

DEVELOPMENTS IN EUROPEAN AND NATIONAL LAW

A) DEVELOPMENTS IN EUROPEAN LAW

Principles of European Insurance Contract Law (PEICL) - Draft Common Frame of Reference (DCFR)

The Work of the Project Group "Restatement of the European Insurance Contract Law" / 28th Regime – an alternative allowing less lawmaking

In recent times on many occasions several voices from civil society have raised the question as to whether an optional regime could be adopted as an alternative to the traditional way of harmonising legislation in specific areas, such as, also, insurance.

As stated above the work of the Project Group "Restatement of the European Insurance Contract Law" has elaborated the Principles of European Insurance Contract Law (PEICL). The Common Frame of Reference (CFR) Expert Group consisting of a team of experts some of which are law professors also members of the Exec. Committee of AIDA Europe (Professors Ioannis Rokas and Jerome Kullmann) issued its first draft opinion on the Restatement of the European Insurance Contract Law in December 2007.

The opinion on the "Restatement of the European Insurance Contract Law" – 28th regime" as an alternative second regime allowing less lawmaking at Community level, was adopted by the EESC on 27, May 2010 (by 124 votes to 8 with 20 abstentions). Thus, the "Draft Common Frame of Reference" ("DCFR") produced not only encapsulates the work conducted over the last 10 years with a view to offer an alternative optional "2nd" regime in each Member State, but also contains model rules for contracts allowing parties to a contract to enter transactions throughout the EU on the basis of a single regime of contract which can furthermore offer advantages – if compared to the options of the unification and/or harmonisation of national law.

B) DEVELOPMENTS IN NATIONAL LAW

Greek Incentive – Law for the Creation of a Guarantee Fund for Private Life Insurance

On the 3rd August 2010 the Law No 3867/2010 (Official Gazette of the Greek Republic bulletin A'-128) on supervision of private insurance and the establishment of a guarantee fund for life insurance, entered into force, introducing, *inter alia*, material legislative changes in the insurance sector.

Among other things, the Law provides for the creation of a guarantee fund for private life insurance¹.

¹ Greece has set up and operates three guarantee funds to ensure customer protection in the financial sector, as stipulated by EU directives. The Deposit Guarantee and Investment Fund (TEKE) covers the risk of credit institutions and investment banking activities, the Co-Guarantee Fund covers the risk of Unlimited Companies offering investment services and the Auxiliary Fund of the Insurance Industry (EK) covering risk insurance business, but only as regards the compulsory motor insurance. It follows that the insurance industry was lacking any guarantee fund to cover the life insurance business. Recent developments in the insurance market, however, demonstrated the need for life guarantee fund to cover the gap occurs in insurance industry.

The Private Life Insurance Guarantee Fund, shortened as the “Life Guarantee Fund” has as its principal purpose the maintenance and transfer of portfolios of insurance policies to another insurance company or other insurance companies and in case this is not feasible then its purpose is the payment of compensation to policyholders.

Members of the guarantee fund shall be made mandatorily:

- a) Insurance companies based in Greece.
- b) Insurance branches of companies based in third (non EU) countries
- c) Insurance branches of EU or EEA companies, where not already covered by corresponding guarantee funds in their country of establishment.

Its only source of income are the contributions made by the life insurance companies which are equally shared and paid by the life insurance companies and by the policyholders.

Through the enactment of this Law Greece moves a step closer to configuring a mechanism for the transfer of portfolios of life in the contracting company and ensuring coverage for the claims of policyholders.

Another significant change brought by this new Law concerns the dissolution of the existing supervisory authority, the Private Insurance Supervisory Committee (PISC) operating since 1.1.2008 as independent body under the supervision of the Ministry of Finance and its replacement so that the supervision of insurance is now entrusted to the Bank of Greece.

In terms of the same Law, the outstanding cases of life insurance companies whose license has already, at the date of its publication, been revoked, are also being dealt with. In order to effectively handle and conclude these cases, it is predicted that all already commenced proceedings will be continued, in view of the ultimate goal of finding an insurance company which will be able to undertake the whole life-insurance sector of these companies, as this will have been adapted as per the currently existing percentage of their assets. If a transfer is not feasible, then the liquidation of the life insurance sector shall be effected. In both cases (i.e. whether transfer or liquidation occurs) the part of the claims of the insureds which has not been met with or satisfied (either by the new insurance company which has undertaken the life insurance sector or by the liquidator) will be covered up to a percentage of 70% from the newly established guarantee fund for life insurance.

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