to and exercise of the insurance mediation business. Article 23 Non-performance 1. The insurer shall in general terms be held publicly liable in the event of failure to perform the duties to provide the information and clarification provided for in this regime. 2. Failure to fulfill the duties to provide information provided for in this subsection shall, moreover, grant the policyholder the right to terminate the contract, save when the non-performance on the part of the insurer has not reasonably affected the counterparty's decision to enter into the contract or cover has been actioned by a third party. 3. The right to terminate provided for in the preceding paragraph must be exercised within a period of 30 days of receipt of the policy. Such termination shall have retroactive effect and the policyholder shall be entitled to reimbursement of the full amount of the premium paid. 4. The provisions of the preceding paragraphs shall apply when the policy conditions differ from the information provided before conclusion of the contract. OBSERVATIONS 1. Please note that articles 3 and 4 of the Legal Regime state as follows: Article 3 Reference to generally applicable provisions The provisions of this regime shall not prejudice application to the contract of insurance of the provisions of the laws on general contractual clauses, consumer protection and contracts that have been entered into remotely, pursuant to the provisions of the aforementioned laws. Article 4 Subsidiary law Any matters relating to contracts of insurance not regulated herein or in specific laws shall be subject, subsidiarily, to the corresponding provisions of commercial and civil law, without prejudice to the provisions of the legal regime governing access to and the exercise of the insurance business. This means that, specifically in what concerns the duties of information, the general provisions on pre-contractual information of the Law 24/96 on Consumer Protection and all general provisions in the consumer protection laws dealing with the rights of information, are applicable to insurance contracts; besides the definition of “consumer” in Portuguese law is wide, not restricted to “physical persons”. Article 2 of the above mentioned Law 24/96 actually states: 1. Consumers are deemed to be all those to whom goods are supplied, services provided or any rights transferred for the purpose of non-professional use, by a person

	who professionally exercises an economic activity the purpose of which is to obtain benefits 2. Included within the scope of this law are the goods, services and rights supplied, provide or transferred by organs of the Public Administration, by legal public persons, by capital companies or those in which the State is the majority shareholder, by the Autonomous Regions, or by local authorities and public services concession companies. Please acknowledge also that for certain kinds of compulsory insurance such as the working accidents insurance there are specific uniform rules with special mandatory provisions on information duties (Portaria 256/2011 of 05/07/2011 Clause 7ª/4)
Romania	The pre-contractual information that is regulated in the Order no. 23/2009 *for the implementation of the Norms regarding the information that insurers and insurance intermediaries must provide customers and other items that must be included in insurance contract*, issued by Insurance Supervisory Commission . This order states in article 1, that: - customers have the right to be informed correctly, from the pre-contractual faze, on all conditions of the insurance contract. - the information has to be provided on potential client through an document (written on paper or another durable medium) before the conclusion of the insurance contract, by a separate document or multiple documents. - these documents can be sent to the potential clients by means of electronic communication, but in a way the client to confirm that they had read those documents. - these documents, the insurance contract and insurance conditions, have to be clear written and easy to read, to use a font size of at least 10, on paper or on another durable medium, in at least two copies, an original copy has to be kept by each party. The background color of the paper of the documents, of the insurance contract and insurance conditions should be contrasted with that of the font used. - At the request of clients, insurers and insurance intermediaries must provide customers with a copy of the insurance contract draft and insurance conditions draft. Article 2238 of Civil Code states that the insurers are required to provide the insured before concluding insurance contracts, at least the following information (information that must be submitted in writing, in Romanian language, in clear writing): - optional or additional terms and benefits of harnessing technical reserves; - the start and the termination of the contract, including termination of the arrangements; - the modalities and the term of insurance premiums payment; - the elements for calculating insurance claims, indicating redemption amounts, the amounts secured low and the extent to which they are secured; - the method of payment of insurance claims; - the law applicable to the contract of insurance; - other elements established by rules adopted by the authority in whose jurisdiction falls, under the law, the supervision of the insurance.
Slovakia	§ 792a of CC Insurer must, prior to the conclusion of the contract, provide the person that concludes the contract business name, legal form and location of registered office of insurer, in case of personal insurance – e. g. manner of the termination of contract, premium payment and maturity, bonus calculation, determination of surrender value and extent of its guarantee and more. Information must be provided in writing. Throughout the insurance contract

	duration the insurer shall provide some information too - change of the insurer´s name, legal form, registered office, state of bonuses for each year.
Spain	Spanish insurance legislation requires an insurer to ensure that a prospective policyholder receives certain information in writing **prior** to the conclusion of the contract of insurance. Pre-contractual information must be provided in writing and should be in Spanish unless otherwise agreed with the policyholder. The content of this pre-contractual information varies depending on the type of policyholder (individual or legal entity) and the risk (large risk/mass risk) but always refers to the Insurer, its Member State, its Supervisor, the law applicable to the contract and claims arrangements. Its aim is to give prospective policyholder information about the insurer in order to help them reach a decision. The Law does not state precisely when the information should be provided. For practical reasons, it is recommended that the insurer inserts this pre-contractual information notice within the risk questionnaire or the proposal form; i.e. when the parties are negotiating the terms of the contract.
Sweden	***Chapter 5, article 1, the Insurance Contract Act (2005:104)*** provides general guidelines on the insurance company's obligations to provide information to customers, policyholders and certain others. The information shall be clear, unambiguous, in writing and in Swedish. The insurance company may – but have no duty – to, if requested, provide the information in some other language. ***Chapter 5, article 2, the Insurance Contract Act (2005:104****)* stipulates that all information shall be contained in a *document*. It is, however, also accepted that information is forwarded e.g. by diskettes, CD-ROMs or by e-mail, provided that the individual consumer is able to avail him- or herself of the information. It is probably not sufficient to refer to information on a web-site. The Insurance Company's obligation is fulfilled when the stipulated information has been forwarded to an insurance intermediary duly authorized to receive it. **Chapter 6, article 5, the Act (2005:405) on Insurance Mediation.** ***The Insurance Business Act (2010:2043*****), Chapter 4, article 2** stipulates that information to policyholders and potential policyholders shall be adapted to the actual kind of insurance and shall show the conditions in a clear manner. Information shall also be given to other beneficiaries where needed. ***The Act (1998:293) on Foreign Insurers' and Occupational Pensions Institutes Business in Sweden, Chapter 8, article 1 a,*** contains corresponding provisions. An insurance company that neglects to provide stipulated information can be ordered under ***the Marketing Practices Act*** **(1994:450)** to do so under penalty of a fine. According to ***The Distance Marketing Act (2005:59***) certain information must be provided to consumers by a business entity offering services at a distance, e.g. via the internet. The information required covers i.a. (i) Name and address of the business entity. (ii) Main features of the service provided. (iii) Price.

	(iv) Cooling off period (14 days – or in respect of life insurance 30 days). (v) Language. (vi) Complaints handling.
United Kingdom	Common law does not impose upon insurers a duty to provide any specific kinds of information, although the concealment of material facts by the insurer prior to the conclusion of the insurance will entitle the insured to avoid the contract: *Banque Keyser Ullmann SA v Skandia (UK) Insurance Co Ltd* [1990] 1 QB 665. However, as a regulatory matter, the Insurance Conduct of Business Sourcebook of the Financial Conduct Authority (ICOBS) implements pre-contractual requirements from EU insurance Directives, the Distance Marketing of Financial Services Directive and the E-commerce Directive. **B2C** ICOBS 3.1 contains rules on Distance Marketing for consumer contracts: A firm has to provide the required information to the consumer in good time before conclusion of the contract, in a clear and comprehensible manner and in a way appropriate to the distance communication used. Information should include terms and conditions in writing or on a durable medium. The information communicated during the pre-contractual phase needs to be in conformity with the contractual obligations which would arise if the contract is concluded. **B2C and B2B** ICOBS 3.2 contains rules on E-commerce A firm must make at least the following information easily, directly and permanently accessible to the recipients of the information society services it provides: - the firm's name; - the geographic address at which it is established; - the details of the firm, including its e-mail address; - an appropriate statutory status disclosure statement together with a statement which explains that it is on the Financial Services Register and includes its Firm Reference Number; - VAT number, where relevant; - additional information relating to membership of professional bodies, name of professional body of registration, professional title and a reference to applicable professional rules; - information on the price; - technical steps for the conclusion of the contract (this requirement may be derogated from for B2B contracts and does not apply to contracts concluded exclusively by e-mail). ICOBS 6.2 contains rules on pre-contractual product information The firm must inform the consumer amongst others of: - details of the firm's office which grants cover; - the law applicable to the contract; - the cancellation right (e.g. existence of the right, duration, condition for exercise).

	Additional information requirements apply to protection policies and pure protection policies under ICOBS 6.3 and 6.4. Requirements for protection polices (e.g. life) are more detailed compared to general insurance contracts, as they implement more detailed EU legislation. <u>Financial Services and Market Act 2000, Section 206A</u> For the breach of pre-contractual duties (as well as other duties) the sanctions may amount up to a suspension of the insurer's permission to carry on regulated activities.

Rechtsvergleichung

Disclosure duties of the customer

Disclosure duties of the customer[1]

Austria	§§ 16 ff VersVG: Pre-contractual disclosure — concerns every fact of importance for the decision of the insurer to take a risk — If violated: Right to rescind the contract ; if insurer rescinds (and only then!) it will be freed from paying insurance money for insured events which were caused by the circumstance which was not disclosed or misrepresented ("all or nothing"). - In practice, insurers use questionnaires at least in mass risk insurance - Insurer´s right to avoid the contract in case of fraud (see § 870 ABGB/Civil Code) remains untouched (see § 22 VersVG)
Bulgaria	Articles 188-191 Code for the Insurance: The Insured is obliged when concluding the contract, to provide accurate and comprehensive information on all substantive circumstances that are relevant to the risk. Those are circumstances on which the insurer has made an enquiry in writing. The insured has the obligation to inform the insurer for those circumstances when they occur while the contract is in force. Intentional inaccuracy or reticence results in the right of the insurer to either terminate the contract or to demand modification of the contract. In any case it can retain the part of the premium paid. If an insured even occurs the insurer can refuse payment or reduce it. Art.243 is a special rule with regard to life insurance: Before signing of a life insurance or accident insurance contract and during the term of the contract the insurer has the right to receive information about the age, sex and health status of the person whose life, health or corporal integrity of the object of the insurance. When the insured event occurs the insurer has the right to access to the entire medical documentation in connection with the health status of the person whose life is insured, and may demand it from all persons who keep such information.
Croatia	Pursuant to Article 931 of the Civil Obligations Act on the conclusion of the contract, the policyholder shall report to the insurer all the circumstances that are material for assessing the risk, of which he is aware or of which he should have been aware.
Estonia	§ 440 LOA - obligation of the policyholder to notify the insurer of relevant circumstances Upon entering into a contract, the policyholder shall inform the insurer of all circumstances known to the policyholder which, due to their nature, may influence the insurer's decision to enter into the contract or to enter into the contract on the agreed terms. Relevant circumstances are presumed to be circumstances concerning which the insurer has directly requested information in a format which can be reproduced in writing. The policyholder is under no obligation to inform the insurer of circumstances which are

[1] The information in this table is provided by insurance experts or insurance organisations from respective country. It does not contain a thorough review of all Member States' insurance contract laws and does not reflect the official opinion of the Commission.

	already known to the insurer or which the policyholder may reasonably assume to be known to the insurer. *Insurer has the right to withdraw upon violation of notification obligation (see limitations in § 441 LOA though, in which case insurer can demand higher insurance premiums from the policyholder, additionally look at § 460 LOA)* <u>Aggravation of risk</u> § 443 LOA - a policyholder shall immediately notify the insurer of an increase in the probability of the insured risk, unless the increase in the probability of the insured risk is caused by circumstances which are common knowledge and which do not affect the insured risk of this policyholder alone. *§ 445 LOA - in case of breach of the notification duty, the insurer will be released from obligation to perform (see limitations though)* *§ 446 (2) If the probability of the insured risk increased due to a change effected by the policyholder without the consent of the insurer and the policyholder failed to give notice of the increase in the probability of the insured risk in time, the insurer may cancel the insurance contract without prior notice. If the policyholder was not responsible for the violation of the prohibition on increasing the probability of the insured risk, the insurer may cancel the contract by giving one month's advance notice.*
Finland	Section 22 of the Act lays down the obligations of the policyholder prior to the conclusion of the contract: "Before the issuance of an insurance contract, the policyholder and the insured shall give true and complete answers to the insurer's questions which may be of importance for the assessment of the liability of the insurer. Moreover, throughout the insurance period, the policyholder and the insured shall without undue delay rectify any errors or deficiencies that they may discover in the information given to the insurer. Failure to disclose information may cause a variety of consequences depending upon the type of policy. If the policyholder or the insured acted fraudulently in the field of life insurance, the insurance contract is not binding on the insurer. The insurer is entitled to retain the premiums paid, even if the insurance lapses. If the policyholder or the insured has intentionally or through negligence failed their duty to inform the insurer, compensation may be reduced or denied, if the said negligence cannot be regarded as minor. See also sections 23 and 24 for consequences of non-compliance and section 72 on misrepresentation after occurrence of insured event: "If after the occurrence of an insured event the claimant has in bad faith given the insurer incorrect or incomplete information of importance for the assessment of the insurer's liability, compensation or benefit may be reduced or refused as considered reasonable in the circumstances.
France	The insured is not obliged to any disclosure beyond his answers to the questions of the insurer. Circumstances which are not material to the risk are outside the duty of disclosure. <u>Article L113-2 (2,3) Insurance Code:</u> Modifié par Loi n°89-1014 du 31 décembre 1989 - art. 10 JORF 3 janvier 1990 en vigueur le 1er mai 1990

	The insured is obliged to: […] 2) answer exactly all the insurer's questions; especially those related to the risk declaration to be done filling the specific form before the conclusion of the contract and those related to circumstances which are essential for the insurer to understand the nature of the risk he is going to take; The insured is allowed to answer the insurer's general questions (especially those contained in the declaration note about the nature of the risk) in a general way. 3) to declare, during the life of the contract, all the new circumstances which may aggravate the risk or create a new risk, thus making the answers given to the insurers in the "risk evaluation form" inexact or incomplete. The insured should declare those circumstances sending the insurer a registered mail not later than 15 days after he is aware of the existence of such circumstances. <u>In case of breach it must be differentiated between fraudulent and negligent breaches. In particular, in case of fraudulent breach no need of protection is felt.</u> <u>Article L113-9 Insurance Code:</u> The insured's omission or his inexact declarations, where it cannot be demonstrate his bad faith; do not imply the nullity of the insurance contract. If the insured's bad faith is demonstrated before the insured event to happen, the insurer may decide to maintain the contract asking for a higher premium (which the insured must accept) or to terminate the contract. In this latter case the termination shall be effective 10 days after being communicated to insured by registered mail and the part of the premium exceeding the period covered shall be given back to the insured. If the insured's bad faith is discovered after the insured event happened, the reparation is reduced in relation to the ratio amongst the tax of the paid premiums and the tax of premiums which would have to be paid, if the risks would have had completely and exactly declared. <u>Article L113-8 Insurance Code:</u> Modifié par Loi n°81-5 du 7 janvier 1981 - art. 32 JORF 8 janvier 1981 rectificatif JORF 8 février 1981 Independently of the all the normal causes of invalidity, the insurance contract is void in case of the insured's reticence or false intentional declarations, when thus behaviour results in changing or reducing the nature of the risk on the insurer's perception, even if the latter did not have any relevance for the specific insured event. (ONLY NON-LIFE) All the premiums paid do not have to be given back. All the remaining premiums shall be paid to the insurer as damages and interests.
Germany	§ 19 (1) VVG: The policyholder shall disclose to the insurer the risk factors known to him which are relevant to the insurer's decision to conclude the contract with the agreed

	content and which the insurer has requested in writing. Sanction: in the case of a grossly negligent or intentional breach the insurer may avoid the contract with *ex tunc* effect. --- (Order of presentation: Aggravation of risk should be kept separate from the pre-contractual disclosure duty; the latter helps to establish the contractual balance, the latter changes it.) § 23 (2) VVG If the policyholder recognises after the fact that he has aggravated or permitted an aggravation of the risk insured without the consent of the insurer, he must disclose the aggravation of the risk insured to the insurer without undue delay. (3) If, after the policyholder has submitted his contractual acceptance, an aggravation of the risk insured occurs notwithstanding his intention, he must disclose the aggravation to the insurer without undue delay as soon as he has learned thereof. The insurer may increase the premiums or terminate the contract according to §§ 24, 25 VVG. § 26 (1) VVG: if the insured event occurs after an aggravation of the risk insured, the insurer is not liable if the policyholder intentionally breached his duty under section 23 (1). In case of a grossly negligent breach, the insurer can reduce his benefits payable commensurate with the severity of the policyholder's fault; the burden of proof that there was no gross negligence is on the policyholder. (2) In the cases of aggravation of insured risk the insurer is not obliged to effect payment if the insured event occurs later than one month after the time when the insurer should have received notification, unless the insurer was aware of the aggravation of the risk insured at that point in time. He shall be liable if the breach of the duty of disclosure in accordance with section 23 (2) and (3) was not intentional; in the event of a grossly negligent breach, subsection (1), second sentence, shall apply. (3) The insurer has to effect payment 1. if the aggravation of the risk insured was not the cause of the occurrence of the insured event or of the extent of the liability, or 2. if at the time of the occurrence of the insured event the insurer's termination period had expired and the contract was not terminated. According to § 27 VVG §§ 23 to 26 do not apply if the aggravation of the risk is only immaterial or if, based on the circumstances, it can be deemed to have been agreed that the aggravation is also to be covered. §§ 19 and 23 - 27 VVG are semi-mandatory, § 32 VVG.
Greece	<u>Art.3 of law 2496/97 in regard to insurance contract:</u> The policyholder is obliged to disclose to the insurer <u>prior to the conclusion of the contract</u> any information or event of which he is aware and which is material for the assessment of the risk. To this end, he answers every question posed by the insurer usually in terms of the application form (see above section –conclusion & form of the contract).

	If the insurer concludes the contract upon written questions, he cannot invoke ex post that: a. specific questions were not replied b. information that were not subject of query, were not disclosed c. an evidently inadequate answer was provided to a general question (except in case that the insured acted intentionally). In case of non-compliance, sanctions vary depending on the grade of fault of the insured. For example in case of intentional breach, the insurer is entitled to terminate the contract within one month from the date on which he got aware of the breach. If the insured event occurs within the above period, he will not pay the insurance indemnity/ amount. The insured will be liable for any loss suffered by the insurer. In regard to health and life insurance, the insured is punished only in case of intentional breach (not when he acted by negligence or with no fault at all). Art 4 of law 2496/97 in regard to insurance contract: During the contract period, the insured is obliged to state to the insurer, within 14 days, any information that may entail a significant aggravation of risk. In such case, the insurer is entitled to terminate the contract or to request its modification. The above-mentioned provisions regarding sanctions apply also in case of risk aggravation. Life and health insurance are excluded from the scope of this Article. Art 5 of law 2496/97 in regard to insurance contract: In case of significant reduction of risk during the contract period, the insured can request the proportionate reduction of premium. If the insurer refuses to proceed to the reduction of premium or fails to answer the relevant request within one month, the insured is entitled to terminate the contract. . Life and health insurance are excluded from the scope of this Article. Art 7 of law 2496/97 in regard to insurance contract: The insured is obliged to notify relatively the insurer within 8 days as from the date he got aware of the occurrence of the risk/ insured event. He is also obliged to provide the insurer with all necessary information, data and documents that concern the conditions and the consequences of the occurrence of the risk. In case of intentional breach, the insurer can claim damages he suffered.
Hungary	**(Ptk. 6:452)**[2] *[Obligation of disclosure and notification of changes]* (1) At the time of conclusion of the contract, the contracting party shall disclose to the

[2] *The text below refers to the following Hungarian laws*
- **Ptk.** – *Hungarian Civil Code; Act of V of 2013.*
- **Bit.** – *Act on Insurance Institutions and Insurance Business; Act of LX of 2003.*

	insurance company all circumstances of which he is or should be aware and which are important in terms of providing the insurance coverage. The contracting party shall satisfy his disclosure obligation by truthfully filling out the questionnaire furnished by the insurance company. Leaving the questions unanswered shall not in itself constitute a violation of the disclosure obligation. (2) The contracting party shall be liable to notify the insurance company in writing of any changes in the material conditions. (3) In the event of any breach of the obligation of disclosure and notification of changes, the obligation of the insurance company shall not take effect, unless the contracting party is able to prove that the insurance company was aware of the concealed or undisclosed circumstance when the contract was concluded or that such circumstance had no influence on the occurrence of the insurance event. (4) If the contract covers more than one asset or more than one person concurrently, and the breach of the obligation of disclosure and notification of changes pertains to some of them, the insurance company shall not be able to allege the breach of the obligation of disclosure and notification of changes with respect to the remaining assets or persons. (5) The obligation of disclosure and notification of changes applies to the contracting party and the insured person both. Neither of them shall be entitled to refer to any circumstance that either one had neglected to disclose or report to the insurance company though he must have known about it and should have disclosed or reported it. **(Ptk. 6:453)** *[Obligation of reporting the occurrence of an insured event]* The insurance company's obligation shall not take effect if the contracting party or the insured person fails to report to the insurance company the occurrence of an insured event within the time limit specified in the contract, fails to provide the information necessary, or fails to facilitate verification of the information provided, and, as a consequence, circumstances which are considered material from the point of view of the obligation of the insurance company become undetectable. **Ptk 6:482** *[Consequences of any breach of the obligation of disclosure and notification of changes for the life assurance]* (1) The insurance company, if it gains knowledge after the time of conclusion of the contract of any material circumstance that existed at the time the contract was concluded, shall be entitled to exercise the rights arising therefrom only during the first five years of the life of the contract. (2) The insurance company's obligation shall take effect notwithstanding an infringement of the disclosure obligation, if the insurance event occurs more than five years after the conclusion of the contract. (3) The provisions set out in Subsections (1) and (2) shall apply mutatis mutandis to the legal consequences on the infringement of the disclosure obligation relating to changes in the material circumstances provided for in the contract. The five-year period available for the insurance company to exercise its related rights shall commence on the day following the disclosure deadline.
Italy	<u>Art. 1892; 1893 Civil Code:</u> Duty for the insured to disclose any material information on his own initiative. If the insured does not comply, possibility for the insurer to ask for the termination of the

	contract. Art. 1897 Civil Code: The insured must communicate the insurer any risks' reduction; if the reduction is a major one[3] the insurer gains the right of terminating the contract within two months after he has received notice of the reduced risk which leads to a reduction of the premium. Art. 1898 Civil Code: The insured must immediately communicate the insurer any aggravation of the risk. The insurer has the right to terminate the contract as a consequence[4].
Portugal	Articles 24 to 26 of the Legal Regime state: Subsection II Duty of the policyholder or the insured to provide information Article 24 Initial disclosure of risk 1. Before entering into the contract, the policyholder or the insured shall be bound to accurately disclose all the circumstances of which they are aware and should reasonably deem significant in relation to assessment by the insurer of the risk. 2. The provisions of the preceding paragraph shall also apply to circumstances that have not been required to be mentioned in any questionnaire that may have been provided by the insurer for that purpose. 3. Any insurer having accepted the contract, save where there is fraud on the part of the policyholder or the insured with a view to obtaining an advantage, may not rely on: (a) failure to respond to a question on the questionnaire; (b) any inaccurate response to a question formulated in overly general terms; (c) clear inconsistency or contradiction in the responses to the questionnaire; (d) the fact that the representative, upon entering into the contract, knew it to be inaccurate or, in the case of an omission, was aware of such omission; and (e) circumstances known to the insurer, in particular when such circumstances are in the public domain and widely known. 4. Before entering into the contract, the insurer must inform the potential policyholder or

[3] According to Art. 1897, it is a reduction that if know at the moment of the conclusion of the contract would have automatically brought to a different agreement on the amount of the premium

[4] The termination can be immediate if the risks' aggravation is of the size that the insurer would not have concluded the contract under those conditions. The termination of the contract is effective only 15 days later if the aggravation is such that the insurer would have asked for a major premium.

	insured as regards the duty referred to in para.1 and the regime covering non-fulfilment, or risk being held publicly liable in general terms. Article 25 Fraudulent omissions or misstatements 1. In the event of intentional non-performance of the duty referred to in para. 1 of the preceding article, the contract may be cancelled by means of a declaration sent by the insurer to the policyholder. 2. Where no loss has occurred, the declaration referred to in the preceding paragraph must be sent within a period of three months of the date on which such non-performance became known. 3. The insurer shall not be obliged to cover any loss occurring before it became aware of the fraudulent non-performance referred to in para. 1 or during the period referred to in the preceding paragraph, and the general terms and conditions for cancellation shall be followed. 4. The insurer shall be entitled to the premium payable up to the end of the period referred to in para.2, save where there has also been fraud or gross negligence on the part of the insurer or the insurer's representative. 5. In the event of fraud on the part of the policyholder or the insured with a view to obtaining an advantage, the premium shall be payable until expiry of the contract. Article 26 Negligent omissions or inaccuracies 1. In the event of negligent non-performance of the duty referred to in art.24(l), the insurer may, by means of a declaration to be sent to the policyholder within a period of three months as of the date on which it became aware of it: (a) Propose an amendment to the contract, fixing a term which may not be less than 14 days for dispatch of acceptance or, if admitted, the counter proposal. (b) Terminate the contract, evidencing that in no circumstances does it enter into contracts covering risks relating to the fact that has been omitted or inaccurately disclosed. 2. The contract shall cease to produce its effects 30 days after dispatch of the declaration of termination or 20 days after receipt by the policyholder of the proposed amendment, in the event of failure to respond or rejection thereby. 3. In the case referred to in the preceding paragraph, the premium shall be returned pro rata temporis of the cover provided. 4. If a loss should occur before the contract is terminated or amended, the occurrence or

	consequences of which have been influenced by a fact in relation to which there have been omissions or negligent inaccuracies: (a) The insurer shall cover the loss in proportion to the difference between the premium paid and the premium that would have been payable, if, upon entering into the contract, the omitted or inaccurately declared fact had been known. (b) The insurer, where it is able to prove that under no circumstances would it have entered into the contract had it been aware of the omitted or inaccurately declared fact, shall not cover the loss and shall only be bound to return the premium.
Romania	Article 2.203 of Civil Code states that the insured person is required to respond in writing to questions from the insurer, and to declare its conclusion, any information or circumstances that you know and also are essential for risk assessment. If the essential circumstances of risk changes during the execution of the contract, the insured is required to notify the insurer in writing of the change. The same obligation rests and ensure that the contractor is aware of the change. Article 2204 of Civil Code states that in addition to the general causes of contract nullity (error, violence, fraud), the insurance contract is void in case of reluctance misstatement or made in bad faith by the insurer or the policyholders on the circumstances, if it were known to the insurer, would have led him to not give consent or not to give the same conditions, even if the statement or reluctance had no influence on the occurrence of the insured risk. The misstatement or reluctance of the insured or the insurance contractor whose bad faith could not be established will not void the insurance contract. If the failure or reluctance misstatements is previous the moment that the insured risk occurs, the insurer is entitled to keep the contract, requiring premium increase, or to terminate the contract at the end of a period of 10 days calculated from the notification received by the insured, return latter's share of the premiums paid for the period in which the insurance does not work. When finding misstatements or unwillingness of the insured risk is later, the allowance is reduced in relation to the proportion of the premiums paid and the premiums that would have been payable.
Slovakia	§793 of CC Pre-contractual duties of person interested in concluding an insurance contract Such a person is obliged when concluding the contract, to provide faithful and comprehensive answers on all questions which the insurer has requested in writing. The insured has the obligation to inform the insurer about any circumstances when they occur while the contract is in force. Law connects with conscious disclosure of false and incomplete information the sanctions and insurer a) can reduce the premium §798 of CC b) has the right to withdraw 802 art.1 of CC c) reject the premium 802 art. 2 of CC
Spain	The policyholder must declare to the insurer, before the conclusion of the insurance contract and in accordance with the questionnaire which the insurer sent him, all

	circumstances of which he was aware at the time he received the questionnaire likely to have an effect on the evaluation of the risk. The policyholder is however exempt if the insurer does not submit the questionnaire or if it does not refer to certain circumstances which may affect the evaluation of the risk *(article 10 LCS).* In addition, the policyholder's obligation to declare is limited to the questionnaire submitted by the insurer (closed questionnaire) It is therefore up to the insurer to include in it all questions he considers relevant for the assessment of the risk because he may not consequently invoke a circumstance concerning the declared risk if it was not covered in the questionnaire. The questionnaire must therefore include clearly and precisely questions on the objective characteristics of the risk and "subjective" questions covering the policyholder vis-à vis the risk to be insured. *Errors or omissions in good faith* The insurer is entitled to cancel the contract in writing within a month with effect from the time he became aware of the omission or error. The contract, thus become invalid and the insurer is not bound by any obligation in the event of a claim. If a claim occurs before the insurer cancels the contract, compensation is reduced according to the ratio between the premium paid and the premium which would have been paid if the insurer had been correctly informed of the risk. *Errors or omissions in bad faith or resulting from negligence by the policyholder* The insurer is entitled to cancel the contract in writing within one month with effect from the moment he became aware of the error or omission. The contract is therefore invalid and any obligation on the insurer to compensate disappears if there is a claim, providing that the latter demonstrates, on the one hand, the bad faith or negligence of the policyholder and, on the other that he did not know of the policyholder´s error or omission. The Insurance Contract Act establishes upon the policyholder or the insured the obligation, during the course of the contract, to notify the insurer, as soon as possible, about all circumstances aggravating the risk.
Sweden	***According to Chapter 4, article 1(1), the Insurance Contract Act,*** a person who wishes to acquire consumer insurance is obligated, upon request of the insurance company, to provide information which may be material to the Company's decision to issue insurance. The same applies where the policyholder requests extension of the coverage or renewal of the insurance. The policyholder shall provide true and complete answers to the insurance company's questions. According to ***Chapter 4, article 3 (1), the Insurance Contract Act (2005:104)*** the insurance company may provide in the insurance contract that the policyholder shall, without unreasonable delay, report to the company any change in a circumstance specified in the contract which is of material significance to the risk.
United Kingdom	**The duty of utmost good faith** The duty applies to all non-consumer insureds (and to consumers of some life insurance contracts for a certain period of time). The duty is breached in case of fraud,

	misrepresentations of fact (whether the proposer acted negligently or innocently) or non-disclosure of material facts before the contract is entered into (Birds, p.113). **Disclosure duty** (For remedies for breach of duty of disclosure, see post.) **B2C** The Consumer Insurance (Disclosure and Representations) Act 2012 Section 2 abolishes the consumer's duty to volunteer information. Thus, insurers should from now on ask questions about what they want to know (Law Commission and Scottish Law Commission, LAW COM No 319, SCOT LAW COM No 219, p.38). **B2B** Marine Insurance Act 1906, Section 18: The assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. MacDonald Eggers 41-030; *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* (1995) 1 AC 501: The scope of the duty to disclose is however limited. The insured needs not to disclose facts which: (a) are either known to the insurer or presumed to be known by him as common knowledge or for the ordinary course of business; (b) are facts which diminish the risk for the insurer (Principles of European Insurance Contract Law, p. 80 N2-N3). *Garnat Trading/ Shipping (Singapore) Pte Ltd v Baminh Insurance Corporation* (2011) A minute disclosure of every material circumstance is not required. The assured complies with the duty if he discloses sufficient information to call the attention of the underwriter to the relevant facts and matters in such a way that if the latter desired further information, he can ask for it (Birds, p.121). **Duty not to misrepresent** **B2C** The Consumer Insurance (Disclosure and Representations) Act 2012 Section 2 establishes a duty of the customer to take reasonable care not to make a misrepresentation to the insurer. Section 3 defines reasonable care and sets out the circumstances which need to be taken into account in the assessment whether the customer has taken reasonable care. Section 4 defines a "qualifying misrepresentation": A "qualifying misrepresentation" has to meet the following criteria: - it should have induced the insurer to enter the contract or variation or do so on different terms and - it should be deliberate or reckless; or careless. **B2B** In addition to the duty to disclose, the policyholder is under a duty not to misrepresent material facts. (Law Commission, consultation paper 204 and The Scottish Law Commission Discussion Paper No 155, p.23) Section 20(1) of the Marine Insurance Act 1906 states: "Every material representation made by the assured or his agent to the insurer during the

	negotiations for the contract, and before the contract is concluded, must be true. If it be untrue the insurer may avoid the contract." Section 20(3) of the 1906 Act states: "A representation may be either a representation as to a matter of fact or as to a matter of expectation or belief. " The two types of misrepresentations receive different treatment, with a strict liability standard applicable to misrepresentations of fact. Thus, the insured cannot rely on the defence that the misrepresentation of fact was innocent. (Law Commission, consultation paper 204, The Scottish Law Commission Discussion Paper No 155, p.23: Section 20(4) of the Marine Insurance Act 1906 applies to factual representations: "A representation as to a matter of fact is true, if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer." Section 20(5) of the Marine Insurance Act 1906 applies to representations of expectation or belief: "A representation as to a matter of expectation or belief is true if it be made in good faith." **Duty not to misrepresent in relation to variations of a contract** **B2C** Consumer Insurance (Disclosure and Representations Act) 1906, Schedule 1, part 2 Where there is a qualifying misrepresentation in relation to a variation of the contract, and that variation can reasonably be treated separately from the insurance policy, the remedy should only apply to the subject matter of the variation. However, if the variation cannot be treated separately, if the consumer made a deliberate or reckless misrepresentation, the insurer may avoid the whole policy. (Law Commission and Scottish Law Commission , LAW COM No 319, SCOT LAW COM No 219, p.85) **Warranties and basis of the contract clauses** **B2C** The effect of basis of the contract clauses has been abolished for consumer insurance contracts. (Law Commission and Scottish Law Commission , LAW COM No 319, SCOT LAW COM No 219,p.43) The Consumer Insurance (Disclosure and Representations) Act 2012 Section 6 states that "a representation is not capable of being converted into a warranty by means of any provision of the consumer insurance contract". **B2B** In insurance, a warranty is a particularly important contractual term. If breached, it leads to an automatic discharge of the insurer's liability. (The Law Commission, Consultation paper 204, The Scottish Law Commission Discussion Paper No 155, p.141) The use of "basis of the contract" clauses reinforces the importance of warranties. If an insured signs a statement on a proposal form stating that the answers given form the basis

	of the contract, this has the effect of converting all the answers into warranties. Thus, the insurer could avoid the contract for any misrepresentation or inaccuracy, even if it is not "material" (The Law Commission, Consultation paper 204, The Scottish Law Commission Discussion Paper No 155, p.135) The Marine Insurance Act 1906, Section 33(3) states that a warranty "must be complied with, whether material to the risk or not". Under Section 34(2) once a warranty is broken the policy holder "cannot avail himself of the defence that the breach has been remedied and the warranty complied with before the loss". These provisions apply to all types of insurance, not only marine. (The Law Commission, Consultation paper204, The Scottish Law Commission Discussion Paper No 155, p.135) *De Hahn v Hartley* (1786) In case of a breach of a warranty the insurer may refuse any claims for subsequent losses, even if the breach was minor (The Law Commission, Consultation paper 204, The Scottish Law Commission Discussion Paper No 155, p.135). **Disclosure of risk aggravation** A duty of the insured to disclose an increase in the risk during the duration of the contract may be introduced in a contract. A term imposing such a duty is usually a promissory warranty, since it provides that upon failure the insurer may avoid the policy. (Birds, p.150) However, case-law has led to a restrictive interpretation of this duty: *Shaw v Robberds* (1837) The increase in the risk should be permanent and habitual and not merely temporary (Birds, p.151). *Glen v Lewis* (1853) If an insurer wishes to be notified of merely temporary increases in risk, it must insert express clauses to that effect. Otherwise, it may not be expected that the insured would inform the insurer on their own initiative (Birds, p. 151).

Rechtsvergleichung

Conclusion and form of the contract

Conclusion and form of the contract[1]

Austria	§ 3 VersVG: - Insurer must transmit insurance certificate to insured on paper or electronically. - Copy of genuine signature sufficient.
Bulgaria	There is a general reference to the Contracts and Obligations Act and the Commercial Act as to the conclusion of contracts, offer and acceptance and other general civil/commercial law rules. Art.184 Code for the Insurance: An insurance contract shall be concluded in writing in the form of an insurance policy or of another written act. The written proposal or request addressed to the insurer concerning the conclusion of an insurance contract or written replies of the insured to queries made by the insurer with regard to circumstances of importance to assessing the nature and amount of risk, shall form an integral part of the insurance contract. The written form is deemed observed in cases where the contract has been drawn up in the form of an electronic document. The insurance contract may also be concluded through the means of long distance communication if this has been provided for by law. Art.261, para.1 Code for the Insurance: Compulsory third party motor insurance contract has the form of an insurance policy and a mark issued by the Guarantee fund. The insurance policy is a special form printed in accordance with the procedure for printing securities.
Croatia	Pursuant to Article 925 of the Civil Obligations Act the insurance contract shall be concluded only when the application concerning the insurance has been accepted. The contract shall be concluded by consensus of both parties, and after the conclusion of the insurance contract, the insurer shall immediately provide the policyholder with a clearly written up and signed insurance policy or any other document relating to insurance (covering note, etc.) Only exceptionally a written form of the insurance contract is required, since the contract shall be considered concluded when signed by the insurer and the policyholder. A written application made to the insurer as regards the conclusion of the insurance contract shall be binding on the applicant for a period of eight days, unless the applicant has not determined a shorter time limit; where a medical examination is required, this time limit shall be 30 days.

[1] The information in this table is provided by insurance experts or insurance organisations from respective country. It does not contain a thorough review of all Member States' insurance contract laws and does not reflect the official opinion of the Commission.

	If the insurer fails to reject the application which does not depart from his terms and conditions for the insurance in question, within that time limit, the application shall be deemed to have been accepted and the contract concluded. In that case, the contract shall be considered concluded at the time the application is received by the insurer.
Estonia	Insurance contract is a consensual contract which is subject to the general rules of the conclusion of contracts - usually insured person submits the offer and insurer accepts. Contract doesn't have to be in writing, but the insurer has the obligation to issue a policy (allowed also electronically, mechanical signature is sufficient - § 434 (1) LOA, § 78 (2) General Part of the Civil Code Act) There are specific rules to be found from MTPL Insurance Act: - MTPL insurance contracts shall be entered into at least in a format that can be reproduced in writing. § 8 (1) MTPL policy at least in a format which can be reproduced in writing, except for the green card which shall be issued in writing. § 9 (2)
Finland	There are few form requirements as to the conclusion of insurance contracts as such. Therefore, similar rules as are applied in the conclusion of any contracts would apply (Contracts Act 228/1929). This means that there is freedom of form. However, section 11 of the Insurance Contracts Acts contains detailed provisions on the commencement of insurance cover, unless otherwise agreed. Reference must be made to the documentary requirements made to insurers to issue policies and insurance conditions without delay. Please see the above section "Definition of insurance contract". In addition to that, the insurance contract must be in writing.
France	Article L112-3 Insurance Code: Modifié par Loi n°2005-1579 du 19 décembre 2005 - art. 54 (V) JORF 20 décembre 2005 The contract and all the attached information provided by the insurer shall be draft in written form, in French and in a clear format. Le contrat d'assurance est consensuel. Il est conclu par l'accord des parties, quelle que soit la forme des consentements (verbale ou écrite). L'écrit n'est exigé que pour la preuve de l'existence et du contenu du contrat. If the parties decide to apply another law to the contract, they can also decide to use another language. If the applicable law is the French one, the parties can nevertheless decide to use another language, in particular the one of the insured's country of residence. Every addition or modification to the original contract shall be done in written form and shall

	be signed by both of the parties. An exception is foreseen in the case of modifications of a complementarity health insurance contract imposed by a State Council decree (Art. L 871-1 Social Security Code). In the latter case the insurer shall inform the insured, who has 30 days to refuse the proposed modifications. If no refusal is made, the proposed modifications would be effective after one month from the expiring of the 30-days deadline.
Germany	The general rules of the Civil Code apply (§§ 145 seq. BGB). The insurance contract is a consensual contract which is formed by the consent of the parties. It is normally the insured person who submits the offer which the insurer accepts after having examined the offer. The insurance contract needs not to be in writing, however the insurer has to issue a policy, s. § 3 (1) VVG. The policy has to be handed over in writing. As long as the insurer has not issued the policy the applicant is not obliged to pay the premium, § 33 VVG, Insurance protection can be denied if the insured person has not paid the first due premium, , § 37 (2) VVG. § 3 (1) VVG is semi-mandatory, § 18 VVG.
Greece	<u>Conclusion of the contract:</u> The conclusion of the insurance contract is subject to the general rules of Civil Code. Its conclusion presupposes proposal and acceptance. In practice the insured submits to the insurer the proposal which is usually made on a form provided by the latter. The insurance contract is concluded as soon as the insurer accepts the proposal. Acceptance is substantiated when the contract is issued and delivered to the insured. <u>Form of the contract:</u> The insurance contract is not obligatorily subject to written form. However, written form is needed for evidencing its conclusion and to this end, the policy is issued by the insurer and is signed by him (even by mechanic means). Law 2496/97 also stipulates that the insurer is obliged to provide the policyholder with the insurance contract.
Hungary	As a general practice insurance contract is concluded in written form[2]. **(Ptk. 6:443)** If the insurance contract has been not concluded in written form, the insurance company is obliged to complete a certificate on the coverage. If the terms of the policy differs from the original application of the client, and this difference is not contested by the contracting party immediately after the receipt of the policy, the contract will be fixed in accordance with the contents of the policy. The client (contracting party) is tied by the application for 15 days, (and for 60 days where health underwriting is required). **(Ptk. 6:443)** A contract will be also created if the insurer does not respond to a client's application in 15 days (and 60 days where health underwriting is required), and the application was made on the official application form of the insurance company. If the contract - that is concluded without the explicit statement of the insurer - deviates from the general conditions of the insurer, the insurer is entitled to make a written proposal within 15 days to have the contract amended in accordance with the general terms. If the modification is not accepted

[2] ▪ **Bit.** – *Act on Insurance Institutions and Insurance Business; Act of LX of 2003.*

	by the client or does not respond it within 15 days, the insurer will be entitled to terminate the contract in writing with 30 days notice.
Italy	Art. 1326, 1887 Civil Code: The proposal is considered to be the offer made by the insured; the proposal is valid for a period of 15 days[3]. The contract is concluded when the insurer's acceptation is known by the insured (derogated for life insurance) Art. 1888 Civil Code: compulsory written form for evidentiary purposes; it's compulsory for the insurer to deliver the insured copy of the contract Contracts should be drafted in Italian if not otherwise agreed Art. 185 d.lgs. 209 7/9/2005: Obligation for the insurers to deliver the insured (attached to a copy of the insurance contract) also a comprehensive information note. Artt. 58, 59, 60,61 Code of Consumers
Portugal	**Articles 32 to 38** of the Legal Regime state: **SECTION V** **FORM OF THE CONTRACT OF INSURANCE AND INSURANCE POLICY** **Article 32** *Form* 1. The validity of the contract of insurance shall not be subject to compliance with any special requirement as to form. 2. The insurer is obliged to formalize the contract in a written instrument, referred to as the insurance policy, and to provide it to the policyholder. 3. The policy must be dated and signed by the insurer. **Article 33** *Advertising messages* 1. The contract of insurance shall include any concrete and objective advertising messages relating thereto, and any contradictory clauses shall be excluded from the contract, save where these are more favorable to the policyholder or the beneficiary. 2. The provisions of the preceding paragraph shall not apply when a period of one year has

[3] 30 days if a medical certification is requested

	elapsed between the last date of broadcasting of these advertising messages and conclusion of the contract or when the messages themselves set a period of validity and the contract has been concluded outside that period. **Article 34** *Provision of the policy* 1. The policy must be provided to the policyholder upon conclusion of the contract or must be sent to the policyholder within a period of 14 days for mass risk insurance, save where there is good reason for not doing so, or within the period agreed for major risks insurance. 2. Where agreed, the insurer may provide the policy to the policyholder on a durable medium. 3. Once the insurance policy has been provided, the insurer may not rely upon clauses that are not contained therein, without prejudice to the rules governing business error. 4. In the event of any delay in provision of the policy, the insurer may not rely on any clauses that do not appear in the written document signed by the policyholder or previously provided thereto. 5. The policyholder may at any time request that they be provided with the insurance policy, even after the contract has been terminated. 6. Once the period referred to in para. 1 has elapsed and until such time as the policy is provided, the policyholder may terminate the contract, such termination having retroactive effect and the policyholder shall be entitled to the return of the entire premium paid. **Article 35** *Consolidation of the contract* If the policyholder has not indicated any discrepancy between what was agreed and the content of the policy within 30 days of the date of provision of the policy, only discrepancies arising out of the written or other durable medium document may be relied upon. **Article 36** *Drafting and language of the policy* I. The insurance policy shall be drafted in comprehensible, clear and rigorous terms and in highly legible print, using words and expressions used in everyday language provided that the use of legal or technical terms is not essential. 2. The insurance policy shall be drafted in Portuguese, save where the policyholder requests that it be drafted in another language, subject to an agreement between the parties to that effect being entered into prior to issue of the policy. 3. In the case of mandatory insurance, a Portuguese version of the policy must be provided,

	which shall in any case prevail over the version drafted in any other language. **Article 37** *Policy wording* 1. The policy shall include the fun content of what has been agreed by the parties, namely the general, special and particular conditions applicable. 2. The policy must include at least the following elements: (a) the word "apólice" [policy] and the full details of the documents which it comprises; (b) the particulars, including the tax identification number, and the domicile of the parties and, where justified, the details of the insured, the beneficiary and the representative of the insurer for the purposes of claims; (c) the nature of the insurance; (d) the risks covered; (e) the territorial scope and period of cover of the contract; (f) the rights and obligations of the parties as well as those of the insured and of the beneficiary; (g) the sum insured or the method by which it may be calculated; (h) the premium or the formula for calculation thereof; (i) the start of the period of validity of the contract, with details of the date, time, and duration; (j) the content of the benefit to be provided by the insurer in the event of loss or the manner in which this may be determined; and (k) the legislation applying to the contract and the terms of arbitration. 3. Furthermore, the policy must include, highlighted and using a larger typeface: (a) any clauses that set out causes of nullity, extension, suspension or termination of the contract at the initiative of either party; (b) any clauses that establish the scope of cover, namely exclusions or limitations; and (c) any clauses that impose on the policyholder or the beneficiary any term-related duty to advise. 4. Without prejudice to the duty to provide the policy and any responsibility in relation thereto, any breach of the preceding points shall entitle the policyholder to terminate the contract in the terms provided for in aIi.23 (2) and (3) and, at any time, to request that the

	policy be corrected. **Article 38** *Non-assignable, to order and assignable policies* 1. The insurance policy may be non-assignable [nominative], to order or assignable [to bearer], and shall be non-assignable should the parties fail to stipulate the respective arrangement. 2. Endorsement of a policy to order transfers the contractual rights of the endorsing policyholder or insured, without prejudice to the fact that the contract of insurance may authorize partial endorsement. 3. Deliver of the policy to bearer transfers the contractual rights of the bearer, whether policyholder or insured, unless otherwise agreed. 4. A non-assignable policy shall be provided by the policyholder to whomsoever succeeds them in the event of assignment of contractual position, and in the case of assignment of receivables, the policyholder must provide a copy of the policy. **OBSERVATION** **Please note that there exist special rules on the conclusion and termination of specific insurance contracts such as the compulsory regime for motor insurance liability (Decree-law 291/2007 of 21/08/2007)**
Romania	<u>The conclusion of insurance contract</u> Article 2200 of Civil Code states that the insurance contract must be concluded in writing. The conclusion of insurance contract is proved by the insurance policy or the insurance certificate issued and signed by the insurer or by the covering note issued and signed by the insurance broker. The documents certifying the completion of an insurance certificate can be signed electronically. <u>The form of the insurance contract</u> Order no. 23/2009 *for the implementation of the Norms regarding the information that insurers and insurance intermediaries must provide customers and other items that must be included in insurance contract,* issued by the Insurance Supervisory Commission states that the insurance contract and insurance conditions has to be clear written and easy to read, to use a font size of at least 10, on paper or on another durable medium, in at least two copies, an original copy has to be kept by each party. The background color of the paper of the documents, of the insurance contract and insurance conditions should be contrasted with that of the font used. Article 2201 of Civil Code states that the insurance policy must contain at least: - the name of the insured, the place of the domicile/residence of the parties and insurance and the beneficiary name if this is not a party in the contract - the object of insurance

	- the insured risks - the start date and the termination date of the insurer liability - the insurance premiums - the insured sums. Article 2238 of Civil Code states that the insurers are required to provide the insured in the insurance contracts, at least the following information (information that must be submitted in writing, in Romanian language, in clear writing): - optional or additional terms and benefits of harnessing technical reserves; - the start and the termination of the contract, including termination of the arrangements; - the modalities and the term of insurance premiums payment; - the elements for calculating insurance claims, indicating redemption amounts, the amounts secured low and the extent to which they are secured; - the method of payment of insurance claims; - the law applicable to the contract of insurance; - other elements established by rules adopted by the authority in whose jurisdiction falls, under the law, the supervision of the insurance.
Slovakia	§ 791 of CC Legal acts concerning insurance shall require a written form. The insurer shall provide the person who entered into the insurance contract with a policy as a written confirmation of its conclusion. § 790 of CC To conclude an insurance contract an insurance proposal must be accepted within the period set by proposer, or, if the proposer did not set such period, within 1 month from the day of its receiving. The contract is concluded at the moment the proposer received a notice of acceptance of the proposal. The proposal may also be accepted by payment of the insurance premium in the amount referred in proposal. § 795 of CC The obligation of the insurer to pay claims and its right to the insurance premium shall come into existence on the first day after the conclusion of the insurance contract, unless agreed otherwise.
Spain	The insurance contract is consensual therefore it is concluded when de offer and the acceptance concur and, in any case, when the policyholder notifies his acceptance of the proposal to the insurer. Insurers are not obliged to follow a specific form when drafting a contract of insurance in Spain. However, Spanish insured's, Spanish Courts and Authorities are all familiar with a specific type of contract that comprises the schedule: general conditions, and any special conditions or terms. (Art. 5 LCS) The insurance contract and its modifications or additions must be formalized in writing.

Sweden	In general there are no specific requirements regarding the form of insurance contracts. Binding insurance contracts may - with few exceptions – be concluded orally. But, in practice, an insurance contract is normally substantiated by at least two documents - an insurance policy and general conditions.
United Kingdom	**Insurable Interest** **Insurable interest in non-indemnity policies (life, critical illness and personal accident):** <u>Life Assurance Act 1774</u> 1. Section 1 bans the making of insurances where there is no interest, and renders any policy issued in such circumstances null and void. Subsequent case law and statues have established what interest is required under this section (Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 10): a) interest arising out of natural affection: Under English law this is possible for own life or life of spouse, <u>but not</u> among parents and children (Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 10-12; *Wainwright v Bland* (1835) 1 Moo. & R 481; *Murphy v Murphy* [2004] 1 Lloyd's IR 744) Note section 11 of the Married Women's Property Act 1882 states that a policy if insurance taken out by a husband for the benefit of his wife or children, or by a wife for the benefit of her husband or children creates a statutory trust of the policy in the hands of the executor. This side steps the needs for children to insure their parents' lives in which they do not have an automatic insurable interest. b) interest arising out of a potential financial loss which is recognised by law and can be shown at the time of the contract: The insured must show that he will or may lose some legal or equitable right or come under some kind of legal liability in consequence of the death of the person whose life is insured (*Lucena v Craufurd* (1806) 2 Bos & PNR 269; *Dalby v India & London Life Assurance* (1854) 15 C.B. 365). The mere expectation or hope of future pecuniary benefit from the prolongation of the life insured or of fulfilment by him of moral obligations owed to the insured is insufficient to sustain an insurable interest (McGillivray on Insurance Law (12th ed.) paragraph 1-070; *Sharma v Home Insurance Co of New York* [1966] E.A.8(K)). In this case, the insurable interest is limited to the economic value of the interest. The key elements are that the interest is pecuniary and must be recognised by law Examples include: - creditor on the life of a debtor for the amount of the debt; - a joint debtor in the life of a joint debtor up to the amount of the debt; - employer in the life of an employee (for the period of notice); (Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 10-14). Where the death of the life insured will involve the assured in a liability, it is no answer for the insurers to show that he will also derive some benefit, since the contract is not one of indemnity (*Branford v Saunders* (1871) 25 W.R. 650) c) interest arising out of statutory provisions:

For example, the Civil Partnership Act 2004 creates a presumption of natural affection among civil partners as among married couples, thus recognising an unlimited insurable interest for civil partners.
(Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 16)
See also the Local Government Act 1972, Local Government (Scotland) Act 1973, Land Drainage Act 1991, Police (Northern Ireland) Act 2003 which give local authorities or councils the right to insure the lives of members of the authority, council or district policing partnership whilst engaged on the business of the authority, council or partnership.

d) interest recognised by the courts that does not fit into any of the above categories (Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 17):

Feasey v Sun Life Assurance Co of Canada (2003)
The case led to a fresh categorisation of insurable interest into four categories with two relevant for life:
- cases where the court has defined the subject matter as a particular life of a particular person and where the insurance is to recover a sum on the death of that person
- cases "in which the court has recognised interests which are not even strictly pecuniary".
Based on this judgment in some policies on lives (in particular those on many lives and over a substantial period) it is not necessary to show a strict pecuniary loss recognised by law.
(Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 17-19)

Further requirements under the Life Assurance Act 1774:
- Interest must be shown to have subsisted at the date on which the contract was made: *Dalby v India and London Life Assurance* (1854) 15 C.B. 365; McGillivray on Insurance Law (12th ed.) paragraph 1-065)
- Section 2 requires the names of those interested to be noted in the policy document.
- Section 3 limits the amount of any recovery to the value of the interest.
- Section 4 provides that the 1774 Act does not apply to "ships, goods, or merchandises".

Consequences of a lack of an insurable interest
Under section 1 of the Life Assurance Act 1774 policies made without an insurable interest are null and void. Pursuant to section 1 a policy made without the insertion of the names of all interested parties is illegal. Case law has also established that a contract of insurance created without an insurable interest is illegal (*Harse v Pearl Life Assurance Co* [1904] 1 KB 558).
Under English law as a general rule premiums are not repayable where a contract is illegal, unless the policy holder shows that the insurer bears a greater degree of responsibility for the illegal contract (Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 20).

Insurable interest in indemnity policies:
Under the indemnity principle the policyholder may only receive indemnity for the amount of loss they have suffered. Thus, a loss has to be proved in any case. (Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 34)

- Insurable interest in goods:

The Gambling Act 2005: Following the entry into force of this act in 2007, the law on insurable interest in indemnity insurance changed and no longer requires an insurable interest for most forms of indemnity insurance. A policy holder no longer needs to show an insurable interest in the goods to prove that the contract is not a wager, as both insurance and wager contracts

	are enforceable. Nevertheless, under the indemnity principle the policyholder still needs to prove a loss in order to receive the indemnity. (Law Commission Issues Paper 4, Issues paper 4, 2008, p. 39) - Insurable interest in land and buildings: It is broadly accepted that the Life Assurance Act 1774 does not apply to land and buildings. If that is the case, since the entry into force of the Gambling Act 2005 no insurable interest is required for insurance of land and buildings and the rules will be the same as for goods. The indemnity principle also applies (Law Commission Issues Paper 4, Issues paper 4, 2008, p. 40) **Offer and acceptance:** An offer could be made by the insured or insurer. In practice, the offer is normally made by the insured by completing a proposal form. If the insurer accepts with qualifications the acceptance may amount to a counter-offer (Birds, p.85). For online contracts, however, an offer is usually made by the insurer by quoting a premium and inviting the insured to accept it (Birds, p.86) ICOBS 3.1.9 states that the performance of a distance contract may only begin after the consumer has given his approval. **Form:** The insurance contract is generally considered a consensual contract which is formed by the consent of the parties, no special form being required. An oral agreement, provided that it can be proved, is binding, provided that there is the necessary agreement on the material terms. In practice though, insurance contracts are recorded in a policy (Birds, p.94). Regulation 9 (3) of the UK Electronic Commerce Regulation 2002 states that, when insurance is contracted electronically, the terms and conditions shall be made available in a way that they can be stored and reproduced. Specific contracts*:* Marine Insurance Act 1906, Section 22. For marine insurances, the contract should be embodied in a policy: "Subject to the provisions of any statute, a contract of marine insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards." Furthermore, there are formalities for life insurance and compulsory motor insurance contracts. (Birds, p.94).

Rechtsvergleichung

Unfair contract terms

Unfair contract terms[1]

Austria	Examples: Clauses in insurance contracts may be void for violating the VersVG, for example § 5(4) VersVG: Waiving right to contest contract because of error § 6(4): right of withdrawal for insurer in case of violation of obligations § 11(4): waiving obligation of insurer to pay default interest § 39(1): terms of less than 2 weeks in case of non-payment of premium Or any clause violating (semi-)mandatory rules of the VersVG Clauses in insurance contracts with consumers may be void because they violate the "black list" as contained in § 6 para. 1 or para. 2 Konsumentenschutzgesetz/Consumer Protection Act Clauses in insurance contracts with consumers may be void because they violate general standards of unfair terms control - Surprising clauses (§ 864a ABGB/Civil Code) - Unfair clauses (§ 879 para. 3 ABGB/Civil Code) - Intransparent clauses (§ 6 para. 3 KSchG/Consumer Protection Act – directly applicable only to consumer insurance). E.g. OGH (Supreme Court) 23rd January 2013, 7Ob201/12b: Several clauses of the General Conditions on legal expenses insurance as used by Austrian insurers were held to be void or not binding on the policyholder based on 3 864a, 897 para 3 ABGB or/and § 6 para 3 KSchG)
Bulgaria	Unfair contract terms are dealt with in Chapter VI, art.143-148 of Consumers Protection Act. The Code for the Insurance does not mention those and does not make any references to them. However Consumers Protection Act contains general rules and is applicable as long as there are no contradictory specific rules in the Code for the Insurance. Art.143 of Consumers Protection Act defines Unfair contract term in a consumer contract as *any clause to the detriment of the consumer which is contrary to the good faith and entails a significant inequality between the rights and obligations of the trader or provider and those of the consumer.* Unfair contract terms are null and void unless they are individually negotiated. The trader has the burden of proof for establishing that certain contract terms are individually negotiated.
Croatia	Pursuant to Article 96 (to 104) of the Consumer Protection Act *'a contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the contractual parties' rights and obligations, to the detriment of the consumer.'*

[1] The information in this table is provided by insurance experts or insurance organisations from respective country. It does not contain a thorough review of all Member States' insurance contract laws and does not reflect the official opinion of the Commission.

	The position of the Consumer Protection Act is that certain contractual terms shall be deemed not individually negotiated where it has been drafted by the trader in advance for which reason the consumer was therefore not able to influence its content, particularly when it is a term of the pre-formulated standard contract of the trader. An unfair contractual term shall be deemed null and void.
Estonia	General unfair terms-regulation applies to both B2C and B2B insurance contracts. LOA § 42. Invalidity of standard terms (1) A standard term is void if, taking into account the nature, contents and manner of entry into the contract, the interests of the parties and other material circumstances, the term causes unfair harm to the other party, particularly if it causes a significant imbalance in the parties' rights and obligations arising from the contract to the detriment of the other party. Unfair harm is presumed if a standard term derogates from a fundamental principle of law or restricts the rights and obligations arising for the other party from the nature of the contract such that it becomes questionable as to whether the purpose of the contract can be achieved. Invalidity of standard terms and the circumstances relating thereto shall be assessed as at the date of entry into the contract. (2) A standard term is not deemed to be unfair if it relates to the main subject matter of the contract or to the relationship between the price and the value of the services or goods supplied in exchange or if the contents of the term is based on such legislation which must not be derogated from pursuant to an agreement between the parties. Subparagraph 3 provides a black list on standard terms considered to be unfair in particular, though in B2B contracts unfairness of those terms is only presumed. One must also look at the imperative clauses in the insurance contract part of LOA, which there are many, e.g. § 451 - any agreement by which the insurer is not required to pay a fine for a delay in the performance of its obligation is void.
Finland	Both section 36 of the Contracts Act (229/1928) as well as Chapter 3 and 4 of the Consumer Protection Act (38/1978) concern regulation of contract terms. An unfair contract term may be set aside or adjusted. Furthermore a contract term, which differs from the provisions of the Insurance Contract Act or any other insured party entitled to compensation as the detriment of the policyholder, shall be invalid. In addition, a contract term, which differs from the provisions of the said Act to the detriment of the policyholder shall be invalid, if the

	policyholder is a consumer or any other natural person or legal entity which can be treated as a consumer in relation to the insurer considering the nature and extent of his/her business activities and other relevant circumstances. The application of these provisions is in theory possible also in the context of insurance contracts, but the specificity of the mostly mandatory provisions of the Insurance contracts Act. In the context of large risks, this has neither any significance.
France	Implementation of the Unfair Contract Terms Directive (93/13/EC): Article L132-1 Consumer Code: (Modifié par LOI n°2010-737 du 1er juillet 2010 - art. 62) In B2C contracts those clauses having the effect of significantly unbalancing the contract on the consumer's side are considered as unfair. Council of State decree issued upon the advice of the *Commission des clauses abusives* determine the types of clauses that must be regarded as unfair. In case of litigation upon one of those clauses, it's up to the professional to demonstrate the fair nature of the clauses. A State Council decree shall determine which clauses, regarding their importance for the contract equilibrium, should be judged unfair according to the present article. […] Without any prejudice to the general interpretation rules provided by Articles 1156, 1161, 1163 and 1164Civil Code, the unfair nature of a clause shall be identify referring to the moment of the conclusion of the contract, to all the circumstances occurring on the specific moment and to all the other clauses of the contract. The judgement should also take into account any other contract having a legal influence on the conclusion or on the execution of the relevant contract. Unfair clauses are considered as non-written. […] The contract shall remain valid if it still has a "legal sense" without the clauses judged as unfair. The above mentioned article shall not be applied when the insurance contract was taken out in pursuance of the insured's business (Cass. Civ. 1er, 23.2.1999, RGDA 1999, 325)[2].

[2] Principles of European Contract Law (PEICL), J. Basedow, J. Birds, M. Clarke, H. Cousy, H. Heiss 2009, p. 124 N11.

	Article L534-1 Consumer Code: (Créé par LOI n°2010-737 du 1er juillet 2010 - art. 62) The Unfair Clauses commission, established by the Ministry of Consumers, shall analyse the standard terms and conditions normally proposed to consumers. The Commission shall judge on the eventual unfair nature of the clauses. Article L113-11 Insurance Code: They are invalid: - All general clauses depriving the insured of his rights in case of violation of laws or regulations, unless such violation constitutes a crime or intentional tort; - All clauses depriving the insured of his rights, due to a delay on the insured's part in stating a claim to the authorities or delivery of documents, without prejudice to the insurer's right to claim for a compensation proportionate to the damage that this delay has caused to his interests.
Germany	The general rules on unfair terms (§§ 307 seq. BGB) apply to B2B and B2C insurance contracts. § 307 BGB (1)Provisions in standard business terms are ineffective if, contrary to the requirement of good faith, they unreasonably disadvantage the other party to the contract with the user. An unreasonable disadvantage may also arise from the provision not being clear and comprehensible. (2)An unreason-able disadvantage is, in case of doubt, to be assumed to exist if a provision 1. is not compatible with essential principles of the statutory provision from which it deviates, or 2. limits essential rights or duties inherent in the nature of the contract to such an extent that attainment of the purpose of the contract is jeopardised. The unfairness control does not apply to the obligations concerning the payment of the premium and the main performance of the insurer.
Greece	Unfair contract terms are envisaged in art. 2 of law 2251/94 in regard to consumer protection which contains a list of per se void terms on the ground that they are unfair. These general (and not insurance-related) rules that partly stem from EU Directive 93/13/EC are also applicable to the insurance contracts. Law 2496/97 in regard to insurance contract does not deal with unfair contract terns. In general terms, a term is deemed to be unfair and thus void if it causes significant imbalance in the rights and obligations of the counter-parties to the detriment of the consumer. Beyond the afore-mentioned regime of law 2251/94, the Ministerial

	Decision Z1-74/4.2.2011 is in place regarding abusive general terms of transactions used by banks and insurance companies. According to this decision issued by the Deputy Minister of Labour and Social Security, *"a clause in hospital care insurance contracts that allows the insurance company to proceed, during the course of the insurance contract or on any renewal date of such insurance cover, with an increase in the premiums with no previous determination of specific criteria that are certain and reasonable for consumer, on the basis of which such increase will take place"* shall be regarded as abusive.
Hungary	**(Ptk. 6:103 and 6:104)**[3] Non-exhaustive list of unfair contract term are listed in the general contract rules of the civil code. These contract terms shall be null and void in the respect of consumer contracts.
Italy	Art. 166 d.lgs. 209 7/9/2005: Hard bargain clauses shall be clearly and exhaustively explained and well signalled (graphic form) Implementation of the Unfair Contract Terms Directive (93/13/EC) Art. 33-38 Consumer Code: Terms are considered unfair if they cause a significant imbalance in the rights and obligations arising under the contract, to the detriment of the consumer. An exhaustive list of clauses which are presumed to be unfair is presented. Terms and clauses which are not immediately clear shall always be interpreted in favour of the consumer. Guidelines to the interpretation of such clauses are presented. Unfair clauses which are not presented following the law are considered to be null, while the remaining part of the contract shall remain valid. Such nullity shall only operate for the benefit of the consumer. The general rules provided by the Civil Code shall continue to apply. Art. 1341 par. 2 Civil Code: List of clauses which must be specifically and written approved; if not, the courts are enabled to review them irrespective of their incorporation into commercial or consumer contracts.

[3] *The text below refers to the following Hungarian law.s*

- **Ptk.** – *Hungarian Civil Code; Act of V of 2013.*

Portugal	The Legal Regime on the Insurance Contract does not state specifically on unfair contract terms. However **article 3** of the Legal Regime states: **Article 3** ***Reference to generally applicable provisions*** *The provisions of this regime* ***shall not prejudice application to the contract of insurance of the provisions of the laws on general contractual clauses****, consumer protection and contracts that have been entered into remotely, pursuant to the provisions of the aforementioned laws.* **This means that the entire regime of unfair contract terms applies *de pleno* to the insurance contracts.** This regime is now the subject of the Decree law 446/85 of 25 October 1985, amended by Decree law 220/95 of 31 August 1995 and Decree law 249/99 of 07 July 1999, which transposed the Directive 93/13/CEE of 05 April 1993. However, according to the Portuguese law, this regime is not only applicable to B2C contracts but also to B2B contracts. Besides the Portuguese law identifies two different sets of black and grey unfair clauses, one for B2B contracts and another one to B2C contracts; however the black and grey lists for B2B are also applicable to B2C contracts. The law identifies 11 black clauses and 9 grey clauses in B2B contracts and 8 black clauses and 14 grey clauses in B2C contracts. This regime applies also to individual contracts and there are special duties of information on the use, the nature and the meaning of any general contract terms. The consequence of the use of unfair contract terms is the "nullity" of the clauses; in principle the individual contracts remain in force, with the applicable supplemental norms ruling the affected parts, with recourse, if necessary to the rules of integration of the contracts; however the afore mentioned contracts may be declared null and void when, notwithstanding the use of the elements referred before, there is insurmountable indeterminateness with regard to essential aspects or an imbalance in the duties to perform which represents a serious affront to

	good faith.
Romania	The unfair contract terms in regulated by the Law no. 193/2000 *on unfair terms in contracts concluded between professionals and consumers* According the law, the insurers are considered professionals. The following provisions of a contract are considered unfair: - providing insurer right to unilaterally modify the terms of the contract, without a valid reason which has to be specified in the contract. - to oblige the consumer to submit to contractual terms which had no real opportunity to get acquainted prior of signing of the contract; - require the consumer to fulfill their contractual obligations, even when the insurer has not fulfilled on its own; - to give the right to the insurer to automatically extend a contract for a specified period by tacit agreement of the consumer if the limit during which he could express option was insufficient; - to give the right to the insurer to alter unilaterally without the consent of the consumer, the terms of the characteristics of products and services to be supplied or the delivery of a product or a service execution time; - to give the right to the insurer to unilaterally declare the conformity of the products and services provided by contractual provisions; - to provide to the insurer the exclusive right to interpret contractual clauses; - to restrict or cancel the consumer's right to claim compensation in cases in which the insurer does not fulfill its contractual obligations; - to require the consumer to pay a disproportionately high sum in case of default attributable to it compared to the damages suffered by the insurer; - to restrict or terminate the consumer's right to cancel or terminate the contract in the following cases: a) the insurer unilaterally changed the terms b) the insurer has not fulfilled its contractual obligations; c) the insurer imposed to the consumer by contract clauses relating to the payment of a fixed sum in case of unilateral termination; - exclude or limit the insurer liability for injury or death of a consumer, as a result of an act or omission on the use of professional products and services; - exclude the consumer's right to take legal action or exercise other legal remedy, asking him at the same time resolving disputes especially through arbitration; - allow unjustified the insurer to impose restrictions in administrating evidence by the consumer or to solicit the consumer to submit evidence that by law is subject to other parts of the contract obligation; - to entitle the insurer to transfer contractual obligations to third parties - agent, trustee, etc.. - without the consumer's consent if the transfer serves to reduce the guarantees or other liability to the consumer; - prohibit the consumer to offset a debt that he has on the insurer with a debt that the insurer has on him; - provide that the product price is determined at the time of delivery or allowed the seller of goods or service providers the right to increase prices without in both cases, to give the consumer the right to cancel the

	contract if the final price is too high in relation to the price agreed when the contract was concluded. - enables insurers to obtain money from the consumer, in case of failure or completion of the contract by the latter, without providing compensation in the amount equivalent to the existence of the consumer and, if a breach of contract by the professional; - entitle the insurer to unilaterally terminate the contract without providing the same right and the consumer; - give the insurer the right to terminate the contract for an indeterminate duration without reasonable notice, except for some reason.
Slovakia	§ 53 of CC Contract must not contain provisions that cause considerable imbalance between the rights and obligations of the parties to the detriment of the consumer. A long list of clauses which are presumed to be unfair is presented. § 53a of CC If the court determined some contractual conditions in the contract made in multiple cases and it is usual that consumer doesn´t affect the content of the contract in the significant way or in the general business condition to be invalid due to the unacceptability of such condition or did not award performance to the provider due to such conditions, provider shell refrain from using them or any condition with the same meaning in the contract with all consumer. Act on Consumer Protection on Distance Delivery of Financial Services § 8 Contract on distance shall not contain provisions by which consumer is in advance giving up any rights and provisions that proving fulfilment of all duties of provider or part of this duties resulting from this act lean on consumer.
Spain	*Art. 82 Royal Legislative Decree 1/2007, General Act to protect consumers* **Definition of Unfair clauses**: Unfair clause are all those stipulations not individually negotiated and not expressly admitted, that contrary to the requirement of good faith cause, to the detriment of the consumer, a significant imbalance in the rights and obligations of the parties arising from the contract. An exhaustive list of clauses which are presumed to be unfair is presented.

	(LCS) Insurance Contract Act establishes that general terms of the insurance contract can't be "harmful" for the insured. (Art. 3) *Harmful clauses* are another term used within the Insurance Contract Act, which refers to unfair clauses. Unfair clauses as well as Harmful clauses are considered to be null, while the remaining part of the contract shall be deemed valid. The failure of the insurer of the mandatory rules of the Insurance Contract Law (among which is the article 3) where such conduct has a repetitive character is considered a serious offense. (*Art. 40.4 h) Insurance Supervision Act)*
Sweden	The Swedish system can be described as a 'two-track' system. 1. ***The Swedish Contract Act (1915:218), Article 36***, is a general clause empowering Courts to adjust or set aside unfair contract terms. The Act applies to insurance contracts. Concrete disputes between two parties – e.g. an insurance company and a policyholder – whether a policy condition is unfair or not is normally decided by the ordinary courts (or an arbitral tribunal). The assessments made by the courts are always based on the specific circumstances in the individual case. 2. **The Act (1994:512) on Contract Terms in Consumer Relations, Article 3,** is a general clause, which regulates the possibility to prohibit business enterprises to forthwith use unfair contract terms. The Act applies solely between business enterprises and consumers. The Act does not directly govern contracts between individual parties but rather sets the legal frame for business enterprises' market conduct. ***The Market Court*** is empowered to prohibit use of unfair contracts. 3. The Act also forms a basis for ***the Swedish Consumer Agency* 's** (Sw.: Konsumentverket) supervisory role.
United Kingdom	The Unfair Contract Terms Act 1977 does not apply to insurance contracts. However consumer insurance is subject to the Unfair Terms in Consumer Contracts Regulations 1999 ("Regulations") . There is some case law on the application of the Regulations but many disputes are dealt with by the Financial Ombudsman Service. FOS decisions are not reported, but some of its decisions are published by it on an anonymised basis in Ombudsman News as illustrations of how FOS it decisions. Relevant case law and FOS decisions are referred to below where applicable. **B2C** The Regulations implement the Unfair Contract Terms Directive

	(93/13/EC): The Regulations apply in relation to unfair terms in contracts concluded between a seller or a supplier and a consumer. Section 5: A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. A term shall always be regarded as not having been individually negotiated where it has been drafted in advance. The onus of proving that a term is individually negotiated is on the drafter. *Pearl Assurance Plc v Kavanagh* [2001] C.L.Y. 3832 A motor policy sought to impose an absolute obligation on the insured to repay sums required by the Road Traffic Act 1988 to be paid to third party victims for liability incurred by an unauthorised driver of the insured's vehicle, where there was no liability under the policy itself. The statutory requirements provide that the insured must indemnify the insurer only where the insured had caused or permitted the use of the vehicle. It was held that the clause had to be construed contra preferentum, but if that was wrong, the clause was unfair as there was an attempt to remove statutory protection without the term being individually negotiated or being brought to the insured's attention. An indicative list of unfair terms is presented in Schedule II: Terms which have the object or effect of: "(a) excluding or limiting the legal liability of a seller or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that seller or supplier; (b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him; (c) making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realisation depends on his own will alone; (d) permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract. The Financial Ombudsman Service has held that it is unfair to provide for a pro rata premium refund if the insurer cancels a policy but to not

	refund any of the premium if a customer cancels four or more months after the start of a policy. Where a policy was cancelled after five months by the customer, the insurance company was required to make a pro rata refund after deducting a reasonable administration fee (Issue 54 Ombudsman News); (e) requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation; (f) authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract; (g) enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so; (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express his desire not to extend the contract is unreasonably early; (i) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract; (j) enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract. The Financial Ombudsman Service has held that it is unfair for a travel insurer to exclude cover for illnesses not known about at the start of a policy but that the insured becomes aware of before a trip. Such a term allows the insurer to change its mind about the cover it will offer and seeks to remove the element of risk (Issue 36 Ombudsman News); (k) enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided; (l) providing for the price of goods to be determined at the time of delivery or allowing a seller of goods or supplier of services to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded; (m) giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract; (n) limiting the seller's or supplier's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality;

	(o) obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his; (p) giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement; (q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract. 2. Scope of paragraphs 1(g), (j) and (l) (a) Paragraph 1(g) is without hindrance to terms by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof immediately. (b) Paragraph 1(j) is without hindrance to terms under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately. Paragraph 1(j) is also without hindrance to terms under which a seller or supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract. (c) Paragraphs 1(g), (j) and (l) do not apply to: - transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the seller or supplier does not control; - contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency; (d) Paragraph 1(l) is without hindrance to price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described." Other terms which clearly are contrary to the Regulations are unreasonable deadlines on the insured, for example in giving notice of a

	loss and clauses which give the insurer complete control over the actions of an insured following an insured loss (e.g. standard terms in liability policies)(Birds, p. 107) <u>Regulation 6(2)</u> Regulation 6(2) imposes a fundamental restriction on the operation of the Regulations. It excludes "core provisions" from scrutiny under the Regulations if they are expressed in plain, intelligible language. The premium, the insuring clause and the exceptions will fall into this category. Therefore, if the premium, insuring clause and exceptions are expressed plainly and clearly they will not be considered for fairness. However if they are not expressed in plain, intelligible language, they will be construed against insurers and their fairness will be considered. (Colinvaux's Law of Insurance, 9th Edition, p.132) *Bankers Insurance Co v South* [2004] Lloyd's Rep. I.R. 1 The Regulations prevent automatic reliance on claims conditions by insurers where the insured is a consumer. Also held that an exclusion was a core provision so that it was not subject to the fairness test if it was expressed in plain, intelligible language.

Rechtsvergleichung

Waiting period

Waiting period[1]

Austria	Not foreseen in the VersVG § 178d VersVG (Health Insurance) limits waiting periods agreed upon in the contract to a maximum of 3, 8, 9 months or 3 years, depending on the kind of medical treatment (note: 9 months is for pregnancy). There will be cover for illness occurring within the waiting period if he policyholder proves that the illness became apparent to him/her only after the conclusion of the contract or that pregnancy began only after the conclusion of the contract.
Bulgaria	Art.187 Code for the Insurance: An insurance contract shall enter into force upon payment of the whole premium due, or of its first instalment. No waiting period is envisaged in the law, however parties are free to agree on such a period as art.187 is a default rule.
Croatia	Pursuant to Article 8, paragraph 6 of the Compulsory **Traffic Insurance Act (Official Gazette, NN151/205, NN76/2013)** with insurance contracts concluded for one or more years, the rights and obligations ensuing from the insurance contract shall be extended after the expiry of the insurance contract for a maximum of 30 days (grace period) unless the insurance undertaking has not received, at least three days before the expiry date of coverage, a registered letter from the policyholder stating that he does not approve of the extension of the insurance contract.
Estonia	Only provisions regarding health insurance - § 558 (1) (2) LOA. The waiting period shall not exceed: 5 months in the case of medical expenses insurance, hospital insurance and insurance against incapacity for work 9 months in the case of childbirth and health services related thereto 3 years in the case of long-term care insurance If the insured event occurs before the end of the waiting period, the insurer shall be required to perform only if the policyholder proves that the illness occurred or that the child was conceived only after entry into the contract.
Finland	Section 11(3) of the Insurance Contract Act: "If justified by the nature of insurance or another particular reason, the terms and conditions of an insurance policy may include a provision to the effect that cover commences only after the insurance premium has been paid. In order to be able to invoke such provision in the terms and conditions of the insurance, the insurer shall

[1] The information in this table is provided by insurance experts or insurance organisations from respective country. It does not contain a thorough review of all Member States' insurance contract laws and does not reflect the official opinion of the Commission.

	indicate this prerequisite in its written invoice for the insurance premium." (14.5.2010/426) The insurer's liability commences, unless some other time is individually agreed with the policyholder, when the insurer or the policyholder gives or sends a reply to the other party to accept the offer. However, if the policyholder has submitted or sent the insurer the insurance application in writing, and it is apparent that the insurer would have approved the application, the insurer is liable for the possible occurrence of the insured event, even if it occurs after the application is submitted. The insurer may not reject an application for personal insurance on the basis that the insured event has occurred or the state of the health of the insured has deteriorated after the dossier is submitted or sent to the insurer.
France	missing
Germany	§ 197 VVG: Waiting periods play a role with health insurances and related insurances and may not exceed three months in respect of cost of illness, daily hospital allowance insurance and daily sickness allowance insurance and eight months in respect of childbirth, psychotherapy, dental treatment, dental prostheses and orthodontics. In the case of long-term nursing care insurance, the qualifying period may not exceed three years. § 197 VVG is semi-mandatory, § 208 VVG.
Greece	<u>Art.6 of law 2496/97 in regard to insurance contract:</u> The cover begins upon the payment of the single premium or of its first instalment. (except as otherwise agreed or if the circumstances of the conclusion of the contract indicate otherwise). <u>Art.19 of law 2496/97 in regard to insurance contract:</u> In regard to property insurance, it is provided that the cover takes effect from noon time of the day following the day of the issue of the policy (unless otherwise agreed). <u>Art. 30 of law 2496/97</u>: In case of suicide of the insured before the expiry of two years from the date of the conclusion of the contract, the insurer is not obliged to pay the agreed sum. No other waiting period is explicitly envisaged in the existing legal framework. However parties are free to agree on such a period, while in health insurance waiting period tends to play a significant role in the relevant contractual terms.
Hungary	**(Ptk. 6:480 for life assurance)**[2]

[2] ▪ **Bit.** – *Act on Insurance Institutions and Insurance Business; Act of LX of 2003*.

	In case of life insurance contracts waiting period may be agreed, but it cannot exceed 6 months. **(Ptk. 6:489 for health insurance contracts)** In case of longterm care insurances and health insurance where any lasting disease of the insured person is known by both contracting parties, waiting period can be agreed, but it cannot exceed 3 years.
Italy	NON LIFE, art. 1899 Civil Code: The insurance coverage is effective from midnight of the day of the conclusion of the relevant contract. LIFE, art. 1927 Civil Code: In case of suicide of the insured, waiting period of two years. (this rule can be derogated)
Portugal	**Articles 22/2 and 216/2** of the Legal Regime state: **Article 22** *Specific duty to provide clarification* ***…….*** 2. In fulfilling the duty referred to in the preceding paragraph, the insurer shall be responsible not only for responding to all requests for clarification made by the policyholder but shall also draw the attention of the policyholder to the scope of the cover proposed, namely any exclusions; **grace periods** and the terms and conditions for terminating the contract at the discretion of the insurer and also, in cases of succession or modification of contracts, the risks of discontinuance of cover. **Article 216** *Pre-existing illnesses* 1. Any pre-existing illnesses of which the insured person is aware on the date on which the contract is concluded shall be deemed to be covered by the cover agreed by the insurer and may be excluded where otherwise generally or specifically agreed. **2. The contract may also provide for a period of grace not exceeding one year for cover of pre-existing illnesses.**
Romania	Article 4 letter r) of Order no. 1/2007 *approving the Methodological Norms on voluntary health insurance*, issued by the Ministry of Public Health and the Insurance Supervisory Commission states that in health insurance the waiting period is the period between the date of the insurance contract and the date on which the insurer's liability for certain medical services specified in the contract.

Slovakia	No waiting period is governed in the law, provisions on waiting period are contained in general insurance terms (health insurances and related insurances (for e. cost of illness, daily hospital allowance insurance)). § 795 of CC The obligation of the insurer to pay claims and its right to the insurance premium shall come into existence on the first day after the conclusion of the insurance contract, unless agreed otherwise.
Sweden	***Chapter 3 article 2(1), the Insurance Contract Act (2005:104)*** stipulates regarding consumer insurance: that the ***policy term*** shall not exceed ***one year***, unless there are specific reasons for a longer policy term. According to ***Chapter 3, article 2(2), the Insurance Contract Act (2005:104)*** the following applies: Unless otherwise agreed or follows from the circumstances, the insurance company's liability pursuant to the insurance contract commences the day after the day when the policyholder applied for the insurance or accepted an offer from the company. ***Chapter 3, article 2(3), the Insurance Contract Act (2005:104)*** applies where acquisition of the insurance policy is contingent upon the policyholder's payment of the premium. The insurance company's obligations commence the day after the day when the premium was paid. The same applies where the insurance policy otherwise is valid only when the premium is paid prior to the commencement of the policy term.
United Kingdom	Save for the cooling off (withdrawal) period, English law does not have waiting periods by operation of law.

Rechtsvergleichung

Withdrawal

Withdrawal[1]

Austria	§ 5b para. 2 VersVG Right of withdrawal, if policy holder has not received: — copy of application — general contract conditions and provisions on fixing the premium — notifications under §§ 9a and 18b VAG — Right of withdrawal must be exercised within 2 weeks (but ends in any event 1 month after receipt of policy + information on right to withdraw — no right of withdrawal for short term contracts (less than 6 months). § 5c VersVG Consumers may withdraw within 14 days upon receipt of policy, conditions including provisions on fixing the premium, information listed in VAG 33 9a und 18b VAG; 137f para. 7, 8 and 137g in connection with § 137h Gewerbeordnung 1994; information on the right to withdraw. No withdrawal right for contracts of less than 6 months duration. § 165a VersVG - 30 days withdrawal period in life insurance - Not for contracts for less than 6 months duration as well as group insurance
Bulgaria	The right to withdrawal within 30 days is only mentioned in art.237 Code for the Insurance with regard to life insurance. According to Art. 12 of Distance Delivery of Financial Services Act: Withdrawal within 14 days, or within 30 days when it comes to life insurance contract. NOTE: this right to withdrawal is only available in cases of distance contracts for financial services.
Croatia	Pursuant to Article 63 of the Consumer Protection Act, paragraph 1, the consumer shall have a period of 14 days to rescind any distance consumer contract concerning financial services without giving any reason, or 30 days in distance contracts relating to life insurance. The consumer has no right to unilateral rescission under paragraph 1 of this Article if: - the contract has been concluded for financial services which price depends on fluctuations in the financial market outside the supplier's control, such as services related to foreign exchange transactions, money market instruments, transferable securities, units in collective investment undertakings, financial-futures contracts, including equivalent cash-settled instruments, forward interest-rate agreements, interest-rate, currency and equity swaps; - the contract has been concluded for travel and baggage insurance or any similar short-term insurance policies valid for a period shorter than one month; - the performance of the contract has been completely fulfilled by both parties at the consumer's express request before the consumer exercises his or her right of rescission

[1]The information in this table is provided by insurance experts or insurance organisations from respective country. It does not contain a thorough review of all Member States' insurance contract laws and does not reflect the official opinion of the Commission.

	under this Article.
Estonia	Policyholder's right to withdraw from a contract (§ 433) *§ 433 is not of great practical value since most of the contracts are entered into for shorter term than a year.* Insurance (including life insurance) contract entered into for a term of more than 1 year – right to withdraw from the contract within 14 days after entry into the contract. Sending the application for withdrawal within the term shall suffice to make it timely. The 14-day term shall not commence until the insurer has informed the policyholder of the right to withdraw and the policyholder has confirmed this by a signature. If the policyholder is not informed of the right to withdraw, the right to withdraw shall expire one month after payment of the first insurance premium. In case of distance contracts for life insurance or pension insurance the withdrawal term is 30 days (§ 56 LOA). Other than life insurance contracts - the policyholder shall not have the right to withdraw if: - the insurer provides the policyholder with immediate insurance cover or - the insurance contract is a B2B contract.
Finland	**Section 13a (30/2005)** *Policyholder's entitlement to terminate pension insurance contract or endowment contract* The policyholder is entitled to terminate a pension insurance contract or an endowment contract by giving notice thereof in writing to the insurer within 30 days of the date at which the policyholder became aware of the acceptance of an application for insurance or of an offer. This cooling-off period does not, however, start to run until the policyholder has received either the documentation referred to in Section 6 or, in the case of distance marketing of insurance policies, the prior information referred to in Part 6a of the Consumer Protection Act and the terms and conditions governing the insurance on a durable medium. In addition, in distance selling the rule is shortened to 14 days according to the Consumer Protection Act.
France	(LIFE) Article L132-5-1 Insurance Code: Modifié par Loi n°2005-1564 du 15 décembre 2005 - art. 4 JORF 16 décembre 2005 General right of withdrawal by registered mail and by the 12 p.m. of the 30th day after the conclusion of the contract. It doesn't matter if the 30th day is a Saturday, a Sunday or a holiday. Si l'assureur n'a pas remis les documents d'information exigés par la loi, le délai de renonciation est prolongé jusqu'à la remise effective de ces documents. La prolongation est limitée à huit années. The withdrawal implies the duty for the insurer to give back all the sums paid by the insured by 30 days from the knowledge of the insured withdrawal. After 30 days the insurer has to pay also interests on the due capital.

	This article does not apply to contracts lasting less than 2 months. CONTRACTS OFFERED BY DISTANCE SELLING: right of withdrawal for all contracts (life and non-life)
Germany	The right to withdraw is not limited to consumers but applies to all policy holders. § 8 VVG Right to withdraw within 14 days to be submitted in writing, but no need for any reason; timely dispatch sufficient for compliance with the time limit. In case of life insurance the right to withdraw is 30 days, § 152 VVG. The right to withdraw is excluded in case of - Short term insurance con-tracts of less than one month, - insurance con-tracts for provisional cover, unless they are distance contracts, - certain insurance con-tracts with pension funds based on the provisions, - large risks No right to withdraw if the contract has been wholly fulfilled by both sides at the explicit request of the policyholder before the exercise of the right to withdraw. It concerns all branches of insurance contracts and all modes of conclusion. According to § 9 VVG the insurer has only to repay that share of the premiums paid for the period after receipt of the notice of withdrawal if the policyholder has been informed in accordance with § 8 (2), 1, no. 2 about his right of withdrawal, the legal consequences of withdrawal and the contribution to be paid, and he has agreed that the insurance cover starts before the end of the withdrawal period; the duty to reimburse shall be fulfilled without undue delay, at the latest 30 days after receipt of the withdrawal. If no note was provided as required under the first sentence, the insurer has to reimburse the insurance premiums paid for the first year of insurance cover; this does not apply if the policyholder has claimed benefits on the basis of the insurance policy. §§ 8, 152(1) VVG are semi-mandatory, §§ 18, 171 VVG
Greece	The regime of withdrawal is addressed in several legislative instruments, leading to duplications or inconsistencies. in specific legal issues. Art.8 of law 2496/97 in regard to insurance contract: In non life insurances with a duration exceeding one year and in life insurances, the policyholder has the right to withdraw from the contract within 14 days from the date when the policy has been handed over to the policyholder. Specifically, in non-group life insurances, the right to withdraw may be exercised within 30 days from the moment he was informed of its conclusion. The cooling period doses not start if the policyholder has not been informed of such a right in writing. In this event, the right to withdraw lapses two months after the payment of the

	fist premium. Art. 4 of law decree 400/70 in regard to private insurance undertaking: The aforementioned provisions implement the respective rules of EU Directive 2002/83/EC, reiterating that in case of non- group life insurances the right is exercised within 30 days from the moment the policyholder was informed of its conclusion. Additionally, it predicts that in such event the insurer is entitled to retain a monthly premium for main insurance and 1/12 of the annual premium for supplementary coverages. This legal possibility does not apply in case of policies with duration equal to or shorter than 6 months. Art. 13c of law decree 400/70 in regard to private insurance undertaking: It sets specific rules regulating the obligations of the insurer that concern issues of reimbursement of premium in case of withdrawal from a unit-linked product. Art.4a of law 2251/94 in regard to consumers protection: The article 4a of law 2251/94 transfers the exact wording of the respective rules of articles 6 and 7 of the EU Directive 2002/65/EC. Comments: According to the above provisions, the right to withdraw can not be exercised in case of insurance policies (without making explicitly clear whether it concerns both life and non life insurances) with duration of less than one month. Nevertheless, law 2496/97 is stricter for the consumer in this respect as the right is excluded in non life insurance policies with duration of less than one year.
Hungary	**(Bit. 96.)**[2] In case of life insurance contract the consumer has the right of withdrawal within 30 days. This period shall be calculated from the receipt of the insurance policy (or the certificate of the coverage).
Italy	Implementation of the Life Assurance Consolidation Directive (2002/83/EC) LIFE, art. 117; 176 d.lgs. 209 7/9/2005: By the 30th day after the insured is informed of the conclusion of the contract. No right of withdrawal for short term contracts (less than 6 months) CONTRACTS OFFERED BY DISTANCE SELLING: right of withdrawal for all contracts (life and non-life)
Portugal	**Article 194** of the Legal Regime states: **Article 194** *Reduction and surrender*

[2] ▪ **Bit.** – *Act on Insurance Institutions and Insurance Business; Act of LX of 2003*.

	1. The contract must regulate any rights of reduction and surrender so that the respective holder is in a position, at any time, to ascertain the respective value. 2. In contributory group insurance, the contract must also regulate the party who is entitled to the surrender, taking into account the contribution of the insured. 3. Whenever there is a guaranteed minimum sum, the insurer must attach to the policy a table of surrender and reduction values calculated with reference to the renewal dates of the contract. 4. If there is a table attached to the policy, the insurer must refer to it specifically in the contract clauses. 5. In the event of irrevocable designation of the beneficiary, the contract shall lay down the conditions for exercising the light of surrender.
Romania	Article 2229 of Civil Code the insured that concluded an individual life insurance contract may waive the contract without notice no later than 20 days from the date of signature of the contract by the insurer. Renunciation takes effect retroactively. This regulations do not apply to life insurance contracts which have a duration of six months or less.
Slovakia	§ 802 of CC In case of personal insurance, except of accident insurance, the person that concluded contract with insurer may withdraw from this contract at the latest within 30 days from insurance contract conclusion. Act on Consumer Protection on Distance Delivery of Financial Services § 5 Right to withdrawal within 14 days to be submitted in writing, but no need for any reason. In case of life insurance the right to withdraw is 30 days.
Spain	<u>Individual life insurance with a duration over six months</u> (Art. 83.a) The policyholder may cancel the contract within 30 days with effect from the date on which the insurer gave him the policy or a provisional cover document (this is however more an option than a cause for cancellation of the contract). In this case, the insurer no longer covers the risk and the policyholder is entitled to reimbursement of the premium for the period during which the contract was in force. This option do not applies for Unit Linked. It is necessary that the policyholder exercises the right of termination as provided in the contract and that he submits on paper or on another durable medium the communication to the insurer. <u>Distance Contracts (Life and Non Life)</u> Policyholders are entitled to withdraw the contract without giving any reason and without penalty provided that: • The desire to withdraw the insurance contract is sent to the insurer, on paper or another durable medium, within 14 days (non-life) or 30 days (life), counting since the policyholder is notified that the contract has been concluded or since the reception of

	the contractual information if it happens to be later • It is not a unit linked • It is not travel or baggage insurance of a duration of less than one month. • The duration of the contract is not shorter than the term for withdrawing • It is not a compulsory insurance for the policyholder. • It is not an "Insured Pension plan" (life insurance contracts with identical function and purpose as pension plans). When exercising the right of withdrawal the policyholder must pay the premium for the period during which the insurance contract has been in force (from the perfection of the contract until the date on which the withdrawal is notified). The deadline to settle this amount is of a maximum of thirty days since the withdrawal is notified. If the insurer failed to inform the policyholder about his right of withdrawal, or if he began to perform the contract without the confirmation of the policyholder, them he will not be required to pay the amount above mentioned. <u>Transfer of the insured object</u> (Art. 35) The insurer may cancel the contract providing that he notifies the purchaser within fifteen days with effect from his knowledge of the said transfer. The insurer must cover the risk insured for the month following the date of notification and must repay that part of the premium corresponding to periods of insurance during which he did not insure the risk, following cancellation. <u>Decrease in the risk (Art. 13 LCS)</u> The policyholder or the insurer may in the course of the contract inform the insurer of any circumstance reducing the risk meaning that if the insurer had known of it when the contract was concluded under he would have concluded under more favorable conditions. Where appropriate, at the end of the insurance period covered by the premium, the next premium amount is reduced appropriately. Failing this, the policyholder may cancel the contract and obtain reimbursement for the difference between the premium paid and the premium which should have been applied with effect from notification of the decrease in the risk (Art. 13).
Sweden	***Chapter 3, article 6(1), the Insurance Contract Act (2005:104)*** stipulates that the policyholder may terminate the insurance policy prior to the expiry of the insurance term, where: 1. the insurance company commits a material breach of its obligations pursuant to the Insurance Contract Act; 2. the insurance policy is no longer needed or some similar situation occurs; 3. the insurance company has amended/otherwise changed the terms and conditions of the policy; 4. the insurance policy has been renewed and the policyholder has not yet paid the premium for the new premium term, or 5. where there otherwise exists a new circumstance which is significant to the insurance relations.

United Kingdom	Common law does not provide any right for the insured to withdraw from (cancel) a contract of insurance beyond the general rules concerning termination (e.g. for misrepresentation). However, in practice insurers may voluntarily provide a right of cancellation within a specified period. Moreover, the Insurance Conduct of Business Sourcebook of the Financial Conduct Authority (ICOBS 7) confers such a right in relation to consumer contracts, based on the Distance Marketing of Financial Services Directive and the Consolidated Life Directive. The right of cancellation is extended to apply not only to distance contracts and life insurance contracts, but to all consumer contracts for general insurance. Consumers have 14 days from the date of conclusion or renewal of a policy to cancel it, without giving a reason, and 30 days for pure protection or payment protection policies. The firm must inform the consumer about the right to cancel as part of the pre-contractual information requirements (ICOBS 6.2.5). If a consumer is not informed of this right, time runs from the date on which he is so informed. <u>ICOBS 7.1.3 enumerates the exceptions:</u> The right of cancellation does not apply in a number of cases such as baggage and short term travel insurance where the period of cover is less than one month.

Rechtsvergleichung

Renewal

Renewal[1]

Austria	Possible as co-insurance (several contractually linked insurers) and additional insurance (several insurers, not linked) Multiple insurance (§ 59) and Double insurance (§ 60,) – duty to notify, limits of indemnification; void contracts in case of fraud on side of the policyholder
Bulgaria	No general rules on the renewal of insurance contracts. The period of validity of contracts is freely negotiated with exception of some specific cases like motor liability insurance. The renewal is also a matter of negotiations. Only with regard to mandatory insurances art. 251, (2) creates the obligation for the customer to renew the contract before expiry of its term except in cases where the insured interest has ceased to exist.
Croatia	Pursuant to Article 8 of the Compulsory **Traffic Insurance Act** with insurance contracts concluded for one or more years, the rights and obligations ensuing from the insurance contract shall be extended after the expiry of the insurance contract for a maximum of 30 days (grace period) unless the insurance undertaking has not received, at least three days before the expiry date of coverage, a registered letter from the policyholder stating that he does not approve of the extension of the insurance contract.
Estonia	**§ 467 LOA**: Any agreement under which an insurance contract which is not cancelled prior to expiry thereof is deemed to be extended for longer than one year is void.
Finland	Most non-life insurances are continuous unless explicitly terminated. There is a definition of continuous insurance in the Insurance Contract Act. One year-contract, however, is most common. The parties may always agree otherwise.
France	Article L 113-14 Insurance Code: Modifié par Loi n°81-5 du 7 janvier 1981 - art. 28 JORF 8 janvier 1981 rectificatif JORF 8 février 1981 Whenever the insured is entitled to request termination, he may do so, at his discretion, either by declaration made against receipt at the registered office or to the insurer's representative in the area, or by extra judicial instrument or by registered letter, or by any other means stated in the policy. Article L 113-15 Insurance Code:

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	Modifié par Loi n°81-5 du 7 janvier 1981 - art. 28 JORF 8 janvier 1981 rectificatif JORF 8 février 1981 The duration of the contract must be stated in very clear fonts in the policy. The policy must also state that the term of the automatic renewal may not under any circumstances exceed one year. <u>(NON LIFE) Article L 113-15-1 Insurance Code:</u> Créé par Loi n°2005-67 du 28 janvier 2005 - art. 2 JORF 1er février 2005 en vigueur le 28 juillet 2005 In the case of tacitly renewable contracts covering natural persons outside their professional capacity, the deadline for the exercise by the policyholder of his right to terminate the contract must be recalled with every premium or contribution advice note (sent to him). When this advice note is sent to him less than fifteen days prior to the deadline date, or when it is sent to him after this date, the policyholder must be informed by this advice note that he has a twenty days-time-limit following the dispatch date of the said advice note to stop the renewal of the contract. In this case, the time-limit for the termination of the contract shall run starting from the date indicated on the postmark. When this information was not sent to him in accordance with the provisions of the first paragraph, the policyholder can put an end to the contract, without any penalty, at any time as from the date of renewal by sending a registered letter to the insurer. The termination shall take effect on the day after the one indicated on the postmark. The policyholder must pay part of the premium or contribution corresponding to the period during which the risk occurred. This period is calculated until the date on which the termination takes effect. The insurer must refund to the policyholder, within thirty days as from the date on which the termination takes effect, the part of the premium or contribution corresponding to the period during which the risk has not occurred. This period shall be calculated as from the aforementioned date on which the termination takes effect. In the absence of refunding under these conditions, the sums due shall produce interest at the legal rate. The provisions of this article shall apply neither to life insurances nor to group contracts and other collective operations
Germany	§ 11 VVG: (1) The parties cannot agree in advance on the extension of the insurance contract for more than one year if the contract provides for a limited period. (2) Both parties may only terminate the insurance contract which is concluded for an unlimited period, to the end of the current period of insurance. They may agree to waive the right of termination for no more than two years.

	(3) The period of notice must be the same for both parties; it may not be less than one month and no more than three months. (4) A policyholder may terminate an insurance contract concluded for a period of more than three years to the end of the third or each successive year, subject to a notice period of three months. § 11 (2) to (4) VVG are semi-mandatory, § 18 VVG. Under § 12 VVG the period of insurance is one year unless the insurance premium is determined for shorter periods.
Greece	Art 8 § 1 and 2 of law 2496/1997 in regard to insurance contract: If the insurance contract provides for a limited duration (finite duration), it shall be terminated following the lapse of the period specified**, unless** it has been agreed that it can be prolonged. Such prolongation (renewal) may not be agreed for a period of more than one year. If the contract is of indefinite duration (unlimited duration), the contract shall be terminated by notice at the end of the insurance period. The time limit set for the exercise of the right of termination may be neither less than one month, nor more than three months. MTPL insurance: Art 11a § 4 of law 489/1976: The insurance contract is valid for the period stated in the policy and is renewed each time, de jure, for an equal period, unless one of the parties notifies the other, with registered mail or notice on receipt, of its objection within thirty (30) days before the expiry date of the insurance policy.
Hungary	No general rules on the renewal of the contract. Parties are free to decide on it. As a general rule contracts concluded for an open term will be renewed automatically unless it has been terminated by one of the contracting parties 30 days prior to the end of the insurance period (typically 1 year).
Italy	Art. 1899 Civil Code: it is possible to have a tacit renewal, but it is valid for maximum 2 years (NON-LIFE) The prolongation of the contract is considered as a renewal and not as a continuation of the original contract. Liability MOTOR-VEHICLE mandatory insurance, art. 170-bis d.lgs. 209 7/9/2005: The tacit renewal is forbidden and the maximum duration of the contract

	is one year. NON-LIFE, Art. 1899 Civil Code: For insurances contracts valid for more than 5 years it's possible to not renew the contract after the 5th year has passed. The letter of not renewal shall be effective 60 days after its reception by the insurer. NB: technically, the rule set by art.1899 refers to the will of the insured not to renew the contract.
Portugal	**Articles 39 to 42** of the Legal Regime state: **CHAPTER III** **PERIOD OF VALIDITY OF THE CONTRACT** **Article 39** *Production of effects* Without prejudice to the provisions of the following articles and save as otherwise agreed, the contract of insurance shall produce its effects as of zero hours on the day following the day on which it is concluded. **Article 40** *Duration* Where the parties are silent on the matter, the period of validity of a contract of insurance shall be one year. **Article 41** *Extension* 1. Unless otherwise agreed, a contract of insurance concluded for the initial period of one year may be extended subsequently, upon expiry of the stipulated term, for further periods of one year. 2. Save as otherwise agreed, a contract of insurance concluded for an initial period of less or more than one year shall not be extended upon expiry of the stipulated term. 3. Any contract that is the subject of extension shall be deemed to be the sole contract. **Article 42** *Risk cover* 1. The start date of insurance cover may be set by the parties in the contract, without prejudice to the provisions of art.59.

	2. The parties may agree that cover will cover risks pre-dating conclusion of the contract, without prejudice to the provisions of art.44. **Article 44** *Non-existence of the risk* 1. Save in those cases provided for by law, the contract of insurance shall be null and void if, at the time of its conclusion, the insurer, the policyholder or the insured is aware of the fact that the risk hasceased to exist. 2. The insurer shall not cover losses pre-dating conclusion of the contract when the policyholder or the insured is aware of them on that date. 3. The contract of insurance shall not produce its effects in relation to a future risk that fails to materialize. 4. In the cases provided for in the preceding paragraphs, the policyholder shall be entitled to return of the premium paid, less any expenses necessary for conclusion of the contract paid in good faith by the insurer. 5. In the event of bad faith on the part of the policyholder, the insurer, acting in good faith, shall be entitled to retain the premium paid. 6. Bad faith on the part of the policyholder will be assumed if the insured was aware, upon conclusion of the contract of insurance, that the loss had occurred.
Romania	There are no general rules on the renewal of insurance contracts.
Slovakia	There are no specific rules on the renewal of the insurance contracts. Duration of the contracts is upon the contractual parties and the renewal of the contract is a matter of negotiations.
Spain	<u>*Art. 22 LCS*</u> The duration of the contract must be determined in the policy and may not exceed ten years. In life insurance, this provision is only applied if it is compatible with the regulation of life insurance. Consequently, only temporary life insurance may be less than ten years. The parties have the option to envisage contractually one or more renewals of the contract, the duration of each renewal not exceeding one year (Art. 22) The parties may contest the conventional renewal of the contract in writing to the other party at least two months before the end of the current period.
Sweden	***Chapter 3, Article 4, the Insurance Contract Act (2005:104)*** Where no valid notification of termination has taken place, the insurance

	policy is renewed for the 'normal' policy term, which comes closest to the previously applicable policy term and other terms and conditions, unless the policyholder has acquired a corresponding insurance policy from another insurer. This applies only where the parties have not agreed otherwise. ***Chapter 3, Article 5, the Insurance Contract Act (2005:104)*** Where the Insurance Company wishes to effect a change in the insurance policy in connection with a renewal under Article 4, the Insurer must specify the change in writing no later than in connection with the claim for payment of premium. ***Information obligations*** in conjunction with a change in the insurance policy are regulated by ***Chapter 2, Article 6, the Insurance Contract Act (2005:104).*** Where the Insurance Company amends or otherwise changes the Insurance Policy pursuant to Chapter 3, the Company shall contemporaneously provide the policyholder with information which he/she may need.
United Kingdom	Most forms of insurance policy are generally for a fixed period and usually expire after one year ("but longer for certain commercial risks, e.g. construction...", Colinvaux & Merkin's Loose-leaf, page 10301). In contrast, a life policy is generally viewed as a continuing contract. The renewal of a non-life policy is seen as the making of a new contract (See *Stokell v Heywood* [1897] 1 CH 459, Principles of European Insurance Contract Law, p. 249, N3, Birds, p.103). Thus, for example the duty of disclosure arises again (Birds, p.101). **Agreement for renewal** There is no obligation for the insurer to renew a contract (Birds, p.103). There is also no right to renew an insurance contract in the absence of a term to that effect (*Kirby v Cosindit Spa* (1969), quoted in Birds, p.102). In the case that renewal has not been provided for, it can only take place through a new agreement between the parties (Colinvaux & Merkin's Loose-leaf, page 10301). "Where there is a provision for renewal it may, as is usual in life policies, give the assured an unconditional right to renew or, as is generally the case in connection with other policies, renewal may be conditional on the assent of both parties," (Colinvaux & Merkin's Loose-leaf, page 10301). **Period of grace** In practice insurers generally renew policies and allow some period of grace for the payment of the premium upon renewal. However, if the premium has not been paid, there will be doubt whether the insured could benefit from the protection under the policy if the loss occurs during the period of grace (Birds, p.103).

Life policies

A life policy may be:
"(a) an annual contract, which the assured has the right to renew, by payment of a further premium, or
(b) an entire contract for life, subject to forfeiture on the failure of the assured to pay any of the annual premiums," (Colinvaux & Merkin's Loose-leaf, page 10303).

The type of life policy will have a bearing in the case that death occurs during the period of grace. For category (a): "If the assured fails to renew, by the appointed day, ... his right to do so can only be revived by the assent of the insurers and, if they give this consent, subject to conditions a new contract will be formed thereby". For category (b), "...as where a debtor insures his life in favour of a creditor and covenants to pay the premiums, ...the assured has not only an option but a duty to renew" (Colinvaux & Merkin's Loose-leaf, page 10303).

"As a general rule, days of grace are allowed for payment of the renewal premium. The position in the event of the death of the life assured during the days of grace and before payment of the premium, must be ascertained from the policy and/or from the regulations of the life office. The life policy may expressly provide that cover continues during the days of grace even before payment of the premium, in which case the position is clear. Most policies…contain further provisions to define the position which arises if the renewal premium remains unpaid after the expiry of the days of grace," (Houseman's Law of Life Assurance, 14th edition, Chapter 1, Section 7D)".

Terms of Renewal

There is a presumption that a renewal is on the same terms as the earlier cover unless there is an express agreement to the contrary (Colinvaux & Merkin's Loose-leaf, page 10304, *Great North Eastern Railway Ltd v Avon Insurance Plc* [2001] EWCA Civ 780).

Notification

Under common law there was no obligation for the insurer to send a renewal notice, but this has changed under ICOBS.

ICOBS 6.1.5 requires that insurance providers take reasonable steps to ensure a customer is given appropriate information about a policy in good time and in a comprehensible form so that the customer can make an informed decision about the arrangements proposed. (This includes renewals (ICOBS 6.1.6).)

Remedies for non-performance[1]

Austria	§ 7 VersVG: Liability ends at noon of last day of contract period = termination of cover which depends on termination of insurance contract (see § 8 VersVG)
Bulgaria	As to obligation for notifying (Art.206 Code for the Insurance): The policyholder has to notify the insurer for the occurrence of the insured event within 7days. The insurer can refuse payment if that obligation is not fulfilled with the aim of hindering the insurer in establishing the circumstances of the event or where such non-fulfilment has made it impossible for the insurer to establish those circumstances. As to obligation to prevent and/or limit the damages (Art. 207): The policyholder is obliged to take measures for the protection of the insured property from damages, to follow the instructions of the insurer and the competent authorities for elimination of the sources of risk, and to allow the insurer to make inspections. Non fulfilment of that obligation gives the insurer the right to terminate the insurance contract if no insured event has occurred, or to reduce the insurance indemnity accordingly. In case the occurrence of the insured event ensues from non-fulfilment of that obligation the insurer may refuse payment, provided that this has been explicitly stipulated in the contract. Right to refuse payment of insurance indemnity (art. 211) -In case of deliberate causation of the insured event by the insured person or by a third benefiting party, or -Upon non-fulfilment of a contractual obligation, which is substantial with regard to the insurer's interest and has been provided for in the law or in the contract; Regressive claim of the insurer (Art. 227): The insurer has the right to file a regressive claim for payment of interest for the period of default of the policyholder to notify certain circumstances. In contracts for life insurance and accident insurance on a third party (Art.233): The insurer shall not pay any insurance amounts if the policyholder deliberately causes the insurable event. In cases of third party motor insurance (Art.271): The insurer is obliged to decide on the claim within three months from the date on which the claim is filed. The damaged party is entitled to the interest over the amount of compensation, starting from the date of expiry of that deadline.

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	General rules on the Law on Obligations and Contracts are also applicable: In cases of non-performance the creditor can ask for performance and compensation for the delay, or to claim damages. In cases of non-performance of monetary obligations the creditor is entitled to interest. The creditor can terminate the contract because of non-performance.
Croatia	*Intentional Misrepresentation or Concealment* Pursuant to Article 931 of the Civil Obligations Act on the conclusion of the contract, the policyholder shall report to the insurer all the circumstances that are material for assessing the risk, of which he is aware or of which he should have been aware. In the case a policyholder has intentionally misrepresented or has intentionally concealed a circumstance the nature of which is such that the insurer would not have entered into the contract had he been aware of the true state of affairs, the insurer may, pursuant to Article 932 of the Civil Obligations Act ask for a cancellation of the contract. In the case of contract cancellation, as quoted above, the insurer shall have a right to retain and collect the premiums until the date when the application for the contract cancellation is submitted. However, the insurer shall be liable to pay the indemnity if the insured event has occurred prior to that date. The insurer's right to demand the insurance contract cancellation shall expire, if he has failed to communicate to the policyholder, within three months following the day he has become aware of misrepresentation or concealment that he intends to exercise this right. *Consequences of Failure to Pay the Premium* Pursuant Article 937 of the Civil Obligations Act if a policyholder, or any other interested party, fails to pay the premium due after the conclusion of the contract on the due date, the insurance contract shall terminate, by operation of law, upon the lapse of thirty days following a delivery of the registered letter to the policyholder informing him of the premium due date. However, this time limit cannot lapse before the expiry of thirty days from the premium due date. In any case, the insurance contract shall terminate by operation of law, if the premium is not paid within one year following its due date. The provisions of this Article shall not apply to life insurance and accident insurance. *Obligation to Report on the Occurrence of the Insured Event* Pursuant to Article 941 of the Civil Obligations Act the insured person shall, except in the case of life insurance, report to the insurer on the occurrence of the insured event within three days from the date he has become aware of that fact. If the insured person fails to meet his obligation within the prescribed time limit, he shall compensate the insurer for the damage that the latter might have as a result of that. *Payment of Indemnity* Pursuant to Article 943 of the Civil Obligations Act in the case the insured event has occurred, the insurer shall pay the indemnity stipulated in the contract within the agreed time limit, which may not be longer than fourteen days, counting from the date when the

	insurer has received a notice of the occurrence of the insured event. If the insurer fails to settle his liability within the time limits prescribed in this Article, he shall pay default interest to the insured person, starting from the date of receipt of the notice of the insured event, as well as a compensation for an injury the latter sustains therefrom. *Exclusion of Insurer's Liability for Damage Caused Intentionally or Deceitfully* Pursuant to Article 944 of the Civil Obligations Act if a policyholder, insured person or beneficiary has caused the occurrence of the insured event intentionally or deceitfully, the insurer shall be released from any performance obligations. Any provision which derogates there from shall have no legal effect. *Insured Event Prevention and Salvage* Pursuant to Article 950 of the Civil Obligations Act the insured person shall take the prescribed, agreed and any other reasonable measures necessary to prevent the occurrence of the insured event, and if the insured event does occur, he shall take all the reasonable measures in his power to restrain its injurious effects. If the insured person fails to meet his obligation of forestalling the insured event or obligation of salvage, for no justified reason, the insurer's liability shall be reduced proportionate to the increase in damage inflicted as a result of this failure. *Overinsurance* Pursuant to Article 956 of the of the Civil Obligations Act where, on entering into contract, one party has fraudulently contracted an amount of insurance which exceeds the actual value of the insured property, the other party may request the cancellation of the contract. In the case of contract cancellation, the insurer shall have a right to retain and collect premiums until the date of submitting the application for the contract cancellation, but he shall be liable to pay the indemnity up to the actual value of the insured property, if the insured event has occurred prior to that date. *Consequences of Failure to Pay the Premium for Personal insurance (Life insurance and Accident insurance)* Pursuant to Article 969 of the Civil Obligations Act where a life insurance or accident insurance policyholder has failed to pay a premium on its due date, the insurer shall not have a right to require its collection in court proceedings. However, if a policyholder, upon an invitation by the insurer which must be served by registered mail, fails to pay the due premium within the time limit indicated in that letter, which may not be shorter than one month counting from the date when the letter has been served, the insurer may only communicate to the policyholder that the insured amount is reduced to the amount of the surrender value, provided that at least three annual premiums have been paid until that time, or, otherwise, that the contract is cancelled.
Estonia	For remedies applicable in case of non-payment of the premium, violation of pre-contractual and contractual disclosure duties of the policyholder, see above. General legal remedies in case of non-performance which stem from the General Part of the Law of Obligations (see § 101) are applicable as well.

Finland	If the policy holder does not pay the premium under the terms of the insurance policy, the insurer may terminate the policy. On late payment on there are termination grounds specified in the law. However, if the non-performance occurs on the side of the insurer, the policy holder may rely on the remedies granted in the Finnish law, such as initiating a civil procedure against defaulted insurer. There are some remedies for a situation where the insurer breaches a policy. Obviously, the assured can claim the benefits of insurance and recover damages for any loss or damage suffered by him and based on the insurers' conduct. If the insurer or its representative, when marketing the insurance, failed to provide necessary information or gave incorrect or misleading information to the policyholder, the insurance contract is considered to apply as understood by the policyholder on the basis of the information he received (*section 7, Insurance Contracts Act*). This also applies where incomplete, incorrect or misleading information is given to the policyholder during the period of the insurance's validity and affects the policyholder's actions. It does not, however, apply to information given by the insurer or its representative on compensation or benefits payable after the occurrence of an insured event.
France	Punitive interest rates: - twice the legal interest rate in motor liability insurance: Article L 211-13 Insurance Code: Créé par Décret n°88-260 du 18 mars 1988 - art. 2 JORF 20 mars 1988 When the offer has not been within the time limit prescribed by Article L211-9, the amount of the compensation offered by the insurer or awarded by the court to the victim shall bear interest ipso jure at double the legal interest rate as from the expiry of the time limit and until the date of the offer or the final judgement. This penalty can be reduced by the court for circumstances not attributable to the insurer. - twice the legal interest rate in compulsory construction insurance: Article L 242-1 Insurance Code: Modifié par LOI n°2008-735 du 28 juillet 2008 - art. 45 […] (5) When the insurer fails to comply within the time-limits provided for in the two paragraphs above or proposes a compensation offer that is clearly inadequate, the insured may, after it has notified the insurer, incur the expenses necessary to repair the damage. In such event, an interest double the legal interest rate shall be applied ipso jure to the compensation to be paid by the insurer.
Germany	Concerning the non-payment of the premium, §§ 37, 38 VVG apply (s. above). Concerning the breach of the policyholder's incidental duties (Obliegenheit), § 28 VVG applies: -(1) As the non-observance of an incidental duty which the policyholder must fulfil prior to the occurrence of an insured event, the insurer may terminate the contract without prior notice within one month after learning of the non-observance, unless the non-observance was not intentional or based on gross negligence.

	(2) Where the contract provides that the insurer is not obliged to pay in case of breach of an incidental duty by the policyholder, he is released from the liability if the policyholder intentionally breached the obligation. In the case of grossly negligent non-observance of the obligation, the insurer is entitled to reduce any benefits payable commensurate with the severity of the policyholder's fault; the policyholder has the burden of proof that there was no gross negligence. (3) However the insurer has to effect performance, insofar as the breach of the duty neither caused the occurrence or the assessment of the insured event nor the assessment or the extent of the insurer's obligation to effect payment. This does not apply if the policyholder fraudulently breached the duty. (4) The insurer can only be exempt from his payment obligation, where the policyholder has breached a duty to provide information or a duty of disclosure after the occurrence of an insured event, when he notified the policyholder in separate correspondence and in writing of this legal consequence. (5) An agreement based on which the insurer is entitled to withdraw from the contract in the event of the non-observance of an incidental duty is void. § 28 (1) to (4) are semi-mandatory. Concerning the late performance of the insurer to pay the money, the general rules on §§ 286 seq Civil Code apply: The policyholder is entitled to interests. § 14 (2) VVG: if the enquiries necessary to establish the occurrence of the insured event and the extent of the insurer's liability have not been concluded. one month after notification, the policyholder may ask for part payment, § 14 (2) VVG which is semi-mandatory, § 18 VVG
	Attribution of the action of a third party to the insurance company (not yet filled in) § 69 VVG: (1) The insurance agent shall be deemed to have power of attorney in respect of 1. taking receipt of applications for the purposes of concluding a contract of insurance and its revocation, as well as declarations made prior to the making of a contract and other declarations made by the policyholder, 2. taking receipt of applications for the renewal of or amendment to a contract of insurance and its revocation, termination, rescission and other declarations relating to the insurance agreement, as well as any information to be provided by the policyholder throughout the policy period, and 3. passing on to the policyholder any insurance policies or renewal policies drawn up by the insurer. (2) The insurance agent shall be deemed to have power of attorney to accept payments which the policyholder makes in connection with the arranging or conclusion of a contract of insurance. The policyholder shall only accept a restriction to this power of attorney to his detriment if he was aware of the restriction when making the payment or was not aware of it as a consequence of gross negligence. § 70 VVG: If the knowledge of the insurer is of relevance in accordance with this Act, the knowledge of the insurance agent shall be equivalent to the knowledge of the insurer. This shall not apply to the knowledge of the insurance agent gained when not engaged in his activity as agent and not connected in any manner to the contract of insurance in question. § 71 VVG:

	If the insurance agent is authorised to acquire contracts of insurance, he shall also be authorised to agree amendments or extensions to such contracts and to make declarations of termination and withdrawal. § 72 VVG: Any restriction of the power of agency to which the insurance agent is entitled in accordance with section 69 and section 71 based on the general terms and conditions of insurance shall be void vis-à-vis the policyholder and third parties. § 73 VVG: §§ 69 to 72 apply mutatis mutandis to an insurer's employees who are contracted to arrange or conclude contracts of insurance and to persons working independently as agents in the arranging or concluding contracts of insurance but not on a commercial basis.
Greece	<u>- non – performance of the insurer:</u> a) Complaints to the supervisory authority (Bank of Greece) / or to the General Secretariat for Consumers / or to the Consumer Ombudsman b) Recourse to civil justice. <u>- non – performance of the policyholder or the insured:</u> a) In case of non - payment of premium: Art. 6 of law 2496/1997 (see above "Payment of premiums and consequence of non – payment) b) In case of non – disclosure: Articles 3, 4, 5 and 7 of law 2496/1997 (see above "Disclosure duties of the customer)
Hungary	Detailed terms of insurer's performance are stipulated in the contract. The insured person is required to prove/justify the occurrence of the insurance event. Necessary documents, required by the insurance company are typically listed in the contract terms. Afterwards the insurer examines the legal ground of payment in line with the contracting terms. The outcome of this process can be following: - The insurer performs in due time. (Deadline of payment is tied by the decision about the legal ground of payment.) - In case of default (late) payment, client is entitled to receive default interest. - If the performance is refused by the insurer, client is entitled to go to court or to make use of an out-of-court relief (Conciliatory Body that is working in the frame of the Supervisory Authority.)
Italy	- Non-performance of the insurer: non-payment of indemnity or restitution of insured sums or undue premiums 1) complaints to control authority (IVASS); recourse to civil justice (no mediation procedure if not the general one, now not compulsory); 2) payment of damages/payment over maximum limit of coverage where bad faith is proven. - non-performance of the insured: a) in case of non-payment of premium: art.1901 Civ. Cod. b) in case of non-disclosure: articles 1892-1893 Civ. Code. c) in case of non-performance of duty of salvage: articles 11913-1914-1915 Civ. Cod.

Portugal	missing
Romania	Remedies for non-performance of the insurer: - the insured can go to the court of justice for the claim settlement. If he wins in the court, the court can oblige the insurer to pay the insurance indemnity, and also legal interest/penalties. Remedies for non-performance of the insured: - the insurer can terminate the insurance contract or it can renegotiate the contractual terms
Slovakia	§ 799 of CC The person entitle to the insurance benefit is obliged to inform insurer in writing without undue delay that the insured event occurred, to provide the insurer with truthful explanation of its occurrence and submit the necessary documents. Knowing breach of the obligations with significant effect to the insurance event, the insurer is entitled to reduce the payment of claims. § 809 of CC The insured shall ensure that the insured event doesn´t occur, in particular, the insured shall not breach the obligation to alert or reduce danger. The insurer is entitled to reduce the claim payment adequately if the insured breach obligation knowingly, or as result of drinking alcohol or taking drugs.
Spain	*Art. 20 LCS*: In the event of a delay in paying the claim, the insurer must pay default interest to the policyholder and insured and, where appropriate, to the injured third party in liability insurance or the beneficiary in life insurance (Art. 20). A delay is said to have occurred when the insurer has not paid the claim within three months with effect from the occurrence of the claim or when he was not settled the minimum amount of the claim within forty days from receipt of the claim declaration. The insurer is therefore automatically obliged to pay default interest corresponding annually to the legal interest at the time of the event increased by 50%. However, if two years or more have elapsed since the claim, the annual interest may not be less than 20%. Interest runs from the date of occurrence of the claim or the date of communication of the claim to the insurer when neither the policyholder, nor the insured and nor the beneficiary has reported the claim within the deadline envisaged in the policy.
Sweden	***Chapter 4, Article 2(1), the Insurance Contract Act (2005:104)*** Where the policyholder has acted fraudulently or contrary to good faith and fair dealings, when fulfilling his duty to inform when acquiring the insurance, the contract is void pursuant to the Contracts Act (1915:218) and the insurance company is relieved from all liability in re of insured events occurring thereafter. ***Chapter 4, Article 2(2), the Insurance Contract Act (2005:104)*** Where the policyholder otherwise intentionally or negligently has disregarded his obligation to inform pursuant to Article 2(1), the indemnification may be reduced in respect of each insured in accordance with what is reasonable taking into consideration the significance the

	fact would have had for the insurance company's risk assessment, whether the disregard was intentional or negligent and other circumstances. ***Chapter 4, Article 3(1), the Insurance Contract Act (2005:104)*** The insurance company may stipulate in the insurance contract that the policyholder shall report to the company, without unreasonable delay, any change in a circumstance specified in the contract, which is of material significance in respect of the risk. Where the policyholder fails to notify the insurance company, indemnification may be reduced in respect of each insured as follows from ***Chapter 4, Article 2(2) the Insurance Contract Act (2005:104)***. It should be noted that ***Chapter 2, Article 8, the Insurance Contract Act (2005:104)*** provides that in some cases the insurance company may not rely on a policy provision regarding reporting obligations pursuant to ***Chapter 4, Article 3(1).*** According to ***Chapter 4, Article 4***, ***the Insurance Contract Act (2005:104)*** the indemnification may not be reduced, where the insurance company knew or should have known that the information was incorrect or incomplete. The same applies where the incorrect or incomplete information was not, or later ceased to be, material to the content of the contract. ***Chapter 4, Article 5(1), the Insurance Contract Act (2005:104)*** stipulates that where the insured has ***intentionally*** caused an insured event, the insurance policy shall not provide indemnity to the insured himself. Where the insured event was caused or exacerbated by ***gross negligence*** the indemnity may, according to Chapter 4, Article 5(2) the Insurance Contract Act (2005:104) be reduced taking into consideration what is reasonable considering the insured's personal circumstances and other conditions. ***Chapter 4, Article 6, the Insurance Contract Act (2005:104)*** regulates the insured's failure to take measures to prevent or minimise the loss. Where the disregard was intentional, his right to indemnification may be reduced to an extent which is reasonable taking into consideration his personal situation and other circumstances. This applies also where the insured has disregarded his obligations knowing that the act or omission meant a significant risk for loss/damage. ***Exceptions*** to the provisions listed above are regulated in ***Chapter 4, Article 9(1), the Insurance Contract Act (2005:104).*** Indemnification may not be reduced pursuant to Chapter 4 due to: 1. Insignificant negligence; 2. Acts of a person who was severely psychologically disturbed or had not reached 12 years of age; or 3. Acts that were intended to prevent injury to person or damage to property in an emergency situation which rendered the acts defensible. ***Article 9(2), the Insurance Contract Act (2005:104)*** deals with ***Third Party Liability Insurance.*** The provisions regarding reduction of indemnity set forth in Article 5(2), Articles 6 and 7, shall not apply in respect of the party suffering an injury/loss. Where the insured is not legally obligated to maintain liability insurance covering the loss, the insurance company is obligated to provide indemnification only to the extent it cannot be provided by the insured.

United Kingdom	**A. Remedies of the insurer** **1. B2C** Under English law, consumers have access to a number of recourses in order to exercise and enforce their insurance contract rights. Consumers can exercise their rights under the common law in the courts and this system is supplemented by the ability for consumers to make complaints to the FCA and the Financial Ombudsman Service (FOS). The FOS is able to consider complaints from consumers (including small businesses) and the FOS has a statutory "fair and reasonable" discretion to develop an alternative approach to the law in resolving disputes. (The Law Commission and The Scottish Law Commission: A Joint Scoping Paper on Insurance Contract Law; pg5-6). **1.1 Remedies for misrepresentations** <u>The Consumer Insurance (Disclosure and Representations) Act 2012</u> The Act only applied to contracts entered into or renewed after 6 April 2013 (and therefore will never apply to most life insurance contracts entered into before this date as ordinary life insurance contracts are entire and run until death or an earlier insured event). The Act was the product of a long period of consultation and effectively enacts the approach that the FCA and the FOS have taken, in respect of the ICOBS rules and the approach of the Ombudsman in relevant disputes. It is important to note that the Act abolished the device of the basis of contract clause, discussed above. <u>Section 2:</u> abolishes the pure duty of disclosure and the application of ss.18 and 20 of the Marine Insurance Act 1906 as far as consumer contracts are concerned. Instead, the Act imposes a duty on a consumer to take reasonable care not to make a misrepresentation. <u>Section 4 and Schedule 1</u> set out the insurer's remedies against a consumer who has made a qualifying misrepresentation before the conclusion of the contract or varying the contract and breached the duty of reasonable care. The insurer would have to prove that they would not have entered into the contract or would have done so on different terms, had the misrepresentation not taken place. <u>Section 5:</u> Qualifying misrepresentations are defined as deliberate or reckless or alternatively careless. Deliberate or reckless representations are those where the consumer knows that a statement is untrue or misleading or does not care whether a statement is untrue or misleading, or, knows that the matter to which the misrepresentation relates is relevant to the insurer, or, does not care whether the matter to which the misrepresentation relates is relevant to the insurer. Schedule 1: The insurer's remedies for the "qualifying misrepresentations" vary depending on whether the misrepresentation was (a)deliberate or reckless; or (b) careless. The Act does not capture innocent misrepresentations. (i) Avoidance with no return of premiums: (a) In the case of deliberate or reckless representations, the insurer may: avoid the contract, refuse all claims and retain the premiums, except to the extent (if any) that it would be unfair to the consumer to retain

	them. (ii) Avoidance with return of premiums: (b) In the case of careless misrepresentations, if the insurer would not have entered into a contract but for the misrepresentation, the insurer may avoid the contract and refuse all claims, but must return the premiums. (iii) Change of terms or premium: (b) In the case of careless misrepresentations, if the insurer would have entered in the contract, (except as regards the amount of premium) the contract is to be treated on those terms. The insurer may reduce the amount to be paid on a claim proportionately to the higher premium they would have charged. (iv) Termination: The insurer may terminate the contract by giving reasonable notice to the consumer (except in contracts for life insurance). This is an alternative remedy for the situations when the insurer would have entered into the contract only based on different terms. Termination, rather than avoidance , is clearly used as the remedy here so that it is prospective and the insurer is still liable for the prior claim. **2. B2B** As mentioned above, a warranty is a particularly important contractual term as a breach of a warranty leads to an automatic discharge of the insurer's liability. If an insured makes a misrepresentation or inaccuracy in relation to a warranty, even if it is not 'material' and even if the breach is unconnected with the loss that occurs, the insurer can avoid the contract. This is in contrast to a breach of a condition, which is actionable only if it causes the loss. Insurer's traditionally have the right in law to avoid a contract of insurance if the insured was guilty of fraud, non-disclosure or misrepresentation before the contract was entered into. It may also have a remedy for breach of utmost good faith during the contract. (Birds: pg 113) **2.1 The insurer's remedies for fraud:** If the insured is found guilty of fraud, the insurer can avoid the contract and the insurer may have the right to claim damages in the tort of deceit, and can in addition retain any premium paid (*Chapman and others, assignees of Keenet v Fraser B R Trin*.) **2.2 The insurer's remedies for breach of the principle of good faith, non-disclosure and misrepresentation:** **Avoidance of the contract:** the contract is treated as if it never existed and the insurer may refuse all claims. Section 17 of the Marine Insurance Act 1906 (MIA 2006), which is said to represent the law applicable to all insurance contracts in this respect, imposes the duty of utmost good faith on both parties to the contract. The remedy for breach of this duty is contract avoidance. Section 18(1) of the MIA 1906 : Disclosure by assured "The assured must disclose to the insurer, every material circumstance which is known to the assured. If the assured fails to make such disclosure, the insurer may avoid the contract."

Section 20(1) of the MIA 1906: Representations
"Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it be untrue the insurer may avoid the contract."

The key question to determine is the 'materiality' of the non-disclosure or the misrepresentation.

Section.18(2) of the MIA 1906:
Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

Section.18(3) of the MIA 1906:
In the absence of inquiry the following circumstances need not be disclosed, namely:
(a) Any circumstance which diminishes the risk;
(b) Any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know;
(c) Any circumstance as to which information is waived by the insurer;
(d) Any circumstance which it is superfluous to disclose by reason of any express or implied warranty. *Lambert v Co-operative Insurance Society Ltd* (1975)
The Court of Appeal held that the statutory formulation in Section18 of the MIA 1906 was a codification of the common law which applied to all insurance contracts.

A fact is considered material for the purposes of both non-disclosure and misrepresentation if it is one that would influence the judgment of a reasonable or prudent insurer in deciding whether or not to accept the risk or what premium to charge (Birds, p.113-125,128).The policyholder may request a return of the premium paid, but not in case of fraudulent misrepresentation (for marine insurance – Section 84(3)(a) of the MIA 1906).

For other types of insurance the matter is governed by general contract law rules of unjustified enrichment (Law Commission, consultation paper 204, The Scottish Law Commission
Discussion Paper No 155, p.24).

2.3 The insurer's remedies for breach of utmost good faith during the contract

Section 17 of the MIA 1906 provides the remedy of avoidance for breach of the principle of good faith, however, there is a question mark as to whether the remedy for a breach of a continuing duty of good faith is also avoidance. This uncertainty has arisen because avoidance would put the parties back to the position they were in at the beginning of the contract, however, if the breach of the principle occurs part way through the life of the contract, arguably the contract should only be avoided at the date of the breach.

In the leading case of *'The Star Sea'* (2001), the House of Lords confirmed the existence of the continuing duty but stated that the nature of the duty fluctuated during the course of the contract. However, the case left open the question of exactly when the remedy of avoidance would be available.

In the later Court of Appeal case of *'The Mercandian Continent'*, the court held that the duty

	was confined to cases where there is an express contractual obligation to provide information. If this duty is breached in such a serious way that the breach would entitle the insurer to repudiate the contract, then, assuming the breach is fraudulent, the insurer will be granted the remedy of avoidance. This is an alternative remedy to the insurer from treating the contract as terminated at the date of the breach. (Birds, pg147-150). **2.4 Damages:** <u>(i) No damages for non-disclosure:</u> *HIH Casualty & General Insurance Ltd v Chase Manhattan Bank* (2003) Even deliberate non-disclosure does not give rise to liability in damages, as deceit or fraud requires a positive misrepresentation (Law Commission, consultation paper 204, The Scottish Law Commission Discussion Paper No 155 p.25) <u>(ii) Possible damages for misrepresentation:</u> In England and Wales, the victim of a fraudulent misrepresentation is entitled to claim damages for deceit (Law Commission, consultation paper 204, The Scottish Law Commission Discussion Paper No 155 p.25). For negligent or innocent misrepresentations, the Misrepresentation Act 1967 provides that a party who makes a non-fraudulent misrepresentation will be liable in damages "as if he were fraudulent" unless he proves that he had reasonable grounds to believe, and did believe up to the time the contract was made, that the facts represented were true. (Law Commission, consultation paper 204, The Scottish Law Commission Discussion Paper No 155, p.25) However, in practice, the right to damages appears to be unimportant in insurance, as the main potential loss for the insurer can be prevented by the remedy of avoidance: A leading authority on English insurance writes that there are no known cases in which an insurer has claimed damages from a policyholder(M A Clarke, The Law of Insurance Contracts Vol 2, Chap 23, para 23-15.) (Law Commission, consultation paper 204, The Scottish Law Commission Discussion Paper No 155, p.24) **2.5 Exclusion clauses: excluding remedies for breach:** The law will uphold, except in the case of fraud, clauses that exclude the remedies for misrepresentation or exclude the duty of disclosure or the remedies for breach. HIH Casualty & General Insurance Ltd v Chase Manhattan Bank (2003): A contract included a clause which provided that the insured would not have an obligation to make a representation or warranty of any nature and non-disclosure would not be a ground for avoidance of the insurer's obligations. The court held that such a clause was valid. (Birds, p.143)
	B. Remedies of the insured **1. Insured's remedies for breach of the principle of good faith:** Section 17 of the Marine Insurance Act 1906 imposes the duty of utmost good faith on both parties to the contract. The remedy for breach of this duty is contract avoidance.

	Banque Financiere de la Cite SA v Westgate Insurance Co Ltd (1987) The insurer has a pre-contractual duty of disclosure to the insured, but only in respect of matters which are material to the risk or to the recoverability of a claim. The only remedy of the insured is avoidance of the contract and return of the premium. The decision of the first instance court to award damages to the insured was not upheld by the Court of Appeal and House of Lords. (Birds, p.155) It is the insurer's duty to disclose all facts known to the insurer which are material either to the nature of the risk sought to be covered or the recoverability of a claim under a policy which a prudent insured would take into account when deciding where or not to place a risk for which he has sought cover with that insurer. (Birds, p.157) 2. Damages for failure to pay a claim under an insurance policy Such failure can result in damages for breach of contract, but under English law any damages payable are limited to the policy claim, plus interest. There is currently no concept of aggravated damages on account of the insurer's conduct in handling the claim. (Anthony Menzies, Peter Kempe and Jonathan Rogers, Taylor Wessing LLP, http://uk.practicallaw.com/4-501-3670?qaq=W_q23&qaq=W_q27&qaid=0-501-2031)

Rechtsvergleichung

Payment of premiums and consequences of non-payment

Payment of premiums and consequences of non-payment[1]

Austria	Several provisions of the VersVG define the obligation of the insurer. They are usually non mandatory, however, deviation is subject to unfair terms control (e.g., § 109 (hail insurance); § 116 para. 1 (insurance of animals); § 129 VersVG (transport insurance); § 14 general liability insurance); § 158j (legal expenses Insurance); § 178b (health insurance); Additional rules are contained in the Motor Vehicle Liability Insurance Act , especially but not limited to § 2
Bulgaria	The default general rule (art.192 Code for the Insurance) is that the whole premium, or the first instalment, shall be paid upon conclusion of the contract. Art.202 contains more detailed rules with regard to property insurance: Payments are due within the term agreed under the contract. In case of failure to pay the insurer may reduce the insurance amount, amend the contract or terminate it. Those remedies can be exercised no earlier than fifteen days from a written notification. The written notification is presumed to be served in case the insurer has explicitly specified in the insurance policy which of the remedies would be exercised upon expiry of the 15-day period. When an insured event has occurred prior to full payment of the premium, the insurer may deduct the amount of unpaid premium from the amount of insurance indemnity. When it has been agreed that the insurance cover shall commence before any payment the insurer shall be entitled to require payment, along with the legal interest from the date of delay. Art.202 is also applicable for third party insurance and for mandatory third party motor insurance. Art.236 is the special rule for life insurance: Where a due instalment is not paid, the insurer cannot claim payment before court. Instead the insurer is obliged to request payment in writing within at least one month from receipt of that request. If the premium due is still not paid the insurer may reduce the insurance amount to the value of the redemption payment, provided that the instalments have been paid for at least two years. Failing this, the insurer may terminate the contract. If the insurable event takes place before the insurance amount is reduced or before the contract is terminated as specified above, the insurance amount shall be considered to have been reduced or the contract to have been terminated.
Croatia	Pursuant to the definition of the insurance contract in Article 921 of the Civil Obligations Act (Official Gazette NN35/05) under the insurance contract, an insurer undertakes to a policyholder to pay the indemnity to the insured person or insurance beneficiary upon the occurrence of an insured event, while the policyholder undertakes to pay insurance premiums to the insurer. Pursuant to Article 936 of the Civil Obligations Act the policyholder shall pay the insurance premium and the insurer shall receive payment of the premium by

[1] The information in this table is provided by insurance experts or insurance organisations from respective country. It does not contain a thorough review of all Member States' insurance contract laws and does not reflect the official opinion of the Commission.

	any person who has a legal interest in such a payment. The policyholder shall pay the premium within the agreed time limits, and if it is to be paid as a lump-sum, the premium shall be paid on entering into contract. The place of the premium payment shall be the place where the policyholder is domiciled or resident, unless another place is stipulated in the contract. Cases where the contractual relationship in the field of insurance arises on the payment of the premium may be included in the terms and conditions of insurance (Art. 927 of the Civil Obligations Act). Consequences of non-payment differ depending on the kind of insurance contract signed. Pursuant to the provision from Article 937 of the Civil Obligations Act if a policyholder, or any other interested party, fails to pay the premium due after the conclusion of the contract on the due date, the insurance contract shall terminate, by operation of law, upon the lapse of 30 days following a delivery of the registered letter to the policyholder informing him of the premium due date. However, this time limit cannot lapse before the expiry of thirty days from the premium due date. In any case, the insurance contract shall terminate by operation of law, if the premium is not paid within one year following its due date. The provisions of this Article shall not apply to life insurance and accident insurance. Thus with contracts by which persons are insured pursuant to Article 969 of the Civil Obligations Act where a life insurance or accident insurance policyholder has failed to pay a premium on its due date, the insurer shall not have a right to require its collection in court proceedings. If a policyholder, upon an invitation by the insurer which must be served by registered mail, or any other interested party fails to pay the due premium within the time limit indicated in that letter, which may not be shorter than 30 days counting from the date when the letter has been served, the insurer may only communicate to the policyholder that the insured amount is reduced to the amount of the surrender value, provided that at least 3 annual premiums have been paid until that time, or, otherwise, that the contract is cancelled.
Estonia	**§ 454 LOA: Payment of insurance premium** (1) A policyholder shall pay the insurance premium or, in the event of an agreement to pay periodic insurance premiums, the first insurance premium immediately after entry into the contract. (2) If the policyholder is to be issued with a policy, the policyholder may refuse to pay the insurance premium until the policy has been issued to the policyholder. (3) It is presumed that the beginning of each new period of insurance is the due date for payment of the insurance premium for the subsequent period of insurance. **§ 457 LOA: Delay in payment of first insurance premium** (1) If a policyholder fails to pay a single premium or the first premium within 14 days after entry into the insurance contract, the insurer has the right, as long as the premium has not been paid, to withdraw from the contract. The insurer is presumed to have withdrawn from the contract if the insurer does not file an action to collect the insurance premium within three months after the premium becomes collectable. (2) If the insurance premium or first insurance premium which has become collectable has not been paid by the time the insured event occurs, the insurer shall be released from its performance obligation. (3) The insurer shall not rely on the provisions of subsections (1) and (2) of this section if the insurer did not inform the policyholder of these consequences prior to entry into the contract.

	§ 458. Delay in payment of subsequent insurance premiums (1) If the policyholder fails to pay the second or a subsequent premium in time, the insurer may, in a format which can be reproduced in writing, set a term of at least 2 weeks or, if a structure is insured, 1 month for the policyholder to pay. In the notice, the legal consequences resulting from the expiry of the term shall be indicated. (2) If the insurer has set an additional term for the payment of an insurance premium and the insured event occurs after the expiry of the term and if at the time of occurrence of the insured event the policyholder is in default with payment of the insurance premium, the insurer shall be released from its performance obligation, unless failure to pay the insurance premium was due to circumstances beyond the control of the policyholder. (3) If the insurer has set a term for payment specified in subsection (1) of this section and the policyholder fails to pay the insurance premium within the specified term, the insurer may cancel the insurance contract without prior notice. The insurer may state in the notice specified in subsection (1) of this section that it will consider the contract as having been cancelled upon expiry of the term if the policyholder fails to pay the premiums within the term. (4) If the policyholder pays the insurance premium within one month as of the cancellation of the contract or the expiry of the term for payment and the insured event does not occur before payment, the contract shall not be deemed to have been cancelled in the case specified in subsection (3) of this section.
Finland	There are very detailed provisions in sections 38 to 45 as to the payment of premiums and the consequences for non-payment. Insurance premiums are to be paid within a month after the insurer has sent the bill to the policyholder. The first payment does not need to be performed prior to beginning the insurer's liability, unless the payment is not precondition for the beginning of the insurer's liability under the insurance contract terms. If the policyholder has failed to pay the insurance premium within the prescribed period, the insurer has the right to terminate the insurance contract 14 days after the date on which the notice is sent. In the field of continuous non-life insurance the insurer does not have the right to terminate the contract. If it is stipulated in the contract terms that the insurer's liability does not expire before the end of the insurance period even though the payment regarding the insurance period is not completed in time, the insurer may charge interest for late payment and distrain/foreclose all due debts without the court order provided that the insurer has made a note to that in the bill.
France	(NON-LIFE) Article L113-2Insurance Code: Modifié par Loi n°89-1014 du 31 décembre 1989 - art. 10 JORF 3 janvier 1990 en vigueur le 1er mai 1990 The insured is obliged to: - pay the premiums or the contributions at the agreed time; […] Article L113-3 Insurance Code: Modifié par Loi n°81-5 du 7 janvier 1981 - art. 31 JORF 8 janvier 1981 rectificatif JORF 8 février 1981 (LIFE + NON LIFE) The premium shall be payable at the address of the insurer or of the representative that it appoints for this purpose. However, the premium may be payable at the address of the insured or at any other place agreed in the cases and terms restrictively set by decree in Conseil d'Etat. (NON LIFE) In the event of non-payment of a premium or a part of a premium within ten

	days as of its due date, and irrespective of the insurer's right to sue for performance of the contract, the cover may be suspended only thirty days after the insured has been served with formal notice. If the annual premium is payable by instalments, the suspension of the cover, in the event of non-payment of one premium instalments, shall be valid until the expiry of the annual period in question. The premium or premium instalment shall be payable at the insurer's premises in all events, after formal notice has been served on the insured. (NON LIFE) The insurer shall be entitled to terminate the contract ten days after expiry of the thirty day period referred to in the second paragraph of this Article. (NON LIFE) The contract that has not been terminated shall be revived for the future at noon on the day after the premium in arrears or, in the event of the annual premium payable by instalments, the premium instalments that were the subject of the formal notice and those to fall due during the suspension period as well as legal fees and collection charges, have been paid to the insurer or to the representative that it appointed for this purpose. (LIFE) Article L132-20 Insurance Code: Modifié par Loi n°92-665 du 16 juillet 1992 - art. 21 JORF 17 juillet 1992 Modifié par Loi n°92-665 du 16 juillet 1992 - art. 24 JORF 17 juillet 1992 Modifié par Loi n°92-665 du 16 juillet 1992 - art. 27 JORF 17 juillet 1992 Modifié par Loi n°92-665 du 16 juillet 1992 - art. 30 JORF 17 juillet 1992 Insurance or a capitalisation firm may not bring an action to demand payment of premiums. When a premium or part of a premium is not paid within ten days of its due date, the insurer shall send the contracting party a registered letter in which it shall inform the insured that upon expiry of a forty day period as from the date of posting said letter, the non-payment to the insurer or its appointed representative of the premium or part of the premium due and any premiums to fall due during said period shall entail either the termination of the contact in the event of the absence of inadequacy of the surrender value or the reduction of the contract. The posting of the registered letter by the insurer renders the premium payable at the insurer's premises in any event. Non-payment of a contribution owed under a capitalisation contract may be penalised only by the suspension or pure and simple termination of the contract and, in the latter case, the surrender value that said contract has possibly Article L114-1 Insurance Code: Modifié par Loi n°2006-1640 du 21 décembre 2006 - art. 18 (V) JORF 22 décembre 2006 All legal actions arising from an insurance contract shall be barred two years as from the event that gave rise to them. […] PROCEDURAL REGULATIONS: Article R113-1 Insurance Code: Modifié par Décret n°92-1356 du 22 décembre 1992 - art. 4 (V) JORF 29 décembre 1992 The notice of default of Article L 113-3 should be done sending a registered letter to the official address of the insured or of the person in charge of the premiums payments. Article R*113-4 Insurance Code: Every time a premium reaches its maturity, the insurer shall advise the insured or the person in charge of the payments on the due date and on the total amount that has to be paid.
Germany	§ 33 VVG: (1) The policyholder must pay a single premium or, where payment of recurrent premiums has been agreed, must pay the first premium without delay 14 days after receipt of the insurance policy. (2) If the insurer previously collected the premium, the policyholder shall not be obligated to

	transfer the premium until requested to do so in writing by the insurer. § 37 VVG: If the single premium or the first premium is not paid on time, the insurer is entitled to terminate the contract, unless the policyholder is not responsible for the non-payment. The insurer is not obliged to pay when the insured event occurs before the payment of the premium, unless the policyholder is not responsible for the non-payment. However the insurer has to inform the policyholder of the legal consequence of non-payment of the premium in writing in a separate communication or by means of a conspicuous note in the insurance policy. § 38 VVG: If a subsequent premium is not paid in due time, the insurer may set the policyholder a deadline of two weeks minimum at his expense and in writing. The setting of the deadline is only effective if it details the individual amounts of the premium which are in arrears, the interest and costs, as well as quoting the legal consequences associated. If the insured event occurs after the expiration of the deadline and if the policyholder has not yet paid the premium or the interest or costs, the insurer is obliged to effect payment. The insurer may, after the expiration of the deadline terminate the contract without prior notice. The termination becomes void if the policyholder pays the premium within one month after the termination of the contract or the expiration of the deadline. §§ 37, 38 VVG are semi-mandatory, § 42 VVG.
Greece	<u>Art 6 of law 2496/97 in regard to insurance contract:</u> The premium must be pre-paid in cash. By result, the cover does not begin before the premium; either the single premium or its first instalment is paid. In case the insured fails to pay subsequent instalment due, the insurer has the right to terminate the contract. The termination is made by a written notice sent to the insured which informs the latter that any further delay shall result, on the expiry of one month from the receipt of the notice, in the termination of the contract.
Hungary	**(Ptk. 6:447.)**[2] The first insurance premium shall be due at the time stipulated in the contract. Lack of such an agreement the insurance premium is due by the conclusion of the contract. Single premium shall be paid at the time when contract is concluded. Insurance period is 1 year. **(Ptk. 6:449)]** In case of non-payment, the insurer must call upon the client in written form to settle the payment within 30 days. If client does not meet this obligation, the contract shall be extinguished, unless the insurer file for court action regarding the premium payment. For life insurance with investment element, the consequence of non-payment is that insurer reduce the insurance amount, but the contract itself is not terminated.

[2] *The text below refers to the following Hungarian laws:*

- **Ptk.** – *Hungarian Civil Code; Act of V of 2013.*
- **Bit.** – *Act on Insurance Institutions and Insurance Business; Act of LX of 2003.*

	Ptk. *6:467* *[Partial payment of premium]* (1) If only a part of the due premium is paid, and the insurance company's request - made in accordance with the provisions on non-payment of premium - to the contracting party for payment of the sum owed proved unsuccessful, the contract shall remain in force with the same amount of coverage for a term to which the premium paid corresponds. (2) If a contract is terminated for non-payment of the premium, the insurance company shall be entitled to demand repayment of the time-proportionate part of the term discount. **Ptk. *6:481*** *[Consequences of non-payment of premium]* (1) The insurance company shall be entitled to bring action to enforce its claim for premium payments for the entire insurance period in the first year. The insurance company shall only be entitled to exercise this right after the first year if the contracting party makes any payment in that year, or if they agreed on deferred payments. (2) In the event of non-payment of premium, an ordinary life insurance policy other than term life insurance shall remain in effect with the premium reduced accordingly (hereinafter referred to as „premium-free reduction"). The contracting party shall have the option to terminate the contract by notice instead. (3) The contract may not be rendered premium-free if the surrender value has not been calculated at the time of premium-free reduction. In this case the contract shall be terminated in the absence of a settlement value.
Italy	NON-LIFE, Art. 1901 Civil Code: - non-payment of the first premium: the insurance is suspended till the payment; - Non-payment of subsequent premium: the insurance is suspended from the 15th day after the payment date; no requirement of warning exists. LIFE, art. 1924 Civil Code: - non-payment of the first premium: the insurer may start an action for the payment by 6 months from the payment date; - other non-payments: automatic termination of the contract if they are not paid by the 20th day from the payment date No period of grace exists. There exist formal requirements for the termination of the contract.

Portugal	1. Articles 51 to 61 of the Legal Regime state for the general regime: SECTION IV PREMIUM Subsection I General provisions Article 51 Concept 1. The premium is the consideration paid in respect of the cover granted and includes anything that may be payable under the contract by the policyholder, namely the costs of cover of the risk, the costs of acquisition, management, and collection and any charges relating to the issue of the policy. 2. The premium is accompanied by any fiscal and parafiscal charges to be borne by the policyholder. Article 52 Features 1. Under freedom of contract, save as otherwise provided by law, the amount of the premium and the rules on calculation and determination thereof shall be stipulated in the contract of insurance. 2. In the event of failure to determine the premium or where the premium has been insufficiently determined by the parties, the premium must be adequate and proportional to the risks to be covered by the insurer and calculated having regard to the principles of the insurance business, without prejudice to any specific features of certain categories of insurance and concrete circumstances of the risks assumed. 3. The premium shall correspond to the period of duration of the contract and shall be payable in full, save as otherwise provided. 4. By agreement of the parties, payment of the premium may be effected in installments. Article 53 Due dates 1. Save as otherwise agreed, the initial premium, or the initial instalment thereof, shall be payable on the date of conclusion of the contract. 2. Subsequent installments of the initial premium, premiums for subsequent years and successive installments thereof shall be payable on the dates established in the contract.

	3. The variable portion of the premium relating to adjustment of the value, and, as the case may be, the portion of the premium corresponding to changes in the contract shall be payable on the dates indicated in the respective notices. Article 54 Payment methods 1. The insurance premium may be paid in cash, by banker's draft, by bank transfer or postal order, by credit or debit card or by any other electronic means of payment. 2. Payment of the premium by cheque shall be subject to collection in full and, once this has occurred, payment shall be deemed to have been made on the date of receipt thereof. 3. Payment by debit to an account shall be subject to the debit not subsequently being cancelled as a result of retraction on the part of the payer within the framework of special legislation permitting such retraction. 4. Should the cheque fail to clear or should the debit be cancelled, this shall be deemed to constitute non-payment of the premium, without prejudice to the provisions of art.57(4). 5. The premium debt may also be extinguished by offset against a recognized, payable and liquid receivable up to the amount to be offset, by means of a declaration from one party to the other, provided that the other requirements of offsetting have been fulfilled. 6. In personal insurance, the parties may agree other means and arrangements for payment of the premium, provided they comply with the legal and regulatory provisions in force. Article 55 Payment by a third party 1. The premium may be paid, pursuant to the provisions of the law or the contract, by a third party whether or not such third party has an interest in fulfillment of the obligation, and the insurer may not refuse to accept such payment. 2. The contract of insurance may provide that an interested third party, who is the holder of the rights set out in the contract, be granted the right to proceed with payment of any premium already having fallen due, provided such payment is made within a period no longer than 30 days following the date on which it fell due. 3. Payment of the premium under the provisions of the preceding paragraph shall give rise to the contract being brought back into force, and provision may be made to the effect that payment entails cover of the risk between the due date and the date of payment of the premium. 4. The insurer shall not cover a loss occurring between the due date and the date of payment of the premium of which the beneficiary was aware.

	Article 56 Receipt and declaration of the existence of insurance 1. Once the premium has been received, the insurer shall issue the corresponding receipt and may, if necessary, issue a provisional receipt. 2. The receipt for a premium paid by cheque or debit to an account, as well as the declaration or certificate relating to proof of existence of the contract of insurance shall evidence effective payment of the premium, if the amount has been collected by the insurer. Article 57 Delay 1. The policyholder shall fall into arrears if payment is not made on the due date. 2. Without prejudice to the general rules, the effects of non-payment of the premium are: (a) For most insurances, those arising out of the provisions of arts 59 and 61. (b) For those insurances indicated in art.58, those stipulated in the conditions of the contract. 3. Termination of the contract of insurance as a result of non-payment of the premium or part or an instalment thereof shall not exempt the policyholder from their obligation to pay the premium corresponding to the period during which the contract was in force, plus any delay interest payable. 4. In the event of any delay on the part of the insurer in relation to collection of the premium, payment will be deemed to have been made on the date on which the means for its payment were made available. Subsection II Special regime Article 58 Scope The provisions of arts 59-61 shall not apply to those insurances and operations regulated by the chapter concerning life insurance, crop and livestock insurance, mutual insurance in which the premium is paid with the proceeds from receipts and major risks cover insurance, save to the extent that such application arises out of a stipulation of the parties and the nature of the relationship does not rule this out. Article 59

	Cover Cover of risks shall be subject to prior payment of the premium. Article 60 Notice of payment 1. During the period of validity of the contract, the insurer must advise the policyholder in writing of the amount payable, as well as the method and place of payment, with a minimum period of notice of 30 days prior to the date on which the premium or premium instalment falls due. 2. The notice must provide legible information on the consequences of non-payment of the premium or premium installment. 3. In contracts of insurance in which payment of the premium in installments payable with a frequency of up to three months has been agreed, and in the related documentation the due dates of the successive premium installments and respective amounts payable are indicated, as well as the consequences of non-payment, the insurer may opt not to send the notice referred to in para. l, and in such case, it shall be responsible for proving issue, acceptance and remittance to the policyholder of the contractual documentation referred to in that paragraph. Article 61 Non-payment 1. Non-payment of the initial premium or the first premium installment on the due date shall give rise to automatic termination of the contract from the date of conclusion. 2. Non-payment of the premium for subsequent years or the first installment thereof, on the due date, shall give rise to the contract not being extended. 3. Non-payment on the due date of: (a) an installment of the premium during a yearly period; (b) an adjusting premium or part of a variable amount premium; and (c) an additional premium arising out of an amendment to the contract based on an additional increase in the risk, shall give rise to automatic termination of the contract. 4. Non-payment by the due date of any additional premium arising out of an amendment to the contract shall render the amendment null and void, and the contract shall remain in force with the scope and conditions in force before the intended amendment, unless it is impossible for the contract to remain in force, in which case it shall be deemed to have been terminated on the due date of the unpaid premium.

	2. Article 80 states for the Group Insurance: Article 80 Payment of the premium 1. Save where it has been agreed that the insured will pay the premium direct to the insurer, the obligation to pay the premium shall fall to the policyholder. 2. Non-payment of the premium by the policyholder shall have the consequences laid down in arts 59 and 61. 3. In contributory insurance in which the insured is to pay the premium direct to the insurer, the provisions of arts 59 and 61 shall apply only to the insured's cover. 3. Articles 202 to 204 state for Life Insurance: Article 202 Payment of the premium 1. The policyholder must pay the premium on the dates and in the conditions stipulated in the contract. 2. The insurer must advise the policyholder with a period of notice of at least 30 days of the date on which the premium or an instalment thereof falls due, the amount payable and the method and place of payment. Article 203 Non-payment of the premium 1. Non-payment of the premium on the due date shall entitle the insurer, depending on the situation and what has been agreed, to terminate the contract, with the consequent compulsory surrender, to reduce the contract or to transform the insurance into a contract without a premium. 2. The conditions of the policy shall state the maximum time period allowed for the policyholder to exercise their right to restore a reduced or terminated contract to its original position without a new medical examination and shall state that the period begins at the time the contract is reduced or terminated. Article 204 Irrevocable beneficiary clause 1. In the event of non-payment of the premium on the due date, if the contract establishes an irrevocable payment in favor of a third party, the insurer must call said person within a period of 30 days to, if they so wish, make the aforementioned payment in place of the

	policyholder. 2. The insurer that has not called upon the beneficiary as provided for in the preceding paragraph may not rely against the beneficiary on the consequences agreed for non-payment of the premium.
Romania	Article 2206 of Civil Code states that: - the insured is obliged to pay insurance premiums to the terms established in the contract. - the parties may agree that the payment of insurance premiums to make full or in instalments. Unless otherwise agreed, payment is made at the insurer or his representative. - the insured has to prove the payment of insurance premiums. - unless agreed otherwise, the insurer may terminate the contract if the insured did not pay the premium at the payment date stipulated in the insurance contract. - the insurer is obliged to inform the insured about the consequences of default in the payment of premiums and provide these consequences in the insurance contract. - the insurer is entitled to offset what is owed premiums by the end of insurance under any contract with any payment due the insured or beneficiary.
Slovakia	§ 801 of CC Non-payment of first premium – Insurance becomes null and void if the premium is not paid within 3 months after the date of its maturity. Non-payment of premium for the next insurance period – Insurance becomes null and void if the premium for the next insurance period within the one month after the date of the delivery of the insurer´s call to pay premium with advice that insurance shall become null and void. Act No. 381/2001 Coll. On Compulsory MTPL insurance § 9 Non-payment of Premium – insurance becomes null and void if premium is not paid within 1 month after the date of its maturity. Liable person is then obliged to conclude a new contract with the same insurer for the rest of insurance period.
Spain	*Payment of the premium* The policyholder must pay the premium under the conditions laid down in the policy.

	If periodical premiums have been agreed, the first is required upon signature of the contract; for single premiums, the deadline is fixed by common consent between the parties. Unless there is an agreement to the contrary, payment of the premium (the first premium or the single premium depending on the case) is a prerequisite for entry into force of the guarantee. The parties may however agree on the entry into force of the cover on the day the contract is concluded or on the date and time or their choice. (Art. 15) If the first premium or the single premium has not been paid through the fault of the policyholder, the insurer is entitled to cancel the contract or require the payment of the premium by means of an enforcement procedure in accordance with the provisions in the policy. Unless there is an agreement to the contrary, the insurer is not bound by his obligation if the premium was unpaid at the time of the occurrence of the claim. In the event of non-payment of a subsequent premium, insurance cover is suspended one month after the deadline for the outstanding premium; the contract remains however in force. If the insurer does not claim the payment within six months of the deadline, the contract is deemed to have expired; the insurer may also cancel the contract during this period. At all events, if the contract is suspended, the insurer may only demand the payment of the corresponding premium for the current period and may not claim premiums due for the entire duration of the contract if the latter comprises several periods.
Sweden	***Chapter 5, article 1(1), the Insurance Contract Act (2005:104****)*, stipulates in respect of consumer insurance that the ***initial premiums*** must not be paid earlier than *fourteen days* from the day the Insurance Company sent a claim for payment to the Policyholder. This does, however, not apply where the insurance policy is contingent upon payment of the premium or where the insurance policy otherwise shall be valid only when the premium is paid prior to the commencement of the policy term. According to ***Chapter 5, article 1(2),*** the premium for a ***subsequent premium period*** need not be paid earlier than ***one month*** from the day the Insurance Company sent a claim for payment to the policyholder. Where the *premium period* does *not exceed one month*, the premium shall be paid on ***the first day*** of the policy term. ***Chapter 5, article 2(1), the Insurance Contract Act (2005:104)*** stipulates that where the premium is not paid timely, the Insurance Company may terminate the insurance policy unless the delay is insignificant. – According to ***Chapter 5, article 2(2),*** the termination becomes effective fourteen days after the day notice thereof was sent. A notification lacking information about the consequences of non-payment/late payment is without effect. ***Chapter 5, article 2 (3)*** extends the time limit for payment where the policyholder has been unable to pay the premium due to (i) serious illness, (ii) deprivation of liberty, (iii) non-payment of pension benefits or salary or similar causes. Under such circumstances the termination becomes effective at the earliest one week after the impediment ceased, but at the latest three months after the expiry of the time-limit.
United	The requirements for payment of a premium are made on a contractual basis. (Birds, p. 191)

Kingdom	It is not necessary for premium actually to be paid - the contract may provide that the consideration is agreement to pay. Generally requirements for payment of premium will be governed by the terms of the contract of insurance. Effect of payment of premium to broker - A broker who is engaged by the insured has no authority from the insurer to collect premium, so payment to the broker will not constitute payment to the insurer, as a matter of English agency law (MacGillivray on Insurance Law, 12th edition 7-007). However even where it is otherwise the agent of the insured, the broker may be held out by the insurer as authorised to accept premiums. Further, Client Asset Rules (CASS) made under the Financial Services & Markets Act 2000 require regulated insurance intermediaries either to agree risk transfer provisions with insurers, (under which a payment of premium to the intermediary will be deemed to have been made to the insurer), or to hold premiums and other client monies in a trust account, so that the insured's position will be protected in the event of intermediary insolvency. Consequences of late payment of premium - An insurance contract may contain a premium warranty under which the insured warrants that premiums will be paid at given times. Such a provision will be given effect by the court as a warranty and default will bring the insurer's liability under the policy to an end, although the insured remains liable for the premium (*J A Chapman & Co Limited v Kadirga Denizcilik Ve Ticaret* [1998] Lloyd's rep IR 377). Even without an express warranty an insurer may be able to repudiate a contract of insurance where there has been a failure to pay premium on the due date. *Figre Limited v Mander* [1999] Lloyd's Rep IR 193 is Commercial Court authority that an insurer could repudiate if: (a) time was stipulated to be of the essence; (b) circumstances of the contract or the nature of the subject matter showed that time was impliedly of the essence; or (c) where time was neither expressly nor impliedly of the essence, but the insured had been guilty of unreasonable delay, and the insurer had given notice requiring the premium to be paid within a reasonable time. Broker's liability to insurer for premium - In the marine insurance market, the placing broker is directly responsible as principal to the underwriter for payment of premium pursuant to Section 53 (1) Marine Insurance Act 1906, which codified a long-standing market practice to this effect. The rule is said to reflect a legal fiction whereby, when the contract is concluded, the broker is deemed to have paid the premium and the insurer is deemed to have loaned the premium money back to the broker. Where the practice codified in Section 53(1) applies, the insurer will be unable to claim premium direct from the insured (*Universo Insurance Co of Milan v Merchants Marine Insurance Co Limited* [1897] 2QB 93). However Section 53(1) and the legal fiction on which it said to be based will not prevent an insurer relying on a premium warranty if the broker has failed to pay the insurer (even if the insured has paid the broker) (*Heath Lambert v Sociedad de Corretaje de Seguros* [2004] Lloyd's Rep IR 905). Because the broker is directly liable to the insurer for the premium as soon as it falls due, the broker has a corresponding right to an indemnity from the insured. The broker can sue the policy holder to recover the premium even if it has not made any payment to the insurer itself (*J A Chapman & Co Limited v Kadirga Denizcilik Ve Ticaret*).

	Where insurance is placed by an insured's broker ("producing broker") instructing a sub-broker (a "placing broker") to place the risk with an insurer, the placing broker will be liable to the insurer for premium under Section 53 (1). He can look to the producing broker for an indemnity, but cannot bring a claim directly against the insured because there is no privity of contract (*Prentis Donegan & Partners Ltd -v- Leeds & Leeds Co Inc* [1998] 2 Lloyd's Rep 326). Section 53(1) probably does not apply to non-marine insurance either outside Lloyd's (*Wilson v Avec Audio-visual Equipment Limited* [1974] 1 Lloyds rep 81), or within the Lloyd's market (*Pacific & General Insurance Company v Hazell* [1997] LRLR 65). Broker's lien - Section 53 (2) Marine Insurance Act 1906 gives the broker a lien over the policy itself, and any policy proceeds it receives from the insurer, which allows the broker to recover from the insured premium it has paid, or is due to pay, to the insurer under its obligation in Section 53 (1). It is unclear whether this rule applies in non-marine insurance. Marine policies also often include a broker's cancellation clause entitling the broker to cancel the policy if the insured has failed to pay premium to the broker. Grace periods - Grace periods are sometimes offered in respect of premium payments, where an insured is given a certain amount of time after the expiry of their current policy to pay their next premium. There are a number of ways this might work depending on the class of business: - The insured might be given a temporary cover note where the insurer holds cover for a certain period, and provided the premium is paid within that period, cover will be backdated to the beginning of that period (or the expiry of the previous policy). The insurer is presumably able to revoke the cover note by notice before the premium has been paid. A cover note of this sort is commonly issued on expiry by motor insurers. - Where there is no automatic right of renewal, the insurer might choose to offer a grace period where either the insurer has not yet decided whether or not to offer renewal terms, or where the insured has not yet decided whether to apply for renewal. In such cases, the effect of the grace period will depend upon the terms of any express contractual provisions and the construction of the policy as a whole. The insurer may be able to refuse premium tendered by the insured in the grace period with the effect that cover is treated as having terminated when the previous policy expired; - Where there is an automatic right to renew and a grace period applies to extend cover until the last date of the grace period, the insured would remain covered during the days of grace and the insurer cannot refuse a renewal premium. (Colinvaux's Law of Insurance, 9th edition p.379) Grace periods in Life policies would fall into the final category as there is a long established insurance practice of issuing policies with a "period of grace" for payment of subsequent premiums. (Principles of European Insurance Contract Law, p. 199 N2-N3)

Rechtsvergleichung

Multiple insurance

Multiple insurances[1]

Austria	Several detailed rules in §§ 49 – 68a VersVG concerning all indemnity insurances: damages paid in money; insured sum = limit of all payments; over-, underinsurance, causation of loss, duty to mitigate loss; right to subrogation General rules on claims handling - §§ 33, 34: duty to notify and give information on insured event - When insurance money falls due (§ 11) Limitation period (3 years but absolute maximum of 10 years - § 12 para 1; short period of 1 year if notified by the insurer in accordance with § 12 para. 3)
Bulgaria	No general rules on multiple insurance, only a couple of specific rules. With regard to property insurance and payment of insurance indemnity (Art.208 (4) Code for the Insurance): The policyholder is obliged to inform of the existence of other insurance contracts, indicating the other insures and the insurance amounts in accordance with the contracts concluded with them. In case two or more insurance contracts have been concluded for the same property right under equal insurance risk covers, and the total of separate insurance amounts exceeds the actual value of the property insured, each insurer shall be liable at the proportion of the insurance amount it agreed on to the total insurance amount of all insurances. With regard to the insurance amount in life and accident insurance (Art.238 (2)): The insurance amount shall also be paid where the policyholder has received payment under another insurance contract.
Croatia	Pursuant to Article 958 of the Civil Obligations Act where a property is insured against the same risk with two or more insurers, for the same interest, for the same period and for the same insured person, so that the aggregate amount of insurance does not exceed the insurable value of that property (multiple insurance), every insurer shall be fully liable for meeting the obligations arising from the contract that he himself has entered into. Where the aggregate amount of insurance exceeds the insurable value of property (double insurance), and the policyholder has acted with due care, all these insurances shall be valid and every insurer shall have a right to the agreed premium for the current period of insurance, while the insured person shall be entitled to request from every individual insurer a compensation in accordance with the contract concluded with him, which shall not exceed the amount of damage. Upon the occurrence of the insured event, the policyholder shall notify thereof

[1] The information in this table is provided by insurance experts or insurance organisations from respective country. It does not contain a thorough review of all Member States' insurance contract laws and does not reflect the official opinion of the Commission.

	every insurer against the same risk, and communicate to him the names and addresses of other insurers and the amounts of insurance of individual contracts concluded with them. After the payment of compensation to the insured, every insurer shall account for a portion of the compensation proportionate to the ratio between the amounts of insurance to which he has agreed to the aggregate amount of insurance. The insurer who has paid a larger amount shall be entitled to request a compensation for the excessive payment from the other insurers. If a contract is entered into without an indication of the amount of insurance or if the cover is unlimited, such a contract shall be deemed as a contract concluded with the largest amount of insurance. If a policyholder has concluded an insurance contract whereby a double insurance has occurred and he has not been aware of the previously concluded insurance contract, he may, regardless of the fact whether he himself or another party has concluded the previous contract, request the corresponding reduction in the amount of insurance and the premium referring to the subsequent insurance contract, within one month from the date when he has become aware of the previous insurance, however, the insurer shall retain the premiums received and he shall be entitled to the premium for the current period. If the double insurance is a result of a reduction in the value of the insured property during the period of insurance, the policyholder shall have a right to a corresponding reduction in the amount of insurance and the premium, starting from the date when he has communicated his request for reduction to the insurer. Where, on the occurrence of the double insurance, the policyholder has failed to act with due care, any insurer may request the cancellation of the contract.
Estonia	§ 483 LOA: A policyholder shall notify the insurer immediately if the same insured risk is insured by another insurer, including cases where loss of income is insured by one insurer and other damage by another insurer. The name of the other insurer and the sum insured shall be indicated in the notice. **§ 486. Multiple insurance** (1) If a policyholder insures the same insured risk with several insurers and the total amount of indemnities payable by the insurers would exceed the extent of the damage or the total of the sums insured would exceed the insurable value (multiple insurance), the insurers shall be liable as solidary obligors. (2) In the case specified in subsection (1) of this section, each insurer shall be liable to the policyholder to the extent of the sum insured to be paid by the insurer pursuant to the contract, but the policyholder shall not claim more in total than the extent of damage. (3) In the case specified in subsection (1) of this section, insurers shall be liable between themselves in proportion to the amount each of them has to pay the policyholder pursuant to the insurance contract. (4) Contracts entered into by a policyholder who takes out multiple insurance with the intention of acquiring an unlawful patrimonial advantage shall be void. If the insurer was unaware of the invalidity of the contract at the time of entry into the contract, the insurer shall be entitled to insurance premiums until the end of the period of insurance during which the insurer became or should have become

	aware of the invalidity of the contract. (5) Any agreement which derogates from the provisions of subsections (1)–(4) of this section is void. **§ 487. Elimination of multiple insurance** (1) If a policyholder unknowingly entered into a contract resulting in multiple insurance or if multiple insurance occurred later due to a decrease in insurable value, the policyholder may cancel the contract which was entered into later or reduce the sum insured to the amount not covered by earlier insurance. Together with a reduction of the sum insured, the policyholder may also reduce the insurance premium. (2) In the case specified in subsection (1) of this section, the policyholder may only cancel the contract or reduce the sum insured immediately after becoming aware of multiple insurance. (3) A contract shall be deemed to have been cancelled under the circumstances specified in subsection (1) of this section or the sum insured and the insurance premium shall be deemed to have been reduced by the end of the period of insurance during which the policyholder cancelled the contract or notified the insurer of the reduction of the sum insured and the insurance premium.
Finland	If several insurers has granted the award of benefit for the same insured occur to the same insurance policy, each of the insurers are liable for the compensation as would be granted under the exclusive insurance policy. If the total cumulative benefit of insurance is over-insured, the insured is not entitled to compensation under various insurance policies totaling more than the actual amount of the damage unless otherwise stipulated by law.
France	Article L121-4 Insurance Code: Modifié par Loi n°82-600 du 13 juillet 1982 - art. 8 JORF 14 juillet 1982 If the insured subscribe different insurances for the same risk, he shall give notice to all the concerned insurers. The insured shall notify the name of the insurer with whom another contract has been signed and shall state the amount of the coverage. If it is the case of multiple insurances signed for fraudulent purposes the sanctions foreseen by Article L 121-3 are applicable. If there is no fraudulent intent, each insurance produce its effects within the limits fixed by the contract and by Article L 121-1 irrespective of the date the contract was signed. (FULL LIABILITY PRINCIPLE) Within these limits the insured may obtain compensation addressing his claim to the insurer(s) he prefers. The contribution of each insurer is determined in relation to the ratio between the indemnity the insurer should have had to pay if he was alone and the total amount of the indemnities that each insurer would have had to pay if he was alone. Article L121-3 Insurance Code: (INDEMNITY PRINCIPLE) If one or more insurance contracts result in over-

	insurance, if there is willingness or fraud, the other party may claim the nullity of the contract and ask for the damages reparation and the interests. If neither there are nor willingness nor fraud, the contract is valid, but only till the real value of insured objects and the insurer has no right to the exceeding premiums.
Germany	§ 77 VVG: Anyone who insures the same interest against the same risk with several insurers has to inform each insurer about the other insurances without undue delay naming the other insurers and the sum insured. This applies also if he has insured the lost profit with one insurer but other damages with another insurer. § 78 VVG: (1) If the sums insured exceed the insurable value or the sum of damages which would have to be paid by the insurer if the other insurance did not exist exceeds the total loss (multiple insurance), the insurers are liable as joint and several debtors in such a manner that each insurer must pay the sum in accordance with his contract, but the policyholder cannot demand more than the total amount of the loss. (3) If the policyholder has concluded multiple insurance with the intention of thereby gaining an illegal pecuniary benefit, each contract made with that intention shall be void; the insurer shall be entitled to the insurance premium up until such time as he learned of the circumstances establishing the nullity. § 79 VVG: If the policyholder has concluded the contract on account of which the multiple insurance arose without knowing this, he may demand that the contract made at a later date be rescinded or the sum insured be reduced, also reducing the insurance premium proportionally to that share not covered by the earlier insurance This applies also if the multiple insurance arose on account of the fact that the insurable value decreased after the conclusion of several contracts of insurance. If in such cases several contracts of insurance were made at the same time or with the consent of the insurers, the policyholder may only demand the proportional reduction of the sums insured and of the premiums.
Greece	<u>Art 15 of law 2496/1997 in regard to insurance contract :</u> In the event that the insured property has been covered against the same risk by several insurers (“multiple insurance”) the policyholder, or the insured, should notify without undue delay each insurer of the conclusion of the further contract and of the insured sum. Multiple insurance contracts are valid up to the total value of the insured loss. In the absence of agreement to the contrary, the insurers shall bear joint and several liability up to the insured sum stipulated in their contracts. It may be agreed that if the existence of other insurance contracts is not notified to the insurer upon the conclusion of the contract, the insurance money shall be limited to the sums exceeding the insured sums under any previous insurance policy. Should the policyholder or the insured intentionally fail to make the said notifications, the

	insurer shall be entitled to terminate the contract within one (1) month from the date when the insurer acquired knowledge of the non – compliance. In the event that the insurance contracts were concluded by joint agreement, with or without a common insurance co-ordinator (leader), each of the insurers concerned shall be proportionally liable for the insured amount ("co-insurance").
Hungary	In case of multiple insurance the claim paid is divided among the insurance companies affected by the multiple cover (in proportion to the terms of supplied insurance cover). ***Ptk. 6:441*** (1) In the event where the insurance risk is covered - in a predetermined percentage - jointly by more than one insurance company, and the insurance services are performed collectively, the contract to that effect shall indicate the name of all insurance companies participating in the co-insurance, including their share in risk coverage. In connection with co-insurance, the service obligations of insurance companies shall be limited by their commitment in the sharing of risks. (2) A co-insurance contract that fails to specify the share of participating insurance companies in risk coverage shall be null and void. (3) The insurance companies shall be represented in respect of the contracting party by the leading insurer. If the leading insurer has not been named in the contract, the contracting party shall have the option to lawfully perform and to make legal statements - at his discretion - to either of the insurance companies. **(Ptk. 6:476)[2]** Multiple insurance is not prohibited for insurances where contract is providing payment of a pre-fixed sum of money. These are typically the life insurance contracts.
Italy	<u>Art. 1910 Civil Code:</u> The insurer must give immediate notice to each insurer, no matter if over-insurance is involved. In case of the insured event to happen, the insured must give immediate notice to all the insurers. If the insured fails to provide the information, the insurer can deny payment. The insured has the right to be paid by each single insurer according to the specific insurance contract till the total amount of the suffered damages is reached (indemnity principle). Principles of full liability for each insurer; but the insurers are entitled to contribution from the other insurers. Each insurer is liable in proportion to the amounts stated in the various insurance policies.

[2] *The text below refers to the following Hungarian laws*

- **Ptk.** – *Hungarian Civil Code; Act of V of 2013.*
- **Bit.** – *Act on Insurance Institutions and Insurance Business; Act of LX of 2003.*

Portugal	**1. Article 133** of the Legal Regime states in general: **Article 133** *More than one contract of insurance* 1. When the same risk relating to the same interest and for an identical period is covered by more than one insurer, the policyholder or the insured must inform all the insurers of this situation as soon as they become aware of the fact and when reporting any loss. 2. Any intentional omission in provision of the information referred to in the preceding paragraph shall discharge the insurers from their respective obligations. 3. A loss occurring within the scope of the contracts referred to in para.1 shall be indemnified by any of the insurers, as selected by the insured, within the limits of the respective obligation. 4. Save as otherwise agreed, the insurers involved in compensating the damage covered by the contracts referred to in para. 1 shall be liable amongst themselves in the proportion of the amount which each one would have to pay if there existed only one contract of insurance. 5. In the event of the insolvency of any of the insurers, the others shall be liable for the share of that insolvent insurer pursuant to the provisions of the preceding paragraph. 6. The provisions of this article shall apply to the right of the injured party to demand payment of the indemnity direct from the insurer in public liability insurance, with the exception of the provisions of para.2 that may not be relied upon against the injured party. **2. Article 180** states for personal insurance in general **Article 180** *More than one contract of insurance* 1. Save as otherwise agreed, pre-determined payments are cumulative with others of the same nature or with payments of a compensatory nature, even where they are dependent on the occurrence of the same event. 2. Insofar as it guarantees compensatory payments in relation to the same risk, the ordinary rules of damage insurance set out in art.133 shall also apply to personal insurance. 3. The policyholder or the insured must inform the insurer of the existence of or of having taken out insurance in relation to the same risk, even where only payments of a predetermined value are covered.

	3. Article 215/b states for health insurance **Article 215** *Applicable regime* The following shall not be applicable to sickness insurance: (a) The rules relating to increased risk set forth in arts 93 and 94in relation to changes in the condition of health of the insured person. (b) **The obligation to disclose the existence of more than one policy** as set forth in art. 180(2) and (3).
Romania	Article 2219 of Civil Code states that in property insurance the insured shall declare the existence of all insurance on the same property, the obligation being awarded to both the conclusion of insurance contracts, and during their execution. When there are several insurance contracts covering the same property, each insurer is liable to pay in proportion to the sum insured and up to it without the insured may receive compensation greater than the actual loss as a direct consequence of the risk.
Slovakia	§ 807 of CC If one and the same thing is insured against the same event at several insurers and if the aggregate of the amount exceeds the insurance value of the thing each insurers shall be obliged to provide only proportion of the sum which should be paid.
Spain	In multiple insurance the policyholder or the insured, unless otherwise agreed, must declare the claim to each insurer, indicating the name of the other insurers (Art. 32 LCS). In the event of coinsurance, a simple notification to the leading insurer or the delegated insurer suffices. (Art. 33), If in bad faith this communication is omitted and if it happens to be over-insurance, insurers are not required to pay compensation. Insurers should contribute to the payment of compensation in proportion to the sum insured, without exceeding the amount of the damage. Within this limit the insured can ask each insurer the compensation due, according to the respective contract. If one of the insurers paid an amount higher than the corresponding proportion he may sue the other insurers. If the total of the sums insured significantly exceeds the value of the interest, shall apply the provisions of Article 31.

Sweden	***Chapter 6, Article 4, the Insurance Contract Act (2005:104)*** Where the same interest has been insured against the same risk with several insurance companies, each insurance company is liable to the insured as if that company alone had issued insurance. However, the insured is not entitled to a total indemnity from the insurers exceeding the actual loss/damage. In case the total sum of the liability amounts exceeds the actual loss/damage, the liability shall be allocated between the insurance companies in relation to the respective liability amount.
United Kingdom	We did not find it possible to summarise in short form this section of English insurance contract law. A detailed analysis is available at Chapter 24 of MacGillivray on Insurance Law relating to all risks other than marine, Twelfth Edition. (This is available on Westlaw or at the Law Societies Brussels Office.)

Rechtsvergleichung

Claims liquidation

Claims liquidation[1]

Austria	§§ 38, 39 VersVG First premium: 14 days period for payment; if paid within this period: full cover as of conclusion of the contract; if not paid within this period: insurer´s right to rescind the contract; if non-payment was negligent, insurer is freed of its obligation to pay insurance money. Further premiums: Insurer must give additional period of at least 2 weeks together with a warning about the consequences of non-payment If premium is not paid within the additional period: right of the insurer to cancel the contract; if the policyholder did not pay negligently, the insurer is also freed from its obligation to cover future insured events Sanctions do not apply if non-payment concerned only a minor part of the premium (no more than 10% or 60€ - see § 39a) See also § 40 – divisibility of premium
Bulgaria	Detailed rules exist mainly with regard to motor insurance. The only general rule is art.193 Code for the Insurance: The insurer is to pay the amount agreed upon the occurrence of the insured event. Several specific rules concern certain types of insurance products. Property insurance: Art.208 - The insurer is to pay the amount agreed within the agreed deadline which may not exceed 15 days from the moment the policyholder has fulfilled the notification obligation. The indemnity is equal to the amount of the damage on the day of occurrence of the event and do not cover lost profit, unless otherwise agreed in the insurance contract. Art.209 - The insurer may, with consent of the insured, also repair the damages in kind within 45 days from the moment the policyholder has fulfilled the notification obligation. Life and accident insurance: Art.238 – The insurer is to pay the amount agreed within 15 days from the moment when evidence of the insured event and of the amount of payment due has been presented. Motor insurance: Before indemnity payment for total loss of a vehicle registered in BG the insurer has to require proof of deregistration of the vehicle. The amount for the repair needed is fixed according to the method agreed on, based on a invoice issued by a motor service station

[1] The information in this table is provided by insurance experts or insurance organisations from respective country. It does not contain a thorough review of all Member States' insurance contract laws and does not reflect the official opinion of the Commission.

	or an expert assessment. Third party motor insurance: Art.269 - An insurer who provides third party motor insurance has to appoint a representative for settlement of claims under this type of insurance in each Member State. Art. 271 - The insurer has to decide on claims within three months from the date on which the claim is filed. Where documents and proof are insufficient, the insurer may require presentation of additional documents. Within that deadline the insurer can either fix and pay the sum of the compensation, or provide a reasoned answer for refusal of payments or stating that the grounds and extent of the damage have not been fully established. The insurer cannot refuse to decide on claim where certain written documents supporting the claim have been presented. Art.273 - In cases of death or bodily injuries, the amount for compensation is fixed by an expert insurance committee of the insurer or by judicial procedure. In cases of damage to property, the compensation may not exceed the actual cost of the damage. Compensation for damage to motor vehicles shall be fixed in accordance with the regulations approved by the Financial Supervision Commission.
Croatia	Pursuant to Article 943 of the Civil Obligations Act in case of an insured event, the insurer shall pay the indemnity stipulated in the contract within the agreed time limit, which may not be longer than 14 days, counting from the date when the insurer has received a notice of the occurrence of the insured event. Where a certain period of time is required to establish the existence of the insurer's liability or the amount of indemnity, the insurer shall pay the indemnity stipulated in the contract within 30 days following the date of receipt of the claim for damages or shall notify the insured, within the same period that his claim is unfounded. If the amount of the insurer's liability is not determined within the quoted time limits the insurer shall immediately pay the undisputed amount of a portion of his liability as an advance payment. If the insurer fails to settle his liability within the prescribed time limits, he shall pay default interest to the insured person, starting from the date of receipt of the notice of the insured event. Pursuant to Article 12 of the Compulsory **Traffic Insurance Act in case of a claim for non-material damage t**he liable insurer shall be obliged, within a period of 30 days at the latest, and in case of a claim for material damage within a period of 14 days at the latest from the day of receiving the claim, to make a reasoned offer of compensation to the claimant i.e. a reasoned reply why the offer of compensation could not have been given. In the event that it is not possible to determine the final amount of compensation, the liable insurer shall be obliged to indemnify the injured party in form of an advance for the undisputed part of compensation. In the event of failure to carry out payment of compensation the liable insurer will be obliged to pay to the injured party the interests accrued calculated as from the date of the submitted claim.

Estonia	Following are the general rules, which however mostly apply to non-life insurance. - A policyholder shall immediately notify the insurer of the occurrence of an insured event. *In life insurance contracts the insurer need not be notified of an insured event if the attainment by the insured person of a certain age has been agreed upon as the insured event. As well, if a third party is entitled to performance of the obligation by the insurer, the third party shall give notice of the insured event and provide information and submit evidence concerning the insured event.* - An insurer may, after the occurrence of an insured event, request information from the policyholder which is necessary to determine the obligation to perform the contract. The insurer may request the submission of evidence insofar as the policyholder can reasonably be expected to submit such evidence. - An insurer's obligation to perform a contract falls due after the occurrence of an insured event and the completion of the process of determining the extent of the insurer's performance. - However, the insurer's obligation to perform a contract falls due if, two months after notifying the insurer of the insured event, the policyholder requests an explanation from the insurer as to why the process of determining the extent of performance has not yet been completed and the insurer fails to respond to the enquiry within one month. - If the process of determining the extent of the insurer's performance is not completed within one month after notification being given of an insured event, the policyholder may, if the occurrence of the insured event is established, request that money be paid at the expense of the insurer's performance obligation in the minimum amount which the insurer should pay under the circumstances. The running of the term shall be suspended for the period during which completion of the process is hindered by circumstances arising from the policyholder.
Finland	When the insurance event occurs, the insurer has the obligation to pay claimant the sum stipulated in the insurance contract, or inform the claimant that the compensation will not be paid no later than one month after the insurer has received the necessary documents and information. The claimant must provide the insurer with the documents and information that are necessary for establishing the insurer's liability, and that the claimant may reasonably be required to provide taking into account the insurer's ability to carry out investigation. If the amount of compensation is disputed, the insurer is liable to pay the compensation of the undisputed part within one month. If the payment of the compensation is delayed, the insurer is liable to pay interest according to the Finnish law. These matters are covered in detail by sections 69 to 75 in the Insurance Contracts Act. Section 73 provides as follows: "Any claims based on an insurance contract shall be made to the insurer within one year from the date at which the claimant becomes aware of an in-force insurance policy, of the occurrence of an insured event and of the loss, damage or injury that resulted from the occurrence. In any event, the claim shall be made within ten years from the

	occurrence of the insured event or, if the insurance has been taken out to cover against bodily injury or liability for damages, from the occurrence of the loss, damage or injury. Reporting the occurrence of an insured event is considered to equal the making of a claim for this purpose. If no claim is made within the period provided under Subsection 1, the claimant loses his entitlement to compensation." Section 74 provides further: "Any suit based on either a decision made by the insurer on a claim or another decision that affects the position of the policyholder, the insured or another party entitled to compensation or benefits, shall be filed within three years from the date of receipt by the party concerned of the insurer's written notice of the decision and of the time limit, under penalty of forfeiture of the underlying right. If the case is pending settlement by the Consumer Disputes Board, the Insurance Complaints Board or any other body resolving consumer disputes, the statute of limitations is suspended as provided in Section 11 of the act on the period of limitation of debt (728/2003)."
France	(FIRE INSURANCE) Article L122-2 Insurance Code: The insurer, unless otherwise agreed, shall be answerable for the sole material damage caused directly by the fire or the start of the fire. If, within three months as from the repair of the loss, the damage survey has not been completed, the insured shall be entitled to have interest accrue as from the demand for payment. If the damage survey has not been completed within six months, each of the parties may bring legal proceedings. ALL INSURANCES : PRESCRIPTION Fraudulent delay on the part of the insurer in settling the claim can interrupt the prescription of the duty of performance: Article L114-1 Insurance Code: Modifié par Loi n°2006-1640 du 21 décembre 2006 - art. 18 (V) JORF 22 décembre 2006 All legal actions arising from an insurance contract shall be barred two years as from the event that gave rise to them. However, said time limit shall run: 1) in the event of non-disclosure, omission, fraudulent representation or misrepresentation of the risk incurred, only from the date on which the insurer is aware of them; 2) in the event of loss, only from the date the concerned parties are aware of them, if

	they prove that they were unaware of such facts up till that moment. When the insured's action against the insurer arises from a third party's recourse, the limitation period shall run only from the date on which said third party brings a legal action against the insured or the latter has paid it compensation. The limitation period shall be increased to ten years for life insurance contract when the beneficiary is not the policyholder and in insurance contracts covering personal injury when the beneficiaries are the deceased insured's successors. Information on limitation period Article R.112-1: Les polices d'assurance doivent rappeler les dispositions des titres Ier et II du livre Ier de la partie législative du présent code concernant la prescription des actions dérivant du contrat d'assurance. Cour de cassation : l'absence d'une disposition des articles L.114-1 et L.114-2 empêche l'assureur d'opposer la prescription. Time of performance: Article L113-5 Insurance Code: Modifié par Loi n°81-5 du 7 janvier 1981 - art. 33 JORF 8 janvier 1981 rectificatif JORF 8 février 1981 Upon occurrence of the risk or the maturity of the contract, the insurer must perform the service defined in the contract within the agreed time and it may not be committed beyond said time. Construction insurance : Compulsory insurance against damage: Article L 242-1 Insurance Code: Modifié par LOI n°2008-735 du 28 juillet 2008 - art. 45 […] The insurer has a maximum period of sixty days as from receipt of the report of loss to notify the insured of its decision on the performance of the covers provided for in the contract. If the performance of the covers provided for in the contract is accepted, the insurer will make a compensation offer, where applicable on temporary basis, to cover the cost of the reparation work of the damage, within a maximum period of ninety days as from receipt of the report of loss. If the insured accepts the offer made, the insurer will settle the compensation within two weeks. When the insurer fails to comply within the time-limits provided for in the two

	paragraphs above or proposes a compensation offer that is clearly inadequate, the insured may, after it has notified the insurer, incur the expenses necessary to repair the damage. In such event, an interest double the legal interest rate shall be applied ipso jure to the compensation to be paid by the insurer. In the event of exceptional difficulties due to the nature or scope of the damage, the insurer may, at the same time as it notifies the insured of its agreement in principle to perform the cover, propose an additional time-limit to make its compensation offer. The proposal must be based exclusively on technical considerations and explained. The additional time-limit provided for in the previous paragraph must expressly be accepted by the insured and may not exceed one hundred and thirty five days. The insurance referred to in the first paragraph of this Article shall take effect after the expiry of the period of the completion bond referred to in Article 1792 of the Civil Code. However, it shall cover the payment of necessary repairs when: - prior to delivery, following an unsuccessful formal demand, the works contract entered into with the contractor has been terminated on ground of the latter's failure to perform its obligations. ntractor has not performed its obligations. Any insurance firm accredited in accordance with the terms set out in Article L321-1, even if it does not manage the risks governed by Articles L. 241-1 and L. 241-2 above, may cover the risks referred to in this Article. Motor vehicle, trailer or semi-trailer compulsory insurance Compensation procedures: Article L 211-9 Insurance Code: Modifié par Loi n°2003-706 du 1 août 2003 - art. 83 JORF 2 août 2003 Irrespective of the nature of the damage, where the liability is not disputed and the damage has been fully quantified, the insurer who covers public liability resulting from a motor vehicle accident shall be bound to make a reasoned offer of compensation to the victim within three-months at most as from the accident. Where the liability is disputed or is not clearly established, or where the damage is not fully quantified, the insurer must, within the same time limit, give a reasoned response on the items raised in the petition. An offer of compensation must be made to the victim who has sustained a physical injury within an eight-month period as of the date of the accident. If the victim dies, the offer shall be made to his heirs and, where applicable, to his/her spouse. The offer shall include all compensable items of the damage, including the items related to material

	damage, when they have not been the subject of prior settlement. The offer may be a provisory one where the insurer has not been informed, within three-months as of the accident, of the stabilisation of the victim's condition. The final offer of compensation must then be made within five-months following the date on which the insurer was informed of the said stabilisation. In any event, the most favourable time limit for the victim shall apply. In the event more than one vehicle is involved and if there are several insurers, the offer shall be made by one insurer acting on behalf of the other insurers. Rules applicable to non-marine loss insurance Indemnity Principle: Article L 121-1 Insurance Code: Insurance in respect of property is a compensation contract. The compensation that the insurer owes to the insured may not exceed the amount of the value of the insured property at the time of the loss. It may be provided that the insured must be his own insurer of a sum or a specific quota or that he shall bear a deduction fixed in advance on the compensation for the loss.
Germany	According to § 30 VVG the policyholder has to notify the insurer of the occurrence of the insured event without undue delay after he has learned thereof. If a third party is entitled to the right to the insurer's benefit, the third party has to notify the insurer. (2) An insurer may not invoke an agreement according to which it does not have to pay because of the breach of the duty to notify if it learns about the occurrence of an insured event in good time by other means. § 31 VVG After the occurrence of an insured event, the policyholder has to disclose all the information necessary to establish the occurrence of the insured event or the extent of the insurer's liability. The insurer may demand proof to the extent that the policyholder may be reasonably expected to obtain such proof. (2) If a third party has the right to receive benefits from the insurer, he must also fulfil the obligations under subsection (1). § 28 VVG on precautionary measures (terminology of the PEICL) is also very important but a separate issue
Greece	<u>Art 7 of law 2496/1997 in regard to insurance contract :</u> (see above “Disclosure duties of the customer) <u>Art 7§ 7 of law 2496/1997 provides also for the following:</u> On the occurrence of the insured event, the insurer must pay the insurance money

	promptly. If a longer period is required for the assessment of the full extent of the loss, the insurer shall be obliged to pay the undisputed amount without undue delay. In case of the investment life policies, the insurer shall pay the amount of the surrender values and the potential profit coming out of the results as set out in the provisions of the Legislative Decree 400/1970 within 30 days from the date of submission of the application by the beneficiary. MTPL insurance: Specific rules are provided regarding the settlement procedure and payment of compensation to the beneficiaries of MTPL insurance contracts (Bank of Greece Decision No 3/5/26.1.2011).
Hungary	**Ptk. 6: 462 §[2]** Time limit of claim liquidation is not explicitly regulated by the contract law. Exact terms and conditions of when and how the service/performance of insurer is due are stipulated in the contract. **Ptk. 6:464** [Exemption from settlement obligation] (1) The insurance company shall be exempt from its payment obligation if it is able to prove that damages have been caused unlawfully, either willfully or by gross negligence, by: a) the insured person or the contracting party; b) any family member living in their household, any managing partner or any employee, member or agent working in a position specified in the standard contract terms; or c) any executive officer of the insured legal person specified in the standard contract terms, or any member, employee or agent of such insured legal person authorized to manage the insured property. (2) The provision referred to in Subsection (1) shall also apply to any breach of the obligation to prevent and mitigate damages.
Italy	Liability MOTOR-VEHICLE mandatory insurance, art. 143 - 150 d.lgs. 209 7/9/2005: Procedural rules for the claims liquidation. Principle of "direct reparation" (immediate reparation by the insurer of the driver's own vehicle and after reintegration by the guilty driver's insurance company) in case of damages only to vehicles and drivers (not to third subjects).
Portugal	1. Articles 99 to 104 of the Legal Regime state for the general regime: CHAPTER IX

[2] *The text below refers to the following Hungarian laws*

- **Ptk.** – *Hungarian Civil Code; Act of V of 2013.*

	LOSS SECTION I CONCEPT AND REPORTING Article 99 Concept A loss is the occurrence, in full or in part, of the event that triggers the risk cover provided for in the contract. Article 100 Reporting of the loss 1. The occurrence of a loss must be reported to the insurer by the policyholder, by the insured or by the beneficiary, within the time limit laid down in the contract or, where no time limit has been set, within the eight days immediately following the date on which the reporting party became aware of it. 2. The report must set out the circumstances surrounding the occurrence of the loss, the possible causes thereof and the respective consequences. 3. The policyholder, the insured or the beneficiary must likewise provide the insurer with any relevant information requested thereby in relation to the loss and its consequences. Article 101 Failure to report a loss 1. The contract may provide for the insurer to reduce the payment having regard to any loss or damage that it may incur as a result of non-fulfilment of the duties set out in the preceding article. 2. The contract may also provide for cover to be forfeited in the event of intentional non-fulfillment or incorrect fulfillment of the duties listed in the preceding article having caused significant loss or damage to the insurer. 3. The provisions of the preceding paragraphs shall not apply when the insurer has become aware of the loss by any other means during the time limit stipulated in para.1 of the preceding article, or the party responsible for reporting the loss is able to prove that it could not reasonably have duly reported it earlier than it did. 4. The provisions of paras 1 and 2 may not be relied upon against injured parties in the case of compulsory public liability insurance and the insurer shall have the right of recourse against any party in breach in relation to the payment it effects, within the

	limits referred to in those paragraphs. SECTION II PAYMENT Article 102 Payment by the insurer 1. The insurer shall be obliged to effect the payment under the contract to the relevant party, once the occurrence of the loss and the causes, circumstances and consequences thereof have been confirmed. 2. For the purposes of the provisions of the preceding paragraph, depending on the circumstances, advance quantification of the consequences of the loss may be required. 3. The payment to be effected by the insurer may be pecuniary or non-pecuniary. Article 103 Third party rights Any payment made to the prejudice of any rights of third parties of which the insurer is aware, namely preferred creditors, shall not release it from the obligation to discharge its duty. Article 104 Due date The insurer's payment shall fall due 30 days after the facts referred to in art. 102 have been established. 2. Articles 128 to 136 state for the damage insurance: SECTION III COMPENSATORY PRINCIPLE Article 128 Amount payable by the insurer The amount payable by the insurer shall be limited to the damage arising from the loss up to the amount of the sum insured. Article 129

	Salvage Any property salvaged from the loss may only be abandoned in favor of the insurer where provision in this respect has been made in the contract. Article 130 Property insurance 1. In property insurance, the damage to be taken into account in order to determine the amount payable by the insurer shall be that of the value of the interest insured at the time of the loss. 2. In property insurance, the insurer shall only be liable for business interruption arising out of the loss if this has been agreed. 3. The provisions of the preceding paragraph shall likewise apply to the value of loss of use of the item. Article 131 Agreement l. Without prejudice to the provisions of art.128 and para. l of the preceding article, the parties may agree on the value of the interest insured to be taken into account in order to calculate the compensation, and this amount must not be manifestly unfounded. 2. The parties may agree, in particular, to set a rebuilding or replacement value for the property or not to take account of any diminution in the value of the interest insured on the basis of wear and tear or use of the property. 3. The agreements provided for in the preceding paragraphs shall not prejudice application of the regime of alteration of the risk provided for in arts 91-94. Article 132 Over-insurance 1. If the sum insured exceeds the value of the interest insured, the provisions of art.128 shall apply, and the parties may request a reduction in the contract. 2. If the policyholder or the insured is acting in good faith, the insurer shall proceed to return any excess premiums that have been paid in the two years preceding the request for reduction in the contract, less any acquisition costs calculated proportionally. Article 134 Under- insurance

	Save as otherwise agreed, if the sum insured is lower than the value of the subject matter of the insurance, the insurer shall only be liable for the damage in the respective proportion. Article 135 Review 1. Save as otherwise stipulated, in insurance relating to housing risks, the value of the property insured or the insured proportion thereof shall be automatically reviewed in accordance with the indices published for this purpose by the Instituto de Seguros de Portugal. 2. Without prejudice to the information provided for in arts 18-21, the insurer must inform the policyholder, upon conclusion of the contract and at the time of any extensions, of the content of the provisions of the preceding paragraph, as well as the insured value of the property to be taken into account for the purpose of compensation in the event of total loss, and of the criteria for review thereof. 3. Failure to fulfill the duties established in the preceding paragraph shall give rise to non-application of the provisions of the preceding article, to the extent of non-fulfillment. Article 136 Subrogation by the insurer 1. Any insurer that has paid out compensation shall be subrogated, to the extent of the amount paid, in the rights of the insured against the third party responsible for the loss. 2. The policyholder or the insured shall be liable up to the limit of the compensation paid by the insurer, for any act or omission that prejudices the rights provided for in the preceding paragraph. 3. Partial subrogation shall not prejudice the right of the insured in relation to the portion of the risk not covered, when the insured acts jointly with the insurer against the liable third party, save as otherwise agreed in major risks insurance contracts. 4. The provisions of para. 1 shall not apply: (a) against the insured if the insured is liable for the third party in accordance with the provisions of the law; and (b) against the spouse, any person who lives in a de facto partnership, ascendants and descendants of the insured who live with them in the same household, save where the liability of such third parties is fraudulent or is covered by a contract of insurance 3. Articles 214 and 217 state for health insurance:

	Article 214 Contractual clauses The contract conditions of renewable annual sickness insurance shall, in a clearly visible and highlighted manner state that: (a) The insurer only guarantees to make the agreed payments or to pay the expenses incurred in each year during the term of the contract. (b) The terms of compensation if the contract is not renewed or of the insured's cover relates to the risk covered in the contract, in accordance with the provisions of art.217. Article 217 Termination of the contract 1. If a contract or cover is not renewed and the risk is not covered by a subsequent contract of insurance, the insurer may not, within the following two years and until the sum insured in the last period of validity of the contract is shown to be exhausted, refuse payments relating to sickness that was evident during the tenTIS of the policy or other events occurring, provided they were covered by the insurance. 2. For the purposes of the provisions of the preceding paragraph, the insurer must be informed of the illness within 30 days immediately following the end of the contract, save where there is a just impediment. OBSERVATION Please note that there exist special rules on claims liquidation for certain kinds of compulsory insurance, such as motor insurance liability (Decree-law 291/2007 of 21/08/2007, articles 31 to 46) and working accidents insurance (Law 98/2009, article 23, and Portaria 256/2011, clause 27)
Romania	Article 2208 of Civil Code states that if the insured risk occurs, the insurer must pay the insurance indemnity as provided in the contract. When there is disagreement on indemnity insurance of the disputed shall be paid by the insurer prior to resolving disagreement by agreement or by the court. In the cases established by the contract, in property insurance and liability insurance, the insurer owes no indemnity if the insured risk was caused deliberately by the insured, the beneficiary of insurance or a member of management of the insured legal entity.
Slovakia	Detailed rules exist mainly with regard to motor insurance. § 797 of CC The right to the claim payment shall arise if the event to which the rise of the insurer´s obligation to pay the claim is related occurs (insured event).

	The claim is payable within 15 days after the date when insurer finished the necessary investigation to ascertain to extant of the insurer´s obligation to pay the claim. The investigation must be performed without undue delay, if it cannot be finished within 1 month after the date when the insurer learned about insured event, the insurer is obliged to provide the insured with an adequate advance payment at the request of the insured. Act No. 381/2001 Coll. On Compulsory MTPL insurance Detailed rules exist mainly with regard to motor insurance. § 10 The insured party is obliged to notify the insurer in writing of the insured event a) within 15 days of its occurrence if the event took place in the Slovakia b) within 30 days of its occurrence if the event took place outside Slovakia § 11 The insurer shall be obliged, without undue delay, to undertake investigation necessary to determine the scope of its obligation to pay insurance benefits and within 3 months of the date when the insured party notified of the incident causing damage a) to complete the investigation necessary to determine the scope of its obligation to pay insurance benefits and to notify the insured party of the amount of the insurance benefit if the scope of the insurer's obligation to pay insurance benefits and the entitlement to compensation of damage has been proven; b) to provide to the insured party a written explanation of the reasons for which it refused or reduced the insurance benefit.
Spain	<u>Notification of the claim</u> The policyholder, the insured or the beneficiary must declare the claim to the insurer within 7 days with the effect from the date when they became aware of it (Art. 16 LCS). Longer or shorter contractual deadlines are allowed. Late notification only entitles an insurer to damages for prejudice suffered. However, this does not apply if it is proved that the insurer has knowledge of the loss by other means. The policyholder or the insured must provide the insurer with information on the circumstances and the consequences of the claim so as to enable him to determine its causes and the extent of loss or damage. The insured and the policyholder must use all means available to them to reduce the consequences of the claim.
Sweden	***Chapter 7, Article 1 (1) the Insurance Contract Act (2005:104)*** An insurance company which have been notified about the occurrence of an insured event shall, *without delay*, take the necessary measures in order to investigate and settle the claim. ***Chapter 7, Article 1(2) the Insurance Contract Act (2005:104)***

	Insurance indemnification (except for periodic payments) shall be paid within ***one month*** after the entitled party reported the insured event and submitted such investigation/findings as may reasonably be re- quested. This does not apply where e.g. the right of indemnification is dependent upon repair or replacement of property, a decision from an authority, etc. Where a claimant obviously is entitled to a certain amount, such amount shall be paid immediately. Where payment is not made timely, the Insurance Company is obligated to pay interest pursuant to ***Chapter 6, the Interest Act (1975:635).*** (At present in the range of 10 %). ***Chapter 7, Article 2 (1) the Insurance Contract Act (2005:104)*** Where a party entitled to insurance indemnity has failed to comply with policy conditions re notification obligations and/or investigation obligations and such failure has caused loss to the Insurance Company, the indemnity may be reduced in accordance with what is reasonable under the circumstances. If the Insured's failure in re of notification/investigation obligations concern a third party liability insurance, the Insurance Company may instead reclaim a reasonable amount from the insured. ***Chapter 7, Article 2 (2) the Insurance Contract Act (2005:104)*** Article 2 (1) shall not apply where the negligence is insignificant.
United Kingdom	*[We have assumed for the purposes of our review that "Claims liquidation" (which is not a term we are familiar with) refers to claims handling and the procedure for making a claim.]* *Claims handling and procedure in England and Wales is governed by both law and regulation.* *General regulatory principles of claims handling by insurers.* *All insurers operating in the UK must be authorised by the Prudential Regulation Authority to carry out insurance business. In respect of their claims handling activities (whether carried out by them or delegated to a claims handling company), they must comply with the Financial Conduct Authority's (FCA) Handbook, including the Insurance Conduct of Business Sourcebook (ICOBS).* *The ICOBS applies to a firm with respect to specified activities (including carrying out contracts of insurance) in relation to a non-investment insurance contract from an establishment maintained by the firm or its appointed representative in the United Kingdom (ICOBS 1.1.1 R), extended to the extent necessary to be compatible with European law [ICOBS 1 Annex 1 Part 3 1.1 R]. It also applies where the firm has outsourced insurance intermediation activities to a third party processor (ICOBS 1 Annex 1*

	1.1R). *ICOBS 8.1 contains some general principles of claims handling applicable to all insurers:* *ICOBS 8.1.1:* *An insurer must:* *- handle claims promptly and fairly;* *- provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;* *- not unreasonably reject a claim (including by terminating or avoiding a policy); and* *- settle claims promptly once settlement terms are agreed.* *ICOBS 8.1.2: contains specific rules for handling consumer claims. The general rule is that a rejection of a consumer policyholder's claim is automatically unreasonable(absent fraud) in a number of specific situations. These are (i) non-disclosure of a fact material to the risk which the insured could not reasonably have been expected to disclose, (ii) non-negligent misrepresentation of a fact material to the risk, or (iii) breach of warranty or condition (except in some limited circumstances).* *There are additional claims handling requirements applicable to certain types of insurance (such as motor insurance and employers' liability insurance). These are contained in ICOBS 8.* *The procedure for making a claim* *The procedure for filing a claim is usually set out in detail in the policy, and the insurer is generally free to include any conditions in the policy that the insured must comply with when making a claim (Bird's, p.282). The insurer may also include conditions in the policy relating to the provision of information by the insured regarding claims or potential claims, co-operation and other assistance that the insured may be required to give.* *An insurer may choose to make compliance with a certain specific term condition precedent to the provision of indemnity under the policy. If such a condition is not complied with the cover is not triggered and the insurer will not be liable to indemnify the insured, irrespective of whether the breach of condition causes any prejudice to the insurer.* *Typical conditions relating to claims handling and procedure include:* *- Notice:* *The first basic obligation is to give a notice of a loss; MacGillivray considers that, even in*

	the absence of any written terms regarding notice, the insured is under an implied obligation to give notice of his loss within a reasonable time. *Oral notice is sufficient, unless the policy expressly stipulates the need for written notice (Bird's, p.282), although MacGillivray points out that the requirement for notice in writing is capable of being waived by an insurer (Webster v General Accident Fire and Life Assurance Corp Ltd (1953)). Notwithstanding the possibility of waiver, it may be in the insured's best interests to give written notice for evidential purposes.* *Layher Ltd v Lowe (2000)* *In third party liability insurance policies notice is often also required when an insured becomes aware of circumstances which are likely to give rise to a claim. This is commonly referred to as a "circumstance" (Birds, p.282).* *What precisely constitutes a "circumstance" which must be notified is the subject of some judicial debate, and will also depend on the precise wording of the policy. For example, an obligation in a policy to notify the insurer of a circumstance that "may" give rise to a claim would impose a more onerous obligation than an obligation to notify the insurer of a circumstance "likely" to give rise to a claim.* *The general rule, as espoused by leading texts such as Jackson and Powell on Professional Liability, is that the obligation on an insured to notify should be construed objectively, but taking into account the actual knowledge of the insured.* *- Time limits:* *Verelst's Administratrix v Motor Union Insurance Company (1925)* *If a policy contains a condition to notify the insurer of a loss "as soon as possible" this should be construed subjectively, taking into account all of the circumstances including when the insured became aware of the loss.* *Cassel v Lancashire and Yorkshire Accident Insurance Company (1885)* *If the insurance policy states a clear time limit for a notice (14 days within occurrence of the event) and if the notice is a condition of the insurer's liability, the time limit has to be complied with strictly, even if the insured only becomes aware of the loss at a later stage (Bird's, p.283). Alternatively, some policies may specify that the time period for notification only starts running once the insured is aware, or should reasonably have been*

	aware, of a loss. *It should be noted in the consumer context that the UK's Association of British Insurers recommends that a consumer policyholder should not be required to do more than "report a claim and subsequent developments as soon as reasonably possible", and this is the standard position in consumer contracts of insurance.* *- Timing of loss:* *It should also be noted that the precise time when a loss occurs – or when the insured first became aware of that loss - may affect whether a particular policy provides cover for said loss. Broadly, there are two types of policy which must be distinguished:* *1) "Occurrence" policies:* *Under an occurrence policy coverage is provided for losses arising from events that occurred during the policy term, regardless of when the claim itself is made (subject to any time limits on making a claim). Occurrence policies are common in the motor, homeowner and general commercial liability insurance markets.* *2) "Claims-made" policies:* *In contrast, a claims-made policy provides coverage for any claim of which the insured became aware during the policy term, provided that the insured notifies the insurer during that term. Under a claims-made policy an insured usually has the option to purchase an "extended reporting period" or "discovery period", which will allow it to make claims under the policy for a specified time after the policy term expires. Claims-made policies are common in the professional liability, directors & officers' and medical malpractice insurance markets.* *- Place of notice:* *A policy may contain a condition that the notice to be sent to a particular place (e.g. the insurer's head office). However, in the absence of a specific requirement a notice to any agent of the insurer with the authority (or ostensible authority) to receive it would suffice*

	(Bird's, p. 285). *- Particulars:* *Notice of a loss is usually informal and precedes the completion of a formal claim form, which is sent by the insurer to the once notice has been given (Bird's, p. 285).* *There are two common types of standard conditions regarding the level of particulars of a loss an insured must provide:* *1) the insured may be required to give "full particulars of the loss":* *Mason v Harvey (1853)* *The particulars must be sufficient to enable the insurer to ascertain the nature, extent and character of the loss. MacGillivray comments that any requirement to give "full particulars" should be construed to mean an obligation to give "the best particulars the assured can reasonably give" (Mason v Harvey (1853)).* *2) The insured may be required to give such proofs and information as may reasonably be requested by the insurer. (Bird's, p. 285).* *Braunstein v Accidental Death Insurance Co. (1861); Widefree Ltd v Brit Insurance Ltd (2009)* *These cases make clear that a requirement to provide "proofs satisfactory to the insurer" will be interpreted to mean "proofs reasonably required by the insurer". As such, although the insurer is entitled to ask for evidence and information which may not be absolutely necessary to prove the insured's case, the insured is not under a duty to provide all proofs and information regarding the particular loss, only what is reasonable.* *The interpretation of either of the conditions regarding particulars of loss outlined above, and in particular what is deemed reasonable to provide, will also be dependent on the time period within which particulars must be supplied to the insurer (National Bank of Australasia v Brock (1864) and MacGillivray p.619).* *Public policy limitations on claims* *Any claim for a loss under an insurance policy will also be subject to the application of public policy rules (in addition to the formal requirements – described above - that the insured needs to fulfil (Bird's, p.273).* *The two key public policy maxims, which apply in many areas of the law beyond insurance as well, are:* *1. No cause of action can arise from a wrongful act (often known as ex turpi causa non*

	oritur actio,). *2. A person may not benefit from his own wrongs or crimes.* *Effectively, the second principle is a more specific version of the first.* *The main insurance-related cases that expand on these principles can be sub-divided into two groups: those relating to first party insurance and those relating to third party insurance.* *For first party insurance:* *WH Smith & Co. v Clinton & Harris (1908)* *Any claim for which an indemnity is sought under an insurance policy must carry an element of fortuity. An insured cannot recover a loss suffered due to his own deliberate wrongful act: an indemnity granted to a publisher against libel was unenforceable as the libel was intentional (Bird's, p.274). This is an example of the more general principle that the insured "cannot by his own intentional act bring about the event upon which the insurance money is payable and then recover under the policy (MacGillivray, p.399).* *Geismar v Sun Alliance and London Insurance Ltd (1977)* *An insured cannot recover a loss caused by his own deliberate criminal or tortious act (Bird's, p. 274): the insured smuggled jewellery into Britain without paying the necessary excise duty. He was not then allowed to claim against his insurer when the jewellery was subsequently stolen.* *For third party insurance:* *The general rule is that "the intentional commission of a crime against a third party for which the insured is liable in damages in tort will not be covered by the insured's liability insurance" (Bird's, p. 276). However, there are competing public policy considerations in this area, in particular the desire that victims of tortfeasors have recourse against the tortfeasor in damages. Often, such damages would be funded by the tortfeasor through the application of the tortfeasor's insurance policy and thus it might be said to be against public policy for an insurer to refuse cover in these circumstances. This argument is particularly relevant for motor insurance claims:* *Tinline v White Cross Insurance Association Ltd (1921); James v British General Insurance Co. (1927):* *The insureds, in each case, were liable for unintentional manslaughter. However, the insurers were ordered to pay the indemnity, despite the fact that the insured would "profit" from their criminal actions. This was because, in each case, the claimant's action (speeding and driving whilst drunk respectively) were still classed as accidents due to negligence, for which the applicable policy provided coverage (Bird's, p.277). MacGillivray*

	comments, in respect of these two cases, that "the correctness of these decisions…is now established beyond doubt". *Hardy v Motor Insurers' Bureau CA (1964); Gardner v Moore (1984):* *Even if the insured acts deliberately (as opposed to negligently) in causing personal injury to an innocent victim, the rules of the Road Traffic Act 1988 and the Motor Insurer's Bureau have been interpreted as rendering compulsory the payment of a motorist's liability claim in order to safeguard the interests of an innocent victim who has suffered loss as a result of the motorist's actions (Bird's, p. 277-8).* *However, in areas other than motor insurance (and employers' liability insurance) claims by an insured for loss caused by deliberate or reckless acts in a criminal course of conduct would likely be barred due to public policy considerations. The underlying principle is that insurance against the proceeds/consequences of crime is unenforceable and may be void (Birds, p.280).*

Rechtsvergleichung

Termination

Termination[1]

Austria	§ 8 VersVG tacit renewal possible, but valid for 1 year maximum for consumers. See also § 6 para 1 no 2 KSchG: insurer must warn the consumer policyholder that silence will be interpreted as consent to renewal consumer policyholders have a right to cancel an insurance contract by the end of the third year the latest (§ 8 para 3 VersVG)
Bulgaria	General rule is Art. 196 Code for the Insurance : An insurance contract is terminated upon expiry of the term, for which it has been concluded, as well as in the cases provided for in the Code. It may also be terminated on grounds agreed thereunder, where these do not contradict good ethics and the interests of the consumers of insurance services are not unjustly affected. Art.214 (3): An insurance subscription contract can be terminated by each party with one month's written notice unless agreed otherwise. Termination is also possible following non-performance by one of the parties' obligations, following significant change of circumstances, as well as in case the insured interest has ceased to exist. A transfer of ownership on the insured property might entitle any of the parties to terminate contract within 30 days from notification of the transfer, but in third party liability motor insurance only the buyer is entitled to do so.
Croatia	Pursuant to Article 946 of the Civil Obligations Act the insurance contract shall be effective as of the expiry of the date stipulated as the date of beginning of the insurance period until the end of the last day of the period covered by the insurance contract. If the period of insurance is not determined by the contract, each party to the contract may cancel the contract at the due date of the premium, notifying the other party thereof in writing, no later than 3 months before the premium due date. If the insurance contract is concluded for a period of more than 5 years, each party to the contract may cancel the contract upon the lapse of that period, notifying the other party thereof in writing, with a six-month notice.
Estonia	**§ 468 LOA: Ordinary cancellation of insurance contract entered into for indefinite period** (1) If an insurance contract has been entered into for an indefinite period of time, it may be cancelled by either party at the end of the current insurance period. (2) The term for giving notice of cancellation shall be the same for both parties and may not be less than one month or longer than three months. (3) Both parties may, by mutual agreement, waive their rights to cancel the contract

[1] The information in this table is provided by insurance experts or insurance organisations from respective country. It does not contain a thorough review of all Member States' insurance contract laws and does not reflect the official opinion of the Commission.

	for up to two years. **§ 469. Cancellation of long-term insurance contract** A policyholder may cancel an insurance contract entered into for a period of more than five years at the end of the fifth year or any subsequent year by giving at least three months' notice thereof, unless otherwise provided by law. **Additionally** the contract can be cancelled: by the insurer due to: - fundamental violation of obligations of the policyholder (§ 470) - insolvency of the policyholder (§ 473) by the policyholder due to: - withdrawal of activity licence of insurer Contract expires due to bankruptcy of insurer (§ 472) See also partial termination of contract (§ 474) (1) If an insurer has the right to withdraw from a contract or cancel the contract only with respect to certain insured objects or persons, the insurer may do so with respect to the remaining objects or persons only if, under the circumstances, it can be presumed that the insurer would not have entered into the contract on the same terms solely for such objects or persons. (2) If an insurer withdraws from a contract or cancels the contract with respect to certain objects or persons only, the policyholder has the right to cancel the entire contract by the end of the period of insurance during which the insurer's withdrawal or cancellation is effected at the latest.
Finland	Basically, the insurance is valid only the time stipulated in the insurance policy/contract. There are different set of rules relating to the termination of continuous (tacit) non-life insurance than terminating, for example, a health Insurance or accident insurance or personal insurance, as well as there are different rules governing the insurer’s and the policyholder’s right to terminate. In addition, the insurer's right to terminate life insurance during the policy period is specifically regulated in the law; certain conditions laid down in the statute must be met. For example, when the insured has intentionally or through gross negligence caused the insurance event, the insurer may terminate the insurance policy. When a policyholder, insured, or beneficiary breach the terms of the insurance contract the insurer can, depending on the circumstances, terminate the policy or limit compensation paid under the policy. An insurer is entitled to terminate a non-life insurance policy during an insurance period if (*section 15, Insurance Contract Act*): . Either the policyholder or the insured gave incorrect or incomplete information before the insurance was issued and the insurer would not have issued the insurance if it had been aware of the true circumstances.

	„. There has been a change in the circumstances reported to the insurer by the policyholder or the insured at the time the contract was concluded, or recorded in the insurance policy, which: „. materially increases the risk; and „. the insurer cannot be considered to have taken into account when the contract was concluded. „. The insured has wilfully or through gross negligence failed to comply with precautionary guidelines. „. The insured has wilfully or through gross negligence caused the occurrence of an insured event. „.The insured has, after the occurrence of an insured event, given in bad faith incorrect or incomplete information important for assessing the insurer's liability to the insurer. The insurer can terminate the policy on 14 days' notice if the premium is unpaid (*section 39, Insurance Contracts Act*). The insurer can limit compensation, for example, in the case of misrepresentation by the insured, depending on the circumstances, or because of the cause of the accident in transport insurance. The insurer can also limit or deny compensation when the policyholder or insured fails to observe security precautions. Insurance may not be terminated as a result of the deterioration of health after taking out the insurance, or as a result of an occurrence of an insured event. The insurer shall execute the termination of the insurance in writing without undue delay immediately after learning of the grounds permitting the termination. The said notice of the termination shall specify the grounds for termination.
France	<u>(NON LIFE) Article L113-12 Insurance Code:</u> Modifié par Loi n°89-1014 du 31 décembre 1989 - art. 12 (V) JORF 3 janvier 1990 en vigueur le 1er mai 1990 The duration of the contract and the conditions of rescission are specified by the policy. The insured has always the right to rescind (terminate) the contract after one year from its subscription. He shall do it sending a registered mail to the insurer two months in advance. The same right is owned also by the insurer. This rule may be waived only for individual health insurance contracts and for the coverage of non-individual risks. ("risques autres que ceux des particuliers"). The right of rescission of the contract shall be specified in each policy. <u>Article R*113-10 Insurance Code:</u> If the policy foresees the insurer possibility of terminating the contract after an insured event happens, the termination should be effective after one month of delay from its notification to the insured person. The insurer who, after one month from the notification of the insured event, accepts the payment of a premium, of an annuity or of a premium fraction corresponding of an insurance period starting after the insured event, cannot take profit of the relevant insured event to terminate the contract.

	In the case described in the first paragraph, the policies shall recognise the insured the right, during the delay of one month from the notification of the termination of the policy referring to the happened insured event, to terminate the other insurance contracts which (s)he may have subscribed with the insurer. Those terminations shall be effective after one month from the notification to the insurer. The possibilities of termination foreseen in this Article imply the restitution by the insurer of those premiums or fraction of premiums referred to the period during which the risk is not still guaranteed. <u>Non-payment of a premium : Right to terminate the contract if the policyholder has delayed performance and a reasonable time to perform has lapsed:</u> <u>Article L113-3(3,4) Insurance Code:</u> Modifié par Loi n°81-5 du 7 janvier 1981 - art. 31 JORF 8 janvier 1981 rectificatif JORF 8 février 1981 In the event of non-payment of a premium or a part of a premium within ten days as of its due date, and irrespective of the insurer's right to sue for performance of the contract, the cover may be suspended only thirty days after the insured has been served with formal notice. If the annual premium is payable by instalments, the suspension of the cover, in the event of non-payment of one premium instalments, shall be valid until the expiry of the annual period in question. The premium or premium instalment shall be payable at the insurer's premises in all events, after formal notice has been served on the insured. The insurer shall be entitled to terminate the contract ten days after expiry of the thirty day period referred to in the second paragraph of this Article. <u>(NON LIFE) Article L 113-4 Insurance Code:</u> Modifié par Loi n°89-1014 du 31 décembre 1989 - art. 11 JORF 3 janvier 1990 en vigueur le 1er mai 1990 In the event of an increase of the risk during the contract, such that, if new circumstances had been declared at the time of conclusion or of renewal of the contract, the insurer would not have contracted or would have done so only in consideration of a higher premium, the insurer shall be entitled to terminate the contract or to offer a new premium amount. In the first case, the termination shall take effect only ten days after notice and the insurer must then reimburse the insured for the part of the premium or contribution for the period during which the risk has not incurred. In the second case, if the insured has not followed up on the insurer's offer or if he expressly refuses the new contract within thirty days as from the offer, the insurer may terminate the contract at the end of said time limit, provided that it has informed the insured of such right, by stating it in clear print in the letter of offer. However, the insurer may no longer complaint of the increase of risks when, after it has been informed thereof, regardless of how it was informed, it expressed its consent to continuation of the insurance, in particular, by continuing to accept premiums or by paying a compensation after a loss.

	The insured shall be entitled, in the event of a decrease of the risk during the contract, to a decrease of the amount of the premium. If the insurer does not agree thereto, the insured may terminate the contract. The termination shall then take effect thirty days after the notice of termination. The insurer must then reimburse the insurer for the part of the premium or contribution for the period during which the risk has not been incurred. The insurer must remind the insured of the provisions of this Article when the insurer informs it either of an increase or a decrease of the risks. The provisions of this Article shall not apply to life insurance or health insurance when the insured's state of health has changed. <u>(NON LIFE) Article L113-16 Insurance Code:</u> Modifié par Loi n°89-1014 du 31 décembre 1989 - art. 13 JORF 3 janvier 1990 en vigueur le 1er mai 1990 In the event of the occurrence of one of the following events: - change of domicile; - change of marital status; - change of matrimonial property regime; - change of occupation; - professional retirement or permanent discontinuation of a professional activity. Each of the parties may terminate the insurance contract when it covers risks directly related to the earlier situation and which are not present in the new situation. The contract may be terminated only three months after the date of the event. The termination shall take effect one month after the other party to the contract has received notice thereof. The insurer must reimburse the insured for the part of the premium or contribution for the period during which the risk was not incurred. Such period shall be calculated as from the effective date of the termination. Payment of compensation to the insurer in the aforementioned events of termination may not be provided for. The provisions of this Article shall not apply to life insurance. They shall apply as from 9 July 1973 to contracts contracted prior to 15 July 1972. A decree in Conseil d'Etat defines the terms of application of this Article, in particular, the date which, for each of the events listed in the first paragraph, shall be retained as the starting date of the period of termination. <u>Article R 113-6 Code des Assurances:</u> Modifié par Décret n°92-1356 du 22 décembre 1992 - art. 1 JORF 29 décembre 1992 When one of the parties want to terminate the insurance contract for one of the reasons of Article L 113-16, (s)he shall send a registered letter to the other party asking for a "notification notice" and specifying the nature and the date of the event

	causing the termination. The letter shall also specify all the information necessary to relate directly the termination of the contract and the relevant event. If the event derives or is ascertained by a judicial decision, or its effects may come only after a judicial homologation or an exequatur, the relevant date is the one reported on the relevant judicial act. <u>Explicit formal requirements for the termination of the insurance contract:</u> <u>Article L 113-14 Insurance Code:</u> Modifié par Loi n°81-5 du 7 janvier 1981 - art. 28 JORF 8 janvier 1981 rectificatif JORF 8 février 1981 Whenever the insured is entitled to request termination, he may do so, at his discretion, either by declaration made against receipt at the registered office or to the insurer's representative in the area, or by extra judicial instrument or by registered letter, or by any other means stated in the policy.
Germany	The insurer is entitled to terminate the contract if the policyholder does not pay the premiums, §§ 37 (1), 38(3) VVG. According to § 28 (1) VVG the insurer may terminate the contract without prior notice within one month after learning of the non-observance if the policyholder has not respected a contractual duty (Obliegenheit) which the policyholder must fulfil vis-à-vis the insurer prior to the occurrence of an insured event, unless the non-observance was not intentional or based on gross negligence § 11 VVG (2):Both parties may terminate the contract in case of insurance contracts concluded for an unlimited time. § 111 VVG: In case of liability insurances, both parties are entitled to terminate the contract after the occurrence of the insured event, if the insurer has acknowledged or wrongly rejected the policyholder's recourse. § 168 (VVG (life insurance) (1) Where continuous life insurance premiums are payable, the policyholder may terminate the insurance policy at any time to the end of the current period of insurance. (2) If an insurance covers a risk for which the insurer is certain to be liable, the policyholder's right to terminate the contract shall also apply if the premium consists of a single payment. For health insurance some special rules apply, s. §§ 205, 206 VVG.
Greece	In addition to the general provisions (art 8 § 1 and 2 of law 2496/1997) that are mentioned above (in regard to "renewal"), the following provisions are also applied: ➢ In general, the insurer is entitled to terminate the contract <u>by notice</u>: a) in the event that the policyholder does not pay the premium installment (art 6 § 2 of law 2496/1997), b) in the event that the policyholder intentionally fails to comply with his duty

	to disclose all information or circumstances of which he is aware, and which are objectively significant for the assessment of the risk (art 3 § 6 of law 2496/1997). c) in case of a significant aggravation of the risk throughout the contract period (art 4 of law 2496/1997), d) in the event that the policyholder or the insured is succeeded by another party (art 12 of law 2496/1997). In such case, the policyholder or the insured has a corresponding right (i.e. to terminate the contract). e) in case the policyholder is declared insolvent or if its business becomes by any other means subject to compulsory administration (art 8 § 4 of law 2496/1997). ➢ In general, the policyholder is entitled to terminate the insurance contract <u>by notice</u> : a) in the event that the insurer is declared insolvent, or if it is deprived of the free disposal of part or of all its property (art 8 § 4 of law 2496/1997), b) in case of a significant reduction of risk, followed by the insurer's refusal to proceed to a proportionate reduction of the premium (art 5 of law 2496/1997). ➢ According to Art 8 § 5 of the law 2496/1997, the insurance policy may also provide further reasons for the termination of the insurance contract.. In the event that the insurer maintains the right to terminate the contract after the insured event has occurred, the policyholder shall have a corresponding right. <u>MTPL insurance</u>**:** <u>Art 11a § 1, 2, 3 of law 489/1976 provides for the following:</u> ➢ An MTPL insurance policy may be terminated at any time by the parties involved with a written agreement. ➢ The policy holder or the insured can terminate the MTPL insurance policy at any time with a written declaration served with a notice of receipt to the insurer or his appointed agent. ➢ The insurer can only terminate the MTPL insurance policy for violation of an essential condition by the policy holder or the insured with a written statement, providing proof of the said violation.
Hungary	***(Pkt. 6:454)*** *[Nullification of contracts; lapse of interest]* (1) If the insurance event occurs, its occurrence becomes impossible, or the insurable interest ceases before the insurance coverage becomes effective, the contract or the relevant part of it shall be terminated. (2) If occurrence of an insurance event becomes impossible or the insurable interest ceases during the period of risk coverage, the contract or the relevant part of it shall be terminated. (3) The legal effects attached to cases of lapse of interest in the insurance shall not apply, if the lapse of interest results solely from the transfer of ownership of the

	insured property, and the property in question was held by the new owner previously under a different title. In that case, insurance cover shall pass together with ownership, and the former and the new owner shall be jointly and severally liable for premium payments due at the time of transfer of ownership. The contract may be terminated by either of the parties within thirty days after gaining knowledge of the transfer of ownership, by giving thirty days' notice. ***(Pkt. 6:446)*** (1) If the insurance company becomes aware of any material circumstance regarding a contract, or any changes thereof, only after the contract has been concluded, and these circumstances bring about a considerable increase in the insurance risk, the insurance company shall be entitled to make a written proposal within fifteen days after gaining knowledge thereof to amend the contract or may terminate the contract in writing with thirty days' notice. (2) If the contracting party does not accept the proposal for amendment or fails to respond to it within fifteen days from the time of receipt thereof, the contract shall be terminated on the thirtieth day following the day of communicating the proposal for the amendment, if the insurance company warned the contracting party of this consequence when the proposal for amendment was made. (3) If the contract covers more than one asset or person concurrently, and the considerable increase in insurance risk applies to some of them only, the insurance company shall not be able to exercise its rights under Subsections (1) and (2) with respect to the remaining assets or persons. **(Ptk. 6.466)**[2] Contacts concluded for an open term may be terminated at any time with 30 days' notice prior the end of the insurance period. The contracting parties shall be entitled to include a clause in the contract to exclude the right of termination for a maximum of 3 years. If a contract covers a period of more than 3 years and the parties do not stipulate that it can be abrogated before the specified period lapses, either of the parties shall be entitled to abrogate the contract as of the fourth year. If the contract is cancelled by the client, the insurer shall be entitled to demand the repayment of the term discount (premium discount). **(Ptk. 6:483)** Life insurance contract cannot be terminated by the insurer, unless the insured risk has been increased significantly. **(Ptk. 6:483)** Health insurance cannot be cancelled by the insurer in the form of normal termination. **(Ptk 6:490)**

[2] *The text below refers to the following Hungarian laws:*

- **Ptk.** – *Hungarian Civil Code; Act of V of 2013.*
- **Bit.** – *Act on Insurance Institutions and Insurance Business; Act of LX of 2003.*

	[Termination of health insurance contracts] (1) The possibility that the insured person's health deteriorates with age due to natural causes shall not constitute a considerable increase in insurance risk. (2) The insurance company may not terminate a health insurance policy by notice in the ordinary way.
Romania	Article 2209 of Civil Code states that the termination of an insurance contract by one party shall be made only in compliance with a notice period of at least 20 days calculated from the date of notice receipt by the other party. Article 2206 of Civil Code states that, unless agreed otherwise, the insurer may terminate the contract if the insured did not pay the premium at the payment date stipulated in the insurance contract. Article 2204 of Civil Code states that the misstatement or reluctance on the insured or the insurance contractor whose bad faith could not be established will not void the insurance contract. If the failure or reluctance misstatements is previous the moment that the insured risk occurs, the insurer is entitled to keep the contract, requiring premium increase, or to terminate the contract at the end of a period of 10 days calculated from the notification received by the insured, return latter's share of the premiums paid for the period in which the insurance does not work. When finding misstatements or unwillingness of the insured risk is later, the allowance is reduced in relation to the proportion of the premiums paid and the premiums that would have been payable.
Slovakia	§ 800 of CC The insurance within which the regular premium is agreed shall be terminated upon notice at the end of the insurance period, such notice shall be given at least six weeks before the insurance period expiration. It may also be greed on that insurance may be terminated by any of the parties within 2 months after the insurance contract conclusion. The notice period is 8 days; by its expiration the insurance contract shall become null and void. The insurer is not allowed to terminate personal insurance, except for accident insurance. § 801 of CC Non- payment of premium § 802 Withdraw from insurance contract
Spain	Main reasons for terminating the insurance contract: • <u>Incorrect declaration of the risk by the policyholder</u> (Art. 10) The insurer may cancel the contract by sending a declaration to the policyholder within a month with effect from his knowledge of the error or omission committed by the policyholder. The insurer is entitled to keep the corresponding premiums for the period up to the moment of this declaration unless he has committed fraud or negligence.

	• Non-payment of the first premium or the single premium (Art. 15) If the policyholder has not paid the first premium or the single premium on the agreed date, the insurer may cancel the contract or enforce the payment of the premium. • Transfer of the insured object (Art. 35) The insurer may cancel the contract providing that he notifies the purchaser within fifteen days with effect from his knowledge of the said transfer. The insurer must cover the risk insured for the month following the date of notification and must repay that part of the premium corresponding to periods of insurance during which he did not insure the risk, following cancellation. • Individual life insurance with a duration over six months (Art. 83.a) The policyholder may cancel the contract within 30 days with effect from the date on which the insurer gave him the policy or a provisional cover document (this is however more an option than a cause for cancellation of the contract). In this case, the insurer no longer covers the risk and the policyholder is entitled to reimbursement of the premium for the period during which the contract was in force.
Sweden	**Chapter 5, Article 2, the Insurance Contract Act (2005:104)** Where the premium is not paid timely, the Insurance Company may terminate the policy unless the delay is insignificant. The notice of termination shall be sent to the policyholder. ***Chapter 7, Article 7(1), the Insurance Contract Act (2005:104)*** Where an insurance Company has prematurely terminated an insurance policy in contravention of the Insurance Contract Act or to the insurance contract, a court shall, upon petition by the policyholder, declare the termination invalid. According to Chapter 7, Article 7(2), a declaratory relief action shall be filed within six months from the time when the insurance company sent the notice of termination to the policyholder, an account of the reasons for the termination and information regarding the measures the policyholder may take in order to have the decision reviewed. The petition need not be filed before the date within which the termination would have been effective. In case a petition is not filed within this time, the right to have the decision reviewed is forfeitd.
United Kingdom	**1. General** **- Expiration** As stated in the section above, insurance policies (excluding life) are generally of a limited duration (one year). "The period of risk ordinarily continues to the precise time fixed in the policy for its expiration arrives. If no hour is fixed for this, it expires at the last moment of the last day of the specified period," (MacGillivray, 6-021, *Isaacs v Royal Insurance Co* (1870) L.R. 5 Ex 296). Insurance contracts may be terminated earlier based on other grounds. Some of these are set out below.

	2. Termination by insurer: **B2C** Consumer Insurance (Disclosure and Representations) Act 2012 Schedule 1 sets out the insurers' remedies for qualifying misrepresentations made by a consumer. **- Deliberate or reckless misrepresentation** Paragraph 2, Schedule 1 provides that an insurer is entitled to avoid the contract and refuse all claims in the case of deliberate or reckless misrepresentation by a consumer. (The insurer may also retain premiums, unless unfair to do so.) **- Careless misrepresentation** Paragraph 5, Schedule 1 provides that: "If the insurer would not have entered into the consumer insurance contract on any terms, the insurer may avoid the contract and refuse all claims, but must return the premiums paid". (This applies when a consumer who made a careless misrepresentation makes a claim (paragraphs 3 to 8, Schedule 1) and for the future treatment of the contract (paragraph 9, Schedule 1).) Schedule 1 also sets out rules for the cases where an insurer would have contracted on different terms or for a higher premium. For example, if an insurer discovers a careless misrepresentation (in relation to a non-life product), it has a choice in relation to the future treatment of the contract: it may notify the consumer that it intends to treat the contract as subsisting on different terms or it may terminate the contract. If the insurer decides to terminate, there must be reasonable notice and the repayment of the premium. The same mechanism is also in place for the assured (paragraph 9, Schedule 1). (A careless misrepresentation does not give the insurer the option to terminate a life insurance policy (paragraph 9, Schedule 1), which would continue on the existing or amended terms if agreed by the assured.) Additional protection is granted to consumer contracts under ICOBS 8.1(3), which prohibits the insurer from "unreasonably [rejecting] a claim (including by terminating or avoiding a policy)". **B2C and B2B** **- Non-payment of a premium by the assured**: In England and Wales, the insurer may terminate the contract due to a delayed payment of the premium (except for life policies), and the insurer need not set an additional payment period. However, if the insurer accepts late payment, the contract remains valid. (Principles of European Insurance Contract Law, p. 202, N2) This can be affected by contract terms. **- Breach of a warranty by the assured**

	Bank of Nova Scotia v Hellenic Mutual War Risks Association (Bermuda) Ltd ("The Good Luck") (1992) 1 AC 233 is the leading case. MacGillivray sets out the point of law as: "…subject to any express provisions in the policy, a breach of warranty discharges the insurer from liability as from the date of the breach, automatically and without the need for any election on his part. This is because a promissory warranty is in the nature of a condition precedent to the liability of the insurer," (MacGillivray, 10-091). The judgment was delivered on the basis of the MIA 1906, but is considered applicable to all types of insurance contracts. This can be affected by contract terms. **- Breach of condition by the assured** "If the assured's breach of a condition precedent to recovery provides the insurer with a permanent defence to [a] claim, the next question will be whether the breach serves not only to relieve the insurer of liability to pay that claim but also discharges him from all liability on the policy thereafter. The answer depends on the clarity of the wording employed and the nature of the particular breach of condition," (MacGillivray, 10-093). (See also *Welch v Royal Exchange Assurance* [1939] 1 KB 294 at 307-308.) **- Contractual Termination Clauses** The contract may enable the insurer to terminate in some circumstances. (See further MacGillivray, 6-030.) **3. Termination by the assured:** **B2C** Consumer Insurance (Disclosure and Representations) Act 2012 If an insurer discovers a careless misrepresentation (in relation to a non-life product) then in relation to the future treatment of the contract, the assured (in addition to the insurer) has the right to terminate (paragraph 9 (7), Schedule 1). While the insurer may not terminate life insurance, it may notify the assured of its amended terms (paragraph 9(4)(a)) following the discovery of the careless representation and the assured can then decide to continue or terminate the contract. **- Contractual Termination Clauses** The contract may enable the assured to terminate in some circumstances. (See further MacGillivray, 6-030.) Life policies may contain specific provisions which allow the assured to terminate the policy. They include: - a possibility to surrender a policy after a certain number of years and receive a lump sum or - a possibility for the policy to become paid-up, so that no more premiums are due, but the benefits due on death are reduced. (Birds, p.102) **Termination by the insurer and assured**

	- Cancellation and substitution by agreement The assured and insurer may together cancel the policy and substitute a new contract of insurance for it (*Rowe v Kenway* (1921) 8 Lloyd's Rep. 225).