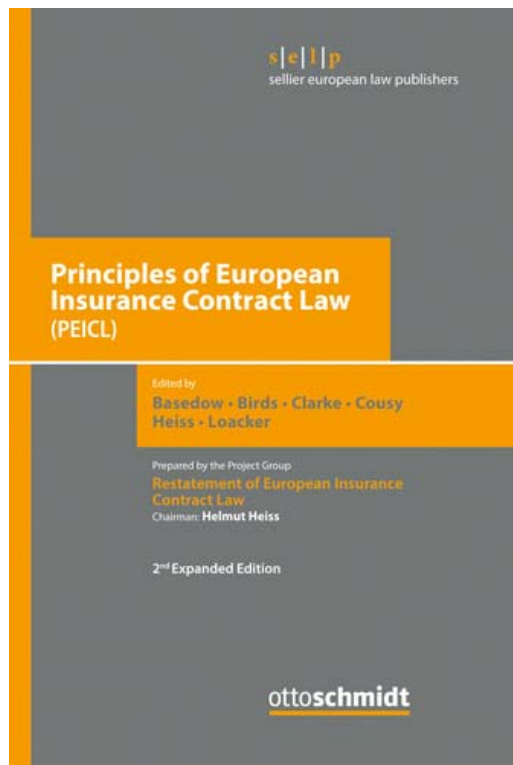


Leseprobe zu



Heiss (Hrsg.)

Principles of European Insurance Contract Law (PEICL)

2. neu bearbeitete Auflage, 2016, 976 Seiten, broschiert, Lehrbuch / Studienbuch, 16 x 24cm

ISBN 978-3-504-08002-0

Verfügbarkeit: November 2015

229,00 €

Table of Contents

Preface to the Second Edition	v
Preface to the First Edition	vi
Our Sponsors	xxxix
Members of the Project Group	xl
Former Members of the Project Group	xli
Corresponding Members of the Project Group	xli
Members of the Drafting Committee	xli
List of Rapporteurs	xlii
List of Translators	xliv
Publications on the PEICL	xlvi

Introduction	1
--------------------	---

Principles of European Insurance Contract Law (PEICL): Rules	31
---	----

Part One: Provisions Common to All Contracts Included in the Principles of European Insurance Contract Law (PEICL)	32
---	----

Chapter One: Introductory Provisions

Section One: Application of the PEICL	32
--	----

Section Two: General Rules	33
---	----

Section Three: Enforcement	35
---	----

Chapter Two: Initial Stage and Duration of the Insurance Contract

Section One: Applicant's Pre-contractual Information Duty	35
--	----

Section Two: Insurer's Pre-contractual Duties	36
--	----

Section Three: Conclusion of the Contract	37
--	----

Section Four: Retroactive and Preliminary Cover	38
--	----

Section Five: Insurance Policy	39
---	----

Section Six: Duration of the Insurance Contract	40
--	----

Section Seven: Post-contractual Information Duties of the Insurer	40
--	----

Chapter Three: Insurance Intermediaries	41
--	----

Chapter Four: The Risk Insured

Section One: Precautionary Measures	41
--	----

Section Two: Aggravation of Risk	42
---	----

Section Three: Reduction of Risk	43
---	----

Chapter Five: Insurance Premium	43
Chapter Six: Insured Event	44
Chapter Seven: Prescription	45
Part Two: Provisions Common to Indemnity Insurance	
Chapter Eight: Sum Insured and Insured Value	46
Chapter Nine: Entitlement to Indemnity	46
Chapter Ten: Rights of Subrogation	47
Chapter Eleven: Insured Persons other than the Policyholder	47
Chapter Twelve: Insured Risk	48
Part Three: Provisions Common to Insurance of Fixed Sums	
Chapter Thirteen: Admissibility	48
Part Four: Liability Insurance	
Chapter Fourteen: General Liability Insurance	48
Chapter Fifteen: Direct Claims and Direct Actions	50
Chapter Sixteen: Compulsory Insurance	51
Part Five: Life Insurance	
Chapter Seventeen: Special Provisions for Life Insurance	51
Section One: Third Parties	51
Section Two: Initial Stage and Duration of the Contract	52
Section Three: Changes during the Contract Period	54
Section Four: Relation to National Laws	55
Section Five: Insured Event	55
Section Six: Conversion and Surrender	56
Part Six: Group Insurance	
Chapter Eighteen: Special Provisions for Group Insurance	57
Section One: Group Insurance in General	57
Section Two: Accessory Group Insurance	57
Section Three: Elective Group Insurance	58

Principles of European Insurance Contract Law (PEICL): Rules, Comments and Notes

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

Chapter One: Introductory Provisions

Section One: Application of the PEICL

Article 1:101 Substantive Scope of Application

Comments	60
Substantive Scope: Substantive Private Insurance Contract Law	60
Mutual Insurance	60
Social Insurance Law	60
Law of Insurance Supervision and Other Public Law on Insurance	60
International Insurance Contract Law (Conflict of Laws)	61
Law of Insurance Intermediaries	61
Marine Insurance	61
Reinsurance	62

Notes

Application to Private Insurance Contracts	62
Mutual Insurance	62
Marine Insurance	62
Reinsurance	63
Other Specific Branches of Insurance	63

Article 1:102 Optional Application

Comments	64
Basic Principle	64
Legal Nature of Opting-in	64
Priority over Conflict Rules	64
Domestic Insurance Contracts	65
No Partial Choice	65
Effect on Intermediaries	65

Note

Article 1:103 Mandatory Character

Comments	66
Focus on Mandatory Law	66
Technique	67

Notes

Mandatory Acts	68
Single Mandatory Provisions	68
Minimum Protection Acts	69

Single Minimum Protection Provisions	69
Beneficiaries of Mandatory and Minimum Protection Rules	70
Article 1:104 Interpretation	
Comments	71
The Objective	71
Interpretation and Development	71
Textual Interpretation	72
Context	72
Good Faith and Fair Dealing	72
Certainty in Contractual Relationships	72
Uniform Application	73
Protection of Policyholders	73
Note	73
Article 1:105 National Law and General Principles	73
Comments	74
Basic Principle	74
Mandatory National Provisions	74
Supervisory Law	74
Internationally Mandatory Provisions	75
Exceptional Recourse to Mandatory National Provisions	75
Filling Gaps	75
General Principles of Contract Law	75
Note	76
Section Two: General Rules	
Article 1:201 Insurance Contract	76
Comments	76
Insurance Contract (para. 1)	76
Insured Event (para. 2)	77
Indemnity Insurance (para. 3)	77
Insurance of Fixed Sums (para. 4)	78
Liability Insurance (para. 5)	78
Life Insurance (para. 6)	78
Group Insurances: Accessory Group Insurance, Elective	
Group Insurance (paras. 7-9)	79
Notes	
The Pros and Cons of Defining the Insurance Contract	79
Standard Elements of Definitions of the Insurance Contract	80
The Insurer's Obligation	80
Uncertain Event	80
Definitions of Other Terms	81

Article 1:202 Further Definitions

Comments	81
Introduction	81
Insured (para. 1)	82
Beneficiary (para. 2)	82
Person at Risk (para. 3)	82
Victim (para. 4)	82
Insurance Agent (para. 5)	83
Premium (para. 6)	83
Contract Period (para. 7)	83
Insurance Period (para. 8)	83
Liability Period (para. 9)	84
Compulsory Insurance (para. 10)	84
 Note	 84

Article 1:203 Language and Interpretation of Documents 84

Comments	85
Relationship to the Principles of European Contract Law	85
Transparency	85
Language of Documents	85
Sanctions	86

Notes

Transparency	86
Language	87
In dubio contra stipulatorem	87

Article 1:204 Receipt of Documents: Proof

Comments	88
----------------	----

Notes

General Law of Evidence	88
Specific Rules of Insurance Law	88

Article 1:205 Form of Notice

Comments	89
Consensual and Formal Contracts	89
Proof	89
Notice	89
Persons Favoured	90
No Particular Form Being Required	90
Notices by the Insurer	91

Notes

Community Law	91
The Kind and Context of the Notice	91

General Principle: No Formal Requirements	92
An Example: Notice of an Insured Event	92
Article 1:206 Imputed Knowledge	
Comments	93
The Issues	93
Imputation and Agency	93
Persons Whose Knowledge May Be Imputed	93
Notes	
General Law of Agency	94
Specific Provisions for Insurance Contracts	94
Knowledge of the Policyholder's Agent	95
When Policyholder and Insured are Not Identical	95
Article 1:207 Non-Discrimination	
Comments	96
Insurance and Differentiation	96
Equal Treatment of Men and Women	98
Non-Discrimination on Grounds of Nationality, Racial or Ethnic Origin	98
Sanctions	99
Burden of Proof	99
Note	99
Article 1:208 Genetic Tests	
Comments	100
Background	100
Scope of Application	100
Subject of Prohibition (para. 1)	100
Exceptions (para. 2)	100
Section Three: Enforcement	
Article 1:301 Injunctions	
Comments	101
Enforcement of Mandatory Rules by Injunction	101
Measures by Qualified Entities	102
Note	
Background in Community Law	102
Article 1:302 Out-of-court Complaint and Redress Mechanisms	
Comments	103
Out-of-court Complaint and Redress Mechanisms under National Law	103
Relationship to the Principles of European Insurance Contract Law	103
Note	104

Chapter Two: Initial Stage and Duration of the Insurance Contract

Section One: Applicant's Pre-contractual Information Duty

Article 2:101 Duty of Disclosure

Comments	104
Information Imbalance	104
The Timing of the Duty	104
Questionnaires	105
Relative Knowledge	105
Inside Knowledge: the Alter Ego	105
Outside Knowledge: The Knowledge of Agents	105
Enquiry or Investigation	106

Notes

Survey	106
Duty of Spontaneous Disclosure	107
Duty to Answer the Insurer's Questions	107
Approximation	108

Article 2:102 Breach

Comments	109
Remedies Available to Insurers	109
Termination (Article 2:102 paras. 2 (second sentence), 3 and 4)	109
Variation (Article 2:102 para. 2)	109
Notice (Article 2:102 para. 2)	109
Discharge (Article 2:102 para. 5)	110

Notes

The All-or-Nothing Principle	110
The Proportional Reduction of the Insurance Money	111
Approximation	112
Innocent Breach	112

Article 2:103 Exceptions

Comments	113
Unanswered Questions	113
Immaterial Information	113
The Reasonable Insurer	113
Waiver	114
Information Known to Insurers	114
Effects of the Exceptions	114

Notes

Obvious Defects of the Policyholder's Answer, Article 2:103(a)	114
Immaterial Information, Article 2:103(b)	115
The Insurer's Knowledge and Behaviour, Article 2:103(c) and (d)	115

Article 2:104 Fraudulent Breach	115
Comments	116
The Range of Remedies	116
The Impact of Fraud	116
Avoidance	116
The Position of Policyholders	116
Notes	117
Article 2:105 Additional Information	117
Comment	118
Note	118
Article 2:106 Genetic Information	
Comments	118
Section Two: Insurer's Pre-contractual Duties	
Article 2:201 Provision of Pre-contractual Documents	118
Comments	119
Pre-contractual Documents in General	119
Duty to Provide an Applicant with a Pre-contractual Document	119
Pre-contractual Documents in Special Branches of Insurance	120
Right to a Copy of the Completed Documents	120
Form of Documents	120
Notes	
European Directives and their Implementation	120
The Kind of Information to Be Given	121
Stricter Requirements under National Laws	121
Information Duty Drafted in General Terms	122
Application Form Provided by the Insurer, Article 2:201 para. 3	122
Article 2:202 Duty to Warn about Inconsistencies in the Cover	
Comments	122
General Remarks	122
Duty to Assist the Applicant	123
Consequences of Failure to Assist	124
Damages	124
Termination	124
Notes	
Community Law	125
National Law	125
Sanctions	126

Article 2:203 Duty to Warn about Commencement of Cover	126
Comments	127
Problems of Commencement of Cover in Practice	127
Duty to Warn	127
Notes	
Community Law	127
The Sanction of Immediate Cover	127
Incomplete and Unclear Sanctions	128
Section Three: Conclusion of the Contract	
Article 2:301 Manner of Conclusion	
Comments	128
The Principles of European Contract Law	128
Agreement	129
Ways of Concluding an Insurance Contract	129
Insurance Contract	129
Mandatory Character	130
Proof	130
Notes	
A Matter of General Contract Law	130
Consensual Contract	131
Article 2:302 Revocation of an Application for Insurance	131
Comments	132
An Application for Insurance	132
Revocation by the Applicant	132
Time for the Arrivals of Revocations and Acceptances Sent Electronically	132
Effectiveness of Revocation	133
Notes	
The Roles of Offeror and Offeree	133
The Binding Nature of an Offer	134
Article 2:303 Cooling-off Period	
Comments	135
Introduction	135
Structure of the Rule	135
Avoidance	135
Commencement of the Cooling-off Period	136
Timeliness of Notice to Withdraw	136
The Exceptions to the General Rule	136
Notes	
Community Law	137
Implementation for Life Assurance and Similar Products	138

General Right of Withdrawal	138
Exception for Short-Term Insurance Contracts	138
Exception for Prolongation of Pre-Existing Contracts	139
Exception for Preliminary Cover	139
Article 2:304 Abusive Clauses	139
Comments	140
Unfair Contract Terms Directive (93/13/EEC)	140
Persons Protected under Article 2:304	140
Core terms	140
Individually Negotiated Terms	141
Fairness Test	141
Grey List	142
Sanctions	142
Burden of Proof: Unfairness	142
Notes	
Implementation of EU Law	145
Additional and Broader Provisions on the Fairness of Insurance Terms	146
Non-Negotiated Contracts, Article 2:304 paras. 1 and 4	147
Exceptions from Judicial Review, Article 2:304 para. 3	147
Consequences of Invalidity of a Clause, Article 2:304 para. 2	148
Section Four: Retroactive and Preliminary Cover	
Article 2:401 Retroactive Cover	
Comments	148
Issues of Risk	148
Knowledge of the Insurer	149
Knowledge of the Policyholder	149
Notes	
General Permission for Retroactive Cover	149
Sector-Specific Permission for Retroactive Cover	150
Article 2:402 Preliminary Cover	
Comments	151
Preliminary Cover	151
Evidencing the Preliminary Cover	152
Exclusion of Articles 2:201 to 2:203	152
Notes	
Survey	152
Form and Information Requirements: Germany, Greece	152
France	153
Belgium	153
Luxembourg	154

United Kingdom	154
Terms of the Cover Note	154
Article 2:403 Duration of Preliminary Cover	
Comments	155
Duration of the Preliminary Cover	155
Notes	
Germany	155
France	156
Section Five: Insurance Policy	
Article 2:501 Contents	156
Comments	157
Insurance Policy	157
Evidence	157
Parol Evidence Rule	157
Preliminary Insurance Contracts	157
Notes	
Issue of a Document	158
Information to Be Provided – Detailed Requirements	158
Mixture: General Provision with Some Details	158
Means of Proof	159
Constitutive Effect	159
Issue of General Contract Terms	159
Cover Notes	160
Written Form	160
Article 2:502 Effects of the Policy	
Comments	160
Notes	161
Legal Presumption of Approval	161
Term for Contradiction	162
Preconditions for Presumption	162
Signature as Means of Protection	162
Legal Presumption of Contract in Accordance with Application	163
Section Six: Duration of the Insurance Contract	
Article 2:601 Duration of the Insurance Contract	
Comments	163
Comparative Survey	163
Structure of the Rule	164
Duration of the Contract Period	164
Effects of Violation	164
Personal Insurance	165

Notes

Maximum Period	165
Personal Insurance	166

Article 2:602 Prolongation

Comments	167
The Need for Prolongation	167
Prolongation and Renewal	167
Adjustment of Contract	167
Form of Notice	167
Term of Notice	168

Notes

Statutory and Contractual Prolongation	168
Period of Prolongation	169
Prolongation and Renewal	169

Article 2:603 Alteration of Terms and Conditions

Comments	170
The Need for a Rule for Alteration	170
The Need for a Special Rule for Insurance Contracts	170
The Concept Underlying Article 2:603	170
Minimum Standards for an Alteration Clause	171

Notes

Article 2:603 para. 1	171
Article 2:603 para. 1(a) – Commencement of Alteration	172
Article 2:603 para. 1(b) – Notice	172
Article 2:603 para. 1(c) – Right of Termination	172

Article 2:604 Termination after the Occurrence of an Insured Event

Comments	173
The Need for Termination	173
Statutory and Contractual Rights to Terminate	173
Time Limits	173
Other Rights to Terminate	174
Application to Group Insurance	174

Notes

Article 2:604 para. 1	174
Article 2:604 para. 2 – Reasonableness	175
Article 2:604 para. 3 – Expiration of the Right of Termination	175
Article 2:604 para. 4 – End of Cover	175

Section Seven: Post-contractual Information Duties of the Insurer**Article 2:701 General Information Duty**

Comments	176
The Need for Information During the Period of Insurance Cover	176
Information to Be Given in All Cases	176
Information about Changes in the Contract	177
Updating Information	177
Manner of Communication	177

Notes

Survey	177
Life Insurance	178
Legal Expenses Insurance	178
Further Post-contractual Information Duties under National Law	179

Article 2:702 Further Information upon Request

Comments	180
Purpose	180
Limits	180
Information on Changes in Standard Terms of Insurance	180
Manner of Communication	181
Remedies	181

Note	181
------------	-----

Chapter Three: Insurance Intermediaries**Article 3:101 Powers of Insurance Agents**

Comments	182
Legal and Contractual Authority of the Insurance Agent	182
Minimum Authority	182
Imputation of the Agent's Knowledge	183
Liability of the Agent	183

Notes

First Sentence of Article 3:101 para. 1 – Statutory Powers	183
Second and Third Sentences of Article 3:101 para. 1 – Contractual Limitations	184
Article 3:101 para. 2 – Minimum Powers	184
Article 3:101 para. 3 – Imputation of the Agent's Knowledge	184

Article 3:102 Agents of Insurers Purporting to Be Independent

Comments	185
Rationale	185
Scope	185
Actual Authority of “Pseudo-brokers”	185

Note	186
------------	-----

Chapter Four: The Risk Insured

Section One: Precautionary Measures

Article 4:101 Precautionary Measures: Meaning

Comments	186
General Remarks	186
The Concept of Precautionary Measure	187

Notes

General Remarks	187
Finland and Sweden	188
Austria, Germany, Switzerland	188
United Kingdom	188
France	188
Belgium, Luxembourg and the Netherlands	189
Spain	189
Poland	189
Greece	189

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

Comments	190
Termination and Non-Prolongation	190
Termination under Other Provisions	190
Manner of Termination	190
Application to Group Insurance	190

Notes

Ipsa iure Avoidance or Declaration of Termination	190
Termination ex tunc or ex nunc	191
Causation: France and United Kingdom	191
Causation in Other Member State Laws	192
Fault: France, the Netherlands and United Kingdom	192
Fault: Other European Laws	192
Written Notice and Time Limits	192
End of Cover	193
National Peculiarities	193

Article 4:103 Discharge of the Insurer's Liability

Comments	193
General Remarks	193
Causation	194
Fault	194

Notes

General Remarks	194
Causation	195
France	195
United Kingdom	195

Italy	195
Belgium and Luxembourg	196
Austria and Germany	196
The Netherlands	196
Further Objective Elements	196
Fault	196
Germany	197
Finland	197
Austria	197
Belgium and Luxembourg	197

Section Two: Aggravation of Risk

Article 4:201 Clauses Concerning Aggravation of Risk

Comments	198
Allocation of Risk	198
The Need for Rules of Law	198
Aggravation of Risk	199
Clauses	199

Notes

Information Requirements	199
Material Aggravation of Risk	200
Aggravation Specified in the Contract	200

Article 4:202 Duty to Give Notice of an Aggravation of Risk

Comments	200
The Need for Notification	200
The Manner of Notification	201
Breach	201

Notes

Notice in Reasonable Time	201
Insurer's Duty to Pay Insurance Money	202

Article 4:203 Termination and Discharge

Comments	202
Reconsideration of the Risk by Insurers	202
Time for Policyholders to Find Alternative Cover	203
Discharge	203
Application to Group Insurance	203

Notes

Expiry of Cover	203
Discharge	204

Section Three: Reduction of Risk

Article 4:301 Consequences of the Reduction of Risk

Comments	204
Purpose and Scope	204
Materiality	205
Policyholder's Initiative	205

Notes

Reduction of the Premium	205
Termination of Contract	206
Exceptions for Personal Insurance	207

Chapter Five: Insurance Premium

Article 5:101 First or Single Premium

Comments	207
Scope of Regulation	207
Regulatory Approach	207
First and Single Premium	208
Prerequisites for Giving Effect to a Condition which is Subject to Article 5:101	209
Consequences of Payment or Non-Payment within the Two Week Period	209

Notes

Postponement of Cover	210
Protection of the Applicant's Expectations	210

Article 5:102 Subsequent Premium

Comments	211
Scope of Regulation	211
Regulatory Approach	211
Subsequent Premium	212
Prerequisites for Giving Effect to a Clause which is Subject to Article 5:102	212
Consequences of Payment or Non-Payment within the Period of Grace	212

Notes	213
-------------	-----

Article 5:103 Termination of the Contract

Comments	214
Scope of Regulation	214
Regulatory Approach	214
Termination in Case of Non-Payment of a First or Single Premium	215
Termination in Case of Non-Payment of a Subsequent Premium	215
Notice of Termination	215
Effects of Termination	215
Automatic Termination	215

Notes

Article 5:103 para. 1: The Right to Terminate	216
Form of Termination	216
Article 5:103 para. 2	217

Article 5:104 Divisibility of Premium

Comments	217
The Principle	217
Abolition of a Principle of Indivisibility of Premium	217

Notes	218
-------------	-----

Article 5:105 Right to Pay Premium

Comments	219
Obligation of the Insurer to Accept Payment	219
Consent of the Policyholder	219
Legitimate Interest of Third Party	219
Notes	220

Chapter Six: Insured Event

Article 6:101 Notice of Insured Event	220
Comments	221
Channels of Communication	221
Balancing Interests	221
Notice Periods	222
Contents of the Notice	222
Breach of Duty	222

Notes

Article 6:101 para. 1: Duty to Notify	223
Who Owes The Duty to Notify	223
Article 6:101 para. 2: Time Allowed for Notification	223
Contractual Derogations	224
Article 6:101 para. 3: Sanction – Reduction of Insurance Money	224
Contractual Arrangements	225

Article 6:102 Claims Cooperation

Comments	226
Information about the Occurrence of the Insured Event	226
Reasonable Requests	226
Breach of Duty	226

Notes

Article 6:102 para. 1: Duty to Cooperate	227
Article 6:102 paras. 2 and 3: Sanctions	227

Article 6:103 Acceptance of Claims

Comments	228
Settlement	228
Prompt Settlement of Claims	228
Notes	229

Article 6:104 Time of Performance

Comments	229
The Importance of Performance	229
Undue Delay	230
The Amount Payable	230
Notes	
Article 6:104 paras. 1 and 3: Rules on the Time of Payment	230
Article 6:104 para. 2: Partial Payment	231

Article 6:105 Late Performance

Comments	232
Compensation	232
Damages	232
The Conceptual Basis of Liability	233
Assessment of Loss	233
Instances of Loss	233
Notes	
General Rules on Interest	234
Specific Interest Rules for Insurance Law	234
Punitive Interest Rates	234

Chapter Seven: Prescription

Article 7:101 Action for Payment of Premium	234
Comments	235

Notes

Community Law	235
General Rules for All Claims Arising from Insurance Contracts	235
Specific Rules on Prescription of Premiums	235
General Rules of the Law of Prescription	236
Comparison of Prescription Periods	236

Article 7:102 Action for Payment of Insurance Benefits	236
Comments	237
General Period of Prescription and its Commencement	237
Absolute Period of Prescription and its Commencement	237

Notes

Introduction	238
A Single Rule without Any Requirement of Knowledge	239
A Double Standard: Knowledge plus Time	239
The Insurer's Decision on the Claim as Starting Point of Prescription	239
The Duration of the Prescription Periods	239
Exception for Life Assurance Contracts	240

Article 7:103 Other Issues Relating to Prescription	240
Comments	241
Prescription of Claims Not Covered by Articles 7:101 and 7:102	241
Unregulated Issues of Prescription	241
Contractual Derogations	241

Notes

General Remark	241
Contractual Derogation	242
Suspension in Case of Negotiations	242
Suspension when Notice or Claim is Lodged	242
Additional Reason for Suspension or Renewal	243

Part Two: Provisions Common to Indemnity Insurance**Chapter Eight: Sum Insured and Insured Value****Article 8:101 Maximum Sums Payable**

Comments	243
The Indemnity Principle and the Sum Insured	243
Mitigation Costs	244
The Sum Insured	244
Valued Policies	244

Notes

The Indemnity Principle	244
Value Agreements	245
Effect of Value Agreements	245
Fraud or Misrepresentation on the Part of the Insured	246

Article 8:102 Underinsurance

Comments	246
Basic Principle: First Loss Cover	246
Permitted Derogation: Proportionate Recovery	246
Alternative Remedies	247

Notes

The Principle of Proportionate Reduction	247
Exceptions	247

Contractual Derogations	248
Article 8:103 Adjustment of Terms in Case of Overinsurance	
Comments	248
Basic Principle: Adjustment of Terms	248
Overinsurance Caused by Multiple Insurance	249
Determination of Insurance Money	249
Alternative Remedies	249
Notes	
General	249
The Claim for Reduction, Article 8:103 para. 1	249
Termination, Article 8:103 para. 2	250
Article 8:104 Multiple Insurance	
Comments	250
Background	250
Key Elements of Multiple Insurance	251
The Insured's Choice	251
Contributions by Different Insurers	252
Notes	
General	252
Indemnity Principle, Article 8:104 para. 1	253
Full Liability of Each Insurer, Article 8:104 para. 2	253
Recourse against Other Insurer(s), Article 8:104 para. 3	254
Chapter Nine: Entitlement to Indemnity	
Article 9:101 Causation of Loss	254
Comments	255
Limits on Recovery of Indemnity	255
Intention	255
Recklessness	255
Failure to Avert or Mitigate	255
Duty and Causation	256
The Persons Prohibited	256
Notes	
Survey	256
Intention and Gross Negligence, Article 9:101 para. 1	257
Intention and Recklessness of Third Parties	257
Contractual Derogations in Case of Negligence	258
Failure to Avert and Mitigate Loss, Article 9:101 para. 3	259
Article 9:102 The Costs of Mitigation	
Comments	259
Establishment of a Right to Recover Certain Costs	259

Scope of the Right of Recovery	260
Underinsurance	260

Notes

General	260
Reasonable Mitigation Costs, Article 9:102 para. 1	261
The Sum Insured as Limit, Article 9:102 para. 2	261

Chapter Ten: Rights of Subrogation

Article 10:101 Subrogation

Comments	262
Introduction	262
Need for Indemnity	263
Protection for Insurer	263
Third Party	264
Protection of Third Parties in a Close Relationship with the Insured	264

Notes

General	265
Basic Principle, Article 10:101 para. 1	265
Protection of Subrogation Rights, Article 10:101 para. 2	266
Protection of the Insured's Entourage, Article 10:101 para. 3	266
No Subrogation Rights against the Insured, Article 10:101 para. 4	267

Chapter Eleven: Insured Persons other than the Policyholder

Article 11:101 Entitlement of the Insured

Comments	267
Concept	267
Protection of the Insured and Scope	268
Basic Rule	268
Other Third Party Claims	268
Revocation of Cover	268
Form of Notice	269
Effects of Revocation	269

Notes

Article 11:101 para. 1: General Principle	269
Article 11:101 para. 2: Revocation	270
Acceptance	270
Insurance for Whom It May Concern	271

Article 11:102 Knowledge of the Insured

Comments	271
Rationale	271
Relation with Article 1:206	272
Elements of the Rule	272
Legal Consequences	272

Notes

Imputation to the Policyholder	273
Direct Notification Duties of the Insured	273

Article 11:103 Breach of Duty by One Insured 273

Comments	274
Rationale and Purpose	274
Scope: the Policyholder as an Insured	274
Scope: Group Insurance	275
Relation to Article 1:206	275
Legal Consequences	275
Joint Insurance	276

Note	276
------------	-----

Chapter Twelve: Insured Risk

Article 12:101 Lack of Insured Risk

Comments	277
Structure and Position of the Rule	277
Non-Existence of Insured Risk	278
Cessation of Insured Risk	278
Transfer of Title	278

Notes

General	279
Initial Absence of Risk, Article 12:101 para. 1	279
Subsequent Cessation of Risk, Article 12:101 para. 2	280

Article 12:102 Transfer of Property

Comments	280
The Need for a Rule concerning Transfer of Property	280
The Underlying Concept	281
Non-Mandatory Character of the Rule	281
Scope of Application	281
Inapplicability to Transfer of Title by Inheritance	281
The Fiction of an Insurance Contract for the Benefit of a Third Party	282
Application to Group Insurance	282

Notes

General	282
The Termination Approach, Article 12:102 para. 1	283
The Substitution Approach	283
Transferable Insurance Policies	283
Passing of Insurance Cover, Article 12:102 para. 2	284
Exceptions, Article 12:102 para. 3	284

Part Three: Provisions Common to Insurance of Fixed Sums

Chapter Thirteen: Admissibility

Article 13:101 Insurance of Fixed Sums	284
Comments	284

Notes

General	285
Content	286
Relationship to Personal Insurance	286

Part Four: Liability Insurance

Chapter Fourteen: General Liability Insurance

Article 14:101 Defence Costs	286
Comments	287
Underlying Principle	287
Scope of Defence Costs	287
Reasonableness of Defence Costs (Article 9:102)	287
Reasonableness and Sum Insured	287
Free Choice of Defence Lawyer	288
Costs of Criminal Proceedings	288
Multiple Insurance	288

Article 14:102 Protection of the Victim

Comments	288
Underlying Principle	288
Scope	289
Agreement on Defence Costs	289

Article 14:103 Causation of Loss

Comments	289
Underlying Principle	289
Specific Instructions	290
Relation to Article 6:102	290

Article 14:104 Acknowledgement of Liability 290 |

Comments	291
Acceptance of the Victim's Claim	291
Insurer's Consent	291

Article 14:105 Assignment

Comments	291
Interests Involved	291
Rationale	292

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

Comments	292
Background	292
Transfer of Bonuses	292
Claims Record	293

Article 14:107 Insured Event

Comments	293
Background: Triggers for the Insurer's Liability	293
New Arrangements for the Insurer's Liability	294
Different National Solutions	295
The Basic Rule (Article 14:107 para. 1)	296
Consumer Liability Insurance – Mandatory Rule	297
Commercial and Professional Risks – Default Rule	297
Claims Made Clauses	298
Other Clauses	298

Article 14:108 Claims Exceeding the Sum Insured

Comments	299
Rationale	299
Proportionality	299
Multiple Events	300
Protection of the Insurer	300

Chapter Fifteen: Direct Claims and Direct Actions

Article 15:101 Direct Claims and Defences

Comments	301
Rationale	301
Compulsory Insurance	302
Insolvency	302
Liquidation or Winding up	303
Personal Injury	303
Law Governing Liability	303
Limits to the Direct Claim	303
Defences	304

Article 15:102 Information Duties

Comments	304
Rationale	304
Information Duty of the Policyholder and the Insured (para. 1)	305
Information Duty of the Insurer (para. 2)	305
Sanctions	305
Information Duty of the Policyholder (first sentence of para. 3)	306
Information Duty of the Insured (second sentence of para. 3)	306
Period for the Provision of Information	306
Analogous Application of para. 3	306

Article 15:103 Discharge	306
Comments	307
Rationale	307
Principle	307
Exceptions	307

Article 15:104 Prescription	307
Comments	308
Rationale	308
Prescription Period	308
Exception: Defence Costs	308
Suspension	308

Chapter Sixteen: **Compulsory Insurance**

Article 16:101 Scope of Application

Comments	309
Rationale	309
The duty to insure and the applicable contract law	310
The Origins of Duties to Insure	310
The priority of national requirements, para. 2	311

Part Five: **Life Insurance**

Chapter Seventeen: **Special Provisions for Life Insurance**

Section One: **Third Parties**

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

Comments	312
Rationale	312
Consent requirement: General aspects	313
Consent in Writing	313
Informed Consent	314
Time of Consent	314
Application to Substantial Changes and Other Situations	314
Sanctions	314

Article 17:102 Beneficiary of the Insurance Money

Comments	315
Rationale	315
Scope	316
Designation and Change of Designation	316
Form of Designation (para. 1)	316
Beneficiary in the Absence of Effective Designation (para. 3)	317
Death or Revocation of One of Multiple Beneficiaries (para. 4)	317
Effects of Insolvency Proceedings (para. 5)	317
Discharge (para. 6)	318

Article 17:103 Beneficiary of the Surrender Value	318
Comments	319
Rationale	319
Revocation and change	319
Default Rule (para. 2)	319
Cross-references (para. 3)	320
 Article 17:104 Assignment or Encumbrance	
Comments	320
Rationale	320
Action of the Policyholder	320
Action of the Beneficiary	321
Consent	321
Effect of Assignment and Encumbrance	321
 Article 17:105 Renunciation of Estate	
Comments	321
Background	321
Rule of Construction	322
Relationship with Insolvency Law	322
 Section Two: Initial Stage and Duration of the Contract	
Article 17:201 Applicant's Pre-contractual Information Duties	
Comments	322
Rationale	322
Information about the Person at Risk (para. 1)	322
Indisputability (para. 2)	323
 Article 17:202 Insurer's Pre-contractual Information Duties	
Comments	324
Rationale	324
Additional Information Requirements	325
Information on Risks Underlying the Contract (para. 3)	325
Model Calculation (para. 4)	326
 Article 17:203 Cooling-off Period	
Comments	326
Rationale and Object of para. 1	326
Rationale and Object of para. 2	327
 Article 17:204 Policyholder's Right to Terminate the Contract	
Comments	327
Rationale	327
Unequal Regulation for Both Parties	328
The One-Year Waiting Period	328
Single Premium Insurance (second sentence of para. 1)	328

Exclusion of Termination Rights under National Law	329
Form and Effect of Termination (third sentence of para. 1)	329
Article 17:205 Insurer's Right to Terminate the Contract	329
Comments	330
Rationale	330
Termination for Breach of Pre-contractual Disclosure Duties	330
Termination for Aggravation of Risk	331
Termination for Non-payment of Premium	331
Modalities and effect of termination	331
Section Three: Changes during the Contract Period	
Article 17:301 Insurer's Post-contractual Information Duties	
Comments	332
Rationale	332
Scope	332
Context	332
Article 17:302 Aggravation of Risk	
Comments	333
Rationale	333
Scope	333
Sanction	333
Article 17:303 Adjustment of Premium and Benefits Payable	
Comments	334
Rationale	334
National Laws as Models	335
Scope (paras. 1 and 3)	335
Requirements (para. 2)	335
Exceptions (para. 4)	336
Form and Time of Effectiveness (para. 5)	336
Premium Reduction	337
Premium Stability (para. 7)	337
Adjustment Clauses	337
Article 17:304 Alteration of Terms and Conditions	337
Comments	338
Rationale	338
Scope	338
Requirements for Alteration Clauses (para. 1)	338
Limited Reasons for Alterations (para. 1)	338
Alteration of Supervisory Law	339
Pension Schemes	339
Tax Privileges	339
Replacement of Invalid Clauses	339
Further Requirements for an Alteration (para. 2)	340

Retroactive Effect	340
Minimum Standards for Alteration Clauses in Life Insurance	340
 Section Four: Relation to National Laws	
Article 17:401 Pension Plans	
Comments	340
Rationale	340
Illustration	341
Scope	342
Precedence of National Law	342
 Article 17:402 Tax Treatment and State Subsidies	
Comments	342
Rationale	343
Scope	343
Legal consequences	343
 Section Five: Insured Event	
Article 17:501 Insurer's Investigation and Information Duty	
Comments	344
Rationale	344
Duty to Investigate the Occurrence of the Insured Event (para. 1)	344
Duty to Investigate the Identity and Address of the Beneficiary (para. 2)	345
Duty to Inform the Beneficiary (para. 2)	345
Sanctions (para. 3)	346
 Article 17:502 Suicide	
Comments	346
Rationale	346
Scope	347
Time Period	347
Mental Incapacity	347
Discharge	348
 Article 17:503 Intentional Killing of the Person at Risk	
Comments	348
Rationale	348
Scope	349
Details	349
Intention	349
Self-Defence	349
Mandatory Character	349
 Section Six: Conversion and Surrender	
Article 17:601 Conversion of the Contract	
Comments	350
Rationale	350

Policyholder's Options	350
Information Duty	350
Form of Request	351

Article 17:602 Surrender of the Contract

Comments	351
Right of Surrender (para. 1)	351
Termination by the Insurer (para. 2)	352
Insurer's Information Duty (para. 3)	352
With-profits Policies (para. 4)	352
Time of Payment (para. 5)	352

Article 17:603 Conversion Value; Surrender Value	352
Comments	353
Home Country Principle (first sentence of para. 1)	353
Established Actuarial Principles (second sentence of para. 1)	353
Deduction of Costs of Contract Conclusion (para. 2)	353
Deduction of Costs of Payment of the Surrender Value (para. 3)	354

Part Six: Group Insurance

Chapter Eighteen: Special Provisions for Group Insurance

Section One: Group Insurance in General

Article 18:101 Applicability

Comments	354
Background	354
Definition	354
Classification	354
Applicability of the PEICL	355

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

Comments	355
Rationale	355
Duty of Care	356
Duty under Contract	356
Information (para. 2)	356

Section Two: Accessory Group Insurance

Article 18:201 Application of the PEICL

Comments	357
Group Insurance and Protection of Group Members	357
Straightforward Application of the PEICL	357
Application of the PEICL mutatis mutandis	358
Contract Terms and the mutatis mutandis Rule	358
Need for Special Rules	358

Article 18:202 Information Duties

Comments	358
Rationale	358
Information Duty when a Person Joins a Group	359
Time when Information has to be Provided	359
Person Obligated to Provide Information	359
Sanctions	359
Burden of Proof	360
Information after Joining	360

Article 18:203 Termination by the Insurer

Comments	360
Rationale	360
Termination after Occurrence of the Insured Event	361
Termination for Non-Compliance with Precautionary Measures or Aggravation of Risk (para. 2)	361
Termination by Transfer of Property (para. 3)	361

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

Comments	362
Rationale	362
Cover in Transitional Period	362
Right to Individual Cover (para. 1)	363
Contents of the Individual Insurance (paras. 1 and 3)	363
Individual Insurance as a New Contract	363
Group Organiser's Information Duty	363
Sanctions for Breach of the Information Duty	364

Section Three: Elective Group Insurance

Article 18:301 Elective Group Insurance: General

Comments	364
Elective Group Insurances as Framework Contracts	364
Applicability of the PEICL	364

Article 18:302 Alteration of Terms and Conditions

Comments	365
Rationale	365
Alteration of Terms and Conditions of the Framework Contract	365
Requirements of Article 2:603	365
Requirements of Articles 17:303 and 17:304	365

Article 18:303 Continuation of Cover

Comments	366
Contents	366
Possible Consequences of the Termination of the Framework Contract	366
Comparison with Article 18:204	366

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

Chinese version: 欧洲保险合同法原则	369
Czech version: Zásady evropského pojišťovacího smluvního práva (ZEPSP)	393
Dutch version: Principles of European Insurance Contract Law (PEICL)	420
French version: Principes du droit Européen du contrat d'assurance (PDECA)	451
German version: Grundregeln des Europäischen Versicherungsvertragsrecht (GEVVR)	480
Greek version: Αρχές Ευρωπαϊκού Δικαίου της Ασφαλιστικής Σύμβασης (ΑΕΔΑΣ)	512
Hungarian version: Az Európai biztosítási szerződési jog alapelvei	544
Italian version: Principi di Diritto Europeo del Contratto di Assicurazione (PEICL)	573
Japanese version: ヨーロッパ保険契約法原則(PEICL) 第1部: ヨーロッパ保険契約法原則(PEICL) に含まれるすべての契約に共通する規定	603
Korean version: Principles of European Insurance Contract Law (PEICL) 유럽보험계약법 원칙	631
Polish version: Zasady europejskiego prawa ubezpieczeń (ZEPU)	657
Portuguese version: Princípios do Direito Europeu do Contrato de Seguro (PEICL)	689
Serbian version: Principi Evropskog Ugovornog Prava Osiguranja (PEUPO)	717
Slovak version: Princípy európskeho práva poisťnej zmluvy (PEPPZ)	745

Spanish version: **Principios de Derecho Europeo del
Contrato de Seguro (PDECS)** 774

Swedish version: **Principer för en Europeisk
Försäkringsavtalsrätt (PEICL)** 804

Turkish version: **Avrupa Sigorta Sözleşmesi ukuku
İlkeleri (ASSHİ)** 833

Annexes

Abbreviations 863

Table of National Statutes (including draft legislation and like sources) 866

Table of EU Legislation (including draft legislation and like sources) 873

Table of International Conventions and Model Laws 878

Table of Cases 879

Bibliography of Works Cited 883

List of Rapporteurs

Article 1:101 Substantive Scope of Application	<i>Reichert-Facilides, Heiss</i>
Article 1:102 Optional Application	<i>Basedow</i>
Article 1:103 Mandatory Character	<i>Reichert-Facilides, Heiss</i>
Article 1:104 Interpretation	<i>Basedow</i>
Article 1:105 National Law and General Principles	<i>Basedow</i>
Article 1:201 Insurance Contract	<i>Reichert-Facilides, Heiss, Norio-Timonen</i>
Article 1:202 Further Definitions	<i>Group</i>
Article 1:203 Language and Interpretation of Documents	<i>Basedow, Heiss</i>
Article 1:204 Receipt of Documents: Proof	<i>Basedow</i>
Article 1:205 Form of Notice	<i>Basedow</i>
Article 1:206 Imputed Knowledge	<i>Clarke</i>
Article 1:207 Non-Discrimination	<i>Basedow</i>
Article 1:208 Genetic Tests	<i>Schauer</i>
Article 1:301 Injunctions	<i>Adelmann, Heiss</i>
Article 1:302 Out-of-court Complaint and Redress Mechanisms	<i>Heiss</i>
Article 2:101 Duty of Disclosure	<i>Clarke, Rudisch</i>
Article 2:102 Breach	<i>Clarke, Rudisch</i>
Article 2:103 Exceptions	<i>Clarke, Rudisch</i>
Article 2:104 Fraudulent Breach	<i>Clarke, Rudisch</i>
Article 2:105 Additional Information	<i>Clarke, Rudisch</i>
Article 2:106 Genetic Information	<i>Schauer</i>
Article 2:201 Provision of Pre-contractual Documents	<i>Heiss</i>
Article 2:202 Duty to Warn about Inconsistencies in the Cover	<i>Heiss</i>
Article 2:203 Duty to Warn about Commencement of Cover	<i>Heiss</i>
Article 2:301 Manner of Conclusion	<i>Dufwa</i>
Article 2:302 Revocation of an Application for Insurance	<i>Dufwa</i>
Article 2:303 Cooling-off Period	<i>Schnyder</i>
Article 2:304 Abusive Clauses	<i>Adelmann, Dufwa</i>
Article 2:401 Retroactive Cover	<i>Heiss</i>
Article 2:402 Preliminary Cover	<i>Heiss</i>
Article 2:403 Duration of Preliminary Cover	<i>Heiss</i>
Article 2:501 Contents	<i>Heiss</i>
Article 2:502 Effects of the Policy	<i>Heiss</i>
Article 2:601 Duration of the Insurance Contract	<i>Basedow</i>
Article 2:602 Prolongation	<i>Basedow</i>
Article 2:603 Alteration of Terms and Conditions	<i>Wandt</i>
Article 2:604 Termination after the Occurrence of an Insured Event	<i>Basedow</i>
Article 2:701 General Information Duty	<i>Wandt</i>
Article 2:702 Further Information upon Request	<i>Wandt</i>
Article 3:101 Powers of Insurance Agents	<i>Heiss, Lorenz</i>

Article 3:102 Agents of Insurers Purporting to Be Independent	<i>Heiss, Lorenz</i>
Article 4:101 Precautionary Measures: Meaning	<i>Wansink, Basedow</i>
Article 4:102 Insurer's Right to Terminate the Insurance Contract	<i>Wansink, Basedow</i>
Article 4:103 Discharge of the Insurer's Liability	<i>Wansink, Basedow</i>
Article 4:201 Clauses Concerning Aggravation of Risk	<i>Clarke</i>
Article 4:202 Duty to Give Notice of an Aggravation of Risk	<i>Clarke</i>
Article 4:203 Termination and Discharge	<i>Clarke</i>
Article 4:301 Consequences of the Reduction of Risk	<i>Clarke, Takáts</i>
Article 5:101 First or Single Premium	<i>Heiss</i>
Article 5:102 Subsequent Premium	<i>Heiss</i>
Article 5:103 Termination of the Contract	<i>Heiss</i>
Article 5:104 Divisibility of Premium	<i>Heiss</i>
Article 5:105 Right to Pay Premium	<i>Heiss</i>
Article 6:101 Notice of Insured Event	<i>Bataller Grau</i>
Article 6:102 Claims Cooperation	<i>Bataller Grau</i>
Article 6:103 Acceptance of Claims	<i>Bataller Grau</i>
Article 6:104 Time of Performance	<i>Bataller Grau</i>
Article 6:105 Late Performance	<i>Bataller Grau</i>
Article 7:101 Action for Payment of Premium	<i>Kullmann, Rokas, Heiss</i>
Article 7:102 Action for Payment of Insurance Benefits	<i>Kullmann, Rokas, Heiss</i>
Article 7:103 Other Issues Relating to Prescription	<i>Kullmann, Rokas, Heiss</i>
Article 8:101 Maximum Sums Payable	<i>Cerini, Clarke, Heiss</i>
Article 8:102 Underinsurance	<i>Clarke, Takáts</i>
Article 8:103 Adjustment of Terms in Case of Overinsurance	<i>Clarke, Takáts</i>
Article 8:104 Multiple Insurance	<i>Takáts, Wansink, Birds</i>
Article 9:101 Causation of Loss	<i>Clarke</i>
Article 9:102 The Costs of Mitigation	<i>Clarke</i>
Article 10:101 Subrogation	<i>Birds</i>
Article 11:101 Entitlement of the Insured	<i>Rokas, Basedow</i>
Article 11:102 Knowledge of the Insured	<i>Rokas, Basedow</i>
Article 11:103 Breach of Duty by One Insured	<i>Rokas, Basedow</i>
Article 12:101 Lack of Insured Risk	<i>Heiss, Loacker</i>
Article 12:102 Transfer of Property	<i>Heiss, Loacker</i>
Article 13:101 Insurance of Fixed Sums	<i>Heiss</i>
Article 14:101 Defence Costs	<i>Birds</i>
Article 14:102 Protection of the Victim	<i>Birds</i>
Article 14:103 Causation of Loss	<i>Clarke</i>
Article 14:104 Acknowledgement of Liability	<i>Clarke</i>
Article 14:105 Assignment	<i>Clarke</i>
Article 14:106 No-Claims-Bonuses / Bonus-Malus-Systems	<i>Birds</i>
Article 14:107 Insured Event	<i>Cousy</i>
Article 14:108 Claims Exceeding the Sum Insured	<i>Heiss</i>
Article 15:101 Direct Claims and Defences	<i>Heiss</i>
Article 15:102 Information Duties	<i>Heiss</i>
Article 15:103 Discharge	<i>Heiss</i>
Article 15:104 Prescription	<i>Heiss</i>
Article 16:101 Scope of Application	<i>Basedow</i>

Article 17:101 Life Insurance on the Life of a Third Party	<i>Heiss</i>
Article 17:102 Beneficiary of the Insurance Money	<i>Cerini</i>
Article 17:103 Beneficiary of the Surrender Value	<i>Basedow</i>
Article 17:104 Assignment or Encumbrance	<i>Rokas</i>
Article 17:105 Renunciation of Estate	<i>Schnyder, Heiss</i>
Article 17:201 Applicant's Pre-contractual Information Duties	<i>Cousy</i>
Article 17:202 Insurer's Pre-contractual Information Duties	<i>Cousy</i>
Article 17:203 Cooling-off Period	<i>Cousy</i>
Article 17:204 Policyholder's Right to Terminate the Contract	<i>Basedow</i>
Article 17:205 Insurer's Right to Terminate the Contract	<i>Basedow</i>
Article 17:301 Insurer's Post-contractual Information Duties	<i>Rokas</i>
Article 17:302 Aggravation of Risk	<i>Clarke</i>
Article 17:303 Adjustment of Premium and Benefits Payable	<i>Wandt</i>
Article 17:304 Alteration of Terms and Conditions	<i>Wandt</i>
Article 17:401 Pension Plans	<i>Schauer</i>
Article 17:402 Tax Treatment and State Subsidies	<i>Schauer</i>
Article 17:501 Insurer's Investigation and Information Duty	<i>Heiss</i>
Article 17:502 Suicide	<i>Schauer</i>
Article 17:503 Intentional Killing of the Person at Risk	<i>Schauer</i>
Article 17:601 Conversion of the Contract	<i>Schnyder</i>
Article 17:602 Surrender of the Contract	<i>Schnyder</i>
Article 17:603 Conversion Value; Surrender Value	<i>Schnyder</i>
Article 18:101 Applicability	<i>Takáts</i>
Article 18:102 General Duty of Care of the Group Organiser	<i>Takáts</i>
Article 18:201 Application of the PEICL	<i>Norio-Timonen</i>
Article 18:202 Information Duties	<i>Norio-Timonen</i>
Article 18:203 Termination by the Insurer	<i>Norio-Timonen, Basedow</i>
Article 18:204 Right to Continue Cover – Group Life Insurance	<i>Norio-Timonen, Schauer</i>
Article 18:301 Elective Group Insurance: General	<i>Takáts</i>
Article 18:302 Alteration of Terms and Conditions	<i>Wandt</i>
Article 18:303 Continuation of Cover	<i>Norio-Timonen, Takáts</i>