

„PEICL“ –

The Project of a European Insurance Contract Law

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I. Present and Future European Contract Law

The EU presently consists of 27 Member States, each one with its own domestic legal system, sometimes with subdivisions (e.g. UK)

No uniform European Contract Law yet

Harmonization by EU Legislation **in selected sectors**, esp.:

- Distance Selling Directive
- Doorstep Selling Directive
- Consumer Sales Directive
- Unfair Contract Terms Directive
- projected: Common European Sales Law (CESL)

There are three main legal acts:

(1) Regulations

- by entering into force they become law in all member states (no implementation needed)
- they override conflicting national law

(2) Directives

- they oblige member states to achieve certain results
- implementation needed in order to become national law

(3) Court Decisions

- legal acts with direct effect, technically limited to the parties

Project of a uniform European Contract Law

Commission on European Contract Law (Lando-Commission, established in 1980)

- non-official
- partly financed by EU
- **result: Principles of European Contract Law (PECL) as a proposal for future codification**

Continuation of work in 2005 by Study Group on an European Civil Code (SGECC)

- Draft Common Frame of Reference (**DCFR**) presented in 2009, based on PECL
- **legally not binding “ toolbox”**
- further handling still not decided

Only few references to insurance contracts in DCFR

II. Characterization of PEICL

In 1979 the European Commission published a draft of a Directive with rules on insurance contract law, aimed at insurance services

No further development of the material law as the Commission focused on the harmonization of conflict law rules for insurance contracts on the European level

New attempt to develop a European insurance law with a Project Group on a Restatement of European Insurance Contract Law

result: Principles of European Insurance Contract Law (**PEICL**), first published in 2009

Legal status of PEICL

Not aimed at an EU Directive or restatement of the law in force, but proposal of a working group without formal acknowledgement by the EU so far

EU Commission decided to launch an expert group in January 2013 in order to work on the proposals

Idea of incorporation into the DCFR

PEICL as an **Optional Instrument** at the disposition of the parties

Reasons: party autonomy;
fostering competition of national contract laws

Main characteristics of PEICL

Basic idea of PEICL: to set limits to private autonomy without imposing a predefined content of the contract

Supposed to contain principles rather than strict provisions

Those principles result of an analysis of different insurance contract laws in Europe, mainly:

Protection of the policyholder, the insured or beneficiary

In case of no express settlement of a matter by the PEICL the PECL are applicable and, if necessary, the general principles common to the laws of the Member States

Range of topics covered

PEICL consist of four parts:

(1) Common provisions

(2) Provisions common to indemnity insurance

(3) Provisions common to the insurance of fixed sums

(4) Special provisions
- not yet existing -

III. Main Content of PEICL

Scope: PEICL shall apply to **private insurance contracts** in general, including mutual insurance

Exception: **reinsurance**

reason: highly professionalized area without need for protection

Agreement of the parties needed in order for the contract to be governed by PEICL as a whole (**Opt-In**)

Independent from any connection of the contract to one or more Member States

General principles in PEICL

Mandatory character of the rules

Exception: derogation possible as long as this is not to the detriment of the policyholder, the insured or beneficiary

Interpretation based on text, context, purpose and comparative background

Promotion of **good faith** and **fair dealing**, **certainty in contractual relationships**, **uniformity of application** and adequate **protection of policyholders**

Main Rules (1)

Definition of some essential terms

All documents shall be in plain and intelligible language and in the language in which the contract has been negotiated

In case of any doubt concerning interpretation the sense which is most favorable to the policyholder shall prevail

Burden of proof for receipt of documents lies with the insurer

No requirement of any particular form for any notice given by the policyholder to the insurer

Main Rules (2)

Any knowledge persons entrusted by the policyholder have or ought to have are considered to be knowledge of the policyholder

Provision of **non-discrimination** based on nationality, racial or ethnic origin and gender

- contract is binding on the basis of the non-discriminatory terms

Action for an injunction to prohibit infringements

- no preclusion of access to out-of-court complaint and redress mechanism (e.g. Ombudsman)

Main Rules (3)

Applicant has a pre-contractual **duty of disclosure**

Pre-contractual duties of insurer to **warn about inconsistencies** between the cover and the applicant's requirements and to warn about commencement of cover

Conclusion of the Contract

- possibility of **revocation** by the applicant up to two weeks after acceptance (cooling-off period)
- protection against **abusive clauses**

Main Rules (4)

Duration of the contract: maximum of one year

- asymmetric time limits for termination
- strict requirements for alteration of terms and conditions
- right of termination after occurrence of an insured event only valid if granted to both parties

Post-contractual information duty of insurer

Main Rules (5)

Contract Terms

- limitation for precautionary measures: recklessness or intent required
- limitation for aggravation of risk: material change of the risk required
- reduction of risk entitles to reduction of premium or even termination

Insurance premium

- consequences of non-payment and payment by third parties

Main Rules (6)

Occurrence of insured event

- notice to be given within reasonable time
- cooperation duty between insurer and policyholder
- acceptance of claim assumed after one month
- performance to happen without undue delay

Prescription

- one year for actions for payment of premiums
- three years for actions for payment of benefits

Provisions Common to Indemnity Insurance

Sum insured and insured value

- wide scope of choice with regard to subject-matter

No entitlement to indemnity in case of causation of loss with intent or recklessly and with knowledge

Rights of subrogation of the insurer against liable third party

Insured persons other than policyholder are entitled to claim

No premium due if risk is inexistent; termination of contract by law

IV. Some Criticism

- **Disadvantages** compared to German insurance law:
 - duration of contract and prescription too strictly fixed
 - cases of termination of contract by law if no agreement is reached
 - legal certainty and feasibility require an increased amount of detailed provisions
 - open questions (e.g. duty to offer advice?; rules for open policy?; cost of investigation?)
- Lack of harmonization between PEICL and DCFR
- Necessity to implement all EU Directives, including those dealing with specific insurance branches

Further Reference

Full text document of PEICL:

www.restatement.info

Article:

Christian Armbrüster, “The Principles of European Insurance Contract Law” (Studi in onore die Aldo Frignani, Milano/Italy, 2011)

Thanks for your attention!