

SLASPO's comments on Draft PEICL

- article 1:102 – support

Despite the fact, that Slovak insurance association supports adoption of consistent legislation which would integrate the rules relating to insurance in the European Union, particularly because of easier cross-border selling and administrative costs' reducing, Slovak insurance association therefore insists that the PEICL's application to private relations will still remain an optional instrument, as provided in Article 1:102

- article 1:202 – add new definition of applicant

Legal concept of „applicant“ is used in text (e.g. 1:205), but there's not defined anywhere.

- article 1:202 par. 5 – explain the intent within legal concept of „insurance agent“ in the sense if he/she is employed by an insurance company

Slovak legislation based on IMD defines agent as a self-employed person.

- article 1:203 par. 2 – phrase „ the interpretation most favourable“ replace by „the interpretation more favourable“

Proposed wording could cause the interpretative problems and excessive involvement of lawyers within the policyholders' claims.

- article 1:205 – introduce obligatory written form for each legal act for both side under penalty of nullity

The proposal by the reasons of legal certainty – written legal act is clear evidence, certainly.

- article 1:207 par. 4 - lack of determination of notice period

- article 2:101 par. 1 – after the word „clear, precise“ add new word „written“

Written form could simplified potential conflict in way of lack of evidence.

- article 2:102 par. 2 – introduce how it is possible to terminate the contract by insurer

Complete the text in order to clarify it.

- article 2:103 – skip letter a) because of possible too extensive interpretation

This provision could be interpretate too extensive and that's why could cause problems when an insurance company should or shouldn't recognise, if provided information is not correct or obviously incomplete.

- article 2:104 – replace the title „fraudulent breach“ by the new title „culpable“ or „caused“ or „committed“ breach

- article 2:201 par. 1 letters a) and b) – skip the text

Insurance company haven't known these information before concluding the contract.

- article 2:201 par. 1 letter c) – skip the text

When an insurance agent is defined as employed by an insurance company, it is not relevant to include this information to pre-contractual documents. For a client an information about insurer's address is important and information about agent's address is thereby irrelevant.

- article 2:202 par. 1 – add definition of independent intermediary

In order to make clear, when using this term in the whole text.

- article 2:202 par. 2 letter b) - lack of determination of the notice period

- article 2:301 – introduce obligatory written form

Written form could simplified potential conflict in way of lack of evidence.

- article 2:303 - lack of determination of notice period

- article 2:304 - state explicitly that this article applies only to the natural persons

This article relates to the provisions on "unfair terms in the contract". According legal regulations of consumer contracts, they should be applied only to consumers – as the natural persons. Under the proposed provisions of Article 2:304, this could be applied also to legal persons. For reasons of legal certainty, it should be stated explicitly if this article refers only to the natural persons or not.

- article 2:403 – specify more precisely

From this text it is not clear, how the application could be rejected.

-article 2:501 – at the beginning the words „when concluding...” replace by „after concluding...”

Displaying the policy at the moment of contract's conclusion may cause problems, mainly when the contract is concluded out of insurer's service and that's why it is not possible to issue policy at the moment of concluding contract.

- article 2:501 – proposal for completed the text of first sentence

After the words „as far as they are not included in the policy,” add new words „or in insurance contract” .

The purpose for this proposal is to avoid a lot of duplicity materials given to the applicant – when general contract terms had been incorporated to the contract, it is senseless when they would be given also separately.

-article 2:501 letter c) – make clear, unify legal concepts that are used in text

We would like to ask for clarification if „intermediary” uses in this article is the same person as „insurance agent” or not.

- article 2:601 – disagreement with one year period of insurance

Insurance for unlimited period is better alternative than for one year period.

- article 2:602 par. 1 letter a) – skip words „stating the reasons for its decision“

Insurer shouldn't have a duty to give reasons for terminating contract, especially when it is concluded for a limited period. And also notice or reason in this case do not affect the continuation of the contractual relation.

- article 2:602 par. 2 - replace last word „dispatch“ by the word „delivered“

It is dangerous to bind this moment to the moment of dispatch, because of lack of evidences.

- article 3:101 – delete the whole article

Directive on insurance mediation is still valid and there is no reason to regulate this scope within PEICL (that is basically material law). Within the interpretation it could even reduce intermediary's obligations.

- article 4:301 par. 2 - lack of determination of the notice period

- article 5:101 – ask for explanation

We would like to ask for clarification, whether it would be still possible to accept the contract also by payment of premium.

- article 5:101 letter b) - replace the word „invoice“ by the word „appeal“ or „notice“ or „handbill“

Assuming that it is a mistake when using invoice.

- article 5:102 par. 1 letter a) - replace the word „invoice“ by the word „appeal“ or „notice“ or „handbill“

Assuming that it is a mistake when using invoice.

- article 5:103 – explain and clarify

An insurance contract should be terminated automatically by period expiration because of premium non-payment. The right for outstanding premium should be maintained. Then it is up to insurer to claim or not the debt on premium from policyholder. So that, why it is stated in this article, that another legal act (deed) is necessary for terminating the contract?

- article 5:105 letter b) – delete the text

Assuming that speculation may occur.

- article 6:101 par. 1 last sentence – skip the text or clarify whether it concerns only liability insurance

There is no reason for enabling different person to notice a right for indemnity. It is a right of beneficiary, entitled person, and not the right of any other person.

- article 6:101 par. 2 second sentence - replace last word „on dispatch“ by the word „on delivery“

It is dangerous to bind the moment of efficiency to the moment of dispatch, because of lack of evidences.

- article 6:103 par. 2 – delete the text

It is not possible to presume claim's acceptance in order to pay indemnity only because of the the omission by insurer.

- article 6:105 – make the relations synallagmatic

Legal relations in insurance are mutual, correlative, so that rights and duties resulting from an insurance contract should be synallagmatic. When there's a sanction for an insurer like in this article, it should be introduce also for another contract party (in chapter five).

- article 7:101 – replace period of one year by period of three year

The purpose is unifying the periods used also in article 7:102.

- article 7:102 par. 1 last sentence, last words – replace the period of 30 years by the period of 10 years

The period of 30 years is too long, it should be max 10 years.

- article 8:101 par 1 – at the end of the sentence add words „and/or aggrieved person“

The victims of the loss is also aggrieved person beside insured person.

- article 8:104 par. 2 – replace the word „policy“ by the word „insurance contract“

The purpose is using the correct legal terms.

- article 9:101 par. 2 – replace the word „policy“ by the word „insurance contract“

The purpose is using the correct legal terms.

- article 10:101 par. 3 – delete the text „a person being in an equivalent social relationship to the policyholder or insured“

The used text is quite vague.

We propose to delete this text or replace by : „a persons living with the insured in the same household and persons who are dependent on the insured for its maintenance/alimenta, except if such person intentionally caused the damage.

- article 10:101 par. 4 – clarify the text and reword it to more legal language – e.g.: „Insurer exercise its right of subrodation only after outstanding debt of insured person is satisfied.“

- article 11:101 par. 2 letter a) – replace the word „policy“ by the word „insurance contract“

The purpose is using the correct legal terms.

- article 12:101 par. 2 – add at the end of the sentence : „in a case of loss hapenned, policyholder is oblige to pay premium to the end of the period, when loss happened“.

For the purpose of clarifying the text.

- article 12:102 par. 1 and par. 3 – specify it that way, that within a reasonable time insurer would have a possibility to know about these facts and would have a possibility to terminate the contract.

The purpose is also the equality of rights and obligations of both parties.