

**Response to the Questionnaire on On-Line Insurance  
by the AIDA German Chapter**

**GERMAN NATIONAL REPORT**

**ON**

**ON-LINE INSURANCE**

**1) Concerning the existence of a national legislation or regulation that is specifically dealing with internet insurance**

Please state whether in your legislation you have rules that are specifically dealing with operations and contracts on the Internet, and whether they are applicable to all contracts (including insurance contracts) or to all financial services contracts, or solely to insurance contracts

**Answer:**

Sec. 312b–312d German Civil Code (*Bürgerliches Gesetzbuch* hereinafter referred to as BGB) specifically provides rules applicable to contracts which are concluded between an entrepreneur and a consumer via means of distance communication (so-called “*Fernabsatzverträge*”). These provisions in principle apply to all contracts regarding the supply of goods and rendering of services, including financial services. Sec. 312f BGB additionally sets out rules for the effect a revocation of a distance communication contract on financial services has on other distance communication contracts regarding further services to be provided by the entrepreneur or a third party (“*hinzugefügte Verträge*”). Further applicable rules governing e-commerce are provided by sec. 312g BGB. Sec. 312b et seq. BGB are based on European Directives 97/7/EC and 2002/65/EC and are, amongst others, applicable to financial services contracts.

Sec. 312b subsec. 3 no. 3, however, explicitly *excludes* insurance contracts and the mediation of insurance contracts from the scope of the above mentioned provisions. The German legislator decided to implement the statutory provisions of the European Directive 2002/65/EC for insurance contracts into the German Insurance Contract Code (*Versicherungsvertragsgesetz*, hereinafter referred to as VVG), especially in sec. 7 et seq. VVG in conjunction with VVG-InfoVO (Regulation on information duties under the VVG). Sec. 7 VVG does not only apply to contracts concluded via Internet but states general obligations in regard to the information which has to be provided to a potential policyholder for all different types for insurance contracts with certain exceptions (e.g. so-defined large risks [*Großrisiken*]). Sec. 7 VVG states that the general terms and conditions of insurance and additional information (about the insurer, the service, the contract and the access to judicial proceedings) has to be delivered in a method

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appropriate to the chosen means of communication and has to be clear and comprehensible. sec. 8 VVG provides the right of the policyholder to revoke an insurance contract without giving reasons within a certain time frame. Sec. 8 VVG is not only applicable to insurance contracts concluded via the internet, but provides the aforementioned right irrespectively of the means of communication by which the contract was concluded.

This does, however, not mean that the mode of conclusion would be completely irrelevant concerning the provisions of the German insurance contract act. If, for example, the essential content of a contract of insurance refers to the insurer granting provisional cover, the contracting parties may according to sec. 49 subsec. 1 phrase 1 VVG agree that the insurer is not obligated to turn over the necessary information material and the general terms of insurance at the usually required moment before the applicant makes his declaration of intent but rather only upon later request and at the latest with the insurance policy. Pursuant to sec. 49 subsec. 1 phrase 2 VVG this exception for contracts regarding provisional cover does, however, not apply to a distance communication contract in the sense of sec. 312b subsec. 1 and 2 BGB.

### **2) Concerning the conclusion of insurance contracts on Internet**

Please describe briefly

- how the successive steps are characterized (offer, acceptance)
- the moment where the consent is established
- the rules concerning the right to withdraw of the policyholder

#### **Answer:**

Concerning the conclusion of insurance contracts via the internet, the general rules and provisions of the German Civil Code apply, i.e. sec. 145–155 BGB. Nevertheless, there are some particular provisions of the VVG which govern the conclusion of insurance contracts as *lex specialis*. As already mentioned, sec. 7 subsec. 1 VVG requires the insurer to deliver the general terms and conditions of insurance (and other information material) in good time before the policyholder makes his contractual declaration, i.e. his offer or acceptance. There are, of course, multiple possibilities of concluding an insurance contract via the internet: The parties can either exchange e-mails, use a dialog box on a website or standardized program routines. Depending on the individual circumstances the offer can be seen either in the contractual statement of the potential policyholder or in the contractual statement made by the insurer. The German Insurance Contract Act contains no provision that would require the offer to be mandatorily made by one or the other party. In practice, in most if not virtually all cases the insurer's website may not be seen to constitute a binding offer but has to be regarded as an invitation to make an offer (so-called *invitatio ad offerendum*). It is thus the potential policyholder (or rather the applicant) who has the opportunity to submit an offer by e.g. filling a form on such a website. To comply with its duties under sec. 7 subsec. 1 VVG the insurer has to provide his general terms and conditions in a downloadable and printable way on his website in this case – in order to conform with sec. 7 subsec. 1 VVG the required information material must be accessible for the insurer before he sends his offer. If the potential policyholder uses a standardized form to declare his offer, this form regularly provides for a period in which he is bound to his offer which is then also the

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period of a possible acceptance for the insurer (sec. 148 BGB) . The subsequent acceptance by the insurer will regularly not be explicit but be implied by its transfer of the insurance policy to the policyholder. As under virtually all legal systems in Germany consent is established when offer and acceptance are in consistence. If the offer is accepted only after the above mentioned period, the acceptance will constitute a new offer (sec. 150 subsec. 1 BGB), which then again has to be accepted by the other party. German insurance contract law, however, provides a radical deviation from the principle legal rule that an acceptance is only valid (and thus not to be regarded as a counter offer) if it unconditionally agrees to the terms set out by the offer. Pursuant to the so-called *clause of approval* enshrined in sec. 5 VVG any modification provided by the insurer's acceptance to the applicant's offer will be deemed to be approved, if the policyholder does not object to them within a period of one month after receiving the policy. This clause of approval, however, only applies if the insurer has sufficiently informed and advised the policyholder about the effected modifications and their legal consequences (sec. 5 VVG). If it is the insurer who makes the offer, the acceptance of the policyholder can be provided explicitly or in an implied way by providing a direct debit authorization to the insurer or by paying the premium.

According to sec. 8 subsec. 1 VVG the policyholder is generally entiteld to revoke its contractual declaration within a period of 14 days (sec. 152 VVG provides a 30-day period for life-insurance contracts), irrespective of which type of insurance contract was concluded or which channel of conclusion was chosen (so-called *cooling-off period*). Sec. 8 subsec. 3 VVG exempts certain types of insurance contracts from this power of revocation (e.g. contracts regarding large risks, contracts with a term of less than a month). Within the 14-day period, the insurance contract is treated as provisionally valid (*schwebend wirksam*). The aforesaid period only starts to run when the policyholder has received the insurance policy, the general terms and conditions of insurance, all the necessary information required by sec. 7 subsec. 1 and 2 VVG, a clearly worded instruction regarding the right of revocation and the legal consequences of the revocation as well as the fulfilment of the general prerequisites for electronic business dealings according to sec. 312g BGB. Where the insurer has not disposed of its aforementioned duties correctly the cooling-off period is not incepted, which means that the policyholder enjoys an infinite power of revocation.

Sec. 9 VVG provides rules in regard to the legal effects of the revocation (sec. 152 subsec. 2 VVG states additional rules applicable to life insurance). Sec. 9, 152 VVG are equally only applicable if the insurer has already provided insurance cover. If cover has been granted only after the period of revocation has lapsed, legal consequences must be taken from an interpretation by analogy of secc. 357, 346, 312d subsec. 6 BGB, due to the reason that there are no provisions in the VVG or BGB that explicitly govern such a constellation. According to sec. 9 phrase 1 VVG the insurer has to return that portion of the premium relating to the period after the receipt of the revocation if the policyholder has agreed that the insurance cover commences before the expiry of the revocation period and the insurer has delivered the information required by sec. 8 subsec. 2 phrase 1 no. 2 VVG. If the prerequisites of sec. 9 phrase 1 VVG in regard to the mentioned information were not fulfilled, according to sec. 9 phrase 2 VVG the insurer has to return not only the amount of premium relating to the period after the receipt of cancellation but also the premium which was paid for the first year of insurance cover, unless the policyholder has already received insurance benefits under the policy. Therer is, however, a prevailing opinion in

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literature that regards sec. 9 phrase 2 VVG to partially violate the Distance Selling Directive 2002/65/EC.

In regard to the conclusion of insurance contracts, it has furthermore to be mentioned, that German insurance law differentiates between formal, material and technical inception of insurance (“Versicherungsbeginn”), formal inception being the moment at which the contract is formally concluded, material inception regarding the moment from which on the insurance cover is incepted and technical inception regarding the moment from which on the policyholder owes the premium.

General rules concerning the rescission of the insurance contract due to error or fraudulent deceit. are provided by the German Civil Code (§§ 119 ff., 123 BGB).

### **3) Concerning special information or warnings to be given to the prospective policyholder when concluding on line operation**

Think of communication failures: errors in declaration, transmission and software errors (press the wrong button, click on the wrong box; the electronic message is lost in the Internet or the software is not fit to send/receive the intended message, etc.)

#### **Answer:**

In order to protect the prospective policyholder against errors in his declaration during the process of concluding contracts via the internet, sec. 312g subsec. 1 phrase 1 no. 1 BGB obliges the entrepreneur who offers services by using means of e-commerce to provide the customer with reasonable, effective and accessible technical means with the aid of which the customer may identify and correct input errors prior to making his contractual declaration. Due to sec. 312g subsec. 1 phrase 1 no. 2 BGB, art. 246 para. 3 EGBGB the insurer is furthermore obliged to inform the prospective policyholder about the above mentioned possibility to correct his declaration before the latter sends his declaration. Due to sec. 312g subsec. 1 phrase 1 no. 3 BGB the insurer is obliged to confirm the receipt of the customers’ (prospective policyholder’s) declaration of intent immediately after receiving it.

In respect to the rescission of the insurance contract due to errors in declaration, transmission and software errors the general rules of the German Civil Code (secc. 119 et seqq. BGB ) are applicable.

There are different constellations in respect to errors connected to the transmission of declarations of intent via the internet:

If the electronic declaration of intent (*elektronische Willenserklärung*) is lost, before it has been saved on the target computer, the declaration will not become binding. If the recipient intentionally prevents the declaration to be saved, the declaration is valid although it failed to reach the recipient’s sphere (arg. secc. 162 subsec. 1, 815 BGB).

If the declaration of intent is lost or deleted after it has been saved on the target computer, it is valid, as the recipient then bears the risk of errors concerning his technical equipment and his provider.

**4) Concerning the special protection of the insured against fraud or concerning the payment of premium**

Are there in your legal system specific rules as regards this protection?

**Answer:**

Sec. 6 subsec. 5 VVG states that the policyholder can claim for compensation for damages resulting from a breach of obligations under sec. 6 subsec. 1, 2 and 4 VVG (duty to advise the policyholder) by the insurer or its agent. There are, however, no provisions on these issues applicable especially to electronic business dealings.

**5) Concerning the special role of insurance intermediaries**

Are there in your legal system specific rules for intermediaries when acting in Internet operation? Examples: registration requirement, information duties, responsibilities with regard to website, protection of personal data, etc.

**Answer:**

Sec. 11 Regulation on Insurance Intermediaries (Versicherungsvermittlervverordnung, henceforth referred to as VersVermV) provides that insurance intermediaries, whether they are acting on the internet or not, have to provide a certain status-based information to the prospective policyholder during the first business contact. These status-based pieces of information have to contain, *inter alia*, the intermediary's name, his business-address, the information, if he is an insurance-broker, insurance agent or insurance-adviser and if he is registered at the competent authority and inscribed in the register in accordance with sec. 34d subsec. 7 German Trade and Commerce Regulation Act (*Gewerbeordnung*).

Sec. 61, 62 VVG provide advisory and documentary duties which intermediaries have to comply with vis à vis a prospective policyholder. These duties are not specific duties for negotiations via the internet. These advisory duties of insurance intermediaries under sec. 61 et seq. VVG basically mirror the equivalent advisory duties of the insurer under sec. 6 subsec. 1 VVG. One important difference can, however, be seen regarding these two duties regarding distance communication contracts: sec. 6 subsec. 6 VVG provides that the insurer is not obliged to fulfil these advisory duties in the case of distance communication contracts ("*Fernabsatzverträge*" in the sense of sec. 312b subsec. 1, 2 BGB). From the lack of an equivalent exception in respect to the intermediary's duty to give advice one might infer that the insurance intermediary is also under a full obligation to give advice when distance communication contracts are concerned. The lack of an equivalent exception in sec. 61 et seq. VVG is, however, widely considered as an unintended oversight by the legislator. Some authors have hence advocated an interpretation by analogy in regard to the application of sec. 6 subsec. 6 VVG as an exception to sec. 60, 61 VVG. While this legal interpretation is certainly arguable, one has also to consider that if one were not to allow for such an analogous application of the exception insurance intermediaries would have to fulfil requirements concerning advisory duties which are stricter than the ones applicable to direct-insurers in comparable situations.

In regard to the protection of personal data the provisions of the Federal Data Protection Act (Bundesdatenschutzgesetz, hereinafter referred to as BDSG) are generally applicable. Especially the provisions of secc. 4, 4a, 28 BDSG are relevant in this context.

## ***Appendix***

### **Applicable provisions VVG**

#### **Section 5**

#### **Deviating insurance policy**

(1) If the content of the insurance policy deviates from the application made by the policyholder or the agreements made, the deviation shall be deemed to be approved if the preconditions under subsection (2) are met and the policyholder does not object in writing within one month of receipt of the insurance policy.

(2) The insurer shall be obligated to indicate to the policyholder when sending the insurance policy that deviations shall be deemed to have been approved if the policyholder does not object in writing within one month of receipt of the insurance policy. The policyholder's attention must be drawn to any deviation and to the associated legal consequences by means of conspicuous notes in the insurance policy.

(3) If the insurer has not fulfilled the obligations under subsection (2), the contract shall be deemed to have been concluded as per the content of the policyholder's application.

(4) An agreement by which the policyholder waives the right to avoid the contract on account of a mistake shall be void.

#### **Section 6**

#### **Advising the policyholder**

(1) If the difficulty in assessing the insurance being offered or the policyholder himself and his situation gives occasion thereto, the insurer must ask him about his wishes and needs and, also bearing in mind an appropriate relation between the time and effort spent in providing this advice and the insurance premiums to be paid by the policyholder, the insurer shall advise the policyholder and state reasons for each of the pieces of advice in respect of a particular insurance. He shall document this, taking into account the complexity of the contract of insurance being offered.

(2) Before the contract is concluded, the insurer shall provide the policyholder with the advice in writing, clearly and comprehensibly stating reasons. This information may be provided verbally if the policyholder so wishes or if and insofar as the insurer guarantees provisional cover. In such

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cases the information shall be provided in writing to the policyholder without undue delay as soon as the contract has been made; this shall not apply where a contract is not made and to contracts in respect of provisional cover in the case of compulsory insurances.

(3) The policyholder may waive the right to advice and documentation thereof in accordance with subsections (1) and (2) by a separate written declaration in which the insurer explicitly indicates that such waiving may have an unfavourable effect on his option for asserting a claim for damages against the insurer in accordance with subsection (5).

(4) The obligation under subsection (1), first sentence, shall also apply after the contract has been made for the entire term of the insurance agreement insofar as it is clear that the insurer recognises that the policyholder requires information and advice. The policyholder may in individual cases waive the right to advice by written declaration.

(5) If the insurer breaches an obligation under subsections (1), (2) or (4), he shall be liable to indemnify the policyholder for any loss or damage resulting therefrom. This shall not apply if the insurer is not responsible for the breach of obligation.

(6) Subsections (1) to (5) shall not apply to contracts of insurance covering a jumbo risk within the meaning of section 210 subsection (2) or if the contract is negotiated with the policyholder by an insurance broker or if it is a distance contract within the meaning of section 312b (1) and (2) of the German Civil Code.

### **Section 7 Information provided to the policyholder**

(1) 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), in good time before the policyholder submits his contractual acceptance. This information shall be provided clearly and comprehensibly in keeping with the means of communication employed. If, upon the request of the policyholder, the contract is concluded by telephone or using another means of communication which does not permit the information to be provided in writing prior to the policyholder's contractual acceptance, that information must be provided without undue delay after the contract is made; this shall also apply if the policyholder explicitly waives the right to information by a separate written declaration prior to submitting his contractual acceptance.

(2) The Federal Ministry of Justice shall be authorised, with the consent of the Federal Ministry of Finance and in consultation with the Federal Ministry for Food, Agriculture and Consumer Protection, to determine the following by statutory ordinance without the consent of the *Bundesrat* for the purposes of providing comprehensive information to the policyholder:

1. which details of the contract, in particular in respect of the insurer, the benefit offered, the general terms and conditions of insurance and the of revocation shall be provided to the policyholder,

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2. which other information shall be provided to the policyholder in respect of life insurance, in particular regarding the expected benefits, their determination and calculation, regarding a model calculation, and acquisition and distribution costs, insofar as these are set off against insurance premiums, and regarding other costs,
3. which other information shall be provided in respect of health insurance, in particular regarding the development and form of insurance premiums, and the acquisition and distribution costs,
4. what information shall be provided to the policyholder if the insurer has contacted him by telephone, and
5. in what manner this information is to be provided.

When determining the notifications in accordance with the first sentence, the information required in accordance with Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance and amending Directives 73/239/EEC and 88/357/EEC (OJ EC L 228 p. 1), 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 Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ EC L 271 p. 16), as well as Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life insurance (OJ EC L 345 p. 1), shall be observed.

(3) The statutory ordinance referred to in subsection (2) shall, furthermore, specify what information the insurer must communicate in writing throughout the policy period; this shall in particular apply in the case of changes to information previously supplied, further in respect of health insurance in the event of increases in insurance premiums and regarding the possibility of changing tariffs, as well as in respect of life insurance with surplus sharing regarding the development of the policyholder's entitlements.

(4) The policyholder may at any time throughout the policy period demand that the insurer send him the terms of contract, including the general terms and conditions of insurance, in the form of a document; the costs of the first dispatch shall be borne by the insurer.

(5) Subsections (1) to (4) shall not apply to insurance contracts covering a jumbo risk within the meaning of section 210 subsection (2). If under such a contract the policyholder is a natural person, the insurer shall inform him in writing prior to the conclusion of the contract of applicable law and the competent supervisory body.

### **Section 8 Policyholder's right of revocation**

(1) The policyholder may revoke his contractual agreement within 14 days. The policyholder shall declare his revocation to the insurer in writing, but need not state any reason; timely dispatch shall suffice for compliance with the time limit.



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(2) The revocation period shall begin at such time as the policyholder receives the following documents in writing:

1. the insurance policy and the terms of contract, including the general terms and conditions of insurance, as well as the other information in accordance with section 7 (1) and (2), and
2. a clearly worded instruction regarding the right of revocation and the legal consequences of the revocation which makes clear to the policyholder his rights commensurate with the requirements of the means of communication employed, and the names of the person to whom the revocation is to be declared, with an address at which documents may be served, as well as a note making reference to the commencement of the revocation period and to the rules set out in subsection (1), second sentence.

Proof of receipt of the documents in accordance with sentence 1 shall be incumbent on the insurer.

(3) The right of revocation shall not apply

1. to contracts of insurance with a term of less than one month,
2. to contracts of insurance for provisional cover, unless they are distance contracts within the meaning of section 312b (1) and (2) of the German Civil Code,
3. to contracts of insurance with pension funds based on the provisions set out in a contract of employment, unless they are distance contracts within the meaning of section 312b (1) and (2) of the German Civil Code,
4. to contracts of insurance covering a jumbo risk within the meaning of section 210 subsection (2).

The right of revocation shall cease to apply if the contract has been wholly fulfilled by both sides at the explicit request of the policyholder before the policyholder has exercised his right of revocation.

(4) Notwithstanding subsection (2), first sentence, the revocation period in e-commerce shall not commence until the obligations set out in section 312g (1), first sentence, of the German Civil Code have also been fulfilled.

(5) The instruction to be given in accordance with subsection (2), first sentence, no. 2. shall be deemed to meet the requirements stipulated therein if the model of the Annex to the present Act is used in text form. The insurer may deviate from the model in terms of format and font size, subject to subsection (2), first sentence, no. 2, and may insert addenda such as the firm name or a mark of the insurer.

## **Section 9 Legal consequences of revocation**

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If the policyholder exercises his right of revocation in accordance with section 8 (1), the insurer shall only be obligated to repay that share of the premiums paid for the period after receipt of the revocation if the policyholder has been instructed in accordance with section 8 (2), first sentence, no. 2 about his right of revocation, the legal consequences of revocation and the contribution to be paid, and he has agreed that the insurance cover commences prior to the end of the revocation period; the duty to reimburse shall be fulfilled without undue delay, at the latest 30 days after receipt of the revocation. If no note was provided as required under the first sentence, the insurer shall in addition reimburse the insurance premiums paid for the first year of insurance cover; this shall not apply if the policyholder has claimed benefits on the basis of the insurance policy.

### **Section 60**

#### **Basis on which insurance intermediary provides advice**

(1) The insurance broker shall be obligated to base his advice on a sufficient number of contracts of insurance and insurers available on the market so that he is in a position to make his recommendation, based on professional criteria, regarding which contract of insurance is suited to meeting the needs of the person wishing to take out insurance. This shall not apply if he explicitly informs the person wishing to take out insurance in individual cases prior to contractual acceptance of the limited selection of insurers and contracts.

(2) An insurance broker who informs a person wishing to take out insurance of the limited selection in accordance with subsection (1), second sentence, and an insurance agent must inform the person wishing to take out insurance on which market and information basis they are providing their services, and must state the names of the insurers on the basis of which they are giving advice. The insurance agent must also name the insurer on behalf of whom he is working and whether he is working exclusively for him.

(3) The person wishing to take out insurance may waive the right to the notifications and information in accordance with subsection (2) by separate written declaration.

### **Section 61**

#### **Insurance intermediary's duties of advice and documentation**

(1) If the difficulty of assessing the insurance being offered or the person wishing to take out insurance himself and his situation gives occasion thereto, the insurance intermediary must ask the person wishing to take out insurance about his wishes and needs and, also bearing in mind the relations between the time and effort spent providing the advice and the premium to be paid by the policyholder, must advise the person wishing to take out insurance and state reasons for each piece of advice given in respect of a particular insurance. He must document this in accordance with section 62, taking account of the complexity of the contract of insurance being offered.

(2) The person wishing to take out insurance may waive the right to the advice or documentation in accordance with subsection (1) by separate written declaration in which he is explicitly informed by the insurance intermediary of the fact that a waiver of the right may have a

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unfavourable effect on the option the person wishing to take out insurance has of asserting a claim for damages against the insurance intermediary in accordance with section 63.

### **Section 62**

#### **Time and form of the information**

(1) The policyholder shall be provided, in a clear and comprehensible written form, with the information in accordance with section 60 (2) before submitting his contractual acceptance, and the information in accordance with section 61 (1) before the contract is concluded.

(2) The information in accordance with subsection (1) may be given orally if the person wishing to take out insurance so wishes, or if and insofar as the insurer grants provisional cover. In such cases the information must be provided to the person wishing to take out insurance in writing without undue delay after the contract has been made, at the latest together with the insurance policy; this shall not apply to contracts for provisional cover for compulsory insurances.

### **Section 63**

#### **Obligation to pay damages**

The insurance intermediary shall be obligated to compensate for loss incurred by the person wishing to take out insurance on account of a breach of one of the duties under section 60 or section 61. This shall not apply if the insurance intermediary is not responsible for the breach of duty.

### **Section 152**

#### **Revocation by the policyholder**

(1) Notwithstanding section 8 (1), first sentence, the time limit on revocation shall be 30 days.

(2) Notwithstanding section 9, first sentence, the insurer shall also pay the surrender value, plus surplus sharing, in accordance with section 169. In the case of section 9, second sentence, the insurer shall reimburse the surrender value, plus surplus sharing, or, if this is more favourable for the policyholder, the insurance premiums paid for the first year.

(3) Notwithstanding section 33 (1), the single or first premium shall be payable without undue delay 30 days after receipt of the insurance policy.

### **Applicable provisions BGB**

### **Section 126**

#### **Written form**

(1) If written form is prescribed by statute, the document must be signed by the issuer with his name in his own hand, or by his notarially certified initials.

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(2) In the case of a contract, the signature of the parties must be made on the same document. If more than one counterpart of the contract is drawn up, it suffices if each party signs the document intended for the other party.

(3) Written form may be replaced by electronic form, unless the statute leads to a different conclusion.

(4) Notarial recording replaces the written form.

### **Section 126a Electronic form**

(1) If electronic form is to replace the written form prescribed by law, the issuer of the declaration must add his name to it and provide the electronic document with a qualified electronic signature in accordance with the Electronic Signature Act [Signaturgesetz].

(2) In the case of a contract, the parties must each provide a counterpart with an electronic signature as described in subsection (1).

### **Section 126b Text form**

If text form is prescribed by law, the declaration must be made in a document or in another manner suitable for its permanent reproduction in writing, the person making the declaration must be named and the completion of the declaration must be shown through the reproduction of a signature of the name or otherwise.

## **Title 3 Contract**

### **Section 145 Binding effect of an offer**

Any person who offers to another to enter into a contract is bound by the offer, unless he has excluded being bound by it.

### **Section 146 Expiry of an offer**

An offer expires if a refusal is made to the offeror, or if no acceptance is made to this person in good time in accordance with sections 147 to 149.

### **Section 147 Period for acceptance**

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(1) An offer made to a person who is present may only be accepted immediately. This also applies to an offer made by one person to another using a telephone or another technical facility.

(2) An offer made to a person who is absent may be accepted only until the time when the offeror may expect to receive the answer under ordinary circumstances.

### **Section 148 Fixing a period for acceptance**

If the offeror has determined a period of time for the acceptance of an offer, the acceptance may only take place within this period.

### **Section 149 Late receipt of a declaration of acceptance**

If a declaration of acceptance received late by the offeror was sent in such a way that it would have reached him in time if it had been forwarded in the usual way, and if the offeror ought to have recognised this, he must notify the acceptor of the delay after receipt of the declaration without undue delay, unless this has already been done. If he delays the sending of the notification, the acceptance is deemed not to be late.

### **Section 150 Late and altered acceptance**

(1) The late acceptance of an offer is considered to be a new offer.

(2) An acceptance with expansions, restrictions or other alterations is deemed to be a rejection combined with a new offer.

### **Section 312b Distance contracts**

(1) Distance contracts are contracts for the supply of goods or the rendering of services, including financial services, which are entered into between an entrepreneur and a consumer solely by the use of means of distance communication, except where the entering into of the contract does not take place in the context of a sales or service system organised for distance sales. Financial services in the meaning of sentence 1 are banking services and services in connection with the granting of a credit, insurance, provision for old age for individuals, investment or payment.

(2) Means of distance communication are means of communication which can be used to initiate or to enter into a contract between a consumer and an entrepreneur without the simultaneous physical presence of the parties to the contract, including without limitation letters, catalogues, telephone calls, faxes, emails, and radio, teleservices and media services.

(3) The provisions on distance contracts do not apply to contracts

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1. relating to correspondence courses (section 1 of the Correspondence Course Act [Fernunterrichtsschutzgesetz]),
2. relating to time sharing of residential buildings, to long-term holiday products and to brokerage contracts or exchange system contracts (sections 481 to 481b),
3. relating to insurance policies and their brokerage,
4. relating to the disposal of plots of land and rights equivalent to real property, the creation, disposal and cancellation of real rights in plots of land and rights equivalent to real property and the erection of buildings,
5. relating to the supply of food products, beverages or other household objects of everyday use which are supplied to the residence, place of abode or place of employment of a consumer by entrepreneurs in the course of frequent and regular rounds,
6. relating to the rendering of services in the fields of lodging, transport, delivery of food and beverages as well as leisure activities, if the entrepreneur, when the contract is entered into, agrees to render the services at a specific time or within a precisely indicated period of time,
7. that are entered into
  - a) with the use of automatic vending machines or automated business premises, or
  - b) with operators of means of telecommunications on the basis of the use of public telephones, to the extent that they have the use of the latter as their subject matter.

(4) In the case of contractual relationships that consist of an initial agreement with transactions following upon it or a series of separate transactions following upon it of the same type that have a temporal connection, the provisions on distance contracts only apply to the first agreement. If such transactions follow one another without such an agreement, the provisions on the duties of an entrepreneur to provide information apply only to the first transaction. However, if no transaction of the same type occurs for longer than one year, the next transaction is deemed to be the first transaction of a new series within the meaning of sentence 2.

(5) More extensive provisions regarding consumer protection remain unaffected.

### **Section 312c**

#### **Giving information to a consumer in distance contracts**

(1) The entrepreneur must give information to the consumer with distance contracts under Article 246 sections (1) and (2) of the Introductory Act to the German Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuch].

(2) In telephone calls arranged by himself, the entrepreneur must at the beginning of every conversation expressly disclose his identity and the business purpose of the contact.

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(3) In the case of financial services, the consumer may demand at any time in the duration of the contract that the entrepreneur provides him with the terms of the contract, including the standard business terms, in a document.

(4) More extensive restrictions in the use of means of distance communication and more extensive duties to provide information under other provisions are unaffected.

### **Section 312d**

#### **Right of revocation and right of return in distance contracts**

(1) In a distance contract the consumer has a right of revocation under section 355. In lieu of the right of revocation, the consumer may, in contracts for the supply of goods, be granted a right of return under section 356.

(2) Notwithstanding section 355 (3) sentence 1, the revocation period does not commence before the duties to provide information under Article 246 section 2 in conjunction with section 1 (1) and (2) of the Introductory Act to the Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuch] have been performed; in the case of the supply of goods, not before they reach the recipient; in the case of recurring deliveries of goods of the same kind, not before the first part delivery reaches the recipient; and in the case of services, not before the contract is entered into.

(3) In the case of a service, the right of revocation is also extinguished if the contract was performed in full by both parties at the express wish of the consumer before the consumer exercised his right of revocation.

(4) Unless otherwise specified, the right of revocation does not exist for distance contracts

1. for the supply of goods produced according to customer specifications or clearly tailored to personal needs or which, by reason of their quality, are not suitable for return or may spoil quickly or whose expiration date would be exceeded,

2. for the delivery of audio or video recordings or of software where the seal on the data carriers has been broken by the consumer,

3. for the delivery of newspapers, periodicals and magazines, unless the consumer has given his contractual acceptance by telephone,

4. for the rendering of betting and lottery services, unless the consumer has given his contractual acceptance by telephone,

5. which are entered into in the form of auctions (section 156),

6. the subject matter of which is the supply of goods or the rendering of financial services whose price is subject to fluctuations on the financial market over which the entrepreneur has no influence and which may occur within the revocation period, including in particular services in connection with shares, dividend coupons which are issued by an investment management

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company or a foreign investment company, and other tradeable securities, foreign currency, derivatives or money market instruments, or.

7. for the rendering of telecommunications-aided services rendered directly by telephone or fax at one time at the request of the consumer insofar as these are not financial services.

(5) In addition, the right of revocation does not exist for distance contracts for which the consumer, under sections 495 or 506 to 512, already has a right of revocation or right of return under section 355 or section 356. In the case of contracts for delivery by instalments, subsection (2) and section 312e subsection (1) apply with the necessary modifications.

(6) (repealed)

### **Section 312e Compensation for value with distance contracts**

(1) In the case of distance contracts for the supply of goods, the consumer, notwithstanding section 357 subsection (1), must only make compensation for the value of the utilisation in accordance with the provisions on statutory revocation

1. insofar as he has used the goods in a manner which goes beyond testing the characteristics and functioning, and

2. if he was previously informed by the entrepreneur of this legal consequence and notified in accordance with section 360 subsection (1) or (2) of his right of revocation or return or has acquired knowledge of both by other means.

Section 347 subsection (1) sentence 1 does not apply.

(2) In the case of distance contracts for services, the consumer, notwithstanding section 357 subsection (1), must only make compensation for the value of the service performance under the provisions on statutory revocation of an agreement

1. if, before he made his contract declaration, his attention was directed to this legal consequence, and

2. if he expressly agreed to the entrepreneur beginning to perform the service before the end of the revocation period.

### **Section 312f Contracts added to distance contracts on financial services**

If the consumer has effectively revoked his declaration of consent targeting the conclusion of a distance contract on financial services, he is no longer bound by his declaration of consent with regard to an added distance contract which has as its subject-matter a further service of the entrepreneur or of a third party on the basis of an agreement between the entrepreneur and the



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third party. Section 357 applies with the necessary modifications to the added contract; section 312e applies with the necessary modifications if there is or was a right of revocation for the added contract in accordance with section 312d.

### **Section 312g Duties in electronic business dealings**

(1) If an entrepreneur uses a teleservice or media service in order to enter into a contract for the supply of goods or the rendering of services (e-commerce contract), he must

1. provide the customer with reasonable, effective and accessible technical means with the aid of which the customer may identify and correct input errors prior to making his order,
2. communicate to the customer clearly and comprehensibly the information specified in Article 246 section 3 of the Introductory Act to the Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuch] in good time prior to sending his order,
3. confirm receipt of the order without undue delay by electronic means for the customer, and
4. make it possible for the customer to retrieve the contract terms including the standard business terms when the contract is entered into and save them in a form that allows for their reproduction.

The order and the acknowledgement of receipt in the meaning of sentence 1 no. 3 are deemed to have been received if the parties for whom they are intended are able to retrieve them in normal circumstances.

(2) Subsection (1) sentence 1 nos. 1 to 3 does not apply if the contract is entered into exclusively by personal communication. Subsection (1) sentence 1 nos. 1 to 3 and sentence 2 does not apply if otherwise agreed in a contract between parties who are not consumers.

(3) More extensive duties to provide information under other provisions are unaffected. If the customer has a right of revocation under section 355, the revocation period does not begin, notwithstanding section 355 (3) sentence 1, until the duties laid down in subsection (1) sentence 1 have been performed.

### **Applicable Provisions Regulation on Information Obligations for Insurance Contracts (VVG-Informationspflichtenverordnung – VVG-InfoV)**

#### **Section 1 - Information obligations for all insurance classes**

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(1) Pursuant to section 7 (1) sentence 1 of the VVG, the insurer shall provide policyholders with the following information:

1. the identity of the insurer and any branch office through which the contract is to be concluded; the commercial register in which the legal entity is registered together with its registration number shall also be provided;
2. the identity of the insurer's representative in the Member State of the European Union in which the policyholder is resident if such a representative exists, or the identity of any party other than the supplier if this party acts as a counterparty to the policyholder, and the capacity in which such party does business with the policyholder;
3. the insurer's contact address and any other address that is relevant to the commercial relationship between the insurer, its representative, or another party pursuant to no. 2 above and the policyholder, including the name of an authorised representative in the case of legal entities, bodies of persons or groups of persons;
4. the insurer's principal business activity;
5. information on the existence of a guarantee fund or other compensation schemes that do not fall within the scope of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135 p. 5) and Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor compensation schemes (OJ L 84 p. 22); the name and address of the guarantee fund are to be provided;
6. a) the general policy conditions, including the premium rate conditions, applicable to the relationship between insurer and policyholder;  
b) the main features of the insurance benefits, in particular details on the nature, scope and due dates of benefits payable by the insurer;
7. the total cost of the insurance, including all taxes and other cost components; premiums shall be stated individually if the insurance relationship comprises several independent insurance contracts, or, if the exact cost cannot be provided, information on its basis of calculation to enable the policyholder to verify the cost;
8. any additional costs, if applicable, stating the total amount payable and any possible additional taxes, fees and costs not levied via or charged by the insurer; as well as any costs incurred by the policyholder for the use of communication methods if such additional costs are chargeable;
9. details on the payment and compliance, in particular the method by which premiums are to be paid;
10. the period of validity of the information provided, for example the duration of time-limited offers, particularly with respect to the cost of the insurance;
11. where appropriate, a warning that the financial service being provided involves financial instruments that are associated with heightened risks due to their particular features or the processes involved, or whose price is subject to fluctuations on the financial markets that are beyond the insurer's control, and that past performance is not an indication of future performance; the circumstances and risks to be outlined in each case;
12. information on how the contract is established, in particular as regards inception of the policy and commencement of cover and the period during which the applicant is bound by the application;
13. whether or not the policyholder has a right of cancellation and the conditions and details concerning the exercise of such right, particularly the name and address of the parties who must be informed of the cancellation and the legal consequences of cancellation, including information on amounts, if any, payable by the policyholder in the event of cancellation;
14. information on the duration of the contract and any minimum contract period;
15. details on the termination of the contract, particularly concerning the contractual conditions for termination including any contractual penalties;

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16. the EU Member States on whose law the insurer bases the establishment of relations with the applicant prior to conclusion of the insurance contract;
17. the law applicable to the contract, a clause in the contract regarding the applicable law or the court with jurisdiction;
18. the languages in which the contract terms and the preliminary information referred to in these provisions are provided and the languages in which the insurer undertakes to conduct communication during the lifetime of this contract, subject to the policyholder's consent;
19. any access the policyholder may have to extrajudicial appeal proceedings and legal remedies and, where appropriate, the conditions of such access, indicating expressly that the policyholder's option to instigate legal proceedings shall not be thereby affected;
20. the name and address of the competent supervisory authority and the option to make a complaint to such authority.

(2) Where disclosure is made via communication of the contract terms, including the general policy conditions, the information under subsection (1) no. 3, no. 13 and no. 15 must be clearly and distinctively highlighted.

### **Section 2 - Information obligations for life insurance, occupational disability insurance and accident insurance with premium refund**

(1) Pursuant to section 7 (1) sentence 1 of the VVG, the insurer shall provide the policyholder with the following information in addition to the information referred to in section 1 (1) above in the case of life insurance:

1. details on costs included in the premium, showing the acquisition costs as a single amount and the other costs as a proportion of the annual premium, stating the period for which they apply in each case;
2. details of other potential costs, particularly non-recurring or exceptional costs;
3. details on the calculation principles and criteria applicable to the determination of surplus and to surplus participation (bonuses);
4. details on the surrender values;
5. details on the minimum sum insured for transformation into paid-up insurance or insurance with discounted premiums and on the benefits payable under such an insurance;
6. the extent to which the benefits under nos. 4 and 5 are guaranteed;
7. in the case of unit-linked insurance, details on the underlying fund and the type of assets it holds;
8. general information on the tax regulations applicable to this class of insurance.

(2) The information under subsection (1) nos. 1, 2, 4 and 5 shall be expressed in euro. The foregoing sentence shall apply to subsection (1) no. 6 subject to the proviso that the guaranteed amount is stated in euro.

(3) Pursuant to section 154 (1) of the VVG, the model calculation to be provided by the insurer shall be based on the following interest rates:

1. the maximum technical interest rate, multiplied by 1.67,
2. the interest rate under no. 1 plus one percentage point, and
3. the interest rate under no. 1 less one percentage point.

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(4) Subsections (1) and (2) shall apply mutatis mutandis to occupational disability insurance. In addition, policyholders shall be informed of the fact that the definition of occupational disability in insurance terms is not the same as the definition of incapacity or reduced earning capacity for social security purposes or the term as defined in the policy conditions of daily benefits insurance.

(5) Subsection (1) nos. 3 to 8 and subsection (2) shall apply mutatis mutandis to accident insurance with premium refund.

### **Section 3 - Information obligations for health insurance**

(1) Pursuant to section 7 (1) sentence 1 of the VVG, the insurer shall provide the policyholder with the following information in addition to the information referred to in section 1 (1) in the case of substitutive health insurance (section 12 (1) of the German Insurance Supervision Act (Versicherungsaufsichtsgesetz – VAG)):

1. details of the costs included in the premium, showing the acquisition costs as a single amount and the other costs as a proportion of the annual premium, stating the period for which they apply in each case;
2. details of other potential costs, particularly non-recurring or exceptional costs;
3. information on the impact of rising medical expenses on future premiums;
4. information on the options available for limiting premiums in old age, particularly as regards a switch to the standard or basic rate or to other rates pursuant to section 204 of the VVG and on options for agreeing exclusions, as well as on the possibility of a premium reduction pursuant to section 12 (1c) VAG;
5. an indication that a switch from private to statutory health insurance is usually precluded at an advanced age;
6. an indication that a switch within a private health insurance scheme in old age may be associated with higher premiums and that switches may be restricted to a changeover to the standard or basic rate;
7. a summary of the premium history in the 10 years prior to the offer, stating the monthly premium that would have been payable in each of the 10 years prior to the offer if the insurance contract had been concluded at the time by a person of the same sex as the applicant and aged 35 at inception; if the premium rate on offer has not existed for 10 years, the comparison shall be made from the date of introduction of the rate, with a note to the effect that the relevance of the comparison is limited due to the shorter period since the introduction of the rate; in addition, the premium history of a comparable premium rate that has existed for 10 years shall be presented.

(2) The information under subsection (1) nos. 1, 2 and 7 shall be expressed in euro.

### **Section 4 - Product information sheet**

(1) If the policyholder is a consumer, the insurer shall provide him with a product information sheet containing information that is of particular significance to the conclusion or performance of the insurance contract.

(2) Information within the meaning of subsection (1) shall include:

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1. details on the type of insurance contract on offer;
2. a description of the risk insured by the contract and of the excluded risks;
3. details on the level of the premium in euro, the due date and the period for which the premium is payable, as well as the consequences of late or non-payment;
4. an indication of the benefit exclusions stipulated in the contract;
5. information on the obligations to be complied with when the contract is concluded and the legal consequences of non-compliance;
6. information on the obligations to be complied with during the lifetime of the contract and the legal consequences of non-compliance;
7. an indication of the obligations to be complied with if an insured event occurs and the legal consequences of non-compliance;
8. when the insurance cover begins and ends;
9. an indication of the options available for termination of the contract.

(3) In the case of with-profits policies, subsection (2) no. 2 shall apply with the proviso that reference is also made to the model calculation to be provided by the insurer pursuant to section 154 (1) of the VVG.

(4) In the case of life insurance, occupational disability insurance and health insurance, subsection (2) no. 3 shall apply with the proviso that the acquisition and distribution costs (section 2 (1) no. 1, section 3 (1) no.1) and other costs (section 2 (1) no. 2, section 3 (1) no. 2) are in each case stated separately in euro.

(5) The product information sheet shall be clearly identified as such and placed in front of the other information. The information to be provided under subsections (1) and (2) must be presented concisely in a clear and comprehensible format; it shall be pointed out to the policyholder that the information is not exhaustive. The order of the information set out in subsection (2) shall be adhered to. Insofar as the information concerns the content of the contract, reference shall be made to the relevant provision of the contract or to the general policy conditions underlying the contract.

### **Applicable provision BDSG**

#### **Section 4 Lawfulness of data collection, processing and use**

- (1) The collection, processing and use of personal data shall be lawful only if permitted or ordered by this Act or other law, or if the data subject has provided consent.
- (2) Personal data shall be collected from the data subject. They may be collected without the data subject's participation only if
  1. allowed or required by law, or
  2. a) the data must be collected from other persons or bodies due to the nature of the administrative task to be performed or the commercial purpose, or
  - b) collecting the data from the data subject would require disproportionate effort and there are no indications that overriding legitimate interests of the data subject would be adversely affected.
- (3) If personal data are collected from the data subject, the controller shall inform him/her as to
  1. the identity of the controller,

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2. the purposes of collection, processing or use, and  
3. the categories of recipients only where, given the circumstances of the individual case, the data subject need not expect that his/her data will be transferred to such recipients, unless the data subject is already aware of this information. If personal data are collected from the data subject pursuant to a law requiring the provision of such information, or if providing this information is required for the granting of legal benefits, the data subject shall be informed that providing this information is required or voluntary, as the case may be. The law and the consequences of refusing to provide information shall be explained to the data subject as necessary in the individual case.

### **Section 4a Consent**

(1) Consent shall be effective only when based on the data subject's free decision. Data subjects shall be informed of the purpose of collection, processing or use and, as necessary in the individual case or on request, of the consequences of withholding consent. Consent shall be given in writing unless special circumstances warrant any other form. If consent is to be given together with other written declarations, it shall be made distinguishable in its appearance.

(2) In the field of scientific research, a special circumstance as referred to in subsection 1 third sentence shall be deemed to exist if the defined purpose of research would be seriously affected if consent were obtained in writing. In this case, the information referred to in subsection 1 second sentence and the reasons the defined purpose of research would be seriously affected shall be recorded in writing.

(3) Where special categories of personal data (Section 3 (9)) are collected, processed or used, the consent must also refer specifically to these data.

### **Section 28 Collection and recording of data for own commercial purposes**

(1) The collection, recording, alteration or transfer of personal data or their use as a means to pursue own commercial purposes shall be lawful

1. if necessary to create, perform or terminate a legal obligation or quasi-legal obligation with the data subject,

2. as far as necessary to safeguard legitimate interests of the controller and there is no reason to assume that the data subject has an overriding legitimate interest in ruling out the possibility of processing or use, or

3. if the data are generally accessible or the controller would be allowed to publish them, unless the data subject has a clear and overriding legitimate interest in ruling out the possibility of processing or use.

When personal data are collected, the purposes for which the data are to be processed or used shall be specifically defined.

(3a) If consent under Section 4a (1) third sentence is given in a form other than writing, the controller shall provide the data subject with written confirmation of the substance of the consent unless consent was given in electronic form and the controller ensures that the declaration of consent is recorded and the data subject can access and revoke it at any time with future effect. If consent is to be given together with other written declarations, it shall be made distinguishable in its printing and format.

(3b) The controller may not make the conclusion of a contract dependent on the data subject's consent under subsection 3 first sentence, if access to equivalent contractual benefits is impossible or unreasonable without providing consent. Consent provided under such circumstances shall be invalid.

(4) If the data subject lodges an objection with the controller regarding the processing or use of his or her data for advertising purposes or market or opinion research, processing or use for these purposes shall be unlawful. In approaching the data subject for the purpose of advertising or market or opinion research, and in the cases of subsection 1 first sentence no. 1 also when creating a legal or quasi-legal obligation, the data subject shall be informed of the identity of the controller and of the right to object under the first sentence; where the party approaching the data subject uses the data subject's personal data recorded by a body unknown to him or her, the approaching party shall also ensure that the data subject may obtain information about the source of the data. If the data subject lodges an objection with the third party to

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which the data were transferred in connection with purposes under subsection 3 as to the processing or use for purposes of advertising or market or opinion research, the third party shall block the data for these purposes. In the cases of subsection 1 first sentence no. 1, the requirements as to the form of the objection may not be stricter than for the creation of a legal or quasi-legal obligation. (5) The third party to which the data are transferred may process or use these data only for the purpose for which they were transferred. Private bodies may process or use the data for other purposes only subject to the conditions of subsections 2 and 3, and public bodies may process or use the data for other purposes only subject to the conditions of Section 14 (2). The transferring body shall point this out to the third party.

## **Einführungsgesetz zum Bürgerlichen Gesetzbuch**

### **(Mangels offizieller Übersetzung deutsche Fassung)**

#### **Art 246**

### **Informationspflichten bei besonderen Vertriebsformen**

#### **§ 3 Informationspflichten bei Verträgen im elektronischen Geschäftsverkehr**

Bei Verträgen im elektronischen Geschäftsverkehr muss der Unternehmer den Kunden unterrichten

1. über die einzelnen technischen Schritte, die zu einem Vertragsschluss führen,
2. darüber, ob der Vertragstext nach dem Vertragsschluss von dem Unternehmer gespeichert wird und ob er dem Kunden zugänglich ist,
3. darüber, wie er mit den gemäß § 312g Absatz 1 Satz 1 Nummer 1 des Bürgerlichen Gesetzbuchs zur Verfügung gestellten technischen Mitteln Eingabefehler vor Abgabe der Vertragserklärung erkennen und berichtigen kann,
4. über die für den Vertragsschluss zur Verfügung stehenden Sprachen und
5. über sämtliche einschlägigen Verhaltenskodizes, denen sich der Unternehmer unterwirft, sowie über die Möglichkeit eines elektronischen Zugangs zu diesen Regelwerken.