

TRANSPARENCY OF INSURANCE CONTRACT TERMS AND CONDITIONS AND PRE-CONTRACTUAL INFORMATION

The issue concerns policyholder protection against misleading terms of insurance policies and the disclosure requirements to be met by insurers and insurance intermediaries prior to the conclusion of any insurance contract.

Reports should outline any applicable laws and regulations, and any legal remedies available against non-compliance, such as civil actions, financial penalties or disciplinary measures.

Particular attention should be paid to transparency rules on life insurance contracts, including a comparison with similar rules applicable to financial intermediation.

The issue does not concern a policyholder/insured's duty of disclosure.

QUESTIONNAIRE

A. Transparency of insurance contracts

I. Transparency of insurance contract provisions under general contract law

As used herein, transparency means the clarity, comprehensibility and exhaustiveness of a contractual text. Please, indicate whether your country has any provisions of law or regulations and/or case-law decisions governing transparency in insurance contract terms and conditions, specifying whether:

1. there are separate rules governing specific types of contract or contracts with weaker parties, such as contracts concluded between a seller or supplier and a consumer; and
2. any special duties are provided for in one-side, adhesion or standard contracts, and whether the *contra proferentem* doctrine is applied to any such contract.

II. Transparency specific rules applicable to insurance contracts

Transparency rules include both the rules of contract law and any rules issued by authorities empowered to supervise insurance companies (supervisory rules).

1. Please, indicate which rules must be observed by insurance companies in setting out insurance contract provisions, distinguishing between insurance contract law rules and supervisory rules, and specifying:
 - (a) any rules common to all insurance contracts;
 - (b) whether different rules are applied to the following types of contract:
 - (i) life insurance contracts;

- (ii) non-life insurance contracts;
 - (iii) particular types of insurance contracts (e.g. accident or sickness policies); and
 - (iv) compulsory insurance contracts;
- (c) whether there are special rules for insurance investment products, such as capital redemption policies, life insurance policies linked to an investment fund or to a stock index (so-called unit-linked policies and index-linked policies);
2. Please, indicate the consequences of infringing transparency duties under contract law and insurance contract law, specifying:
- (a) whether and under which circumstances infringement will affect a contract or individual contractual provisions (invalidity of contract or individual contractual provisions, termination of contract or other events);
 - (b) whether and under which circumstances infringement may result in damages or other compensation being awarded to the other party to a contract;
 - (c) whether any other consequences of infringement have been provided for;
 - (d) which consequences may follow infringement of supervisory rules, such as prohibition or restriction from continuing to conclude the contract involved and/or pecuniary penalties. Further specify whether any adopted measure involving penalties or restrictions on the activities of an insurance company is subject to the right to apply to the courts; and
 - (e) whether a remedy taken by the supervisory authority is a *de jure* or *de facto* element binding upon the judge seised of the case in an action brought by the weaker party against the stronger party for the same facts as those prompting the remedy so taken.

B. Pre-contractual information and *bona fide* negotiations

As used herein, “pre-contractual information” means the duty to inform and advise the policyholder prior to executing an insurance contract.

As used herein, “*bona fide* negotiations” means the duties to negotiate fairly, to refrain from malicious or even merely reticent behaviours, and to provide the other party with all information that is relevant to, known or even merely knowable within the scope of ordinary care with a view to, contract execution.

I. Pre-contractual information under general contract law

Please indicate whether:

1. there are separate rules governing specific types of contract or contracts with weaker parties, such as contracts concluded between a seller or supplier and a

consumer; and

2. any special duties are placed upon the party setting forth contractual terms in one-side, adhesion or standard contracts.

II. Pre-contractual information in concluding insurance contracts. Specific rules on insurance contracts.

1. Please, indicate whether there are separate rules governing the following types of contract:
 - (a) life insurance contracts;
 - (b) non-life insurance contracts;
 - (c) particular types of insurance contracts (e.g. accident or sickness policies);
 - (d) compulsory insurance contracts; and
 - (e) insurance investment products, such as capital redemption policies, life insurance policies linked to an investment fund or to a stock index (so-called unit-linked policies and index-linked policies).
2. Please, indicate the obligations applicable to all insurance contract and those applicable to special types of insurance contracts, specifying whether:
 - (a) there is a duty for the insurer to inform the policyholder about the rights and obligations arising from the contract, even if only covered by the general conditions of a contract of adhesion that are known or knowledgeable to the adhering party;
 - (b) there are specific information duties in relation to the object and characteristics of insurance coverage;
 - (c) there are information duties also in relation to the policyholder's statutory obligations (e.g. in compulsory insurance); and
 - (d) there is a duty to assess whether the relevant insurance product is adequate to meet the insured's cover needs and to direct his or her choice to a more suitable product; and
 - (e) there are any information duties as to potential conflicts of interest between the insurer and the insured.

III. Infringing *bona fide* negotiation and pre-contractual information obligations.

1. Under law of contract.

Please, indicate:

- (a) whether and under which circumstances infringement will affect a contract or individual contractual provisions (invalidity of contract or individual provisions, termination of contract or other events);
- (b) whether and under which circumstances infringement may result in damages or other compensation being awarded to the other party to a contract;
- (c) any criteria applicable to the identification (also in relation to the burden of proof) and the quantification of the losses or injuries to be compensated for; and
- (d) whether any other consequences are provided for.

2. Under law of insurance contract.

Please, indicate:

- (a) whether and under which circumstances infringement will affect a contract or individual contractual provisions (invalidity of contract or individual provisions, termination of contract or other events);
- (b) whether and under which circumstances infringement may result in damages or other compensation being awarded to the other party to a contract;
- (c) any criteria applicable to the identification (also in relation to the burden of proof) and the quantification of the losses or injuries to be compensated for; and
- (d) which consequences may follow infringement of supervisory rules, such as prohibition or restriction from continuing to conclude the contract involved and/or pecuniary penalties;
- (e) whether any adopted measure involving penalties or restrictions on the activities of an insurance company is subject to the right to apply to the courts; and
- (f) whether the remedy taken by the supervisory authority is a *de jure* or *de facto* element binding upon a civil court seised of the case in an action brought by the weaker party against the stronger party for the same facts as those prompting the remedy so taken.

IV. Insurance intermediaries

As used herein, “insurance intermediary” means a person who submits or proposes insurance contracts on behalf of an insurer.

1. Indicate whether an insurance intermediary’s activity:

- (a) is unregulated;

- (b) is subjected to supervision rules;
 - (c) is subjected to supervision rules only for specific classes of professional intermediaries, such as insurance agents or brokers; and
 - (d) the authority supervising insurance intermediaries is the same as the authority called upon to supervise insurance companies.
2. Indicate the following, specifying the source of the relevant obligation (statutes and/or supervisory rules):
- (a) intermediaries' duties of pre-contractual information, specifying whether there are separate rules applying to the following types of contract:
 - (i) life insurance contracts;
 - (ii) non-life insurance contracts;
 - (iii) particular types of insurance contracts (e.g. accident or sickness policies);
 - (iv) compulsory insurance contracts; and
 - (v) insurance investment products, such as capital redemption policies, life insurance policies linked to an investment fund or to a stock index (so-called unit-linked policies and index-linked policies); and
 - (b) whether there are different and/or additional duties placed upon particular classes of intermediaries.
3. Indicate which consequences may follow infringement by the intermediaries of information duties, specifying:
- (a) whether and under which circumstances infringement may result in damages or other compensation being awarded to the other party to a contract;
 - (b) whether and under which circumstances the insurer-and-principal is liable to the policyholders and the insured for losses caused by the intermediaries;
 - (c) whether the authority supervising insurance intermediaries' activity may inflict penalties; and
 - (d) whether and under which circumstances penalties may also be inflicted on the insurers-and-principals.

C. Publicity of insurance products: Transparency and fairness

Please, indicate:

1. whether there are any special transparency and fairness duties to be observed in advertising insurance products;
2. whether any controls on advertising are in place, specifying:
 - (a) the types of advertising placed under control; and
 - (b) whether prior approval procedures are in place;
3. which consequences may ensue from non-performance of transparency and fairness duties.

V. Open Answer:

If necessary, indicate other points that could be felt to be relevant to the topic.